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Rules and Regulations

Federal Register
Vol. 81, No. 233
Monday, December 5, 2016

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

[Doc. No. AMS–SC–16–0083; SC16–944/980/999–1 IR]

Changes to Reporting and Notification Requirements and Other Clarifying Changes for Imported Fruits, Vegetables, and Specialty Crops

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule updates reporting and notification requirements associated with, and makes clarifying changes to, the fruit, vegetable, and specialty crop import regulations for certain commodities regulated under section 608(e) (hereinafter referred to as ''8e'') of the Agricultural Marketing Agreement Act of 1937. The updates include shifting the exempt reporting requirement for imported tomatoes destined for noncommercial outlets for experimental purposes from the tomato import regulations to the safeguard procedures section of the vegetable import regulations. In addition, the pistachio import regulations will be updated by removing reference to a paper-based notification of entry process. Other administrative changes will be made to several of the 8e regulations to replace outdated information. These changes to the import regulations support the International Trade Data System (ITDS), a key White House economic initiative that will streamline and automate the filing of import and export information by the trade.

DATES: Effective December 8, 2016; comments received by February 3, 2017 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Specialty Crops Program, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Shannon.Ramirez@ams.usda.gov* or *VincentJ.Fusaro@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, 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: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 8e provides that whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and/or maturity requirements as those in effect for the domestically produced commodities. The Act also authorizes The Department of Agriculture (USDA) to perform inspections and other related functions (such as commodity sampling) on those imported commodities and to certify whether these requirements have been met.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify inspection, certification, and reporting requirements for imported commodities regulated under 8e. Additionally, these parts specify the imported commodities that may be exempt from grade, size, quality, and/or maturity requirements when imported for specific purposes (such as processing, donation to charitable organizations, or livestock feed) as well as the form importers must use to report to USDA and the U.S. Customs and Border Protection (CBP) imports of commodities exempt from 8e regulations.

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. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule makes a clarifying change to part 980, the vegetable import regulations, by moving the procedure for filing an exempt commodity form for tomatoes destined for noncommercial outlets for experimental purposes from § 980.212, the tomato import regulations, to § 980.501, the imported vegetable safeguard procedures section. This change removes reference to a form that does not exist for imports and makes the safeguard regulations consistent for all imported vegetables that are exempt from 8e regulations.

This rule also changes § 999.600, the pistachio import regulations, by removing reference to a paper-based notification of entry process, known in the industry as the ''stamp and fax'' process. This paper-based process is being replaced by an electronic filing requirement that was developed to comply with the International Trade Data System (ITDS) and is intended to be specified within AMS's Specialty Crops Inspection Division's regulations (form SC–357, *Initial Inspection Request for Regulated Imported Commodities*). Removing this outdated information streamlines the regulations and provides

consistency among the specialty crop import regulations.

This rule also makes other minor administrative changes to §§ 944.401, 999.1, and 999.600 in the fruit and specialty crop import regulations. These changes, which include updating agency and program names and removing or updating other information that is duplicative or out of date, help ensure the import regulations contain accurate information and align with the ITDS objective of streamlining import processes for the trade.

Imported Tomato Regulation Changes

The import regulations in parts 944, 980, and 999 provide that individual lots of some imported commodities may be exempted from 8e requirements if those commodities are intended to be used in processing or in some other exempted outlet, such as a charitable organization or as livestock feed. To import exempt commodities into the United States, importers and receivers are required to certify to USDA and CBP as to the intended, authorized exempt use of those commodities. Certification is reported by both importers and receivers using a paper or electronic FV–6 form, *Importer's Exempt Commodity Form.*

On March 26, 1996, a final rule was published in the **Federal Register** (61 FR 13057) that changed, among other things, the safeguard section of the imported vegetable regulations (§ 980.501) by adding exemptions, subject to certain safeguard provisions, for tomatoes used for processing (canning and pickling), charity, and relief. At that time, the tomato import regulations already contained an exemption for tomatoes destined for noncommercial outlets for experimental purposes as well as an associated exemption reporting form (Certificate for Special Purpose Shipment) to be completed by the importer and the receiver of the tomatoes (§ 980.212(b)). However, the Certificate of Special Purpose form is not used to report the exempt use of these imported tomatoes; instead, an *Importer's Exempt Commodity Form* (form FV–6) is completed by importers and receivers, pursuant to the long-standing safeguard procedures that are in place for imported fruits, vegetables, and specialty crops. Therefore, a clarifying change is made to move the exempt-use reporting requirements for tomatoes destined for noncommercial outlets for experimental purposes from the tomato import regulations (§ 980.212) to the safeguard section for imported vegetables (§ 980.501). Incorporating the safeguard procedures for imported tomatoes into the vegetable safeguard procedures reflects current practice and standardizes the vegetable import regulations.

Imported Pistachio Regulation Changes

The regulations for imported pistachios provide for aflatoxin sampling procedures, based on lot size (§ 999.600(d)). These procedures currently require that an importer provide the inspection service office that will draw and prepare samples of the pistachio shipment with a copy of Customs entry documentation and other information related to the shipment; and in turn, the inspection service signs, stamps, and returns the entry documentation to the importer. This paper-based entry procedure is known in the industry as the ''stamp and fax'' process because the documentation is ''stamped'' by the inspection service and returned to the importer via ''fax.''

In support of ITDS, § 999.600(d) is revised to remove the paper-based ''stamp and fax'' process. This process is being replaced by an electronic process that importers will use to notify AMS of an initial request for inspection (form SC–357, *Initial Inspection Request for Regulated Imported Commodities*). The initial request is intended to alert the inspection service and CBP that a lot of pistachios will be arriving that will require inspection at the port of entry or at another location (this is identical to the purpose of the old ''stamp and fax'' process). AMS's Specialty Crops Inspection Division intends to amend its inspection application regulations (7 CFR part 51) to provide for the electronic filing of the initial request for inspection, thereby meeting CBP's requirement that the regulations of agencies participating in ITDS be revised to provide for electronic filing of shipment entry data.

Administrative Changes

To further ensure that the fruit, vegetable, and specialty crop import regulations provide accurate information to the import trade, the USDA agency and program names are being updated where needed.

Also, a statement about the requirement that importers provide USDA inspectors with identifying information, including a Customs entry number, for each lot being inspected is simplified in the fruit and specialty crops import regulations in §§ 944.401(e) (olives) and 999.1(c)(1) (dates), respectively. These changes will make the olive and date import regulations consistent with the other fruit, vegetable, and specialty crop import regulations.

Finally, a paragraph titled ''importation'' in the date import regulations (§ 999.1(e)) is removed because it contains redundant and incomplete information about filing inspection or exemption documents with CBP. These requirements are more accurately explained elsewhere in the date regulations; specifically, § 999.1(b) provides the grade requirements that must be met by dates prior to importation, § 999.1(c) provides the inspection and certification requirements, and § 999.1(d) provides detailed exemption information and also references the safeguard section in the specialty crops import regulations (§ 999.500) that provides details on filing an electronic or paper FV–6 exemption form.

These changes will ensure the import regulations contain accurate and consistent information, which should benefit the import trade.

International Trade Data System (ITDS)

Changing the 8e import regulations to remove the paper-based notification of entry for imported pistachios supports the International Trade Data System (ITDS), a key White House economic initiative that has been under development for over ten years and is mandated for completion by December 31, 2016 (pursuant to Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses,* signed by President Obama on February 19, 2014 (79 FR 10657)). Under ITDS, the import and export trade will file shipment data through an electronic ''single window,'' instead of completing multiple paper-based forms to report the same information to different government agencies. ITDS will greatly reduce the burden on America's import and export trade while still providing information necessary for the United States to ensure compliance with its laws.

By the end of 2016, the ITDS ''single window'' will be presented to the import and export trade through CBP's Automated Commercial Environment (ACE) platform. ACE will be the primary system through which the global trade community will file information about imports and exports so that admissibility into the U.S. may be determined and government agencies may monitor compliance.

Prior to the implementation of the ITDS ''single window,'' CBP is requiring that the 47 partnering government agencies that are participating in the ITDS project, including AMS, ensure that agency regulations provide for the electronic entry of import and/or export information.

AMS's Marketing Order and Agreement Division (MOAD) is currently developing the functionality of a new automated system called the Compliance and Enforcement Management System (CEMS) that will interface with CBP's ACE system in support of ITDS. CEMS will electronically link with the ACE system to create a ''pipeline'' through which data will be transmitted between MOAD and CBP. CEMS will contain several features, including an exempt imported commodities module and the ability to message CBP about whether a shipment may be released for importation into the United States.

AMS has determined that the changes in this rule meet CBP's requirements for ITDS by streamlining a notification process for imported pistachios; shifting an exempt-tomato reporting requirement to the proper safeguard section of the vegetable regulations, which was revised in 2015 to provide an electronic filing option; and by removing duplicate or revising outdated information. These changes will reduce the burden on America's import trade without compromising AMS's ability to ensure compliance with its import regulations.

Initial 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 action on small entities. Accordingly, AMS has prepared this initial 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.

Small agricultural service firms, which includes importers and USDA-accredited laboratories who perform services required by import regulations, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000 (13 CFR 121.201).

Based on 2015 reporting, USDA estimates that there were two importers and two receivers of tomatoes that were exempt from 8e requirements. Although USDA does not have access to data about the business sizes of these importers and receivers, it is likely that the majority may be classified as large entities.

This action moves the requirements for reporting imported tomatoes destined for noncommercial outlets for experimental purposes, which are exempt from 8e regulations, from the tomato import regulations to the safeguard section of the vegetable import regulations. This change to the regulations does not revise the procedures currently used by importers and receivers of exempt tomatoes; instead, it shifts the outdated requirements currently listed under § 980.212 to the more appropriate safeguard section in § 980.501. Most importers and receivers already file FV–6 forms electronically using AMS's Marketing Order Online System (MOLS), while some paper forms are still submitted. In 2015, AMS estimates it received five electronic FV–6 forms and no paper FV–6 forms for approximately 14,900 pounds of exempt tomatoes.

As part of the full implementation of ITDS, importers and receivers will report exempt shipments through CBP's ACE system and AMS's CEMS system, which, as noted earlier, is currently under development and will eventually replace MOLS. An affirmation of interim rule as final rule was published in the **Federal Register** on June 25, 2015 (80 FR 36465) that provided for the electronic submission of FV–6 forms, a practice that has existed since MOLS was implemented in 2008 but was not reflected in the regulations. This action imposes no additional burden on importers and receivers of exempt tomatoes.

Regarding alternatives to this action, AMS determined that these changes to the regulations were needed to comply with the ITDS mandate. Moving an outdated, paper-based exempt form-filing requirement from the import tomato regulations to the safeguard section of the vegetable import regulations standardizes the regulations and properly provides for the current requirement of filing a paper or electronic form FV–6, which will benefit importers and receivers who import these exempt tomatoes. In addition, changing the pistachio regulations by removing the paper-based ''stamp and fax'' requirement streamlines the regulations and reduces the burden on the trade. The other administrative changes made in this action will also provide the import trade with accurate information.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements for the form FV–6 (for commodities exempt from 8e requirements) have been previously approved by OMB and assigned OMB No. 0581–0167 (Specific Commodities Imported into United States Exempt From Import Regulations). No changes in the requirements for the FV–6 form as a result of this action are necessary. The shift of the requirements for exempt-use filings from the tomato import regulations to the safeguard section for imported vegetables is administrative in nature and does not change the practice that has existed for many years. Should any changes to form FV–6 become necessary in the future, they would be submitted to OMB for approval.

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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, importers are already familiar with the long-existing process and requirement to file FV–6 forms for commodities exempt from 8e regulations. Also, the import trade is fully aware of the ITDS initiative, which is designed to streamline and automate the filing of import shipment data.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

This rule invites comments on updates to reporting and notification requirements, as well as other clarifying and administrative changes, to the regulations for fruit, vegetable, and specialty crop import regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule clarifies and standardizes exempt commodity form-filing requirements and does not impose any new requirements, which should benefit importers and receivers; (2) this rule eliminates a paper-based notification of entry requirement that is no longer going to be used by importers of pistachios; (3) the import industry is well aware of the ITDS initiative and its goal to automate paper-based processes; (4) CBP is requiring timely update of import regulations to meet the ITDS

electronic data submission requirement; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Olives, Oranges.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Pistachios, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 944, 980, and 999 are amended as follows:

■ 1. The authority citation for 7 CFR parts 944, 980, and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 944—FRUITS; IMPORT REGULATIONS

■ 2. Revise § 944.401 paragraph (e) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(e) Inspection shall be performed by USDA inspectors in accordance with said regulations governing the inspection and certification of processed fruits and vegetables and related products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant therefore. Applicants shall provide USDA inspectors with the entry number and such other identifying information for each lot as the inspector may request.

* * * * *

■ 3. Amend § 980.212 as follows:

■ a. Revise paragraph (b) introductory text; and

■ b. Remove and reserve paragraphs (b)(2) and (3).

§ 980.212 Import regulations; tomatoes.

* * * * *

(b) *Grade, size, quality and maturity requirements.* On and after the effective date hereof no person may import fresh tomatoes except pear shaped, cherry, hydroponic and greenhouse tomatoes as defined herein, unless they are inspected and meet the following requirements:

* * * * *

■ 4. In § 980.501, revise the first sentence of paragraph (a) introductory text and paragraph (a)(4), and add paragraph (a)(5) to read as follows:

§ 980.501 Safeguard procedures for potatoes, onions, and tomatoes exempt from grade, size, quality and maturity requirements.

(a) Each person who imports or receives any of the commodities listed in paragraphs (a)(1) through (5) of this section shall file (electronically or paper) an ''Importer's Exempt Commodity Form'' (FV–6) with the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA. * * *

(4) Pearl onions; or

(5) Tomatoes to be used in noncommercial outlets for experimental purposes.

* * * * *

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

■ 5. Amend § 999.1 as follows:

■ a. Revise paragraph (c)(1);

■ b. Remove paragraph (e); and

■ c. Redesignate paragraphs (f) through (i) as (e) through (h), respectively.

§ 999.1 Regulations governing the importation of dates.

* * * * *

(c) *Inspection and certification requirements*—(1) *Inspection.* Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Processed Fruits and Vegetables and Related Products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant. Applicants shall provide USDA inspectors with the entry number and such other identifying information for each lot as the inspector may request.

* * * * *

■ 6. Amend § 999.600 as follows:

■ a. Remove paragraph (d)(1); and

■ b. Redesignate paragraphs (d)(2) and (3) as (d)(1) and (2), respectively, and revise the newly designated paragraph (d)(1).

§ 999.600 Regulation governing the importation of pistachios.

* * * * *

(d) *Sampling.* (1) All sampling for aflatoxin testing shall be performed by USDA-authorized inspectors in accordance with USDA rules and regulations governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR part 51). The cost of each such sampling and related certification shall be borne by the importer. Whenever pistachios are offered for sampling and testing, the importer shall furnish any labor and pay any costs incurred for storing, moving, and opening containers as may be necessary for proper sampling and testing. The importer shall furnish the USDA inspector with the customs entry number and such other identifying information for each lot as he or she may request. Importers may make arrangements for required sampling by contacting the Inspection Service office closest to where the pistachios will be made available for sampling. For questions regarding sampling, a list of Federal or Federal-State Inspection Program offices, or for further assistance, importers may contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1536–S, Washington, DC 20250; Telephone: (202) 720–5870; Fax: (202) 720–0393.

* * * * *

Dated: November 29, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–29022 Filed 12–2–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0215; Directorate Identifier 2012–NM–132–AD; Amendment 39–18665; AD 2016–19–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 707–300, 707–300B, and 707–300C series airplanes; and certain Model 727C, 727–100C, and 727–200F series airplanes. This AD was prompted by a report indicating that a cam latch on the main cargo door (MCD) broke during flight. This AD requires various inspections and related investigative and corrective actions, if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 9, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 9, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0215.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0215; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain The Boeing Company Model 707–300, 707–300B, and 707–300C series airplanes; and certain Model 727C, 727–100C, and 727–200F series airplanes. The NPRM published in the **Federal Register** on March 28, 2013 (78 FR 18922) (''the NPRM''). The NPRM was prompted by a report indicating that a cam latch on the MCD broke during flight. The NPRM proposed to require performing repetitive inspections of the MCD cam latches; replacing cam latches, certain bolts, and door hinge fittings; performing related investigative and corrective actions, if necessary; and rigging the MCD. We are issuing this AD to detect and correct discrepancies of the cam latches, latch pins, and latch pin cross bolts, which could reduce the structural integrity of the MCD, and result in potential loss of the cargo door and rapid decompression of the airplane.

Actions Since the NPRM Was Issued

Since we issued the NPRM, we have reviewed Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes). (We referred to Boeing 707 Alert Service Bulletin A3536, dated February 6, 2012; and Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012; as the appropriate sources of service information for accomplishing the actions specified in the NPRM.)

Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015; clarify the inspection conditions and the corrective actions for certain conditions. Certain inspections of the cam latches and latch pins were changed from detailed inspections to general visual inspections. Also, a detailed inspection of mating parts and immediately adjacent cam latches and latch pins for any cracks or any gouges in critical areas was added to certain corrective actions specified in the service information.

Also, the corrective actions for latch pin extensions that are between 0.84 and 0.89 inch or between 0.91 and 0.94 inch were changed. Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015; specify replacement of any discrepant latch pin and a detailed inspection of the mating cam latch for any cracks or gouges in lieu of the repetitive detailed inspections described in Boeing 707 Alert Service Bulletin A3536, dated February 6, 2012; and Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012.

Explanation of Certain Changes to This AD

In light of the issuance of the revised service information discussed previously, we have revised paragraphs (c), (g), and (h) of this AD to refer to Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015. We have also added new paragraph (l) of this AD to give credit for doing actions before the effective date of this AD using Boeing 707 Alert Service Bulletin A3536, dated February 6, 2012; and Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012. In addition, we have removed the Optional Terminating Action, which was paragraph (m) in the proposed AD, and moved that information into paragraph (g)(2) of this AD to align with the revised service information. We have redesignated subsequent paragraphs accordingly.

In addition, since certain inspections and conditions were revised in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015; we have revised the description of the actions required by this AD to correspond with the terminology used in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015. As a result, certain paragraphs in the proposed AD have been rearranged, and the corresponding paragraph identifiers have been redesignated in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Action in the NPRM	Corresponding requirement in this AD
paragraph (g)	paragraph (g)(1).
paragraph (h)	paragraph (g)(2).
paragraph (i)	paragraph (h).
paragraph (j)	paragraph (h).
paragraph (k)	paragraph (k).
paragraph (l)	paragraph (i).
paragraph (m)	paragraph (g)(2).
paragraph (n)	paragraph (j).

We have also revised the Costs of Compliance section in this final rule to reflect the number of work-hours specified in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015. We have also included the costs for the repetitive inspections required before the MCD rigging check as well as replacement of the alloy cross bolts; these costs were inadvertently omitted from the NPRM. In addition, we have included the costs for the concurrent actions in Boeing

707/720 Service Bulletin 3477, Revision 2, dated April 15, 1993; and Boeing Service Bulletin 727–52–0142, Revision 2, dated April 15, 1993.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

FedEx Express had no objection to the NPRM.

Request for Clarification of Requirements

Boeing stated that it was difficult to align the requirements proposed in paragraphs (g), (h), (i), (j) and (l) of the proposed AD with the actions described in Boeing 707 Alert Service Bulletin A3536, dated February 6, 2012; and Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012. Boeing commented that it is not clear which requirements in the proposed AD go with which section of table 1 and table 2 in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012. Boeing expressed concern that the proposed AD does not include all of the items in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012. Boeing suggested that the proposed AD be rewritten so operators are not confused with unclear compliance requirements, which might cause situations of non-compliance.

Boeing also requested that paragraphs (h)(1), (h)(2), (h)(3)(i), and (h)(3)(ii) of the proposed AD be rewritten to improve clarity because words were omitted that might lead to confusion or misinterpretation of the requirements in the proposed AD.

We agree that the description of the parts to be inspected and the required tasks should be consistent throughout this final rule and should match what is described in the Boeing service information. With the exception of paragraph (l)(2) of this AD, we are requiring only actions that are described in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015. We have revised paragraphs (g), (h), (i), and (j) of this AD accordingly.

For clarity we have moved the ''Concurrent Actions'' paragraph of the proposed AD (paragraph (l) of the proposed AD) before the ''Exceptions to Service Information Specifications'' paragraph (paragraph (k) of the proposed AD). In this AD, the ''Concurrent Actions'' paragraph is redesignated as paragraph (i) of this AD.

Request To Revise Intervals for Repetitive Inspections

The United States Air Force Joint STARS (Joint STARS) program stated that its concern is that the NPRM addresses only airplanes that are frequently used to haul cargo. For operators that do not haul cargo and typically only open the MCD for C-check inspections, the general visual inspections required every 330 flight cycles or 150 days is excessive. This commenter stated that these repetitive inspections do not fit into the current Joint STARS maintenance program and would result in airplane downtime and additional cost. This commenter noted that detailed inspections every 3,000 flight cycles or 24 months, and high frequency eddy current (HFEC) inspections every 6,000 flight cycles or 48 months, would fit into its current maintenance schedule and not cause a significant impact.

We agree that the required intervals for repetitive inspections may not be appropriate for some operators because they infrequently use the cargo door. However, we disagree with revising the intervals for the repetitive inspections required by this AD. We need to evaluate the requests for different inspection intervals on a case-by-case basis, based on the operator and its use of the MCD. Operators may request a change in the intervals for the repetitive inspections by following the procedures in paragraph (m) of this AD and requesting approval of an alternative method of compliance.

We also note that the FAA has limited oversight of public aircraft operations (PAO). The government entity conducting the PAO is responsible for oversight of the operations, including aircraft airworthiness.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015; and Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015. This service information describes procedures for doing a general visual inspection for broken or missing cam latches, latch pins, and latch pin cross bolts; torqueing the cross bolts in the latch pins; measuring the extension of the latch pins; replacing all alloy steel cross bolts through the latch pins with CRES cross bolts; doing a general visual inspection of all cam latches for lip deformation; doing a HFEC or magnetic particle inspection of cam latch 1 and cam latch 2 for cracks and replacing all cracked or broken parts; checking the rig of the MCD and re-rigging as applicable; and doing related investigative and corrective actions. This service information also describes procedures for doing repetitive inspections for certain conditions specified in the service information, which terminate after the MCD rigging is done as specified in this service information. This service information also describes procedures for doing MCD post-rigging inspections and corrective actions. These service bulletins are distinct because they apply to different airplane models.

We also reviewed Boeing 707/720 Service Bulletin 3477, Revision 2, dated April 15, 1993; and Boeing Service Bulletin 727–52–0142, Revision 2, dated April 15, 1993. This service information describes procedures for doing general a general visual inspection of the hinge fittings and the cam latches on the MCD, and related investigative and corrective actions. These service bulletins are distinct because they apply to different airplane models.

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

Costs of Compliance

We estimate that this AD affects 18 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/torque/measurement	4 work-hours × $85 per hour = $340	$0	$340	$6,120.
Repetitive inspections pre-MCD rigging	Up to 3 work-hours × $85 per hour = $255 per inspection cycle.	$0	Up to $255 per inspection cycle.	Up to $4,590 per inspection cycle.
MCD rigging/adjustment	48 work-hours × $85 per hour = $4,080.	Up to $8,821 [1]	Up to $12,901	Up to $232,218.
Replacement of alloy cross bolts	1 work-hour × $85 per hour = $85	$0	$85	$1,530.
Repetitive inspections post-MCD rigging.	3 work-hours × $85 = $255 per inspection cycle.	$0	$255 per inspection cycle.	$4,590 per inspection cycle.
Concurrent [2] inspection	8 work-hours × $85 per hour = $680	$0	$680	$12,240.

[1] Special tooling is available from the airplane manufacturer; $8,821 is the purchase price and $180 per day is the rental rate.
[2] The concurrent inspection is required by AD 91–22–04, Amendment 39–8064 (56 FR 55223, October 25, 1991).

We estimate the following costs to do any necessary related investigative actions and certain replacements that will be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative actions	Up to 3 work-hours × $85 per hour = $255	$0	Up to $255.
Replacement of broken/missing parts	1 work-hour × $85 per hour = $85 per latch/pin	$0	$85 per latch/pin.
Concurrent replacement [1]	26 work-hours × $85 = $2,210	$15,324	$17,534.

[1] The concurrent replacement of parts is required by AD 91–22–04, Amendment 39–8064 (56 FR 55223, October 25, 1991).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–19–16 The Boeing Company: Amendment 39–18665; Docket No. FAA–2013–0215; Directorate Identifier 2012–NM–132–AD.

(a) Effective Date

This AD is effective January 9, 2017.

(b) Affected ADs

None.

(c) Applicability

The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 707–300, 707–300B, and 707–300C series airplanes, as identified in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015.

(2) Model 727C, 727–100C, and 727–200F series airplanes, as identified in Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report that a cam latch on the main cargo door (MCD) broke during flight. We are issuing this AD to detect and correct discrepancies of the cam latches, latch pins, and latch pin cross bolts. Such discrepancies could reduce the structural integrity of the MCD, and result in potential loss of the cargo door and rapid decompression of the airplane.

(f) Compliance

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

(g) MCD Pre-Rig Inspections, Bolt Torque, Latch Pin Measurement, Cross Bolt Replacement, and Related Investigative and Corrective Actions

(1) Except as provided by paragraph (k)(l) of this AD, at the applicable times specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes): Do the actions specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this AD in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes).

(i) A general visual inspection of the MCD for broken or missing cam latches, latch pins, and latch pin cross bolts.

(ii) Torque the cross bolts in the latch pins.

(iii) Measure the extension of the latch pins.

(iv) Perform a general visual inspection of all cam latches for lip deformation.

(2) Except as required by paragraph (k)(2) of this AD, after accomplishing the actions specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this AD: Do all applicable related investigative and corrective actions, replace all alloy steel cross bolts through the latch pins with corrosion resistant steel (CRES) cross bolts, repeat the applicable inspections, and do the check of the MCD rig and the latch mechanism adjustment test, at the applicable times and intervals specified in table 1 of paragraph 1.E., ''Compliance,'' and in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes). Accomplishment of the check of the MCD rig terminates the repetitive inspections required by this paragraph.

(h) MCD Post-Rigging Inspections and Corrective Actions

(1) Except as required by paragraph (k)(2) of this AD: At the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes): Do general visual inspections for any broken or missing cam latches, latch pins, and latch pin cross bolts; a detailed inspection of the cam latches and latch pins for any cracks, or any gouges in critical areas; and an HFEC or magnetic particle inspection of cam latch 1 and cam latch 2 for cracks in critical areas; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes). Do all applicable corrective actions before further flight.

(2) Repeat the inspections required by paragraph (h)(1) of this AD at the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes).

(i) Concurrent Actions

(1) For airplanes identified in Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015: Before or concurrently with accomplishment of the general visual inspections specified in paragraphs (g)(1)(i) and (g)(1)(iv) of this AD, do a general visual inspection of the hinge fittings and the cam latches on the MCD, and perform related investigative and corrective actions as applicable, in accordance with the Accomplishment Instructions of Boeing 707/720 Service Bulletin 3477, Revision 2, dated April 15, 1993.

(2) For airplanes identified in Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015: Before or concurrently with accomplishment of the general visual inspections specified in paragraphs (g)(1)(i) and (g)(1)(iv) of this AD, do a general visual inspection of the hinge fittings and the cam latches on the MCD, and perform related investigative and corrective actions as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–52–0142, Revision 2, dated April 15, 1993.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install an alloy steel bolt as a cross bolt through any latch pin fitting assembly in the lower sill of the MCD on any airplane.

(k) Exceptions to Service Information Specifications

The following exceptions apply to this AD.

(1) Where Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes); specifies a compliance time relative to the issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes); specifies to contact Boeing for appropriate action: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015 (for Model 727C, 727–100C, and 727–200F series airplanes); repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for the corresponding actions required by paragraphs (g) and (h) of this AD, if those actions were done before the effective date of this AD using Boeing 707 Alert Service Bulletin A3536, dated February 6, 2012 (for Model 707–300, 707–300B, and 707–300C series airplanes); or Boeing Alert Service Bulletin 727–52A0150, dated January 30, 2012 (for Model 727C, 727–100C, and 727–200F series airplanes).

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

(n) Related Information

(1) For more information about this AD, contact Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov.*

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

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Boeing 707 Alert Service Bulletin A3536, Revision 1, dated September 16, 2015.

(ii) Boeing Alert Service Bulletin 727–52A0150, Revision 1, dated November 5, 2015.

(iii) Boeing 707/720 Service Bulletin 3477, Revision 2, dated April 15, 1993.

(iv) Boeing Service Bulletin 727–52–0142, Revision 2, dated April 15, 1993.

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

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

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

Issued in Renton, Washington, on September 14, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28337 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5466; Directorate Identifier 2015–NM–183–AD; Amendment 39–18724; AD 2016–24–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by investigation results that determined that a certain thickness of the fuel tank panels is insufficient to meet the certification requirements. This AD requires inspecting the thickness of the fuel tank panels, and repair if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 9, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 9, 2017.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 7X airplanes. The NPRM published in the **Federal Register** on April 13, 2016 (81 FR 21770) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0216, dated October 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

> Several rear fuselage tanks of the Falcon 7X were assembled on the production line with a lateral panel, which had been excessively chemically-milled in some areas. Investigation results determined that the remaining thickness is insufficient to meet the certification requirements. Dassault Aviation identified the individual aeroplanes that are potentially affected by this production deficiency. Due to this reduced thickness, the risk of damaging and puncturing a fuel tank wall panel as a result of a high energy lightning strike is increased.
>
> This condition, if not detected and corrected, could lead to loss of electrical power and/or other essential functions, possibly resulting in reduced control of the aeroplane or ignition of a fuel tank.
>
> To address this potential unsafe condition, Dassault Aviation published Service Bulletin (SB) 7X–245 to provide inspection and repair instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the fuel tank wall panels and, depending on findings, accomplishment of a repair.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletin 7X–245, dated June 8, 2015. The service information describes procedures for measuring fuel tank panel thickness, and repair if necessary.

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

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,080, or $680 per product.

In addition, we estimate that any necessary follow-on actions will take about 20 work-hours and require parts costing $2,244, for a cost of $3,944 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–24–07 Dassault Aviation: Amendment 39–18724; Docket No. FAA–2016–5466; Directorate Identifier 2015–NM–183–AD.

(a) Effective Date

This AD is effective January 9, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers (S/Ns) 17 through 21 inclusive, S/Ns 86 through 90 inclusive, S/Ns 115 through 119 inclusive, S/Ns 129 through 138 inclusive, and S/N 155.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by investigation results that determined that a certain thickness of the fuel tank panels is insufficient to meet the certification requirements. We are issuing this AD to detect and correct improper thickness of the fuel tank panels. Improper thickness increases the risk of damaging and puncturing a fuel tank wall panel as a result of a high energy lightning strike, which could lead to loss of electrical power and/or other essential functions, possibly resulting in reduced control of the airplane or ignition of a fuel tank.

(f) Compliance

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

(g) Inspection and Repair

Within 99 months or 4,100 flight cycles, whichever occurs first since the date of first delivery of the airplane, inspect for improper thickness of the fuel tank panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–245, dated June 8, 2015. If improper thickness is found during this inspection, before further flight, repair the fuel tank panels, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–245, dated June 8, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0216, dated October 28, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5466.

(j) Material Incorporated by Reference

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

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

(i) Dassault Service Bulletin 7X–245, dated June 8, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

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

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28600 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7271; Directorate Identifier 2015–NM–099–AD; Amendment 39–18722; AD 2016–24–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by heavy corrosion found on the wing rear spar lower girder. This AD requires inspections of the affected areas, modification of the wing trailing edge lower skin panels, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 9, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 9, 2017.

ADDRESSES: For service information identified in this final rule, contact, Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7271.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by *searching* for and locating Docket No. FAA–2016–7271; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on June 23, 2016 (81 FR 40823) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0113, dated June 22, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

On an F28 Mark 0070 aeroplane, heavy corrosion was found on the wing rear spar lower girder. At small spots the effective thickness of the vertical flange of the lower girder was almost lost. Subsequently, a number of inspections were accomplished on other aeroplanes to provide additional information on possible corrosion in this area. Because the rear spar lower girder between Wing Stations (WSTA) 9270 and 11794 is hidden from view by the inboard and outboard aileron balancing plates, it is possible that corrosion in this area remains undetected during the zonal inspections in zone 536 and 636 (MRB [Maintenance Review Board] tasks 062505–00–01 and 062605–00–01).The heavy corrosion was not only found in the area between WSTA 9270 and 11794, but also in the area where the rear spar lower girder is directly visible.

This condition, if not detected and corrected, reduces the load carrying capability of the wing, possibly resulting in structural failure and loss of the aeroplane.

To address this potential unsafe condition, Fokker Services issued Service Bulletin (SB) SBF100–57–049 to provide instructions to detect and remove corrosion and to modify the wing trailing edge lower skin panels into access panels. SBF100–57–050 was issued to provide repair instructions.

For the reasons described above, this [EASA] AD requires inspections of the affected areas and, depending on findings, accomplishment of applicable corrective action(s) [including removing corrosion, repair, and restoring protective finish]. This [EASA] AD also requires modification of the wing trailing edge lower skin panels into access panels [This modification is to provide ease of access for later inspection and repairs in the affected areas.], and reporting of the results of the inspections to Fokker Services.

More information on this subject can be found in Fokker Services All Operators Message AOF100.197.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7271.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, which describes procedures for an inspection for corrosion of certain wing rear spar lower girder areas, modification of the wing trailing edge lower skin panels, and corrective actions if necessary. We also reviewed Fokker Service Bulletin SBF100–57–050, Revision 1, dated May 19, 2015, which describes procedures for repair of the wing spar. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Wing inspection and modification.	35 work-hours × $85 per hour = $2,975 per inspection cycle.	$1,680	$4,655 per inspection cycle.	$37,240 per inspection cycle.
Reporting	1 work hour × $85 per hour = $85	0	85	680.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective Actions	Up to 372 work hours × $85 per hour = $31,620	Up to $7,600	Up to $39,220.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–24–05 Fokker Services B.V.: Amendment 39–18722; Docket No. FAA–2016–7271; Directorate Identifier 2015–NM–099–AD.

(a) Effective Date

This AD is effective January 9, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by heavy corrosion found on the wing rear spar lower girder. We are issuing this AD to detect and correct corrosion of the wing rear spar lower girder. This condition could reduce the load-carrying capability of the wing, possibly resulting in structural failure and loss of the airplane.

(f) Compliance

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

(g) Inspection of the Wing Rear Spar Lower Girder From Wing Stations (WSTA) 9270 to 11794

Within 1,000 flight cycles or 12 months, whichever occurs first after the effective date of this AD, accomplish a one-time detailed visual inspection for corrosion of the wing rear spar lower girder area from WSTA 9270 to 11794, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015.

(h) Modification of Wing Trailing Edge

Within 1,000 flight cycles or 12 months, whichever occurs first after the effective date of this AD, modify the wing trailing edge lower skin panels into access panels, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015.

(i) Inspection of the Wing Rear Spar Lower Girder From WSTA 2635 to 8700 and WSTA 11794 to 12975

Within 2,000 flight cycles or 24 months, whichever occurs first after the effective date of this AD, accomplish a one-time detailed visual inspection for corrosion of the wing rear spar lower girder area from WSTA 2635 to 8700 and WSTA 11794 to 12975, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015.

(j) Corrective Actions for the Inspections of Wing Rear Spar Lower Girder

(1) If during any inspection required by paragraph (g) or (i) of this AD, as applicable, corrosion is found, before further flight, remove the corrosion and determine the remaining thickness at the damaged spots, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015. If the remaining thickness at the damaged spots, as determined by this paragraph, is not within the tolerances specified in Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, except as required by paragraph (k)(1) of this AD: Before further flight, accomplish the applicable corrective actions as defined in paragraph (j)(1)(i) or (j)(1)(ii) of this AD, as applicable.

(i) For corrosion damage found outboard of WSTA 8200 only: Repair, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–050, Revision 1, dated May 19, 2015.

(ii) Repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA).

(2) If during any inspection required by paragraph (g) or (i) of this AD, only damage to the surface protection is found, or if the remaining thickness at the damaged spots, as determined by paragraph (j)(1) of this AD, is within the tolerances specified in Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, except as required by paragraph (k)(1) of this AD: Before further flight, restore the surface protection, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, except as required by paragraph (k)(2) of this AD.

(k) Exceptions to Service Information Specifications

(1) Where Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, specifies the acceptability of smaller thickness or customized repairs: Before further flight, obtain acceptable tolerances, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Fokker Services B.V.'s EASA DOA.

(2) Where Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, specifies contacting Fokker for a customized repair: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Fokker Services B.V.'s EASA DOA.

(l) Reporting Requirements

Submit a report of the findings, both positive and negative, of the inspections required by paragraphs (g) and (i) of this AD to Fokker Services, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–049, dated March 24, 2015, at the time specified in paragraph (l)(1) or (l)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(n) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0113, dated June 22, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7271.

(o) Material Incorporated by Reference

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

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

(i) Fokker Service Bulletin SBF100–57–049, dated March 24, 2015.

(ii) Fokker Service Bulletin SBF100–57–050, Revision 1, dated May 19, 2015.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

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

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

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28601 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7418; Directorate Identifier 2015–NM–163–AD; Amendment 39–18675; AD 2016–20–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2A12 (CL–601 Variant), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This AD was prompted by a report that a potential chafing condition exists between the negative-G fuel feed drain line of the auxiliary power unit (APU) and its surrounding structure and components. This AD requires, for certain airplanes, a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and corrective actions if necessary. For certain other airplanes, this AD requires replacement of the APU negative-G fuel feed tube assembly and the drain line. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is January 9, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 9, 2017.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Norman Perenson, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7337; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2A12 (CL–601 Variant), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The NPRM published in the **Federal Register** on June 28, 2016 (81 FR 41889) (''the NPRM''). The NPRM was prompted by a report that a potential chafing condition exists between the negative-G fuel feed drain line of the APU and its surrounding structure and components. The NPRM proposed to require, for certain airplanes, a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and corrective actions if necessary. For certain other airplanes, the NPRM proposed to require replacement of the APU negative-G fuel feed tube assembly and the drain line. We are issuing this AD to prevent a chafing condition in the negative-G fuel feed drain line, which can result in fuel leaking from the drain line. This condition, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2015–26, dated August 31, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2A12 (CL–601 Variant) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The MCAI states:

> It was reported that a potential chaffing condition exist between the Auxiliary Power Unit (APU) negative-G fuel feed drain line and its surrounding structure and components. Leakage of the negative-G fuel feed drain line is a dormant failure, however, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.
>
> This [Canadian] AD mandates [for certain airplanes] the detailed visual inspection [for chafing conditions, *e.g.,* fouling between the drain line and other components and insufficient clearance] and, if required, rectification [corrective actions], to ensure required clearance between the APU negative-G fuel feed drain line and its surrounding structure and components [and, for certain other airplanes, this [Canadian] AD mandates replacement of the APU negative-G fuel feed tube assembly and the drain line].

Corrective actions include replacing the APU negative-G fuel feed drain line. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed the following Bombardier, Inc. service information.

• Bombardier Service Bulletin 601–0640, dated May 19, 2015; and Bombardier Service Bulletin 604–28–021, dated May 19, 2015. This service information describes procedures for a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and corrective actions. These service bulletins are distinct since they apply to different airplane models.

• Bombardier Service Bulletin 605–28–009, dated May 19, 2015. This service information describes procedures for a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, replacement of the APU negative-G fuel feed tube assembly and the drain line, and corrective actions.

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

Costs of Compliance

We estimate that this AD affects 504 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Modification	22 work-hours × $85 per hour = $1,870	$6,334	$8,204	$4,134,816

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–20–09 Bombardier, Inc.: Amendment 39–18675; Docket No. FAA–2016–7418; Directorate Identifier 2015–NM–163–AD.

(a) Effective Date

This AD is effective January 9, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–2A12 (CL–601 Variant) airplanes, having serial numbers (S/Ns) 3001 through 3066 inclusive.

(2) Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive.

(3) Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5301 through 5665 inclusive, and 5701 through 5970 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report that a potential chafing condition exists between the negative-G fuel feed drain line of the auxiliary power unit (APU) and its surrounding structure and components. We are issuing this AD to prevent a chafing condition in the negative-G fuel feed drain line, which can result in fuel leaking from the drain line. This condition, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.

(f) Compliance

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

(g) Inspection and Corrective Action for Certain Airplanes

Within 24 months after the effective date of this AD, comply with the applicable actions specified in paragraphs (g)(1) through (g)(3) of this AD, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

(1) For Model CL–600–2A12 (CL–601 Variant) airplanes, having S/Ns 3001 through 3066 inclusive; and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0640, dated May 19, 2015.

(2) For Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5301 through 5665 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–28–021, dated May 19, 2015.

(3) For Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5701 through 5913 inclusive, 5917, 5918, and 5923 through 5970 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions in Part A and, if applicable, Part B of Bombardier Service Bulletin 605–28–009, dated May 19, 2015.

(h) Modification for Certain Other Airplanes

For Model CL–600–2B16 (604 Variant) airplanes having S/Ns 5914 through 5916 inclusive and 5919 through 5922 inclusive: Within 24 months after the effective date of this AD, replace the APU negative-G fuel feed tube assembly and the drain line, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 605–28–009, dated May 19, 2015.

Note 1 to paragraph (h) of this AD: An inspection is not required.

(i) Service Information Exception

Where any service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD specifies to contact the manufacturer for corrective action, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2015–26, dated August 31, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601–0640, dated May 19, 2015.

(ii) Bombardier Service Bulletin 604–28–021, dated May 19, 2015.

(iii) Bombardier Service Bulletin 605–28–009, dated May 19, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on September 19, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28340 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 747, 748 and 762

[Docket No. 160303182–6999–02]

RIN 0694–AG89

Amendment to the Export Administration Regulations: Removal of Special Iraq Reconstruction License

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by removing the Special Iraq Reconstruction License (SIRL) from the EAR. This action furthers the objectives of the Retrospective Regulatory Review Initiative that directs BIS and other federal agencies to streamline regulations and reduce unnecessary regulatory burdens on the public. Specifically, the SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq. This rule also makes conforming changes.

DATES: This rule is effective January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, Bureau of Industry and Security, by telephone at (202) 482–6396 or by email at *Thomas.Andrukonis@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) issues this final rule to remove the Special Iraq Reconstruction License (SIRL) provisions from the Export Administration Regulations (EAR), consistent with the Retrospective Regulatory Review Initiative. In the preamble to the proposed rule published in the **Federal Register** on June 7, 2016 (81 FR 36481) (hereinafter ''the June 7 proposed rule'' or ''the June 7 rule''), BIS reviewed the origins of the SIRL, established in 2004 (69 FR 46070, July 30, 2004) to supplement options to facilitate exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects in Iraq funded by specified entities, including the United States government. BIS also reviewed the record of related transactions since the SIRL was established.

The record indicates that exporters supplying items used in support of the civil reconstruction efforts in Iraq have not relied on the SIRL to advance those efforts, apparently because of its complexity and narrowness. Further, since 2004, BIS processed only three applications for the SIRL and approved only one, as compared to over 400 approved individual license applications for the export of items to Iraq between 2012 and 2015. Finally, with the implementation of updates to the EAR, the relative advantages of the SIRL have been offset by changes to individual licenses and other types of authorizations offered by BIS that provide less complex alternatives to the SIRL.

Thus, consistent with the President's Retrospective Regulatory Review Initiative to streamline regulations and reduce unnecessary regulatory burdens on the public (see ''Improving Regulatory Review'' (Executive Order 13563 of January 18, 2011)), BIS

concluded that the SIRL proved not to be useful.

BIS received no comments in response to the June 7 rule. BIS, therefore, publishes in final form the amendments to the EAR to remove the SIRL as described initially in the June 7 rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule amends collections previously approved by the Office of Management and Budget (OMB) under Control Numbers 0694–0088, ''Simplified Network Application Processing + System (SNAP+) and the Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and 0694–0137, ''License Exemptions and Exclusions.''

The total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Numbers are not expected to decrease significantly as a result of this removal of part 747 of the EAR because of the infrequent use of part 747 of the EAR by exporters.

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.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis was published in the proposed rule and is not repeated here. BIS received no comments, which means there were no comments that addressed the economic impact of this rule on small entities. Therefore, a final regulatory flexibility analysis is not required and one was not prepared.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 747

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, under the authority of 50 U.S.C. 1701 *et seq.,* parts 730, 747, 748 and 762 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of May 3, 2016, 81 FR 27293 (May 5, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

■ 2. Supplement No. 1 to part 730 is amended by revising the entry for Collection number ''0694–0129''. The revision reads as follows:

Supplement No. 1 to Part 730—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

* * * * *

Collection No.	Title	Reference in the EAR
* * * * * * *		
0694–0129	Export and Reexport Controls For Iraq	§§ 732.3, 738, 744.18, 746.3(b)(1), 750, 758, 762, 772, 774.
* * * * * * *		

PART 747—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 747.

PART 748—[AMENDED]

■ 4. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§ 748.1 [Amended]

■ 5. Section 748.1 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction License applications)'' from the first sentence of paragraph (d).

§ 748.7 [Amended]

■ 6. Section 748.7 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction Licenses)'' from paragraphs (a) and (d).

PART 762—[AMENDED]

■ 7. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

§ 762.2 [Amended]

■ 8. Section 762.2 is amended by removing and reserving paragraph (b)(17).

Dated: November 23, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–29056 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 161005927–6927–01]

RIN 0694–AH16

Amendment to the Export Administration Regulations: Removal of Semiconductor Manufacturing International Corporation From the List of Validated End-Users in the People's Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to remove one end-user from the list of validated end-users in the People's Republic of China (PRC). Specifically, BIS amends Supplement Number 7 to part 748 of the EAR to remove the Semiconductor Manufacturing International Corporation (SMIC) as a validated end-user in the PRC. BIS makes this change at the company's request, and not in response to activities of concern.

DATES: This rule is effective December 5, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: 202–482–5991; Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated end-users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations (facilities) and items are identified in Supplement No. 7 to part 748 of the EAR (15 CFR part 748). Under the terms described in that supplement, and in conformity with section 748.15 of the EAR, VEUs may obtain eligible items without an export license from BIS. Eligible items vary between VEUs, and may include commodities, software, and technology, except items controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646), to create Authorization VEU.

Amendment to the List of Validated End Users (VEU) in the People's Republic of China (PRC)

Removal of the Semiconductor Manufacturing International Corporation (SMIC) From the List of VEUs in the PRC

In this final rule, BIS amends Supplement No. 7 to part 748 of the EAR (Supplement No. 7) to remove the VEU SMIC from the list of VEUs in the PRC. Specifically, BIS removes information for SMIC from Supplement No. 7. BIS takes this action at SMIC's request. BIS makes this change to Supplement No. 7 at the company's request and not in response to activities of concern.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. Total burden hours associated with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule. Notwithstanding any other provisions of law, no person is required to respond to, nor 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.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant or remove VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement Nos. 8 and 9. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2) and the authority to remove VEU designations is contained in 15 CFR 748.15(a)(3). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). In publishing this final rule, BIS removes a VEU from the list of VEUs in the PRC, at the request of the VEU, similar to past requests by other VEUs, approved by the End-User Review Committee. This change has been made within the established regulatory framework of the VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the procedure for revocation of a VEU or facility from the Authorized VEU list is similar to the license revocation procedure, which does not undergo public review. During the VEU revocation procedure, the U.S. Government analyzes confidential business information according to set criteria to determine whether a given authorized VEU entity remains eligible for VEU status. Revocation may be the result of a material change in circumstance at the VEU or the VEU's authorized facility. Such changes may be the result of a VEU or VEU facility no longer meeting the eligibility criteria for Authorization VEU, and may thus lead the U.S. Government to modify or revoke VEU authorization. VEUs or VEU facilities that undergo material changes that result in their no longer meeting the criteria to be eligible VEUs must, according to the VEU program, have their VEU status revoked. Here, however, SMIC requested removal from the VEU program. Consequently, BIS is removing SMIC from the list of VEUs. Public comment on whether to make the removal is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. However, BIS finds good cause to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply removing SMIC as a VEU. In this rule, BIS amends the EAR consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness would likely cause confusion regarding which items are authorized by the U.S. government, and in turn stifle the purpose of the VEU program. Accordingly, it would be contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 7 to Part 748—[AMENDED]

■ 2. Amend Supplement No. 7 to Part 748 by removing the entire entry for ''Semiconductor Manufacturing International Corporation,'' in ''China (People's Republic of)''.

Dated: November 23, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–29057 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 124, 126 and 127

[Public Notice: 9757]

RIN 1400–AE05

Amendment to the International Traffic in Arms Regulations: Corrections and Clarifications

AGENCY: Department of State.

ACTION: Final rule; request for comments.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify recent revisions made pursuant to the President's Export Control Reform (ECR) initiative. This rule clarifies the scope of disclosure of information submitted to the Directorate of Defense Trade Controls (DDTC), clarifies the policies and procedures regarding statutory debarments, and corrects administrative and typographical errors.

DATES: This Final rule is effective on December 5, 2016. The Department will accept comments on the Final regulation up to January 4, 2017.

ADDRESSES: Interested parties may submit comments within 30 days of the date of publication by one of the following methods:

• *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Corrections and Clarifications.''

• *Internet:* You may view this Final rule and submit your comments by visiting the *Regulations.gov* Web site at *www.regulations.gov,* and searching for docket number DOS–2016–0070.

Comments received after that date will be considered if feasible, but consideration cannot be assured. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted in those comments or their transmittal emails) will be made

available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Corrections and Clarifications.

SUPPLEMENTARY INFORMATION: The Department makes the following revisions to the ITAR in this final rule:

- A definition of ''classified'' is moved from § 121.1(e) to § 120.46;
- The structure of § 121.1(a)–(e) is realigned, with paragraphs (a) and (b) revised to clarify the existing requirements for United States Munitions List (USML) controls, and paragraphs (c), (d) and (e) removed;
- Thirteen USML categories are amended to clarify that commodities, software, and technology subject to the Export Administration Regulations (EAR) and related to defense articles in a USML category may be exported or temporarily imported on the same license with defense articles from any category, provided they are to be used in or with that defense article;
- In three places within the USML, the word ''enumerated'' is replaced with the word ''described'' to make the language consistent with changes directed in the Final Rule published at 79 FR 61226, Oct. 10, 2014;
- Section 122.4(c)(4) is revised to permit the Directorate of Defense Trade Controls (DDTC) to approve an alternative timeframe, not less than 60 days, to the current 60-day requirement for registrants to provide a signed amended agreement;
- Section 124.2(c)(5)(v) is revised to correct errors to the USML category references for gas turbine engine hot sections, from VI(f) and VIII(b) to Category XIX;
- Section 124.12 is amended in paragraph (a)(9) to update the name of the Defense Investigative Service to Defense Security Service;
- Section 126.9 on Advisory Opinions and Related Authorizations is amended to correct paragraph (a);
- Paragraph (b) of § 126.10 is amended to clarify the scope of control and disclosure of information, however, notwithstanding the changes to paragraph (b) it is the Department's policy not to publicly release information relating to activities regulated by the ITAR except as required by law or when doing so is otherwise in the interest of the United States Government; and
- Section 127.7(b) is amended to clarify the policies and procedures regarding statutory debarments (addressing inadvertent omissions resulting from a prior amendment to that section), and § 127.11 is amended to make conforming revisions to paragraph (c) omitted from prior amendment to that section.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is providing 30 days for the public to submit comments without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that, given the nature of the amendments made in this rulemaking, there will be minimal cost to the public. Therefore, the benefits of this rulemaking outweigh the cost. This rule has not been designated a ''significant regulatory action'' by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Exports, Crime, Law, Penalties, Seizures and forfeitures.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 121, 122, 124, 126, and 127 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.46 is added to read as follows:

§ 120.46 Classified.

Classified means classified pursuant to Executive Order 13526, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 3. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 4. Section 121.1 is amended by:
■ a. Revising paragraphs (a) and (b);
■ b. Removing paragraphs (c), (d), and (e);
■ c. Removing the words ''controlled in this category'' in paragraph (x) and the Note to paragraph (x) for each of the following USML categories: Category IV, Category V, Category VI, Category VII, Category VIII, Category IX, Category X, Category XI, Category XIII, Category XV, Category XVI, Category XIX, and Category XX;
■ d. In Category VI:
■ i. Removing the word ''enumerated'' and adding in its place the word ''described'' in Note 1 to paragraph (f); and
■ ii. Removing the word ''enumerated'' and adding in its place the word ''described'' in paragraph (g); and
■ e. Removing the word ''enumerated'' and adding in its place the word ''described'' in paragraph (h) of Category VII.

The revisions read as follows:

§ 121.1 The United States Munitions List.

(a) *U.S. Munitions List.* In this part, articles, services, and related technical data are designated as defense articles or defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act and constitute the U.S. Munitions List (USML). Changes in designations are published in the **Federal Register**. Paragraphs (a)(1) through (3) of this section describe or explain the elements of a USML category:

(1) *Composition of U.S. Munitions List categories.* USML categories are organized by paragraphs and subparagraphs identified alphanumerically. They usually start by enumerating or otherwise describing end-items, followed by major systems and equipment; parts, components, accessories, and attachments; and technical data and defense services directly related to the defense articles of that USML category.

(2) *Significant Military Equipment.* All items described within a USML paragraph or subparagraph that is preceded by an asterisk (*) are designated ''Significant Military Equipment'' (*see* § 120.7 of this subchapter). Note that technical data directly related to the manufacture or production of a defense article designated as Significant Military Equipment (SME) is also designated as SME.

(3) *Missile Technology Control Regime (MTCR) designation.* Annotation with the parenthetical ''(MT)'' at the end of a USML entry, or inclusion in § 121.16, indicates those defense articles that are on the MTCR Annex. *See* § 120.29 of this subchapter.

(b) *Order of review.* Articles are controlled on the U.S. Munitions List because they are either:

(1) Enumerated in a category; or

(2) Described in a ''catch-all'' paragraph that incorporates ''specially designed'' (see § 120.41 of this subchapter) as a control parameter. In order to classify an item on the USML, begin with a review of the general characteristics of the item. This should guide you to the appropriate category, whereupon you should attempt to match the particular characteristics and functions of the article to a specific entry within that category. If the entry includes the term ''specially designed,'' refer to § 120.41 to determine if the article qualifies for one or more of the exclusions articulated in § 120.41(b). An item described in multiple entries should be categorized according to an enumerated entry rather than a specially designed catch-all paragraph. In all cases, articles not controlled on the USML may be subject to another U.S. government regulatory agency (*see* § 120.5 of this subchapter, and Supplement No. 4 to part 774 of the Export Administration Regulations for guidance on classifying an item subject to the EAR).

* * * * *

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 5. The authority citation for part 122 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 6. Section 122.4 is amended by revising paragraph (c)(4) to read as follows:

§ 122.4 Notification of changes in information furnished by registrants.

* * * * *

(c) * * *

(4) Amendments to agreements approved by the Directorate of Defense Trade Controls to change the name of a party to those agreements. The registrant must provide to the Directorate of Defense Trade Controls a signed copy of such an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee, within 60 days of this notification, unless an extension of time is approved by the Directorate of Defense Trade Controls. Any agreement not so amended may be considered invalid.

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 7. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105–261; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 8. Section 124.2 is amended by revising paragraph (c)(5)(v) to read as follows:

§ 124.2 Exemptions for training and military service.

* * * * *

(c) * * *

(5) * * *

(v) Gas turbine engine hot sections covered by Category XIX(f);

* * * * *

■ 9. Section 124.12 is amended by revising paragraph (a)(9) to read as follows:

§ 124.12 Required information in letters of transmittal.

(a) * * *

(9) For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 10. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 11. Section 126.9 is amended by revising paragraph (a) to read as follows:

§ 126.9 Advisory opinions and related authorizations.

(a) *Preliminary authorization determinations.* A person may request information from the Directorate of Defense Trade Controls as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from the Directorate of Defense Trade Controls is issued on a case-by-case basis and applies only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved.

* * * * *

■ 12. Section 126.10 is amended by revising paragraph (b) to read as follows:

§ 126.10 Disclosure of information.

* * * * *

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) provides, by reference to section 12(c) of the Export Administration Act (50 U.S.C. 2411), that information obtained for the purpose of consideration of, or concerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Section 38(e) of the Arms Control Export Act further provides that, the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 13. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

■ 14. Section 127.7 is amended by revising paragraph (b) to read as follows:

§ 127.7 Debarment.

* * * * *

(b) *Statutory debarment.* It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction and to prohibit that person from participating directly or indirectly in any activities that are subject to this subchapter. Such individuals shall be notified in writing that they are statutorily debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the **Federal Register**. Statutory debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, which established guilt beyond a reasonable doubt in accordance with due process. Reinstatement is not automatic, and in all cases the debarred person must submit a request for reinstatement to the Department of State and be approved for reinstatement before engaging in any activities subject to this subchapter. The procedures of part 128 of this subchapter are not applicable in such cases.

* * * * *

■ 15. Section 127.11(c) is revised to read as follows:

§ 127.11 Past violations.

* * * * *

(c) *Debarred persons.* Persons debarred pursuant to § 127.7(b) (statutory debarment) may not utilize the procedures provided by paragraph (b) of this section while the statutory debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d).

Dated: November 18, 2016.

Tom Countryman,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2016–28406 Filed 12–2–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 965 and 966

[Docket No. FR 5597–F–03]

RIN 2577–AC97

Instituting Smoke-Free Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule requires each public housing agency (PHA) administering public housing to implement a smoke-free policy. Specifically, no later than 18 months from the effective date of the rule, each PHA must implement a ''smoke-free'' policy banning the use of prohibited tobacco products in all public housing living units, indoor common areas in public housing, and in PHA administrative office buildings. The smoke-free policy must also extend to all outdoor areas up to 25 feet from the public housing and administrative office buildings. This rule improves indoor air quality in the housing; benefits the health of public housing residents, visitors, and PHA staff; reduces the risk of catastrophic fires; and lowers overall maintenance costs.

DATES: *Effective date* February 3, 2017.

FOR FURTHER INFORMATION CONTACT: Leroy Ferguson, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500; telephone number 202–402–2411 (this is not a toll-free number). Persons who

are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Rule

The purpose of the rule is to require PHAs to establish, within 18 months of the effective date, a policy disallowing the use of prohibited tobacco products, as such term is defined in § 965.653(c), inside all indoor areas of public housing, including but not limited to living units, indoor common areas, electrical closets, storage units, and PHA administrative office buildings, and in all outdoor areas within 25 feet of the housing and administrative office buildings (collectively, ''restricted areas''). As further discussed in this rule, such a policy is expected to improve indoor air quality in public housing; benefit the health of public housing residents, visitors, and PHA staff; reduce the risk of catastrophic fires; and lower overall maintenance costs.

B. Summary of Major Provisions of the Rule

This rule applies to all public housing other than dwelling units in mixed-finance buildings. PHAs are required to establish, within 18 months of the effective date of the rule, policies disallowing the use of prohibited tobacco products in all restricted areas. PHAs may, but are not required to, further restrict smoking to outdoor dedicated smoking areas outside the restricted areas, create additional restricted areas in which smoking is prohibited (*e.g.,* near a playground), or, alternatively, make their entire grounds smoke-free.

PHAs are required to document their smoke-free policies in their PHA plans, a process that requires resident engagement and public meetings. The proscription on the use of prohibited tobacco products must also be included in a tenant's lease, which may be done either through an amendment process or as tenants renew their leases annually.

C. Costs and Benefits of This Rule

The costs to PHAs of implementing smoke-free policies may include training, administrative, legal, and enforcement costs. The costs of implementing a smoke-free policy are minimized by the existence of current HUD guidance on many of the topics covered by the mandatory smoke-free policy required by this rule. Already, hundreds of PHAs have voluntarily implemented smoke-free policies. Furthermore, infrastructure already exists for enforcement of lease violations, and violation of the smoke-free policy would constitute a lease violation. In addition, time spent by PHA staff on implementing and enforcing the smoke-free policy will be partially offset by the time that staff no longer have to spend mediating disputes among residents over secondhand smoke (SHS) infiltration within living units. Given the existing HUD guidance, initial learning costs (such as the costs of staff and resident training understanding of this policy) associated with implementation of a smoke-free policy may not be significant. For the hundreds of PHAs that are already implementing voluntary smoke-free policies, there will be minimal costs of updating smoke-free policies, and these minimal costs will generally apply only if their existing policies are not consistent with the minimum requirements for smoke-free policies proposed by this rule.

However, implementing the requirements successfully may require additional enforcement legal costs for cases where repeated violations lead to evictions. Total recurring costs to PHAs of implementation and enforcement are expected to be $7.7 million, although they may be higher in the first few years of implementation, given the necessity of establishing designated smoking areas (a total of $30.2 million in the first year).

The benefits of smoke-free policies could also be considerable. Over 700,000 units would be affected by this rule (including over 500,000 units inhabited by elderly households or households with a non-elderly person with disabilities), and their non-smoking residents would have the potential to experience health benefits from a reduction of exposure to SHS. PHAs will also benefit from a reduction of damage caused by smoking, and residents and PHAs both gain from seeing a reduction in injuries, deaths, and property damage from fires caused by prohibited tobacco products. Estimates of these and other rule-induced impacts are summarized in the following table:

Source of impact	Type of impact	Amount ($millions)		
		Low	Standard	High
PHA Compliance/Enforcement [1]	Recurring Cost (highest initially)	6	7.7	30
Inconvenience [2]	Recurring Cost	56	94	340
PHA Reduced Maintenance [3]	Recurring Benefit	15.9	21.3	37.5
PHA Reduced Fire Risk [4]	Recurring Benefit	4.7	4.7	4.7
Residents' Well-Being [5]	Recurring Benefit	101	283	314
Net Benefits [6]	Recurring Net Benefits	−248	+207	+262

[1] The high estimate includes initial costs of implementation which could run as high as $30 million per year. The low and standard include only recurring costs. The low estimate includes a low-end cost estimate of eviction to a PHA ($700 per case and $500,000 in aggregate). The standard estimate includes a high estimate of eviction costs ($3000 per case and$ 2.2 million in aggregate).

[2] The low and standard estimates are generated from the price-elasticity of demand for cigarettes and assumed reduction in smoking derived from studies of smoking bans. The high estimate was generated from a study of public health policies on SIDS and inferring behavioral change of smokers from the impact of SIDS.

[3] The low and high estimates are based on a range of $1,250 to $2,955 per unit. The standard estimate is based on an estimate of $1,674 per unit.

[4] HUD does not have data to predict a range of fire reduction risks.

[5] The low and standard estimates of residents' well-being is estimated using the rent premium approach. The high estimate is derived from Quantitative Approach #3 described in the Appendix 1.

[6] The standard net benefit is equal to the sum of the standard benefits less the less the sum of the standard costs. The low net benefit is equal to the low benefits less the high costs. The high net benefit is the high benefits less the low costs.

For additional details on the costs and benefits of this rule, please see the Regulatory Impact Analysis (RIA) for this rule, which can be found at *www.regulations.gov,* under the docket number for this rule. Additional

information on how to view the RIA is included below.

II. Background

On November 17, 2015, HUD published a proposed rule at 80 FR 71762, soliciting input from the public on requiring PHAs to have smoke-free policies in place for public housing. The proposed rule was an outgrowth of many years of research on the harms and costs associated with smoking and ongoing efforts from HUD to promote the voluntary adoption of smoke-free policies by PHAs and the owners/operators of federally subsidized multifamily properties. The preamble of this proposed rule contains more information on HUD's efforts and the findings on which HUD relied in proposing this regulation.

As a result of these combined actions, over 600 PHAs have implemented smoke-free policies in at least one of their buildings. While this voluntary effort has been highly successful, it has also resulted in a scattered distribution of smoke-free policies, with the greatest concentration in the Northeast, West, and Northwest, which also results in unequal protection from SHS for public housing residents. This is due to several factors, including the fact that many of the benefits accrue to residents instead of PHAs, implementation of new policies can be difficult in fiscally tight times, uncertainty over whether indoor smoking bans are enforceable, and differences in the opinions and experience of the boards that govern PHAs. HUD recognizes that additional action is necessary to truly eliminate the risk of SHS exposure to public housing residents, reduce the risk of catastrophic fires, lower overall maintenance costs, and implement uniform requirements to ensure that all public housing residents are equally protected.

Therefore, HUD is requiring PHAs to implement smoke-free policies within public housing except for dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (*e.g.,* community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

In finalizing this policy, it is important for HUD to reiterate that HUD's rule does not prohibit individual PHA residents from smoking. PHAs should continue leasing to persons who smoke. In addition, this rule is not intended to contradict HUD's goals to end homelessness and help all Americans secure quality housing. Rather, HUD is prohibiting smoking inside public housing living units and indoor common areas, public housing administrative office buildings, public housing community rooms or community facilities, public housing day care centers and laundry rooms, in outdoor areas within 25 feet of the housing and administrative office buildings, and in other areas designated by a PHA as smoke-free (collectively, ''restricted areas''). PHAs have the discretion to establish outdoor designated smoking locations outside of the required 25 feet perimeter, which may include partially enclosed structures, to accommodate smoker residents, to establish additional smoke-free areas (such as in and around a playground), or, alternatively, to make their entire grounds smoke-free.

Furthermore, section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act provide the participant the right to seek a reasonable accommodation, including requests from residents with mobility impairments or mental disabilities. A request for a reasonable accommodation from an eligible participant must be considered, and granted unless there is a fundamental alteration to the program or an undue financial and administrative burden.

III. Changes Made at the Final Rule Stage

The only substantive change in this final rule from the proposed rule is that now waterpipes (also known as hookahs) are included in the list of products that may not be used in the restricted areas. PHAs are required under this final rule to only permit the use of waterpipes outside the restricted areas. While HUD found no evidence of human fatalities associated with hookahs, there were sufficient incidents of property damage to warrant their inclusion in this rule.

In addition, HUD has changed the items covered under the smoking ban from ''lit tobacco products'' to ''prohibited tobacco products'' to make clear that waterpipes are included in the list of prohibited products.

IV. Responses to Comments

25-Foot Boundary From Buildings

Some commenters objected to the proposed 25-foot smoke-free perimeter around all public housing buildings. Some felt that the distance was too large because it would force smokers off the property and onto sidewalks or adjacent areas, including the street. Others expressed concern that the distance would be too great for elderly residents or residents with disabilities or would place residents in danger from having to travel so far. Some believed that the distance could subject smokers to crime or would force parents to leave sleeping children. Some also suggested that forcing residents to go so far to smoke would cause them to leave public housing, increasing turnover costs for PHAs.

Other reasons for objecting included an argument that it would effectively require PHAs to build designated smoking areas or it would be impossible to enforce. Commenters stated that requiring smokers to go outdoors is enough and that residents should be able to smoke on their porches or balconies. Some wrote that any extra perimeter is unfair if there is not a shared porch or landing where smoking there would affect others.

Commenters objecting to the 25-foot distances suggested that instead PHAs be allowed to create their own policies regarding outdoor smoking and any distance restrictions around buildings, taking their own layouts into account. Others suggested that HUD allow PHAs to comply with existing smoke-free policies or use minimum distances required by state laws.

Several commenters pointed out that PHAs may use office space in buildings not owned by the PHA, and the PHA has no control over the actions of other tenants in the building. These commenters asked for additional clarity on how the proposed rule would apply to such situations.

Some commenters suggested alternative requirements to the 25-foot barrier, including a minimum distance from common entrances or using a shorter distance such as 15 or 20 feet. Commenters also asked HUD for additional insight into their rationale for a 25-foot perimeter.

A group of commenters, however, supported the perimeter and even requested that HUD expand the outdoor restrictions. Some stated that 25 feet may not be enough to protect children, and that outdoor smoking should also be banned in areas frequented by children, particularly playgrounds. Some suggested that the perimeter be extended to 25 feet from all playgrounds. Other commenters suggested that all common areas, such as pools, should also be included in the smoke-free zone. Commenters suggesting that the smoke-free zone be more than 25 feet asked for a range of new distances, from 40–50 feet to 100 feet. Commenters stated that 25 feet may still be too close to buildings to prevent

smoke drift. Some also asked that HUD expressly prohibit parking lots from being used as designated smoking areas.

Several commenters suggested that the smoke-free perimeter should be extended to cover the entire property. These commenters stated that such a policy would protect residents from drifting smoke in designated areas or would make smoke-free enforcement easier. Another commenter suggested that HUD should allow a PHA to designate a smoking area, outside of which no smoking would be allowed.

HUD Response: HUD appreciates the comments on this part of the rule, and recognizes that for some developments, residents may have to cross the street to be 25 feet away from the building. HUD included the 25-foot perimeter in the proposed rule based on several factors. A smoke-free perimeter of sufficient size must be established around doorways in order to limit smoke exposure to individuals entering and leaving buildings. A sufficient perimeter is also needed to prevent SHS from entering windows that are open in units on lower floors and to prevent SHS exposure to individuals on lower floor balconies or porches. One study found that toxins present in SHS approach ordinary background levels approximately 23 feet from the source (Repace, 2005). In addition, local government ordinances have customarily adopted 25-foot boundaries as standard practice when prohibiting outdoor smoking in the vicinity of public building entrances and windows. PHAs without ample grounds may consider working with their local municipalities to identify nearby public areas where residents who wish to continue smoking can do so in a safe environment. PHAs may also consider, if available, offering these residents the option to move to an alternate site that has more accessible space for outdoor smoking. The smoke-free policy must extend to all outdoor areas up to 25 feet from the housing and administrative office buildings, or to the PHA's property boundary in situations where the boundary is less than 25 feet from the PHA-owned buildings. These decisions are at the discretion of the PHA. However, the rule requires the 25-foot restriction to be enforced across all PHAs.

This policy is not intended to force anyone to move out of public housing, but instead to offer safe, decent and sanitary housing for all populations. HUD is not requiring any PHA to build a designated smoking area, but to work with residents to address any difficulties they encounter. HUD understands that PHAs only have the authority to implement smoke-free policies in buildings and office spaces they own.

Burden on PHAs

Commenters objected to the proposed rule on the basis that it would impose too great a burden on PHAs. Some stated that this was an unfunded mandate from HUD. Others stated that the proposed rule would necessitate increased monitoring of residents without increasing funding for PHAs, or would increase the workload of an already inadequate staff. Several commenters wrote that the proposed rule would add administrative burden in implementing the policies by requiring education of residents, and through increased enforcement efforts. Several commenters pointed out that implementing the policies would have costs related to unit turnaround, either due to increased evictions or as a result of residents voluntarily moving out. Some stated that the proposed rule would increase paperwork on the PHA without providing additional benefits to residents or that putting the burden of monitoring and enforcement on public housing administrators is not practical or fair.

Commenters also stated that the policies would increase vacancies at public housing properties, stressing PHAs both financially and in Real Estate Assessment Center (REAC) evaluations. Commenters asked that HUD make financial incentives available to PHAs to offset implementation costs.

HUD Response: HUD acknowledges that PHAs may incur training, administrative, legal and enforcement costs, as well as additional expenditure of staff time in these areas. These expenses are outlined in the Regulatory Impact Analysis (RIA). All PHAs receive an annual operating subsidy and capital fund grants, and could also use their operating reserves to cover the initial costs of implementing smoke-free policies. PHAs that have already implemented smoke-free policies indicated in stakeholder listening sessions that the costs were less than they expected once the smoke-free policy was fully implemented, and after that there were savings in unit turnover costs. HUD expects that costs will be minimized by PHAs' utilization of existing HUD resources on the smoke-free policy and continued usage of standard lease enforcement procedures. Additionally, HUD has no evidence that this policy will increase vacancies. In contrast, housing agencies that have implemented smoke-free policies have experienced greater demand for their units. This rule will not impose any Federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (UMRA).

Burden on Small PHAs

In addition to the concerns about burdens on PHAs generally, some commenters expressed concerns with burdens on small PHAs. Some stated that the proposed rule would have an outsized impact on small PHAs' administrative expenses. Others commented that there was not enough information in the proposed rule on how maintenance or insurance costs would be lower for small PHAs. Others stated that small, rural PHAs would be at a disadvantage because they are unable to partner with outside organizations to help with implementing the rule in a way that larger, more urban PHAs could. Some commenters also expressed concerns that small PHAs face greater competition in the affordable housing market, so a smoking ban would increase their vacancy rates.

HUD Response: Although some aspects of the rule may be burdensome, as noted in the RIA, HUD expects these burdens to be accompanied by the benefits of smoke-free policies, including reduction in maintenance costs, less risk of catastrophic fires, and fewer residential complaints from residents who are impacted by smoke. Additionally, creating a smoke-free environment may be more attractive to tenants and could result in increased leasing. In fact, some PHAs use smoke-free policies as a marketing feature to attract tenants. Cost savings are expected to be realized in the less expensive turnover of rental units. For example, painting and carpet cleaning costs are expected to be much lower with a smoke-free policy in place.

The capital and operating funds can be used to implement smoke-free policies. Note, however, that capital funds can only be used for eligible activities identified in 24 CFR 905.200. Financial costs relative to funding for small PHAs are not expected to be greater than relative costs facing larger PHAs. Small PHAs, like large PHAs, can request insurance premium allowances from their insurance providers after implementing smoke-free policies.

Housing agencies are encouraged to start the process of implementing smoke-free policies early so that the necessary implementation activities can be spread out over the allowed 18-month implementation period with regular lease renewal practices (*e.g.,* lease recertification). Small PHAs unable to partner with as many outside organizations will have access to

national smoking cessation resources such as 1–800–QUIT–NOW, a toll-free portal which routes callers to their state quitline, and community health centers for any smoking cessation needs. HUD is also working with federal partners to identify geographical areas with the greatest need for resources, and will, when possible, work to provide additional technical assistance. Best practices on moving to a smoke-free environment are found on HUD's Web page for Smoke-Free Housing Toolkits (*http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1*). Additional smoke-free guidance will be made available to PHAs.

HUD has no evidence that this policy will increase vacancies. In contrast, housing agencies that have implemented smoke-free policies have experienced greater demand for their units.

Burden on Residents

Many commenters objected to the proposed rule because of the burden it would place on public housing residents. Some stated that an indoor smoking ban is unfair to persons with disabilities who cannot easily travel outside their units, particularly if they live alone and cannot leave without help. Others commented that it was not right to force the elderly or persons with disabilities outside in bad weather, putting their health at risk. Some simply stated that it would be unfair to make the elderly or persons with disabilities walk that far to smoke. Some commented that people use smoking to deal with medical issues; prohibiting indoor smoking would force them to forego the use of nicotine to combat their pain.

Other commenters focused on the effects the proposed ban would have on those with mental health issues who may rely on smoking to help deal with those issues. Some stated that residents in acute stages of post-traumatic stress syndrome need to smoke to calm down but cannot leave their apartment. Some stated that smoking helps people calm down and relieve stress, and this rule would increase their burden. Several commenters stated that the use of eviction as an enforcement mechanism would result in the most vulnerable residents in public housing, who need secure housing the most, being forced out of their homes.

Some commenters stated that forcing residents, particularly women, outside at night and in bad weather would put them in danger.

Commenters stated that the rule should exempt PHAs serving seniors or residents with disabilities to avoid discrimination problems. Others asked that HUD allow PHAs to grandfather in existing residents; some pointed out that the smoke damage is already done, and it will be difficult to tell if the smell of smoke is from current or past smoking. However, other commenters stated that HUD should not allow smoke-free policies to be grandfathered in for existing public housing residents. These commenters stated that grandfathering the smoking ban for some but not all the residents would make enforcement difficult.

HUD Response: Although smokers will face new requirements, other residents will generally benefit from an improved quality of life that minimizes the dangers of indoor smoking and SHS exposure. In addition, residents should experience improved indoor air quality and reduced interpersonal friction among neighbors exposed to others' smoking.

There is no ''right'' to smoke in a rental home, and smokers are not a protected sub-class under anti-discrimination laws. In addition, this rule does not prohibit smoking by residents; rather, it requires that if residents smoke that they do so at least 25 feet away from the buildings. HUD is aware that commenters and national surveys suggest that persons with disabilities tend to smoke at a higher rate than persons without a disability. See national survey of smoking prevalence among those with disabilities at *https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6444a2.htm*. PHAs are encouraged to engage with these residents early and often when developing the smoke-free policy and to work with social service agencies to identify other alternatives to smoking in their units. This rule grants flexibilities to PHAs in addressing difficulties encountered by residents. In the case that a particular resident is especially burdened by the smoke-free policy, the PHA may consider such flexibilities as moving that resident to a first-floor unit which would provide easier access to smoking outside of their units, or modifying a walkway for easier use by that resident (*e.g.* adding additional lighting). HUD encourages PHAs to ensure an appropriately safe environment for all residents, smokers and nonsmokers alike.

HUD is not aware of any medical conditions for which smoking is considered a legitimate, proven treatment. Also, in situations where nicotine treatment is appropriate (*i.e.,* smoking cessation) it can be delivered orally or through dermal applications. Research has shown that smokers with behavioral health conditions (*i.e.,* mental and/or substance abuse disorders) actually benefit from quitting smoking. As summarized by the Substance Abuse and Mental Health Services Administration, research has demonstrated that quitting smoking can decrease depression, anxiety, and stress, and for those in treatment for substance use disorders, smoking cessation can increase long-term abstinence from alcohol or other drugs.[7]

Additionally, under this regulation, PHAs cannot ''grandfather'' tenants by exempting them from the application of the rule. PHAs that have implemented smoke-free policies have reported significant implementation challenges when they allow current residents to be ''grandfathered'' into the policy. Allowing this situation presents additional enforcement challenges and will only prolong the time that other residents are exposed to SHS and the risk of fire.

Smoking Cessation

Many commenters asked HUD to include cessation help in the final rule. Commenters had a variety of suggestions on the best way to provide such services. Some stated that HUD should partner with other federal agencies such as the National Institutes of Health or Health and Human Services to provide resources; they stated that Health Centers target the same populations served by public housing. Commenters referenced the national quitline or state-operated quitlines as possible resources. Commenters stated that PHAs should be required to use cessation services that are proven to be effective, and suggested that PHAs and HUD work with state and local health agencies or tobacco prevention and cessation programs for resources. Some commenters pointed out that there is cessation help available through Medicaid and private insurance plans. Commenters also asked that HUD provide toolkits or other help to PHAs looking to partner with organizations to provide cessation help.

Commenters specifically mentioned a variety of cessation methods or techniques. Commenters suggested that HUD mandate that the types of required cessation treatments be varied instead of limited to a few options. Some requested that HUD provide nicotine replacement therapy. Some stated that any cessation courses or counseling be provided on-site. Some specifically stated that PHAs should give residents information on the interaction between

[7] *http://www.samhsa.gov/sites/default/files/topics/alcohol_tobacco_drugs/tobacco-behavioral-health-issue-resources.pdf.*

nicotine addiction and psychotropic drugs.

Commenters stated that cessation support should begin now and continue for a longer period of time after the effective date of the rule. Commenters stated that any cessation materials should be available in languages other than English when appropriate for the PHA's population.

Some commenters suggested that HUD should supply funding for the cessation services or at least help PHAs locate funding, especially if the PHA is serving a population with mental health issues. Several suggested that PHAs be allowed to use savings generated by the proposed rule to pay for incentives for cessation and associated costs of treatment programs such as child care or transportation. Commenters stated that the time that residents spend taking or volunteering at cessation courses should count towards their community service requirement or that PHAs should be able to count funding provided for cessation help and incentives as funding towards fulfilling Section 3 requirements.

Some commenters stated that residents face a variety of barriers to quitting smoking, including the fact that limited cellphone minutes or language barriers interfere with the use of quitlines. Others stated that it would be unfair to hold PHAs accountable for public health outcomes like cessation. Commenters were also concerned that rural PHAs would not have the same access to cessation tools and programs as PHAs in urban areas. Commenters asked HUD to explicitly forbid PHAs from requiring cessation as part of enforcement efforts.

HUD Response: HUD acknowledges the importance of connecting residents interested in quitting smoking to cessation resources, preferably at no cost. Although HUD will not directly provide cessation assistance, HUD has resources available on Healthy Homes Web site (*http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/hhi*) for residents interested in cessation. Medicaid covers the cost of tobacco cessation services and prescription smoking cessation medications for recipients, and although Medicaid coverage varies by state, all 50 states offer at least some smoking cessation coverage. Residents of all states also have access to ''quitlines,'' which are free evidence-based cessation services that residents can access by calling 1–800–QUIT–NOW. HUD is also working closely with Federal agencies involved in tobacco control to help make cessation resources available to residents. For example, the Centers for Disease Control and Prevention (CDC) has coordinated with state tobacco control programs (*i.e.* health departments that receive CDC tobacco control grants in all 50 states) to assist PHAs in implementing smoke-free policies in their respective states. The CDC is also developing educational materials for housing managers and residents to help link them to smoking cessation services (*e.g.* community health centers). Federally Qualified Health Centers, supported through the Health Resources and Services Administration, serve many PHA residents and have made promotion of smoking cessation a top priority. The guidance that HUD has created to date emphasizes the value of partnerships between housing providers and local organizations (*e.g.* local health departments and clinics, and tobacco control organizations such as the American Lung Association) in making smoking cessation services available to residents.

Commenters on the proposed rule provided a lengthy list of resources that they used to assist residents. HUD will make this information, where applicable, available to interested PHAs.

Section 3 is a provision of the Housing and Urban Development Act of 1968 that ensures employment and other economic opportunities generated by HUD financial assistance are directed to low-income persons, particularly those receiving housing assistance. Section 3 requirements may be fulfilled to the extent residents are employed in providing cessation services, in accordance with 24 CFR part 135, provided that employment opportunities for cessation services are generated by the use of covered PIH assistance.

Definitions

Commenters asked HUD for expanded definitions of several key terms, particularly ''smoking''. Several asked that HUD define the term broadly to capture a variety of dangerous products and not to limit the rule to ''lit tobacco products'' in order to be consistent with existing state and local standards.

Other requests for definitions included definitions for ''smoke,'' ''electronic smoking devices,'' ''hookahs,'' ''enclosed,'' ''indoor area,'' and ''partially enclosed.'' Some commenters were concerned that allowing for partially enclosed designated smoking areas would run against current state indoor smoking bans. Commenters also asked that HUD change the phrase ''interior common areas'' in the space where smoking is banned to be ''interior areas'' to make it clearer that smoking is prohibited in all indoor areas.

Commenters often provided examples from model or existing codes and standards for HUD to use as guides for many of these definitions.

HUD Response: HUD does not define ''smoking,'' but rather ''prohibited tobacco products.'' HUD is restricting the use of prohibited tobacco products, including cigarettes, cigars, pipes, and waterpipes (hookahs). Because PHAs must ban the use of specific items, it is unnecessary to define what smoke is. In addition, this rule does not supersede state or local smoking bans, so if such laws prohibit the use of partially enclosed designated smoking areas, the PHAs would still be subject to those requirements.

HUD has changed the phrase ''interior common areas'' to ''interior areas.''

Designated Smoking Areas (DSAs)

Some commenters stated that the indoor ban was fine, but HUD should require PHAs to provide a reasonable DSA. Commenters wrote that any DSA should be sheltered from the weather, have shade and seating, and should be accessible to anyone with mobility issues and have appropriate safety features, such as lighting. Commenters stated that any DSA should be far enough away from buildings to prevent smoke drift, which some commenters specified as at least 25 or 50 feet from other smoke-free zones. Some stated that residents should have input on deciding whether or not to have a DSA or where any DSA should be located. Some asked that PHAs be required to sign memoranda of understanding with local police forces to clarify that using the DSA would not count as loitering.

Commenters expressed concern that the cost of building and maintaining benches or other amenities in a DSA would be too expensive for PHAs. Some stated that HUD should provide the funding or that PHAs should seek funding from the tobacco industry to pay for them. Some also stated that smokers should be allowed to contribute money to pay for covered smoking areas.

Some commenters stated that HUD should encourage outdoor smoke-free areas and discourage DSAs entirely, as having DSAs could raise concerns regarding reasonable accommodations and accessibility. Some commenters suggested that PHAs with DSAs evaluate their policies on a regular basis to determine if it would be appropriate to make the property 100 percent smoke-free. Commenters also stated that HUD should not encourage partially enclosed DSAs, as they can trap smoke,

provide hidden areas for crime, and violate state clean air laws.

HUD Response: HUD does not mandate DSAs. However, some PHAs have achieved better compliance with smoking bans in restricted areas when there is a designated location with seating. Also, the use of DSAs could potentially make implementation of the smoke-free policy easier because they demonstrate to a smoking resident how far he or she must move away from the building. If a PHA decides to implement a DSA, HUD recommends appropriate wellness and safety features, such as appropriate seating and shade. If a PHA chooses to designate a smoking area for residents, it must ensure that the area is accessible for persons with disabilities, in accordance with a PHA's obligations under section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Fair Housing Act. This may include a flat or paved pathway, ramp, and adequate lighting depending on the need and area selected. HUD encourages PHAs to include DSAs in future capital needs planning.

Electronic Nicotine Delivery Systems (ENDS)

Many commenters asked that HUD include ENDS in the list of prohibited tobacco products. These commenters pointed out that the aerosol emitted by the devices is not harmless, and the toxins in the aerosol are higher than in FDA-approved nicotine inhalers. Others stated that ENDS pose risks of fire or explosion due to their batteries or poisoning from the liquids. Commenters stated that ENDS also increases third-hand exposure to nicotine (nicotine that settles on surfaces within a building), and banning ENDS may help stop the increase of ENDS usage among teens.

Commenters stated that ENDS are not devices approved for stopping smoking, and their use can undermine efforts to de-normalize smoking. Others commented that the use of ENDS can undermine enforcement efforts, either by making it appear that the policy is not taken seriously, or by causing confusion about whether it is ENDS or a cigarette being used.

Some commenters supporting the ban of ENDS asked that if HUD does not include ENDS in the proposed rule, that HUD make it explicit that a PHA can choose to do so themselves. Others asked HUD to track and share research to help PHAs make the case for including ENDS in smoke-free policies.

Other commenters objected to the inclusion of ENDS in the indoor smoking ban. Some stated that the science on the harm caused by ENDS is not settled and therefore there is no justification at this time for including them in the policy, because prohibiting ENDS does not advance the proposed rule's goals of improved health and savings on maintenance costs. Commenters stated that ENDS are an important tool in stopping smoking and allowing them would therefore help to soften the larger no-smoking policy, while adding flexibility to the proposed rule. Some commenters stated that the proposed rule does not contain enough justification to include ENDS in the policy and therefore, if HUD decides to include them, there should be another round of comments.

Commenters also asked that if HUD includes ENDS in the final policy, HUD consider limiting the places ENDS are prohibited only to common areas. Some stated that enforcing ENDS would be more difficult than only enforcing a cigarette ban, because ENDS lacks some of the markers of cigarette smoke such as a smell.

HUD Response: Research to date on ENDS is still developing and lacks clear consensus, in contrast with research on the effects of cigarettes and other tobacco products. Unlike with products that involve burning of substances, there is little evidence that ENDS significantly increases fire risks, and there is no conclusive evidence that the vapors emitted by ENDS cause damage to the units themselves. Therefore, prohibiting ENDS will not necessarily reduce the risk of catastrophic fires or maintenance costs for PHAs, and this rule does not prohibit the use of ENDS.

However, PHAs may exercise their discretion to include a prohibition on ENDS in their individual smoke-free policies if they deem such a prohibition beneficial. In addition, if evidence in the future arises that banning ENDS will, for example, result in significant maintenance savings, HUD will reconsider including them in items that are prohibited inside public housing.

Enforcement

Many comments focused on how PHAs are to enforce smoke-free policies. Some commenters stated that enforcement would be impossible because PHAs would not be able to prove that residents were smoking or the exact origins of a smoke smell. Commenters asked for additional guidance on how to detect violations and expressed concern that enforcing policies across scattered sites or in non-business hours would be extremely difficult. Commenters also stated that HUD should provide additional guidance on who can report violations and that HUD should place the burden of proof of violations on the complaining party.

Commenters also expressed concern about having a primary method of enforcement be reporting from tenants. Commenters stated that relying on residents to report will erode trust and increase tensions between residents, staff, and management. Some commenters stated that requiring residents to report violations would lead to additional confrontations with police. Commenters stated that residents should be able to report violations in a way that makes them feel safe. Some commenters stated that resident reporting will require additional mediation between tenants and that HUD should create a method of enforcement that does not rely on residents reporting each other, such as using routine maintenance inspections to look for evidence of smoking indoors.

Some commenters asked for specific guidance on how PHAs are to enforce smoke-free policies, and asked for HUD to publish successful enforcement actions from agencies with smoke-free policies in place. Commenters expressed concern that some PHAs or managers would not enforce the smoke-free policies consistently, leading to liability for PHAs. To address such concerns, commenters suggested that HUD impose heavy fines on managers who do not enforce policies, conduct site visits to ensure enforcement, and provide information to residents on whom to contact if managers are not enforcing policies. Commenters also stated that the costs of enforcement will be equal to or greater than any savings on maintenance generated by smoke-free policies.

Commenters also expressed concern about the use of eviction as an enforcement mechanism, stating that evictions do not help create strong communities. Commenters also wrote that increased evictions will increase homelessness and costs to PHAs. Commenters stated that it was unfair to subject children to homelessness from eviction for the actions of their parents, that it would be unfair to evict an entire family for the actions of one individual, or that it would be unfair to evict tenants for the actions of their guests. Commenters stated that relying solely on eviction sets up residents for failure and puts groups at the highest risk for discrimination in housing or with higher health risks at even greater risk of homelessness. Some stated that if families who are evicted as a result of this rule tend to fall into a protected class, there might be a disparate impact claim against the PHA or HUD.

Some stated that evicting families for a legal activity would be impossible because courts would not uphold evictions, or even that local ordinances may make evictions for smoking illegal. Commenters suggested that the rule explicitly state that smoking in violation of the PHA's policy is an offense that can result in eviction in order to allow courts to enforce evictions.

Commenters suggest that HUD require PHAs to take specific, progressive enforcement steps prior to allowing eviction, in particular focusing on education and cessation treatments.

Others stated that the rule should minimize evictions, or eliminating evictions from enforcement options completely, perhaps using a system of fines, positive incentives, or cessation treatment instead. Commenters stated that the final rule language should specify that violation of a smoke-free policy is not a material or serious violation of the lease. Some commenters suggested that HUD consider structuring the smoke-free requirement like the community service requirement, where noncompliance mandates specific actions to allow a tenant to ''cure'' the violation and where PHAs do not renew leases instead of evicting tenants.

HUD Response: HUD believes that allowing a PHA to enforce its smoke-free policy through lease enforcement actions is the best way to ensure compliance with such policies. Upon successful implementation, smoke-free policies should be enforced similar to other policies under lease enforcement procedures. HUD does not expect the enforcement of smoke-free policies to be significantly easier or more difficult than other unit-focused policies PHAs have established. Based on experiences of the PHAs that have already implemented smoke-free policies, when there is resident engagement in developing the plan and an effective plan for implementation, policy enforcement is less likely to lead to evictions. As written in this rule, the lease and appropriate amendment(s) will be the primary smoke-free policy enforcement mechanism. All residents must sign the amendment(s) as a condition of their continuing occupancy. PHAs will have local flexibility as to how the lease amendment process occurs during the 18-month implementation period after the final rule effective date. HUD has clarified that the adoption of a PHA smoke-free policy is likely to constitute a significant amendment or modification to the PHA Plan, which would require PHAs to conduct public meetings according to standard PHA amendment procedures. Therefore, PHAs are encouraged to obtain board approval when creating their individual smoke-free policies.

HUD affords PHAs flexibility in designing policies on reporting of violations by other residents, in order to fit the local needs of the housing communities. However, a PHA must sufficiently enforce its smoke-free policy in accordance with the rule's standards, by taking action when it discovers a resident is violating the policy. PHAs must ensure due process when enforcing the lease. If a PHA pursues lease enforcement as a remedy, public housing residents retain their right to an informal and formal hearing before their tenancy is terminated. As currently written, the new regulations intentionally distinguish lease violations based on criminal behaviors from violations based on civil behaviors, and place smoke-free violations in the latter category to discourage overly aggressive enforcement approaches and decrease the potential of eviction and homelessness.

Termination of assistance for a single incident of smoking, in violation of a smoke-free policy, is not grounds for eviction. Instead, HUD encourages a graduated enforcement approach that includes escalating warnings with documentation to the tenant file. HUD has not included enforcement provisions in this rulemaking because lease enforcement policies are typically at the discretion of PHAs, and it is appropriate for local agencies to ensure fairness and consistency with other policies. HUD also is not requiring any specific graduated enforcement procedure, because public housing leases are subject to different local and state procedural requirements that must be met prior to eviction. Best practices regarding smoke-free implementation and enforcement are available at *http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1.* HUD will provide additional guidance in the future with examples of graduated enforcement steps.

This rule does not expressly authorize or prohibit imposing fines on non-complying PHA managers. Once the rule takes effect, HUD may use PHA certifications to verify that PHAs have implemented a smoke-free policy within the required timeframe. HUD may also use the periodic REAC inspections and OIG audits to help monitor and confirm whether the policy is being enforced. The PIH regulations at 24 CFR 903.25 state that to ensure that a PHA is in compliance with all policies, rules, and standards adopted in the PHA Plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD determines that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

Evaluation

Commenters asked that HUD have some sort of plan in place to evaluate the effect of the proposed rule. Some stated that HUD should evaluate, after 1 or 2 years, the success of the rule in getting units smoke-free and whether there have been health benefits. Others stated that HUD should review how each PHA has implemented a smoke-free policy, including surveys to residents on how the policy is working and if improvements are needed. Some commenters stated that the evaluation should be of the PHAs themselves, including how they document violations and manage accommodation requests, how well PHAs comply with the requirements and adhere to ''best practices'', and the PHAs' outcomes of the smoke-free policies. These evaluations could be done as part of periodic reviews of PHA performance in general.

Other suggestions for evaluations focused on the effects of the rule itself. Some suggested that HUD should survey tenants to track smoking cessation progress. Others stated that HUD should evaluate support for the policies among tenants, numbers of complaints, health changes, costs, savings, and turnover and eviction as a result of the policies. Commenters stated that HUD should carefully keep track of the number of evictions due to smoke-free policies. Commenters suggested that HUD should study whether completely smoke-free grounds would be appropriate.

Commenters stated that HUD could partner with other agencies for evaluation studies.

HUD Response: HUD agrees that it is important to evaluate various aspects of the implementation of the rule by the PHAs, including the benefits on indoor air quality and resident health as well as the actual implementation process. Although HUD has identified and made available effective practices from housing providers that have implemented smoke-free policies, there is value in doing this using a more systematic process (*e.g.,* see *http://portal.hud.gov/hudportal/documents/huddoc?id=SFGuidanceManual.pdf*). HUD is supporting research on the implementation of smoke-free policies in federally assisted multifamily properties through its Healthy Homes Technical Studies Grant Program. A goal of this research is to identify

effective implementation practices as well as impacts on indoor air quality and smoking cessation among residents. HUD has also worked with the National Center for Health Statistics to match administrative data for residents of federally assisted housing (including public housing) with multiple years of data from the National Health Interview Survey. This is a cost effective way to track potential changes in the smoking behavior of residents over time (*i.e.,* before and after the rule becomes effective). HUD is a member of a work group that includes federal partner agencies in order to explore opportunities for cooperative activities to evaluate the impact of the rule. HUD is also cooperating with researchers who are part of a university/philanthropy partnership planning to survey PHAs that have already implemented smoke-free policies, in order to capture lessons learned that will be valuable for PHAs that have not yet implemented smoke-free policies. This effort will include interviews of both management and residents.

Expansion of Applicability of Rule

Some commenters felt that it was unfair to only cover public housing with this proposed rule. Commenters felt that the covered properties should be expanded to include all multifamily dwelling units in the country, all rental and subsidized housing, mixed-finance developments, Section 8 vouchers, or all properties receiving HUD assistance.

However, other commenters stated that HUD should never consider requiring homeless assistance programs to have a smoke-free policy. Some also stated that HUD should not expand the requirement beyond public housing.

Commenters did have some questions about the applicability of the rule. Some asked about whether the rule applies to non-dwelling units leased to other entities. Others asked whether low-income housing on tribal lands would be covered. Commenters also asked how this rule would apply to public housing projects converting their assistance under the Rental Assistance Demonstration Program.

HUD Response: The final rule does not apply to tribal housing, mixed-finance developments, or PHA properties that have converted to project-based rental assistance contracts under RAD. HUD will continue to promote voluntary adoption of smoke-free policies by all owners receiving project-based assistance and may consider expansion of requirements to additional housing assistance programs in the future. In addition, HUD will issue a solicitation of comments in the **Federal Register** to obtain feedback on the prospect of requiring smoke-free policies in other HUD-assisted properties. Absent regulations, private owners and PHAs can continue to use HUD's ''Smoke-Free Housing Toolkit for Public Housing Authorities and Owners/Management Agents'' (available at *http://portal.hud.gov/hudportal/documents/huddoc?id=pdfowners.pdf*) to help in implementation of smoke-free polices.

Flexibility for PHAs

Commenters objected to the mandate that PHAs create smoke-free policies, instead asking that it continue to be left up to the PHA's discretion. They stated that letting PHAs make the decision would allow them to decide where to allocate resources and best account for the needs of the residents and PHA. Other commenters simply asked that PHAs be allowed to craft policies they designed instead of having policies determined by HUD. Commenters also asked that small PHAs be given more flexibilities.

Commenters specifically asked that PHAs be given flexibility with the implementation phase of smoke-free policies. Some asked for the ability to implement policies at a time of the year with pleasant weather to make compliance easier. Others asked for the ability to phase-in policies by buildings or properties instead of all at once; however, some commenters explicitly opposed phasing in the policy across buildings. Commenters also asked for a longer implementation period, even as much as 5 years.

Another specific flexibility requested by commenters was for a PHA to establish buildings or scattered-site locations as designated smoking buildings, if physically separate from non-smoking buildings.

Commenters also asked that PHAs with established smoke-free policies continue to keep the existing policies, even if the perimeter around buildings is less than 25 feet. These commenters stated that it would be extremely burdensome, costly, and confusing to change existing policies, and compliance with additional restrictions might impose additional costs, such as building shelters for smokers, that they have already decided are unnecessary. However, some commenters stated that PHAs should be required to conform to any policies that are stricter than what they may currently have in place.

Some commenters also asked that HUD make it explicit that a PHA may adopt policies that are stricter than the ones required by HUD.

Commenters also asked that HUD allow PHAs to have maximum budget flexibility during implementation to pay for up-front costs.

HUD Response: HUD has been advocating for smoke-free housing since 2009 because the health benefits to residents are substantial, and the costs and benefits to PHAs are also compelling in terms of reduction in maintenance and unit turnover costs. HUD applauds the more than 600 PHAs that already have implemented policies in at least one building since HUD began promoting voluntary adoption of smoke-free housing policies. The rule's mandatory approach implements uniform standards and requirements which will greatly minimize the disproportionate exposure to SHS for public housing residents.

The flexibility inherent in the rule allows PHAs to implement their smoke-free policies in a way that does not violate the standards established in the final rule. The final rule bans the use of prohibited tobacco products in all public housing living units, interior common areas, and all outdoor areas within 25 feet from public housing and administrative office buildings where public housing is located. The rule also gives PHAs the flexibility to limit smoking to DSAs, which may include partially enclosed structures, to accommodate residents who smoke.

PHAs must exercise their discretion in a way that reasonably relates to the purpose of the rule, and PHAs face legal risk when imposing a standard that exceeds the scope of legal authority (*e.g.,* is arbitrary and capricious). PHAs are encouraged to exercise their discretion and may adopt stricter smoke-free policies. This approach should always consider resident feedback prior to adopting stricter smoke-free policies.

Budget flexibility in terms of combining operating, capital, or housing assistant payment funds is permitted to the extent otherwise provided under arrangements such as Moving to Work (MTW).

Funding

Commenters stated that HUD should provide funding for the implementation costs of this rule, specifically through increased Operating or Capital Fund allocations. Commenters wrote that without additional staff to help, the smoke-free policies cannot be successful. Commenters also asked for additional funding to remediate and repair any damage caused by residents who are currently smoking.

HUD Response: The rule provides no additional financial assistance for policy

implementation; however, HUD has already begun to mobilize our public health and private partners such as the Centers for Disease Control and Prevention, American Cancer Society, the American Lung Association and Environmental Protection Agency, among others, to support PHAs.

Implementation

Many commenters expressed concern that tenants be adequately involved in a PHA's implementation of the final rule when effective. Commenters stated that HUD should require specific engagement activities. They stated that these requirements should include multiple meetings with tenants to educate them on the policy, how to comply, and what assistance is available to them. Commenters stated that PHAs should use community advisory boards to address issues and tenant concerns during implementation. Commenters stated that HUD should require PHAs to engage their residents, particularly on health issues associated with smoking and SHS, prior to amending leases; some stated that engagement should be ongoing for a year prior to a PHA amending a lease.

To ensure that residents are fully engaged from the beginning, some commenters stated that HUD should specify that implementing a smoke-free policy would require a significant amendment to the PHAs' plans. However, other commenters stated that PHAs with smoke-free policies in place should not have to make significant amendments.

Commenters also suggested changes to the timeline for compliance with the final rule. Several stated that 18 months is not enough time for PHAs to have smoke-free policies in effect. Commenters stated that 18 months was too short a time period to adequately educate tenants and get their support, amend leases, and do other supporting tasks like constructing DSAs. Some asked for specific time periods, from 24 to 36 months to up to 3 years, while others asked for PHAs to be able to apply for more time. Commenters stated that allowing PHAs flexibility on the timeline for implementing the rule so that the PHAs could use the existing Annual Plan amendment process would save money and effort.

Commenters alternatively asked that HUD allow for an implementation timeline in stages, allowing residents to participate voluntarily for the first 6 months, year, or 2 years of the policy before being subject to penalties.

Some commenters, however, stated that 18 months was too much time, and stated that HUD should encourage PHAs to begin implementation as soon as possible after the final rule is effective, including providing cessation help and educational resources. Commenters suggested that PHAs should be able to implement smoke-free policies for new residents prior to that deadline, and some stated that HUD should require compliance within 6 months. Commenters asked if PHAs would be able to phase-in their properties during the 18-month period.

HUD Response: HUD included in the proposed rule the 18-month timeframe after the final rule effective date for PHAs to enlist the involvement and support their resident councils, initiate cessation programs, post notices, and disseminate information to the residents, pursuant to PIH regulations and best practices among early smoke-free policy adopters. In the final rule, HUD has clarified that the adoption of a PHA smoke-free policy is likely to constitute a significant amendment or modification to the PHA Plan, which would require PHAs to conduct public meetings according to standard PHA amendment procedures. Therefore, PHAs are encouraged to obtain board approval when creating their individual smoke-free policies. HUD believes this approach will allow local organizations to pledge their support for the smoke-free policy and to support the mission of providing healthier housing for low-income residents.

The PHA must consult with resident advisory boards to assist with and make recommendations for the PHA plan. Those recommendations must include input from PHA residents. With regard to the smoke-free policy, the PHA plan will list the PHA's rules, standards and policies that will govern maintenance and management of PHA operations. HUD believes that 18 months will provide PHAs sufficient time to conduct resident engagement and hold public meetings that are required when an amendment constitutes a significant change to the PHA plan.

The final rule will become effective 60 days after publication in the **Federal Register**. Once the rule is effective, PHAs will then have 18 months to implement smoke-free policies. PHAs must incorporate the smoke-free policy into resident leases. The lease will continue to be the legally binding document between the PHA and the resident. Leases (including recertifications, automatic renewals, new leases, lease addendums and modifications) can be modified at any time by written agreement between the resident and the PHA. PHAs may provide a specific date that the policy will take effect. PIH regulations permit PHAs to modify rules and regulations to be incorporated by reference into the lease form, as long as the PHAs provide at least 30 days' notice to all affected residents (see 24 CFR 966.5), and allow resident feedback on the new lease language (see 24 CFR 966.3). PHAs must consider this feedback prior to making the changes.

To amend individual resident leases based on the modified lease form adopted by the PHA, a PHA must notify a resident of the written revision to an existing lease 60 days before the lease revision is to take effect and specify a reasonable time period for the family to accept the offer (see 24 CFR 966.4(l)(2)(iii)(E)). PIH regulations also provide that leases are required to stipulate that the resident has an opportunity for a hearing on a grievance of any proposed adverse action against the resident (see 24 CFR 966.52(b)). However, PHA grievance procedures are not applicable to class grievances and cannot be used as a forum for initiating or negotiating policy changes, including smoke-free policy changes (see 24 CFR 966.51(b)).

HUD strongly encourages PHAs to post signs referencing the new smoke-free policy. Signs must be accessible to all residents and visitors, and must be posted in multiple languages if appropriate for residents of the PHA, in accordance with HUD's current guidance on limited English proficiency. PHAs are not required to construct smoking shelters or DSAs.

Leases

Commenters stated that the smoke-free language in leases should include not only the policy, but also information on any available DSAs or cessation services.

HUD Response: A public housing lease specifies the rights and responsibilities between the PHA and tenant. If a PHA chooses to develop one or more DSAs, PHAs are encouraged to note the availability and location of any DSAs in the lease. HUD also encourages PHAs to share this information using less formal communication methods (*e.g.* letters, flyers, seminars, etc.) to ensure residents are aware of the policy. The information must be presented in pertinent places in various languages to help residents understand the policy.

Objections—Civil Rights

Commenters objected to the idea behind the proposed rule, stating that prohibiting smoking in public housing is an invasion of civil rights because it would ban an individual's freedom to do something that is legal. Others stated that it was an invasion of smokers'

privacy. Some commented that people should be able to smoke in their own homes and that a smoking ban is authoritarian and invasive.

Commenters also objected to the proposed policy because it does not prohibit smoking in private homes and therefore unfairly punishes the poor and working class. Commenters stated that smoking bans demonize and dehumanize smokers and discriminate against smokers. Some stated that if HUD is banning smoking, HUD should also ban all things that cause harm or smell, such as pet dander or smelly food.

HUD Response: HUD believes that focusing on public housing is appropriate, as HUD and our PHA partners have already made significant progress in this area. More than 600 PHAs have already implemented smoke-free policies in at least one of their buildings since HUD began promoting voluntary adoption of smoke-free housing policies in 2009. HUD is not using this policy as a punishment for any group of people. Instead, HUD believes this policy will benefit many residents especially vulnerable populations (*e.g.* children, elderly persons, and persons with disabilities). This rule will protect the health and well-being of public housing residents and PHA staff and is an opportunity to lower overall maintenance costs and reduce the risk of catastrophic fires. Smoke-free public housing helps HUD realize its mission of providing safe, decent and sanitary housing for vulnerable populations nationwide. Additionally, smoke-free policies are increasingly being adopted in market-rate rental housing and condominiums.

In Constitutional jurisprudence, courts have found that smoke-free policies do not violate the Equal Protection Clause because there is no fundamental right to smoke,[8] and the classification of a ''smoker'' does not infringe on a fundamental Constitutional right.[9] In addition, the act of smoking is entitled to only minimal level of protection, and courts assess smoking-related Equal Protection claims under a rational basis standard of review [10]—meaning that those who challenge a smoke-free regulation bear the burden to prove that the regulation is not rationally related to a legitimate government interest.

Courts [11] have held that protecting persons from SHS is a valid use of the State's police power that furthers a legitimate government purpose.[12] And, those courts considering Equal Protection challenges to smoking restrictions have concluded that the restrictions bear a reasonable relation to such legitimate state interests as: (1) Improving resident health and safety; (2) reducing fire hazards; (3) maintaining clean and sanitary conditions; and (4) reducing non-smoker complaints and threats of litigation.[13]

Objections—General

Commenters stated that an indoor smoking ban would actually increase fires as people tried to hide their smoking and disposed of cigarettes improperly. Commenters also stated that they supported smoking bans in public places and near doors, but felt that smoking should still be permitted in an individual tenant's unit. Commenters suggested that instead of a smoking ban, PHAs could require a higher security deposit from smokers.

Commenters also stated that given the number of individuals with mental health problems who rely on smoking, this rule would be unfair to that population. Commenters wrote that bans in individual units would make it harder for tenants with mental illnesses to maintain stable housing. Some objected to the rule because they stated that some individuals who smoke do so to avoid returning to prior addictions. Commenters stated that discouraging any part of the population from affordable housing programs is contrary to the mission of HUD and PHAs.

Some commenters objected to the rule because they stated that the rule contradicts a recent notice from HUD that PHAs should slow evictions based on criminal history, while now encouraging evictions for legal activities. Other commenters stated that the rule contradicts Congressional direction to increase flexibility and reduce unnecessary regulatory burdens. Commenters also objected to the rule by stating that funding should be used for priorities other than enforcement of the rule, including evictions.

HUD Response: This rule is an opportunity to lower overall maintenance costs and reduce the risk of catastrophic fires in properties while advancing the health of public housing residents and PHA staff. Smoking within a tenant's unit exposes other residents to SHS. As such, smoke-free public housing is fully aligned with HUD's mission of providing safe, decent and sanitary housing for vulnerable populations nationwide. HUD encourages all PHAs to work with all of their residents to ensure they fully understand the policy. In order to meet a successful 18-month implementation timeframe, HUD encourages community engagement and outreach so PHAs will be able to solicit support and involvement of their resident councils and tenants. Residents who smoke and comply with the smoke-free policy can continue their residency in public housing. During enforcement of their smoke-free housing policies, HUD expects PHAs to follow administrative grievance procedures. Where there are violations of the smoke-free policy, HUD encourages PHAs to use a graduated enforcement approach that includes written warnings for repeated policy violations before pursuing lease termination or eviction. HUD will provide additional guidance with examples of graduated enforcement steps.

HUD emphasizes that this rule, unlike previous HUD guidance on smoking, is not optional or merely a recommendation. However, PHAs may not treat tenants who smoke punitively in their implementation of this regulation by, for example, requiring a higher security deposit from tenants who smoke. Residents can be charged for property damage that is beyond normal wear and tear, in accordance with 24 CFR 966.4(b)(2).

Reasonable Accommodations

Commenters asked for more information and further clarification on what PHAs could offer as a reasonable accommodation under the rule. Some expressed confusion on whether smokers were eligible for reasonable accommodations, and some commenters explained that the reasonable accommodation was not available to help with the smoking habit, but rather was intended to address the underlying disability that frustrates the tenant's ability to comply with the smoke-free policy. Commenters explained that individuals with mental health disabilities or cognitive or learning disabilities may have difficulties in understanding the new smoke-free policies or complying with traditional cessation treatments, and that any PHA not allowing reasonable accommodations for tenants with disabilities is not considering the whole picture.

[8] *Brashear* v. *Simms, 138 F. Supp. 2d 693, 694 (D. Md. 2001).*

[9] *Fagan* v. *Axelrod,* 550 N.Y.S. 2d 552, 560 (1990).

[10] *See McGinnis* v. *Royster,* 410 U.S. 263 (1973); *Giordano* v. *Conn. Valley Hosp.,* 588 F. Supp. 2d 306 (2008).

[11] The holdings referenced here are taken from jurisprudence on smoking prohibitions in public areas and in the state prison context.

[12] *See Fagan* v. *Axelrod,* 550 N.Y.S.2d 552, 560 (N.Y. Sup. Ct. 1990).

[13] *See Chance* v. *Spears,* 2009 U.S. Dist. LEXIS 110304.

Others asked for specific lists of permissible accommodations or for best practices in providing reasonable accommodations. Some commenters requested that HUD explicitly state in the final rule that a PHA must grant appropriate requests for reasonable accommodations. Commenters also stated that HUD should take public comment on any future reasonable accommodation guidance.

Some commenters stated that reasonable accommodations should not include the ability to smoke indoors. Commenters asked whether HUD would defend PHAs who do not allow indoor smoking as a reasonable accommodation. Some commenters stated that smoking in the tenant's unit should be allowable as a reasonable accommodation, particularly for the elderly in winter or individuals who are disabled and cannot leave their unit. Commenters have stated that smaller PHAs may not have accommodations to offer other than allowing smoking in a tenant's unit.

Commenters offered other suggestions of permissible reasonable accommodations, including allowing the tenants to use ENDS in their unit, smoking closer to the building than the 25-foot barrier, additional time for compliance for those using cessation services, or moving smokers with mobility disabilities into units closer to elevators or on the ground floor. Commenters also stated that HUD should make it clear that smoking is not a bar to receiving assistance and should allow tenants who cannot comply to receive vouchers to move out of public housing.

However, commenters also expressed concern about the reasonable accommodation process. Commenters shared concerns that relying on the reasonable accommodation process assumes all residents with disabilities know their rights, assumes at least some requests will be granted, and places all the burden on the residents with disabilities themselves. Others stated that a PHA may be unable to move residents, due to costs of moving or a low vacancy rate. Commenters suggested that HUD require that language advising residents of their right to request a reasonable accommodation be included in leases along with other smoke-free requirements.

HUD Response: Under section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Fair Housing Act, PHAs are prohibited from discriminating on the basis of disability and must make reasonable accommodations in their rules, policies, practices, and services. A reasonable accommodation is a change, adaptation or modification to a policy, rule, program, service, practice, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. In order to show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. This individualized determination must be made on a case-by-case basis by the PHA. When a person with a disability requests an accommodation related to his or her disability, a recipient must make the accommodation unless the recipient can demonstrate that doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.

Often, a PHA's Admissions and Continued Occupancy Plan (ACOP) will include guidelines for submission consideration, but an individual with a disability is not required to use a specific format when requesting an accommodation. General guidance on the reasonable accommodation process can be found at *http://go.usa.gov/cJBBC.* HUD also issued reasonable accommodation guidance entitled, ''Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act,'' which can be found at *http://www.hud.gov/offices/fheo/disabilities/_modifications_mar08.pdf.* HUD has determined that additional, specific guidance on accommodations related to smoke-free public housing is unnecessary, given the case-by-case nature of these decisions.

Research shows that SHS will intrude into other units even when there is mechanical ventilation or air cleaners are installed. HUD acknowledges that some persons, including persons with disabilities, may have additional challenges in quitting, but reiterates that this rule does not require persons who smoke to stop smoking; rather, they must perform the activity in allowable areas outside of the public housing facilities and other restricted areas.

HUD's guidance, ''Change is in the Air,'' available at *http://portal.hud.gov/hudportal//huddoc?id=smokefreeactionguide.pdf,* provides examples of how PHAs have approached and managed smoke-free policies for residents with disabilities. Not all of these examples involve reasonable accommodations, but they demonstrate a range of options that PHAs can use to implement smoke-free policies. For instance, PHAs have allowed residents to move to the first floor or closer to an exit door, and provided designated smoking areas with an accessible walkway, cover, lighting, and seating.

HUD continues to encourage PHAs to engage residents early in the development of the policy so that there is adequate time to consider reasonable accommodations requests they receive. Language advising residents of their right to request a reasonable accommodation should already be contained within the PHA's ACOP. Under this rule, HUD is not requiring that reasonable accommodation language be contained in the lease. Public housing residents who suspect they are victims of housing discrimination can call (800) 669–9777.

The act of smoking itself is not a disability under the ADA. HUD encourages all PHAs to fully engage with their residents so they fully understand the policy. Smokers with behavioral health conditions may require individualized attention to ensure they understand the policy and available cessation resources, as well as reasonable accommodation request procedures.

Scientific Basis for the Rule

Some commenters were skeptical that there was adequate scientific justification for the rule and questioned whether SHS is dangerous. Commenters stated that the rule is merely part of a crusade against smokers.

Other commenters stated that the ban on indoor smoking would be unnecessary if better construction, insulating electrical outlets or improving ventilation, were used in public housing.

HUD Response: HUD relies on the conclusions of Federal agencies and other authoritative organizations regarding the health effects of exposure to SHS. Based on these conclusions, the scientific evidence for the adverse health effects of SHS exposure is compelling. In a 2006 report, the Surgeon General concluded that there is no risk-free level of exposure to SHS. In children, the U.S. Surgeon General concluded that SHS exposure can cause sudden infant death syndrome, and can also cause acute respiratory infections, middle ear infections and more severe asthma in children. In adults, the Surgeon General has concluded that SHS exposure causes heart disease, lung cancer, and stroke. In addition, SHS is designated as a known human carcinogen by the U.S. Environmental Protection Agency, the U.S. National Toxicology Program, and the

International Agency for Research on Cancer.

The Surgeon General also concluded in 2006 that ''eliminating indoor smoking fully protects nonsmokers from exposure to SHS. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure to secondhand smoke.'' HUD acknowledges that the movement of SHS from a smoker's unit to other parts of a building can be partially reduced through improvements in ventilation systems and through the increased air sealing of units; however, these strategies cannot fully eliminate exposure. Increased air sealing could also have the disadvantage of increasing SHS exposures to non-smokers in the sealed units, and could increase the amount of SHS that settles on surfaces within the sealed units.

Signs

Commenters asked that HUD include requirements on no-smoking signs in the final rule. Commenters stated that HUD should require a minimum amount of signage, and others stated that any signs should be in all languages applicable to a given PHA.

HUD Response: HUD strongly encourages PHAs to post signs referencing their smoke-free policy. These signs must be accessible to all residents, and must be posted in multiple languages if appropriate for residents of the PHA, in accordance with HUD's guidance on limited English proficiency.

Scope of the Rule

Commenters stated that the proposed rule does not go far enough in only banning tobacco smoking. They asked that HUD include other items in the ban, including all products creating smoke, such as non-tobacco cigarettes and scented candles and incense, or other things posing health risks such as fatty foods or alcohol.

HUD Response: This rule bars the use of prohibited tobacco products indoors, and outdoors within 25 feet of any building. Prohibited tobacco products include waterpipes. HUD is focusing first on public housing because HUD already has significant progress to build upon, as many PHAs have voluntarily implemented smoke-free policies. HUD intends next to turn attention to other HUD-assisted housing. Although this rule curtails a behavior that public housing regulations previously allowed, instituting smoke-free public housing would ensure that public housing residents enjoy the confirmed and significant health benefits that many higher-income market-rate residents now enjoy and increasingly demand of the private housing market. As a practical matter, HUD also is focusing first on smoke-free public housing because, in public housing, HUD can more readily leverage the Federal government's direct financial investments and existing regulatory framework to promote broad-based, successful policy implementation than where housing depends on private owners and contracts. However, HUD will issue a solicitation of comments in the *Federal Register* to obtain feedback from owners and tenants on the prospect of requiring smoke-free policies in other HUD-assisted properties.

Training

Commenters asked that HUD provide specific support for training in the final rule, both for residents and for PHA staff on both the reasons for the rule and proper enforcement of no-smoking policies.

HUD Response: HUD agrees that PHAs and residents will need training on the reasons for the rule and proper enforcement of smoke-free policies. HUD is coordinating with other federal agencies and non-governmental organizations on providing assistance to PHAs, as appropriate, in implementing smoke-free policies. HUD will provide training to PHAs in the form of video- and print-based materials, as well as in-person training for select PHAs. Training resources will be focused on geographic areas with the greatest need, including areas where few PHAs previously implemented smoke-free policies. Resident training should be provided by PHA staff.

Waterpipes (Hookahs)

Many commenters asked that HUD include waterpipes in the smoke-free policy. These commenters stated that they are still a fire hazard and the smoke gives off harmful elements like cigarette smoke. Some commenters stated that waterpipes pose a carbon monoxide hazard in addition to the other toxins. Commenters stated that hookah sessions frequently last longer than the time it takes to smoke a cigarette and that some experts believe the SHS from waterpipes may be more hazardous than that from cigarettes.

Commenters asked that if HUD does not include waterpipes in the smoke-free policy standard, the final rule should be explicit that PHAs may do so themselves.

Other commenters stated that HUD should not include waterpipes in the final rule, and noted that for some cultural groups, there is a cultural significance to smoking around a waterpipe that HUD should keep in mind.

HUD Response: Waterpipes (hookahs) are smoking devices that use coal or charcoal to heat tobacco, and then draw the smoke through water and a hose to the user. HUD recognizes that the use of hookahs is fundamentally different from the use of cigarettes, cigars, or other handheld tobacco products. Hookahs are not held while in use, and therefore require a person to remain in one spot while using them. In addition, the lit coals, which can last for half an hour or longer, cannot be extinguished and therefore must be used or discarded, leading the users to spend longer time periods outdoors than users of other tobacco products. For many residents, there may not be a permissible way to use a hookah outside their homes. But for PHAs that establish DSAs, it may still be feasible for outdoor hookah smoking in those locations, especially if the DSA is covered, preventing precipitation from interfering with the lighting of the coals.

Both the heating source and burning of tobacco are sources of contaminant emissions. HUD agrees with commenters that there is considerable evidence that the use of waterpipes results in the emission of contaminants that are similar to those identified in SHS from other tobacco products, including carbon monoxide, respirable particulate matter ($PM_{2.5}$), nicotine and benzene. There is no evidence that the drawing of tobacco smoke through water in hookahs makes the smoke less hazardous. Furthermore, because hookah sessions generally extend for longer periods than required to smoke a cigarette or other tobacco products, they can result in higher concentrations of contaminants. Finally, the presence of lit charcoal poses a fire risk to the property. Several examples of hookahs causing serious fire damage have been seen in homes around the country.[14] In addition, the World Health Organization [15] and the American Lung

[14] See, *e.g.,* Raya Zimmerman, 5 Dogs Die in St. Paul House Fire Likely Started by Teen's Hookah, Pioneer Press, May 11, 2014, *http://www.twincities.com/localnews/ci_25741957/5-dogs-die-st-paul-home-fire-woman;* Jason Pohl, Mishandled hookah sparked May apartment fire, Coloradoan, July 26, 2015, *http://www.coloradoan.com/story/news/2015/07/25/pfa-mishandled-hookah-sparked-may-apartment-fire/30670277/;* and Erin Wencel, Hookah Starts Fire in North Fargo Basement, KVRR News, Nov. 26, 2015, *http://www.kvrr.com/news/local-news/hookah-starts-fire-in-north-fargo-basement-no-injuries-in-wahpeton-housefire/36677270.*

[15] World Health Organization, ''Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators,'' (2005), available at *http://www.who.int/tobacco/global_*

Association [16] recommend that hookahs should be subjected to the same regulations as cigarettes. Therefore, HUD has amended the final rule to state that waterpipes fall under the definition of a ''prohibited tobacco product.''

While the use of hookahs may be viewed as a significant cultural practice, this does not qualify a resident for exclusion from the policy. As previously noted, there is no fundamental right to smoke and the act of smoking is entitled to only a minimal level of protection under the Equal Protection Clause. Therefore, smoking a hookah, as a significant cultural practice, does not itself provide a reason for exclusion from the policy.

Other Comments

Commenters stated that no matter what, smoking should not be a bar to public housing tenancy, despite some statements by PHA directors that state they already discriminate against smokers.

Commenters also wrote that HUD should state in the rule that the rule does not guarantee a smoke-free environment in order to avoid lawsuits from tenants with non-compliant neighbors.

HUD Response: This rule is not to be interpreted as making smoking a bar to public housing tenancy. Prospective and current residents are free to smoke outdoors with the understanding that smoking is prohibited within a 25-foot perimeter of buildings and in accordance with the PHA's smoke-free policy. This rule does not guarantee a smoke-free environment; residents may still be exposed to SHS on public housing grounds, particularly outside the 25-foot smoke-free perimeter. HUD emphasizes that the smoke-free policy is intended to reduce financial costs for PHAs as well as improve indoor air quality for all residents.

Responses to Questions

As part of the proposed rule, HUD asked the public to share specific information, particularly from PHAs who have already implemented smoke-free policies and can share their experiences. HUD received a number of comments with past experiences and suggestions for best practices, and we appreciate all the input. The information commenters submitted has helped inform HUD as to changes in the final rule and in developing further guidance for PHAs on implementing and enforcing this final rule.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule was economically significant under the order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. The Regulatory Impact Analysis (RIA) prepared for this rule is also available for public inspection in the Regulations Division and may be viewed online at *www.regulations.gov,* under the docket number above. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0226. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule prohibits smoking of tobacco in all indoor areas of and within 25 feet of any public housing and administrative office buildings for all PHAs, regardless of size.

There are 2334 ''small'' PHAs (defined as PHAs with fewer than 250 units), which make up 75 percent of the public housing stock across the country. Of this number, approximately 378 have already instituted a voluntary full or partial policy on indoor tobacco smoking.

HUD anticipates that implementation of the policy will impose minimal additional costs, as creation of the smoke-free policy only requires amendment of leases and the PHA plan, both of which may be done as part of a PHA's normal course of business. Additionally, enforcement of the policy will add minimal incremental costs, as PHAs must already regularly inspect public housing units and enforce lease provisions. Any costs of this rule are mitigated by the fact that PHAs have up to 18 months to implement the policy, allowing for costs to be spread across that time period.

While there are significant benefits to the smoke-free policy requirement, the majority of those benefits accrue to the public housing residents themselves, not to the PHAs. PHAs will realize monetary benefits due to reduced unit turnover costs and reduced fire and fire prevention costs, but these benefits are variable according to the populations of each PHA and the PHA's existing practices.

Finally, this rule does not impose a disproportionate burden on small PHAs. The rule does not require a fixed expenditure; rather, all costs should be proportionate to the size of the PHA implementing and enforcing the smoke-free policy.

Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. The

interaction/tobreg/Waterpipe%20recommendation_Final.pdf.

[16] American Lung Association, ''An Emerging Deadly Trend: Waterpipe Tobacco Use,'' (Feb. 2007), available at *http://www.lungusa2.org/embargo/slati/Trendalert_Waterpipes.pdf.*

FONSI is also available to view online at *www.regulations.gov.*

Executive Order 13132, Federalism

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Public Housing program is 14.872.

List of Subjects

24 CFR Part 965

Government procurement, Grant programs-housing and community development, Lead poisoning, Loan programs-housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 966

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 965 and 966 as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

■ 1. The authority citation for 24 CFR part 965 continues to read as follows:

Authority: 42 U.S.C. 1547, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

■ 2. Add subpart G to read as follows:

Subpart G—Smoke-Free Public Housing

Sec.
965.651 Applicability.
965.653 Smoke-free public housing.
965.655 Implementation.

Subpart G—Smoke-Free Public Housing

§ 965.651 Applicability.

This subpart applies to public housing units, except for dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (*e.g.,* community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

§ 965.653 Smoke-free public housing.

(a) *In general.* PHAs must design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, ''restricted areas'') in which public housing is located.

(b) *Designated smoking areas.* PHAs may limit smoking to designated smoking areas on the grounds of the public housing or administrative office buildings in order to accommodate residents who smoke. These areas must be outside of any restricted areas, as defined in paragraph (a) of this section, and may include partially enclosed structures. Alternatively, PHAs may choose to create additional smoke-free areas outside the restricted areas or to make their entire grounds smoke-free.

(c) *Prohibited tobacco products.* A PHA's smoke-free policy must, at a minimum, ban the use of all prohibited tobacco products. Prohibited tobacco products are defined as:

(1) Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes.

(2) To the extent not covered by paragraph (c)(1) of this section, waterpipes (hookahs).

§ 965.655 Implementation.

(a) *Amendments.* PHAs are required to implement the requirements of this subpart by amending each of the following:

(1) All applicable PHA plans, according to the provisions in 24 CFR part 903.

(2) Tenant leases, according to the provisions of 24 CFR 966.4.

(b) *Deadline.* All PHAs must be in full compliance, with effective policy amendments, by July 30, 2018.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 3. The authority section for 24 CFR part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

■ 4. In § 966.4, revise paragraphs (f)(12)(i) and (ii) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(f) * * *

(12) * * *

(i) To assure that no tenant, member of the tenant's household, or guest engages in:

(A) *Criminal activity.* (*1*) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(*2*) Any drug-related criminal activity on or off the premises; or

(B) *Civil activity.* For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.

(ii) To assure that no other person under the tenant's control engages in:

(A) *Criminal activity.* (*1*) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(*2*) Any drug-related criminal activity on the premises; or

(B) *Civil activity.* For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.

* * * * *

Dated: November 28, 2016.

Julián Castro,

Secretary.

[FR Doc. 2016–28986 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9799]

RIN 1545–BN61

Tax Return Preparer Due Diligence Penalty Under Section 6695(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that modify existing regulations related to the penalty under section 6695(g) of the Internal Revenue Code (Code) relating to

tax return preparer due diligence. These temporary regulations implement recent law changes that expand the tax return preparer due diligence penalty under section 6695(g) so that it applies to the child tax credit (CTC), additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). The temporary regulations affect tax return preparers. The substance of the temporary regulations is included in the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 5, 2016.

Applicability Date: For dates of applicability, see § 1.6695–2T(e).

FOR FURTHER INFORMATION CONTACT: Rachel L. Gregory, 202–317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these temporary and final regulations is in §§ 1.6695–2(b) and 1.6695–2T(b) and is reported on Form 8867, ''Paid Preparer's Due Diligence Checklist.'' Responses to this collection of information are mandatory. The collection of information in current § 1.6695–2 was previously reviewed and approved under control number 1545–1570. Control number 1545–1570 was discontinued in 2014, as the burden for the collection of information contained in § 1.6695–2 is reflected in the burden on Form 8867 under control number 1545–1629.

Background

This document contains amendments to 26 CFR parts 1 and 602 under section 6695(g) of the Code, imposing a penalty on tax return preparers who fail to comply with the due diligence requirements imposed by the Secretary by regulations with respect to determining the eligibility for, or the amount of, the EIC. Section 6695(g) was added to the Code because Congress believed more thorough efforts by tax return preparers are important to improving EIC compliance. H.R. Rep. No. 105–148, 105th Cong. 1st Sess., p. 512 (June 24, 1997).

Enacted by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (11 Stat. 788, 955 (1997)), and effective for taxable years beginning after December 31, 1996, section 6695(g) originally imposed a $100 penalty on an income tax return preparer who failed to meet the EIC due diligence requirements set forth in regulations prescribed by the Secretary. Section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 112, 200 (2007)) amended the penalty to apply to all tax return preparers. Section 501(a) of the United States-Korea Free Trade Agreement Implementation Act, Public Law 112–41 (125 Stat. 428, 459 (2011)), amended section 6695(g) to increase the amount of the penalty to $500, effective for returns required to be filed after December 31, 2011. Section 208(c), Div. B of the Tax Increase Prevention Act of 2014, Public Law 113–295 (128 Stat. 4010, 4073 (2014)) (2014 Act), added section 6695(h), which indexes the penalty amount for inflation, effective for returns or claims for refund filed after December 31, 2014.

Section 1.6695–2 implements section 6695(g) by imposing due diligence requirements on persons who are tax return preparers under section 7701(a)(36) with respect to determining eligibility for, or the amount of, the EIC. The due diligence requirements set forth in § 1.6695–2(b) are that the preparer must: (1) Complete and submit Form 8867, ''Paid Preparer's Earned Income Credit Checklist;'' (2) complete the Earned Income Credit Worksheet (Worksheet), as contained in the Form 1040 instructions or record the preparer's computation of the credit, including the method and information used to make the computation; (3) not know or have reason to know that any information used by the preparer in determining eligibility for, and the amount of, the EIC is incorrect and make reasonable inquiries when required, documenting those inquiries and responses contemporaneously (knowledge requirement); and (4) retain, for three years from the applicable date, the Form 8867, the Worksheet (or alternative records), and the record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer, including the identity of any person furnishing information and a copy of any document relied on by the preparer.

To comply with the knowledge requirement under § 1.6695–2(b)(3), the tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. Examples in § 1.6695–2(b)(3)(ii) illustrate this requirement. This knowledge requirement is consistent with the verification requirement imposed on all tax return preparers with respect to preparation of any tax return or claim for refund under the accuracy-related standards set forth in § 1.6694–1(e).

A tax return preparer is required to submit the Form 8867 to the IRS when the preparer electronically files the tax return. If a tax return preparer required to complete the Form 8867 is not electronically filing the taxpayer's return with the IRS, § 1.6695–2(b)(1) provides rules for submission of the form. If the tax return preparer required to complete the Form 8867 is not the signing tax return preparer, the preparer satisfies the submission requirement by providing a copy of the completed Form 8867 to the signing tax return preparer. If the tax return preparer required to complete the Form 8867 is the signing tax return preparer but the taxpayer is not electronically filing the return, the preparer must provide a copy of the completed Form 8867 to the taxpayer to be attached to the return being filed with the IRS.

Section 1.6695–2(c) provides that a firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to a penalty if certain conditions apply. Under this rule, a firm will be subject to a penalty if and only if one or more members of principal management (or principal officers) of the firm or branch participated in, or prior to the time the return was filed, knew of the failure to comply with the due diligence requirements; the firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements; or, through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) the firm disregarded its own reasonable and appropriate compliance procedures. A firm subject to a section 6695(g) penalty under this section is not eligible for the exception to the penalty in § 1.6695–2(d). Under this exception, the penalty will not be applied if the tax return preparer can demonstrate to the satisfaction of the IRS that, considering all of the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements, and the failure to meet the due diligence requirements with respect to the particular tax return or claim for refund was isolated and inadvertent.

Section 207, Div. Q of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (129 Stat. 2242, 3082 (2015)) (PATH Act) amended section 6695(g) by expanding the scope

of the due diligence requirements to also include claims of the CTC/ACTC under section 24 and the AOTC under section 25A(a)(1), effective for taxable years beginning after December 31, 2015.

These temporary regulations reflect the changes made to section 6695(g) by the PATH Act by expanding the due diligence requirements to the CTC/ACTC and the AOTC. These temporary regulations also conform the regulation to the 2014 Act, reflecting that the penalty is to be adjusted for inflation.

Explanation of Provisions

The temporary regulations amend § 1.6695–2 to implement the changes made by the PATH Act that extend the preparer due diligence requirements to returns or claims for refund including claims of the CTC/ACTC and/or AOTC in addition to the EIC. As a result of these changes, one return or claim for refund may contain claims for more than one credit subject to the due diligence requirements. Pursuant to the statute, each failure to comply with the due diligence requirements set forth in regulations prescribed by the Secretary results in a penalty. The section 6695(g) requirements apply to each credit claimed, meaning more than one penalty could apply to a single return or claim for refund. The temporary regulations provide examples to show how multiple penalties could apply when one return or claim for refund is filed.

The Form 8867 has been revised for the 2016 tax year and is a single checklist to be used for all applicable credits (EIC, CTC/ACTC, and/or AOTC) on the return or claim for refund subject to the section 6695(g) due diligence requirements. The Form 8867 was streamlined to eliminate unnecessary redundancy with other forms and schedules. These changes were intended to reduce burden while increasing the utility of the Form 8867 as a checklist for tax return preparers to more accurately determine taxpayer eligibility for credits, thereby reducing errors and increasing compliance by preparers and taxpayers. The temporary regulations clarify § 1.6695–2(b)(1)(ii) to illustrate that the completion of Form 8867 can be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained or previously known by the preparer.

The examples provided in § 1.6695–2(b)(3)(ii) have been updated to provide more insight into when a tax return preparer has satisfied the due diligence knowledge requirement, including for purposes of the CTC and AOTC. The updates to the examples in § 1.6695–2T(b)(3)(ii) illustrate that the knowledge requirement for purposes of due diligence can be satisfied in conjunction with a tax return preparer's information-gathering activities done for the purpose of accurately completing other aspects of a tax return or claim for refund. New examples, Example 2 and Example 4, have also been added to illustrate that in certain circumstances a tax return preparer may satisfy the knowledge requirement based on existing knowledge without having to make additional reasonable inquiries. Another new example, Example 7, provides an example of due diligence for purposes of the AOTC.

Section 1.6695–2(a) is amended by the temporary regulations to reflect the changes made by section 208(c) of the 2014 Act, requiring the IRS to index the penalty for inflation for returns or claims for refund filed after December 31, 2014. In addition, § 1.6695–2T(c)(3) clarifies the parenthetical therein by removing the words ''or ascertained.''

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses.

Drafting Information

The principal author of this regulation is Rachel L. Gregory, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

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

Section 1.6695–2T is also issued under 26 U.S.C. 6695(g).

* * * * *

■ **Par. 2.** Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) and (ii), (b)(4)(i)(B) and (C), and (c)(3) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain credits.

(a) [Reserved]. For further guidance regarding the penalty for failure to meet due diligence requirements with respect to certain credits, see § 1.6695–2T(a).

(b) * * *

(1) * * *

(i) [Reserved]. For further guidance regarding the completion of Form 8867, see § 1.6695–2T(b)(1)(i).

* * * * *

(ii) [Reserved]. For further guidance regarding the information used to complete the Form 8867, see 1.6695–2T(b)(1)(ii).

(2) [Reserved]. For further guidance regarding computation, see § 1.6695–2T(b)(2).

(3) * * *

(i) [Reserved]. For further guidance regarding the knowledge requirement, see § 1.6695–2T(b)(3)(i).

(ii) [Reserved]. For current examples, see § 1.6695–2T(b)(3)(ii).

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance on the retention of records, see § 1.6695–2T(b)(4)(i)(B).

(C) [Reserved]. For further guidance on the retention of records, see § 1.6695–2T(b)(4)(i)(C).

* * * * *

(c) * * *

(3) [Reserved]. For further guidance on the special rule for firms, see § 1.6695–2T(c)(3).

* * * * *

■ **Par. 3.** Section 1.6695–2T is added to read as follows:

§ 1.6695–2T Tax return preparer due diligence requirements for certain credits (Temporary).

(a) *Penalty for failure to meet due diligence requirements*—(1) *In general.* A person who is a tax return preparer (as defined in section 7701(a)(36)) of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the child tax credit (CTC) and additional child tax credit (ACTC) under section 24, the American

opportunity tax credit (AOTC) under section 25A(i), or the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty as prescribed in section 6695(g) (indexed for inflation under section 6695(h)) for each failure. A separate penalty applies with respect to each credit claimed on a return or claim for refund for which the due diligence requirements of this section are not satisfied and for which the exception to penalty provided by paragraph (d) of this section does not apply.

(2) *Examples.* The provisions of paragraph (a)(1) of this section are illustrated by the following examples:

Example 1. Preparer A prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer A did not meet the due diligence requirements under this section with respect to the CTC or the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer A is subject to two penalties under section 6695(g): One for failure to meet the due diligence requirements for the CTC and a second penalty for failure to meet the due diligence requirements for the AOTC.

Example 2. Preparer B prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer B did not meet the due diligence requirements under this section with respect to the CTC claimed on the taxpayer's return, but Preparer B did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer B is subject to one penalty under section 6695(g) for the failure to meet the due diligence requirements for the CTC. Preparer B is not subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

(b) [Reserved]. For further guidance, see § 1.6695–2(b).

(1) *Completion and submission of Form 8867.* (i) The tax return preparer must complete Form 8867, ''Paid Preparer's Due Diligence Checklist,'' or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS), and—

(A) through (C) [Reserved]. For further guidance, see § 1.6695–2(b)(1)(i)(A) through (C).

(ii) The tax return preparer's completion of Form 8867 must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(2) *Computation of credit or credits.* (i) When computing the amount of a credit described in paragraph (a) of this section to be claimed on a return or claim for refund, the tax return preparer must either—

(A) Complete the worksheet in the Form 1040, 1040A, 1040EZ, and/or Form 8863 instructions or such other form including such other information as may be prescribed by the IRS applicable to each credit described in paragraph (a) of this section claimed on the return or claim for refund; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's computation of the credit or credits claimed on the return or claim for refund, including the method and information used to make the computations.

(ii) The tax return preparer's completion of an applicable worksheet described in paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation of the credit or credits permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(3) *Knowledge*—(i) *In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, any credit described in paragraph (a) of this section and claimed on the return or claim for refund is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files any inquiries made and the responses to those inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. In 2018, Q, a 22 year-old taxpayer, engages Preparer C to prepare Q's 2017 federal income tax return. Q completes Preparer C's standard intake questionnaire and states that she has never been married and has two sons, ages 10 and 11. Based on the intake sheet and other information that Q provides, including information that shows that the boys lived with Q throughout 2017, Preparer C believes that Q may be eligible to claim each boy as a qualifying child for purposes of the EIC and the CTC. However, Q provides no information to Preparer C, and Preparer C does not have any information from other sources, to verify the relationship between Q and the boys. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer C must make reasonable inquiries to determine whether each boy is a qualifying child of Q for purposes of the EIC and the CTC, including reasonable inquiries to verify Q's relationship to the boys, and Preparer C must contemporaneously document these inquiries and the responses.

Example 2. Assume the same facts as in *Example 1* of this paragraph (b)(3)(ii). In addition, as part of preparing Q's 2017 federal income tax return, Preparer C made sufficient reasonable inquiries to verify that the boys were Q's legally adopted children. In 2019, Q engages Preparer C to prepare her 2018 federal income tax return. When preparing Q's 2018 federal income tax return, Preparer C is not required to make additional inquiries to determine the boys relationship to Q for purposes of the knowledge requirement in paragraph (b)(3) of this section.

Example 3. In 2018, R, an 18 year-old taxpayer, engages Preparer D to prepare R's 2017 federal income tax return. R completes Preparer D's standard intake questionnaire and states that she has never been married, has one child, an infant, and that she and her infant lived with R's parents during part of the 2017 tax year. R also provides Preparer D with a Form W–2 showing that she earned $10,000 during 2017. R provides no other documents or information showing that R earned any other income during the tax year. Based on the intake sheet and other information that R provides, Preparer D believes that R may be eligible to claim the infant as a qualifying child for the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer D must make reasonable inquiries to determine whether R is eligible to claim these credits, including reasonable inquiries to verify that R is not a qualifying child of her parents (which would make R ineligible to claim the EIC) or a dependent of her parents (which would make R ineligible to claim the CTC), and Preparer D must contemporaneously document these inquiries and the responses.

Example 4. The facts are the same as the facts in *Example 3* of this paragraph (b)(3)(ii). In addition, Preparer D previously prepared the 2017 joint federal income tax return for R's parents. Based on information provided by R's parents, Preparer D has determined that R is not eligible to be claimed as a dependent or as a qualifying child for purposes of the EIC or CTC on R's parents' return. Therefore, for purposes of the knowledge requirement in paragraph (b)(3) of this section, Preparer D is not required to make additional inquiries to determine that R is not her parents' qualifying child or dependent.

Example 5. In 2018, S engages Preparer E to prepare his 2017 federal income tax return. During Preparer E's standard intake interview, S states that he has never been married and his niece and nephew lived with him for part of the 2017 tax year. Preparer E believes S may be eligible to claim each of these children as a qualifying child for purposes of the EIC and the CTC. To meet the

knowledge requirement in paragraph (b)(3) of this section, Preparer E must make reasonable inquiries to determine whether each child is a qualifying child for purposes of the EIC and the CTC, including reasonable inquiries about the children's parents and the children's residency, and Preparer E must contemporaneously document these inquiries and the responses.

Example 6. W engages Preparer F to prepare her federal income tax return. During Preparer F's standard intake interview, W states that she is 50 years old, has never been married, and has no children. W further states to Preparer F that during the tax year she was self-employed, earned $10,000 from her business, and had no business expenses or other income. Preparer F believes W may be eligible for the EIC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer F must make reasonable inquiries to determine whether W is eligible for the EIC, including reasonable inquiries to determine whether W's business income and expenses are correct, and Preparer F must contemporaneously document these inquiries and the responses.

Example 7. Y, who is 32 years old, engages Preparer G to prepare his federal income tax return. Y completes Preparer G's standard intake questionnaire and states that he has never been married. As part of Preparer G's client intake process, Y provides Preparer G with a copy of the Form 1098–T Y received showing that University M billed $4,000 of qualified tuition and related expenses for Y's enrollment or attendance at the university and that Y was at least a half-time undergraduate student. Preparer G believes that Y may be eligible for the AOTC. To meet the knowledge requirements in paragraph (b)(3) of this section, Preparer G must make reasonable inquiries to determine whether Y is eligible for the AOTC, as Form 1098–T does not contain all the information needed to determine eligibility for the AOTC or to calculate the amount of the credit if Y is eligible, and contemporaneously document these inquiries and the responses.

(4) *Retention of records.* (i) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(i).

(A) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(i)(A).

(B) A copy of each completed worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 and the applicable worksheets required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 and/or an applicable worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) through (iii) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(ii) through (iii).

(c) [Reserved]. For further guidance, see § 1.6695–2(c).

(1) through (2) [Reserved]. For further guidance, see § 1.6695–2(c)(1) through (2).

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) [Reserved]. For further guidance, see § 1.6695–2(d).

(e) *Applicability date.* This section applies to tax returns and claims for refund prepared on or after December 5, 2016 with respect to tax years beginning after December 31, 2015. For returns and claims for refund prepared before December 5, 2016 with respect to tax years beginning before January 1, 2016, the rules that apply are contained in § 1.6695–2 in effect prior to December 5, 2016. (See 26 CFR part 1 revised as of April 2016).

(f) *Expiration date.* This section will expire on December 5, 2019.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry for § 1.6695–2 from the table.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: November 21, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–28993 Filed 12–2–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 208

[Docket ID: DOD–2013–OS–0021]

RIN 0790–AJ01

National Security Education Program (NSEP) and NSEP Service Agreement

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements the responsibilities of the Secretary of Defense for administering the National Security Education Program (NSEP) and explains the responsibilities of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) for policy and funding oversight for NSEP. It discusses requirements for administering and executing the NSEP service agreement and; and assigns oversight of NSEP to the Defense Language and National Security Education Office (DLNSEO).

DATES: This final rule is effective on January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Alison Patz, 571–256–0771.

SUPPLEMENTARY INFORMATION: On November 9, 2015, the Department of Defense published a proposed rule titled, ''National Security Education Program (NSEP) and NSEP Service Agreement,'' (80 FR 69166–69171) for a 60-day public comment period. The public comment period closed on January 8, 2016. No public comments were received.

After the 60-day public comment period for the proposed rule, minor administrative edits were made to provide clarity or remove outdated, unnecessary, or confusing language in the regulatory text due to an internal DoD re-organization. Offices and symbols have been updated to reflect the most current organizational structure.

Background

The David L. Boren National Security Education Act of 1991 (Title VIII, Pub. L. 102–183), as amended, codified at 50 U.S.C. 1901 *et seq.* (NSEA), mandated that the Secretary of Defense create and sustain a program to award scholarships to U.S. undergraduate students, fellowships to U.S. graduate students, and grants to U.S. institutions of higher education.

The NSEP is authorized through 50 U.S.C. 1901–1912 to award scholarships, fellowships, and grants to

institutions of higher education in order to increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign languages, area studies, counterproliferation studies, and other international fields that are critical to the Nation's interest, as well as to produce an increased pool of applicants for working the departments and agencies of the United States Government with national security responsibilities.

NSEP oversees nine national security language and culture initiatives designed to attract, recruit, and train a future federal workforce skilled in languages and cultures to work across all agencies involved in national security. These initiatives support professional proficiency language training at U.S. colleges and universities, as well as support students to study overseas in regions critical to U.S. national security through scholarships and fellowships.

The final rule outlines requirements applicable to the NSEP office and NSEP award recipients. This includes information about the NSEP service agreement, which award recipients must adhere to as a condition of award. In exchange for support, NSEP awardees must work in qualifying national security positions in the U.S. federal government for at least one year.

Benefits

NSEP, as outlined in the David L. Boren National Security Education Act of 1991, oversees multiple critical initiatives. All of NSEP's programs are designed to complement one another, ensuring that the lessons learned in one program inform the approaches of the others. Congress specifically—and uniquely—structured NSEP to focus on the combined issues of language proficiency, national security, and the needs of the federal workforce.

NSEA outlines five major purposes for NSEP, namely:

- To provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time;
- To increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign languages, area studies, counterproliferation studies, and other international fields that are critical to the nation's interest;
- To produce an increased pool of applicants to work in the departments and agencies of the United States government with national security responsibilities;
- To expand, in conjunction with other federal programs, the international experience, knowledge base, and perspectives on which the United States citizenry, government employees, and leaders rely; and
- To permit the federal government to advocate on behalf of international education.

As a result, NSEP is the only federally-funded effort focused on the combined issues of language proficiency, national security, and the needs of the federal workforce.

- Boren Scholarships are awarded to U.S. undergraduates for up to one academic year of overseas study of languages and cultures critical to national security. Boren Scholars demonstrate their merit for an award in part by agreeing to fulfill a one year (minimum) service commitment to the U.S. government. NSEP awards approximately 150 Boren Scholarships annually.
- Boren Fellowships are awarded for up to two years to U.S. graduate students who develop independent projects that combine study of language and culture in areas critical to national security. Boren Fellows demonstrate their merit for an award in part by agreeing to fulfill a one year (minimum) service commitment to the U.S. government. NSEP awards approximately 100 Boren Fellowships annually.
- The Language Flagship supports students to achieve superior-level proficiency in critical languages including Arabic, Chinese, Hindi Urdu, Korean, Persian, Portuguese, Russian, Swahili, and Turkish. Flagship students combine language study with a major discipline of their choice and complete a year-long overseas program that includes intensive language study, direct enrollment in a local university, and a professional internship experience. In addition, The Language Flagship awards grants to U.S. universities recognized as leaders in the field of language education and supports new concepts in language education. More than 2,000 U.S. undergraduate students participate annually in The Language Flagship's programs, which are based at more than 20 U.S. institutions of higher education and multiple universities overseas.
- The Language Flagship also manages a Flagship/ROTC initiative, through which ROTC cadets and midshipmen are supported at Flagship institutions, thus building a cadre of students with professional-level proficiency and commitment to serve in the U.S. armed forces.
- The English for Heritage Language Speakers (EHLS) program provides professional English language instruction for U.S. citizens who are native speakers of critical languages. Participants receive scholarships to the EHLS program at Georgetown University, which provides eight months of instruction. This training allows participants to achieve professional-level proficiency in the English language and prepares them for key federal job opportunities. NSEP awards approximately 20 EHLS Scholarships annually.
- The African Flagship Languages Initiative (AFLI) is a Flagship language program, designed in cooperation with Boren Scholarships and Fellowships, to improve proficiency outcomes in a number of targeted African languages. The Intelligence Authorization Act for Fiscal Year 2010, Section 314 (Pub. L. 111–259) initially directed the establishment of a pilot program to build language capabilities in areas critical to U.S. national security interests, but where insufficient instructional infrastructure currently exists domestically. Based on the successes of its many critical language initiatives, NSEP was designated to spearhead the effort. All AFLI award recipients are funded through either a Boren Scholarship or Boren Fellowship. Participants complete eight weeks of domestic language study at the University of Florida prior to departure overseas, followed by intensive, semester-long study internationally. AFLI's current language offerings include Akan/Twi, French (for Senegal), Hausa, Portuguese (for Mozambique), Swahili, Wolof, and Zulu.
- The National Language Service Corps (NLSC) is a civilian corps of volunteers with certified proficiency in foreign languages. Its purpose is to support DoD or other U.S. departments or agencies in need of foreign language services, including surge or emergency requirements. NLSC capabilities include language support for interpretation, translation, analysis, training, logistics activities, and emergency relief activities. Members generally possess professional-level proficiency in a foreign language and in English, and may have clearances or may be clearable.
- Project GO provides grants to U.S. institutions of higher education with large ROTC student enrollments, including the Senior Military Colleges. In turn, these institutions provide language and culture training to ROTC students from across the nation, funding domestic and overseas ROTC language programs and scholarships. To

accomplish Project GO's mission, NSEP closely works with Army, Air Force, and Navy ROTC Headquarters, as well as with U.S. institutions of higher education. To date, institutions participating in the program have supported critical language study for over 3,000 ROTC students nationwide. More than 20 domestic institutions host Project GO programs serving ROTC students from across the country.

• Language Training Centers (LTC) are a collaborative initiative to develop expertise in critical languages, cultures and strategic regions for DoD personnel. Section 529(e) of the National Defense Authorization Act for Fiscal Year 2010 authorized the establishment of the program in 2011. The program's purpose is to leverage the expertise and infrastructure of higher education institutions to train DoD personnel in language, culture, and regional area studies. In 2010, NSEP funded the study ''Leveraging Language and Cultural Education and U.S. Higher Education'' to fulfill a Congressional request. Findings from the Leveraging report revealed that federal investments in language and culture at higher education institutions produced a group of universities with well-established programs and faculty expertise that are capable of supporting the military's needs for proficiency-based training in critical and less commonly taught languages at various levels of acquisition. Therefore, facilitating the establishment and continued growth of relationships among these institutions, military installations, and DoD entities is an integral part of the LTC program.

Costs

To manage and run its initiatives, NSEP employs 8.78 full-time equivalents (FTE), ranging in salary from Federal General Schedule (GS) grade 6 through GS grade 15 (three employees devote partial time to NSEP initiatives, which equates to 0.78 FTE). Using the 2014 GS pay scale for the Washington, DC metro area, NSEP's 8.78 FTEs equate to approximately $795,154 in DoD expenditure annually. To calculate this figure, NSEP used GS step one wage rates for all employees.

NSEA legislates $14,000,000 for Boren Scholarships, Boren Fellowships, and The Language Flagship programs annually (sec. 1910–1911) and $2,000,000 for the EHLS program annually (sec. 1912). In addition, the Intelligence Authorization Act for Fiscal Year 2010, Section 314 (Pub. L. 111–259) directed the establishment of an African language program, a hybrid of Boren and Flagship, at $2,000,000. In addition to these amounts, NSEP receives $10,000,000 annually from DoD appropriations in support of Flagship program efforts.

Retrospective Review

This final rule will be reported in future status updates of DoD's retrospective review in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires 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 2014, that threshold is approximately $141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 208 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These requirements have been approved by OMB and assigned OMB Control Number 0704–0368, National Security Education Program (Service Agreement Report for Scholarship and Fellowship Awards).

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 208

Education, Languages, Service agreement.

■ Accordingly 32 CFR part 208 is added to read as follows:

PART 208—NATIONAL SECURITY EDUCATION PROGRAM (NSEP) AND NSEP SERVICE AGREEMENT

Sec.

Authority: 50 U.S.C. 1901–1912, 50 U.S.C. 1903, 50 U.S.C. chapter 37.

§ 208.1 Purpose.

This part:

(a) Implements the responsibilities of the Secretary of Defense for administering NSEP.

(b) Updates DoD policy, assigns responsibilities, and prescribes procedures and requirements for administering and executing the NSEP service agreement in accordance with 50 U.S.C. chapter 37.

(c) Modifies requirements related to the NSEP service agreement.

(d) Assigns oversight of NSEP to the Defense Language and National Security Education Office.

§ 208.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this part as the ''DoD Components'').

(b) The administrative agent, and all recipients of awards by NSEP.

§ 208.3 Definitions.

These terms and their definitions are for the purpose of this part.

Administrative agent. Organization that will administer, direct, and manage resources for NSEP.

Boren Fellowship. A competitive award granted for graduate study under NSEP.

Boren Scholarship. A competitive award granted for undergraduate study abroad under NSEP.

Critical area. Determined by the Secretary of Defense, in consultation with the members of the National Security Education Board, in accordance with 50 U.S.C. chapter 37 and 50 U.S.C. 1903.

Critical foreign language. Determined by the Secretary of Defense, in consultation with the members of the National Security Education Board in accordance with 50 U.S.C. chapter 37.

Deferral of the NSEP service agreement. Official NSEP documentation signed by the Director, NSEP, or his or her designee, by which an NSEP award recipient pursuing approved, qualified further education is allowed to postpone meeting the service deadline.

(1) A deferral reschedules the date by which an NSEP award recipient must begin to fulfill service.

(2) Qualified further education includes, but is not limited to, no less than half-time enrollment in any degree-granting, accredited institution of higher education worldwide or participation in an academic fellowship program (*e.g.,* Fulbright Fellowship, Thomas R. Pickering Foreign Affairs Fellowship).

(3) A deferral is calculated by first calculating the length of enrollment in the degree program from start date to anticipated graduation date, and then adding the length of enrollment in the degree program to the service deadline.

(4) Approvals of deferrals will be considered on a case-by-case basis.

Extension of the NSEP service agreement. Official NSEP documentation signed by the ASD(R), through the DASD(FE&T), by which an NSEP award recipient who has completed award requirements, reached the service deadline, and is actively seeking to fulfill the NSEP service agreement in a well-documented manner is allowed to extend the service deadline. An extension reschedules the date by which an NSEP award recipient must complete the service required in the NSEP service agreement.

Intelligence Community. The U.S. Intelligence Community is a coalition of 17 agencies and organizations within the executive branch that work both independently and collaboratively to gather the intelligence necessary to conduct foreign relations and national security activities.

Language proficiency. The U.S. Government relies on the Interagency Language Roundtable (ILR) scale to determine language proficiency. According to the ILR scale:

(1) 0 is No Proficiency.

(2) 0+ is Memorized Proficiency.

(3) 1 is Elementary Proficiency.

(4) 1+ is Elementary Proficiency, Plus.

(5) 2 is Limited Working Proficiency.

(6) 2+ is Limited Working Proficiency, Plus.

(7) 3 is General Professional Proficiency.

(8) 3+ is General Professional Proficiency, Plus.

(9) 4 is Advanced Professional Proficiency.

(10) 4+ is Advanced Professional Proficiency, Plus.

(11) 5 is Functional Native Proficiency.

NSEP Service Approval Committee. Committee of key NSEP staff members who review the merits of all requests for service credit, deferrals, extensions, or waivers of the NSEP service agreement, including adjudication of all cases involving award recipients who decline job offers, in order to provide recommendations to the Director, NSEP.

Other federal agencies. Includes any federal government agency, department, bureau, office or any other federal government organization of any nature other than the Department of Defense or any component, agency, department, field activity or any other subcomponent of any kind within or subordinate to the Department of Defense.

Program end date. Official end of an NSEP award recipient's program, as set forth within the individual's NSEP service agreement.

Request of service credit in fulfillment of the NSEP service agreement. Written request made through submission of a DD Form 2753 to the NSEP office, documenting how employment an NSEP award recipient held or holds complies with fulfillment of the NSEP service agreement.

Reserve Officer Training Corps (ROTC). College program offered at colleges and universities across the United States that prepares young adults to become officers in the U.S. Military. In exchange for a paid college education and a guaranteed post-college career, cadets commit to serve in the Military after graduation. Each Service branch has its own take on ROTC.

Satisfactory academic progress. Maintenance of academic standards at both home and host institution(s) for every NSEP award recipient for the duration of the study program.

Service deadline. Date by which NSEP award recipient must begin to fulfill the NSEP service agreement.

Waiver of the NSEP service agreement. Official NSEP documentation, signed by the ASD(R), through the DASD(FE&T), by which an NSEP award recipient is relieved of responsibilities associated with the NSEP service agreement.

Work in fulfillment of the NSEP service agreement. Upon completion of the NSEP award recipient's study program, such individual must seek employment in the DoD, Department of Homeland Security (DHS), Department of State (DOS), or the Intelligence Community, or if no suitable position is available, anywhere in the U.S. Government in a position with national security responsibilities. If such individual is unsuccessful in finding a federal position after making a good faith effort to do so, award recipient agrees to seek employment in the field of education in a position related to the study supported by such scholarship or fellowship. The award recipient further agrees to fulfill the service requirement, as described in this rule.

§ 208.4 Policy.

It is DoD policy that:

(a) NSEP assist in making available to DoD and other federal entities, as applicable, personnel possessing proficiency in languages and foreign regional expertise critical to national security by providing scholarships and fellowships pursuant to 50 U.S.C. 1902(a). These scholarships and fellowships will be awarded to:

(1) Students who are U.S. citizens, to pursue qualifying undergraduate and graduate study in domestic and foreign education systems to assist in meeting national security needs for professionals with in-depth knowledge of world languages and cultures, and who enter into an NSEP service agreement as required by 50 U.S.C. 1902(b); or

(2) Students who are U.S. citizens who are native speakers of a foreign language identified as critical to the national security of the United States, but who are not proficient at a professional level in the English language with respect to reading, writing, and other skills, to enable such students to pursue English language studies at institutions of higher education. Recipients must agree to enter into an NSEP service agreement as required by 50 U.S.C. 1902(b).

(b) Grants will be awarded to institutions of higher education for programs in critical areas pursuant to 50 U.S.C. 1902(a) and 1902(f) to implement a national system of programs to produce advanced language expertise critical to the national security of the United States.

(c) An NSEP award recipient must enter into an NSEP service agreement before receipt of an award as required by 50 U.S.C. chapter 37. The award recipient must agree to maintain satisfactory academic progress and work in fulfillment of the NSEP service agreement until all service requirements are satisfied.

(d) All NSEP award recipients who are government employees or members of the uniformed services at the time of award must confirm that they have resigned from such employment or service before receiving support for their NSEP-funded overseas study. These stipulations apply to all individuals, including employees of a department, agency, or entity of the U.S. Government and members of the uniformed services, including members of a Reserve Component of the uniformed services. ROTC participants who are also members of a Reserve Component must be in an inactive, non-drilling status during the course of their NSEP-funded overseas study.

(e) Neither DoD nor the U.S. Government is obligated to provide, or offer work or employment to, award recipients as a result of participation in the program. All federal agencies are encouraged to assist in placing NSEP award recipients upon successful completion of the program.

§ 208.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the ASD(R):

(1) Develops programs, processes, and policies to support NSEP award recipients in fulfilling their NSEP service agreement through internships or employment in federal service pursuant to 50 U.S.C. chapter 37.

(2) Determines, pursuant to 50 U.S.C. 1902(a), after consultation with the National Security Education Board, which countries, languages, and disciplines are critical and in which there are deficiencies of knowledgeable personnel within federal entities.

(b) Under the authority, direction, and control of the USD(P&R) through the ASD(R), and in coordination with the Director, Department of Defense Human Resources Activity (DoDHRA), the DASD(FE&T), or his or her designee:

(1) Makes available competitive scholarship, fellowship, and English for Heritage Language Speakers (EHLS) awards to U.S. citizens who wish to engage in study for the purposes of national security in accordance with 50 U.S.C. chapter 37.

(2) Manages, oversees, and monitors compliance of NSEP service agreements on behalf of the Secretary of Defense.

(3) Advises NSEP award recipients who are seeking federal or national security positions on how to fulfill their NSEP service agreement in national security positions.

(4) Maintains documentation of successful completion of federal service or initiates debt collection procedures for those NSEP recipients who fail to comply with the NSEP service agreement.

(5) Works with agencies or offices in the U.S. Government to identify potential employment opportunities for NSEP award recipients and make employment opportunities and information readily available to all award recipients.

(6) Approves or disapproves all DD Form 2573 written requests for service credit, deferrals, extensions, or waivers of the NSEP service agreement, including adjudication of all cases involving award recipients who decline job offers.

(c) Under the authority, direction, and control of the USD(P&R), and in coordination with the DASD(FE&T), the Director, DoDHRA:

(1) Provides administrative and operational support to NSEP.

(2) Provides fiscal management and oversight to ensure all funds provided for NSEP are separately and visibly accounted for in the DoD budget.

§ 208.6 Procedures.

(a) *NSEP award recipients.* The award recipient of any scholarship or fellowship award through NSEP will:

(1) Maintain satisfactory academic progress in the course of study for which assistance is provided, according to the regularly prescribed standards and practices of the institution in which the award recipient is matriculating.

(2) As a condition of receiving an award, sign an NSEP service agreement as required by 50 U.S.C. chapter 37, which among other requirements, must acknowledge an understanding and agreement by the award recipient that failure to maintain satisfactory academic progress constitutes grounds upon which the award may be terminated and trigger the mandatory requirement to return to the U.S. Treasury the scholarship, fellowship, or EHLS funds provided to the award recipient.

(3) Notify the DASD(FE&T) within ten business days if advised of failure to maintain academic progress by the institution of matriculation.

(4) Notify the DASD(FE&T) in a timely manner and in advance of the service deadline should any request for deferral, extension, or waiver become necessary.

(i) *Deferrals.* NSEP award recipients actively seeking to fulfill the NSEP service agreement in a well-documented manner may request approval of a one-year extension of their service deadline. Approvals of deferrals for pursuit of education will be considered on a case-by-case basis. Renewal of a deferral may be granted if adequately justified.

(ii) *Extensions.* A thorough outline describing all further plans to complete the NSEP service agreement must accompany all extension requests. No more than two extensions may be granted to an NSEP award recipient.

(iii) *Waivers.* (A) In extraordinary circumstances, an NSEP award recipient may be relieved of responsibilities associated with the NSEP service agreement. As a result of receiving a waiver, the award recipient will no longer receive job search assistance from NSEP; is no longer a beneficiary of the special hiring advantages available to award recipients who have a service requirement; and will not be eligible to receive NSEP letters of certification, or endorsements or recommendations. Upon request, the NSEP office will continue to certify that the award recipient received an NSEP scholarship or fellowship.

(B) The DASD(FE&T), will consider requests for extensions and waivers of the NSEP service agreement only under special circumstances as defined in paragraph (b) of this section. The request must set forth the basis, situation, and causes which support the requested action. The award recipient must submit requests electronically on *www.nsepnet.org* or to *nsep@nsep.gov.* Final approval of work in fulfillment of the NSEP service agreement, deferrals, extensions, and waivers rest with, and are at the discretion of, the DASD(FE&T).

(5) Immediately upon successful completion of the award program and either completion of the degree for which the award recipient is matriculated or withdrawal from such degree program, begin the federal job search. Award recipients should concurrently seek positions within DoD, any element of the Intelligence Community, the DHS, or DOS.

(6) Work to satisfy all service requirements in accordance with applicable NSEP service agreements until all NSEP service requirements are

satisfied. Work in fulfillment of the NSEP service agreement must be wholly completed within five years of the award recipient's first date of service unless an approved deferral or extension has been granted.

(7) Work for the total period of time specified in the NSEP service agreement either consecutively in one organization, or through follow-on employment in two or more organizations.

(8) Repay the U.S. Treasury the award funds provided to the award recipient if the requirements of the NSEP service agreement are not met.

(9) Submit DD Form 2753 to NSEP no later than one month after termination of the period of study funded by NSEP and annual reports thereafter until the NSEP service requirement is satisfied. The DD Form 2753 will include:

(i) Any requests for deferrals, extensions, or waivers with adequate support for such requests.

(ii) The award recipient's current status (*e.g.,* not yet graduated from, or terminated enrollment in, the degree program pursued while receiving NSEP support; engaged in work in fulfillment of the requirement.)

(iii) Updated contact information.

(10) Notify the ASD(R), through the DASD(FE&T), within ten business days of any changes to the award recipient's mailing address.

(b) *Procedures and requirements applicable to NSEP aard recipients*—(1) *NSEP service agreement.* Award recipients of any scholarship, fellowship, or EHLS award through this program must comply with the terms of the NSEP service agreement they signed. NSEP awards entered into before the date of this part will be governed by the laws, regulations, and policies in effect at the time that the award was made. The NSEP service agreement for recipients awarded as of the date of this part will:

(i) In accordance with 50 U.S.C. 1902(b) outlines requirements for NSEP award recipients to fulfill their federal service requirement through work in positions that contribute to the national security of the United States. An emphasis is placed on work within one of four organizations: DoD, any element of the Intelligence Community, DHS, or DOS. On a case-by-case basis, NSEP may consider employment with a federal contractor of one of these four priority organizations as meeting the service requirement should the award recipient provide adequate documentary evidence that the salary for the position is funded by the U.S. Government.

(ii) Stipulate that absent the availability of a suitable position in the four priority organizations or a contractor thereof, award recipients may satisfy the service requirement by serving in any federal agency or office in a position with national security responsibilities. It will also stipulate that absent the availability of a suitable position in DoD, any element of the Intelligence Community, DHS, DOS, a contractor thereof, or any federal agency with national security responsibilities, award recipients may satisfy the service requirement by working in the field of education in a discipline related to the study supported by the program if the recipient satisfactorily demonstrates to the Secretary of Defense through the Director, NSEP, that no position is available in the departments, agencies, and offices covered by paragraph (b)(1)(i) of this section.

(2) *Implementation.* The NSEP service agreement will be implemented as follows:

(i) Prior to receiving assistance, the award recipient must sign an NSEP service agreement. The award recipient will submit to the NSEP Administrative Agent, in advance of program of study start date, any proposed changes to the approved award program (*i.e.,* course and schedule changes, withdrawals, course or program incompletions, unanticipated or increased costs).

(ii) The minimum length of service requirement for undergraduate scholarship, graduate fellowship, and EHLS award recipients is one year. The duration of the service requirement for graduate fellowship award recipients is equal to the duration of assistance provided by NSEP.

(iii) In accordance with 50 U.S.C. 1902(b), undergraduate scholarship students must begin fulfilling the NSEP service agreement within three years of completion or termination of their undergraduate degree program.

(iv) In accordance with 50 U.S.C. 1902(b), graduate fellowship students must begin fulfilling the NSEP service agreement within two years of completion or termination of their graduate degree program.

(v) In accordance with 50 U.S.C. 1902(b), EHLS award recipients must begin fulfilling the service requirement within three years of completion of their program.

(vi) The award recipient must accept a reasonable offer of employment, as defined by the Director, NSEP, or his or her designee, in accordance with the NSEP service agreement, at a salary deemed by the hiring organization as commensurate with the award recipient's education level, and consistent with the terms and conditions of the NSEP service agreement.

(vii) The award recipient will annually submit a DD Form 2753 to NSEP until all NSEP service agreement requirements are satisfied. The DD Form 2753 must be received and reviewed by the NSEP Service Approval Committee. The receipt of a completed DD Form 2753 will be acknowledged through official correspondence from NSEP. Award recipients who do not submit the DD Form 2753 as required will be notified by NSEP of the intent to pursue collection action.

(viii) If the award recipient fails to maintain satisfactory academic progress for any term in which assistance is provided, probationary measures of the host institution will apply to the award recipient. Failure to meet the institution's requirements to resume satisfactory academic progress within the prescribed guidelines of the institution will result in the termination of assistance to the award recipient.

(ix) Extenuating circumstances, such as illness of the award recipient or a close relative, death of a close relative, or an interruption of study caused by the host institution, may be considered acceptable reasons for non-satisfactory academic progress. The award recipient must notify the NSEP Administrative Agent of any extenuating circumstances within 10 business days of occurrence. The NSEP Administrative Agent will review these requests to determine what course of action is appropriate and make a recommendation to NSEP for final determination. The DASD(FE&T) will upon receipt of the NSEP Administrative Agent recommendation, determine by what conditions to terminate or reinstate the award to the award recipient.

(x) NSEP award recipients may apply to the DASD(FE&T) for a deferral of the NSEP service agreement requirement if pursuing qualified further education.

(xi) NSEP award recipients may apply to the DASD(FE&T), to receive an extension of the NSEP service agreement requirement if actively seeking to fulfill the NSEP service agreement in a well-documented manner.

(xii) In extraordinary circumstances an NSEP award recipient may request a waiver to be relieved of responsibilities associated with the NSEP service agreement. Conditions for requesting a waiver to the NSEP service agreement may include:

(A) Situations in which compliance is either impossible or would involve extreme hardship to the award recipient.

(B) Interruptions in service due to temporary physical or medical disability or other causes beyond the award recipient's control.

(C) Unreasonable delays in the hiring process not caused by the award recipient, including delays in obtaining a security clearance if required for employment.

(D) Hiring freezes that adversely affect award recipients who are seeking positions with the U.S. Government.

(E) Permanent physical or medical disability that prevent the award recipient from fulfilling the obligation.

(F) Inability to complete the NSEP service agreement due to terminations or interruptions of work beyond the award recipient's control.

(G) Death of the award recipient.

(xiii) In cases where assistance to the award recipient is terminated, the amount owed to the U.S. Government is equal to the support received from NSEP. Repayment to the U.S. Treasury must be made within a period not to exceed six months from expiration of the service deadline. Noncompliance with repayment requirements will result in the initiation of standard U.S. Government collection procedures to obtain payment for overdue indebtedness, unless a waiver is specifically granted by the DASD(FE&T). Further job search assistance to an award recipient will be denied if any outstanding debt remains unpaid as a result of an award termination.

(A) Repayment to the U.S. Treasury for the amount of assistance provided becomes due, either in whole or in part, if the award recipient fails to fulfill the NSEP service agreement. Award recipients who do not submit the SAR as required will be notified by NSEP of the intent to pursue collection action. Noncompliance with repayment requirements will result in the initiation of standard U.S. Government collection procedures to obtain payment for overdue indebtedness, unless a waiver is specifically granted by the DASD(FE&T).

(B) Repayment recovery procedures will include one or a combination of the following:

(*1*) Voluntary repayment schedule arranged between the award recipient and the administrative agent.

(*2*) Deduction from accrued pay, compensation, amount of retirement credit, or any other amount due the employee from the U.S. Government.

(*3*) Such other methods as are provided by law for recovery of amounts owed to the U.S. Government.

Dated: November 29, 2016.

Morgan Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0975]

Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone—San Diego Parade of Lights

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the San Diego Parade of Lights special local regulations on the waters of San Diego Bay, California on December 11, 2016 and December 18, 2016. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 5 p.m. through 8:30 p.m. on December 11, 2016 and December 18, 2016 for Item 5 in Table 1 of Section 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the San Diego Parade of Lights in San Diego Bay Bay, CA in 33 CFR 100.1101, Table 1, Item 5 of that section from 5 p.m. until 8:30 p.m. on December 11, 2016 and December 18, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 100.1101. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: November 16, 2016.

J.R. Buzzella,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2016–29110 Filed 12–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1007]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (Albemarle and Chesapeake Canal), Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S168 (Battlefield Blvd. S/SR 168 BUS) Bridge across the Albemarle & Chesapeake Canal, mile 12.0, Atlantic Intracoastal Waterway, Chesapeake (Great Bridge), VA. The deviation is necessary to accommodate the 32nd Annual Chesapeake Rotary Christmas Parade. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 4:00 p.m. to 10:00 p.m., December 3, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–1007] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The City of Chesapeake, who owns the S168 (Battlefield Blvd. S/SR 168 BUS) Bridge across the Albemarle & Chesapeake Canal, mile 12.0, Atlantic Intracoastal Waterway, Chesapeake (Great Bridge), VA, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(g) to facilitate the 32nd Annual Chesapeake Rotary Christmas Parade.

Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 4:00 p.m. to 6:00 p.m. and from 8:00 p.m. to 10:00 p.m., on December 3, 2016. The closure has been requested to ensure the safety of the increased volume of cars and spectators that will be participating in the 32nd Annual Chesapeake Rotary Christmas Parade. The bridge is a single bascule bridge and has a vertical clearance in the closed-to-navigation position of 8 feet above mean high water.

The Atlantic Intracoastal Waterway (Albemarle and Chesapeake Canal) is used by a variety of vessels including recreational, tug and barge, fishing vessels, and small commercial vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed- position may do so at any time. The bridge will open in case of an emergency and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: November 29, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–29049 Filed 12–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–1016]

Drawbridge Operation Regulation; York River, Yorktown, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Coleman Memorial (US 17) Swing Bridge across the York River, mile 7.0, Yorktown, VA. The deviation is necessary to accommodate maintenance to the bridge's hydraulic motors, pumps, and hoses. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from December 5, 2016 through 8 p.m. on December 15, 2016. For the purposes of enforcement, actual notice will be used from 7:00 a.m. on December 1, 2016, until December 5, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–1016] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns the Coleman Memorial (US 17) Swing Bridge across the York River, mile 7.0, Yorktown, VA, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1025 to facilitate maintenance to the bridge's hydraulic motors, pumps, and hoses.

Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 7:00 a.m. to 8:00 p.m., on December 1, 2016, and December 8, 2016; with an alternate date on December 15, 2016. At all other times, the bridge will operate per 33 CFR 117.1025. The bridge is a swing bridge and has a vertical clearance in the closed-to-navigation position of 60 feet above mean high water.

The York River is used by a variety of vessels including recreational, tug and barge, fishing vessels, and small commercial vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-position may do so at any time. The bridge will not be able to open in case of an emergency. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: November 29, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–29050 Filed 12–2–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 14–CRB–0001–WR (2016–2020) (COLA 2017)]

Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of

ephemeral reproductions of sound recordings.

DATES: *Effective Date:* January 1, 2017.

Applicability Dates: These rates are applicable to the period January 1, 2017, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On May 2, 2016, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2016–2020 for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. *See* 81 FR 26316.

Pursuant to those regulations, at least 25 days before January 1 of each year, the Judges shall publish in the **Federal Register** notice of a COLA applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10(a)(1)–(2).

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI–U from the CPI–U published in November 2015 (237.838),[1] according to the formula $(1 + (C_y - 237.838)/237.838) \times R_{2016}$, where C_y is the CPI–U published by the Secretary of Labor before December 1 of the preceding year and R_{2016} is the royalty rate for 2016 (*i.e.,* $0.0022 per subscription performance or $0.0017 per nonsubscription performance). The adjustment shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c) (as revised herein). The CPI–U published by the Secretary of Labor from the most recent index published before December 1, 2016, is 241.729.[2]

[1] The current regulations erroneously state that 237.336 was the CPI–U published in November 2015. That was actually the CPI–U *for* November 2015 that was published in December 2015. See *BLS News Release—Consumer Price Index November 2015, available at http://www.bls.gov/news.release/archives/cpi_12152015.pdf.* The correct figure for this part of the calculation is 237.838 because it was the CPI–U *published in* November 2015. *See BLS News Release—Consumer Price Index November 2015, available at http://www.bls.gov/news.release/archives/cpi_11172015.pdf.* The Judges have corrected the figure in text of the regulations published herein.

[2] As announced on November 17, 2016, by the Bureau of Labor Statistics in its *News Release—Consumer Price Index October 2016, available at http://www.bls.gov/news.release/pdf/cpi.pdf.*

Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in no adjustment in the rates for 2017.

The 2017 rate for eligible transmission of sound recordings by commercial webcasters remains unchanged at a rate of $.0022 per subscription performance and $.0017 per nonsubscription performance.

Application of the formula to rates for noncommercial webcasters results in an unchanged rate of $.0017 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.1(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Section 380.10 is amended by:

■ a. Revising paragraph (a).

■ b. In paragraph (c), removing ''237.336'' wherever it appears and adding in its place ''237.838''.

The revision reads as follows:

§ 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2017, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial Webcasters:* $0.0022 per performance for subscription services and $0.0017 per performance for nonsubscription services.

(2) *Noncommercial webcasters.* $500 per year for each channel or station and $0.0017 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

* * * * *

Dated: November 29, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2016–29019 Filed 12–2–16; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0439; FRL–9954–33]

Tau-Fluvalinate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tau-fluvalinate in or on wine grapes. Makhteshim Agan of North America, Inc., d/b/a ADAMA requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2016. Objections and requests for hearings must be received on or before February 3, 2017, 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–2015–0439, 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: Michael Goodis, 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–2015–0439 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 February 3, 2017. 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–2015–0439, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 26, 2015 (80 FR 51759) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8362) by Makhteshim Agan of North America, Inc., d/b/a ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR 180.427 be amended by establishing a tolerance for residues of the insecticide/miticide tau-fluvalinate in or on wine grapes at 1.0 parts per million (ppm). That document referenced a summary of the petition prepared by Makhteshim Agan of North America, Inc., d/b/a ADAMA, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), 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 tau-fluvalinate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tau-fluvalinate 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.

Tau-fluvalinate is a member of the pyrethroid class of insecticides. Pyrethroids have historically been classified into two groups, Type I and Type II, based on chemical structure and toxicological effects. Tau-fluvalinate is a Type II pyrethroid. Neurotoxicity was observed throughout the database and clinical signs characteristic of Type II pyrethroids, such as excessive salivation, tremors, pawing, abnormal stance, excessive lacrimation, bulging eyes, ruffling, excessive grooming, vocalization and hyperactivity followed by hypoactivity were seen. Other observed neurotoxic effects included decreased rearing, forelimb grip strength and body temperature, heightened sensitivity to pain, and impaired motor, autonomic, and sensorimotor function.

No increased prenatal susceptibility was observed following developmental toxicity studies in the rat or rabbit. Tau-fluvalinate did not have an effect on fetal development in the prenatal developmental study in rats. In the prenatal developmental study in rabbits, maternal and fetal effects were seen at the highest dose tested. Developmental effects included skeletal anomalies, a lower implantation efficiency, higher incidence of resorption and concurrent lower fetal viability. Maternal effects involved anorexia and general depression. The qualitative susceptibility seen during the prenatal developmental study in rabbits is secondary to maternal toxicity and occurs at the same dose. Evidence of quantitative post-natal sensitivity was

observed in the 2-generation reproduction study in rats. Under the conditions of this study, both the F_1 and F_2 litters experienced tremors during lactation and decreased pup and litter weight in both litters while no effects were noted in the adult animals. However, when considered in the context of the totality of the database, a different pattern emerges regarding this apparent lifestage sensitivity. It appears that the postnatal sensitivity seen in the reproduction study reflects the limited evaluation of adult animals as well as the potential for greater pup exposure through both milk and feed rather than a specific lifestage sensitivity. There are on-going efforts to develop methods to investigate the possibility of increased sensitivity of juvenile rats to pyrethroids as a class at doses near the lowest observed adverse effect level (LOAEL) values. Pending receipt of the additional data, the Agency has conducted an assessment using the available guideline and literature studies. This approach is consistent with assessments performed for other pyrethroid pesticides.

A dermal assessment was not conducted based on the lack of systemic toxicity in the rabbit dermal study at the limit dose and the low potential for dermal absorption. These findings are consistent with the toxicology profile of many pyrethroids. In an acute inhalation neurotoxicity study, neurotoxic effects were observed in the functional observational battery (FOB) including decreased rearing, forelimb grip strength and body temperature in females. This route-specific study provides a robust endpoint for the inhalation route of exposure and was used to estimate human inhalation risks. The standard interspecies extrapolation uncertainty factor is reduced from 10X to 3X due to the human equivalent concentration (HEC) calculation accounting for pharmacokinetic (not pharmacodynamic) interspecies differences. However, due to the lack of a clear no- observed-adverse-effect-level (NOAEL) in the acute inhalation neurotoxicity study, an additional 10X is added to extrapolate a NOAEL from a lowest-observed-adverse-effect-level (LOAEL). The 10X intraspecies factor is also applied. The total uncertainty factor for inhalation exposure is 300X for adults and children >6 years of age. The total inhalation uncertainty factor for children ≤6 years of age is 1,000X since the Food Quality Protection Act safety factor (FQPA SF) of 3X applies.

There was no evidence of carcinogenicity in the combined chronic gavage/carcinogenicity study in rats or the carcinogenicity study in mice. In a battery of mutagenicity studies, there was no evidence of a mutagenic effect.

Specific information on the studies received and the nature of the adverse effects caused by tau-fluvalinate 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 ''Tau-fluvalinate. Human Health Risk Assessment for Registration Review and for Establishment of a Tolerance with No U.S. Registrations for Residues in Wine Grapes'' on page 52 in docket ID number EPA–HQ–OPP–2015–0439.

B. Toxicological Points of Departure/Levels of Concern

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

The database of tau-fluvalinate toxicology studies is complete and provides a robust characterization of the hazard potential for children and adults. In addition to the standard guideline studies, numerous studies from the scientific literature that describe the pharmacodynamic (PD) and pharmacokinetic (PK) profile of the pyrethroids in general have been considered in EPA's assessment. Tau-fluvalinate is rapidly absorbed following an oral dose, and effects are typically observed within the first several hours after dosing. For pyrethroids, as a class, the combination of rapid absorption, metabolism, and elimination precludes accumulation and increased potency following repeated dosing. This is also true of tau-fluvalinate. However, the combined chronic gavage/carcinogenicity neurotoxicity study is more appropriate for point of departure (POD) selection than the acute oral studies, because it is more sensitive. This is likely due to the lower doses tested, and the lower gavage volume used to administer tau-fluvalinate. While acute neurotoxic effects are the most sensitive effects observed in the toxicity database, neurotoxic effects attributable to chronic exposure to tau-fluvalinate have not been identified. The clinical signs in the combined chronic gavage/carcinogenicity neurotoxicity study disappeared each day prior to the next dosing and did not progress in severity across time. This POD is the most protective within the database and will be protective of the acute neurotoxic effects seen in the acute, subchronic and 2-generation reproduction studies in the rat. All exposure durations for the tau-fluvalinate risk assessment are assessed as single-day exposures.

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

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TAU-FLUVALINATE 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 (Children < 6 years old).	NOAEL = 1.0 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 3x	Acute RfD = 0.01 mg/kg/day. aPAD = 0.003 mg/kg/day.	Combined chronic gavage/carcinogenicity study. LOAEL = 2.5 mg/kg/day. Clinical signs of neurotoxicity including excessive salivation, pawing, abnormal stance, excessive lacrimation, ruffling and hyperactivity followed by hypoactivity.
Acute dietary (Adults and children ≥ 6 years old).	NOAEL = 1.0 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.01 mg/kg/day. aPAD = 0.01 mg/kg/day.	Combined chronic gavage/carcinogenicity study. LOAEL = 2.5 mg/kg/day. Clinical signs of neurotoxicity including excessive salivation, pawing, abnormal stance, excessive lacrimation, ruffling and hyperactivity followed by hypoactivity.
Chronic dietary (All populations)	Neurotoxic effects, the most sensitive effects observed in the toxicity database, attributable to chronic exposure to tau-fluvalinate have not been identified (neurotoxic effects do not progress over time).		
Inhalation short-term (1 to 30 days).	Inhalation study LOAEC= 20 mg/m^3. UF_A = 3x UF_H = 10x $UF_{L=}$ 10x FQPA SF= 3x (Children <6 years old) FQPA SF= 1x (Adults and children ≥6 years old)	LOC for MOE = 1,000 (Children <6 years old). LOC for MOE = 300 (Adults and children ≥6 years old).	Acute inhalation study. LOAEL = 20 mg/m^3 (LDT). Increased glucose levels and decreased body temperature, rearing and forelimb grip strength in females in addition to soiled fur appearance.
Cancer (Oral, dermal, inhalation).	Tau-fluvalinate has been classified as not likely to be a human carcinogen.		

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). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tau-fluvalinate, EPA considered exposure under the petitioned-for tolerances as well as all existing tau-fluvalinate tolerances in 40 CFR 180.427. EPA assessed dietary exposures from tau-fluvalinate 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.

Such effects were identified for tau-fluvalinate. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) 2003–2008 National Health and Nutrition 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 registered and proposed commodities.

ii. *Chronic exposure.* Neurotoxic effects, the most sensitive effects observed in the toxicity database, attributable to chronic exposure to tau-fluvalinate have not been identified (neurotoxic effects do not progress over time); therefore, a quantitative chronic aggregate risk assessment was not conducted.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that tau-fluvalinate does not pose a cancer hazard 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 tau-fluvalinate. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* As a class of chemicals, the pyrethroids have low water solubility and a high affinity to bind to soils. Given these physical/chemical properties, it is unlikely that dietary exposure from drinking water will be a major pathway of exposure. The existing beehive use and use on wine grapes grown outside of the U.S. will not result in tau-fluvalinate entering drinking water sources. However, the outdoor, non-food uses (including carrots and *Brassica*/cole crops grown for seed, ornamentals and building perimeters) could potentially result in residues in surface or ground water. The limit of water solubility, 2.4 ppb, is used for tau-fluvalinate as an upper-bound estimated drinking water concentration (EDWC) for this assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Tau-fluvalinate is currently registered for the following uses that could result in residential exposures: Outdoor residential settings including outside surfaces (crack and crevice), ant mound treatments (spot application) and use on roses, flowers, houseplants, ground covers, vines, ornamentals, shrubs and trees. EPA assessed residential exposure

using the following assumptions: Because a dermal hazard was not identified for tau-fluvalinate, only inhalation exposures were assessed for handlers. The quantitative exposure/risk assessment developed for residential handlers is based on the following scenarios: (1) Applying ready-to-use (RTU) spray for use on gardens/trees, flowers, and ornamentals; (2) Mixing/loading/applying liquids with pump sprayer/hose-end sprayer for use on gardens/trees, flowers, and ornamentals; (3) Mixing/loading/applying liquids with manually pressurized handwand for use on gardens/trees, flowers, and ornamentals; (4) Mixing/loading/applying liquids with backpack for use on gardens/trees, flowers, and ornamentals; (5) Mixing/loading/applying liquids with a sprinkler can for use on gardens/trees, flowers, and ornamentals; and (6) Applying RTU spray to spot or crack and crevice treatment outdoors.

Although there is potential for post-application exposure to individuals as a result of being in an environment that has been previously treated with tau-fluvalinate, post-application inhalation exposure is anticipated to be negligible due to the combination of low vapor pressure for tau-fluvalinate and the expected dilution in outdoor air. In addition, because no dermal POD was selected for tau-fluvalinate (*i.e.,* there is no dermal hazard), a quantitative residential dermal post-application exposure assessment was not performed.

Post-application non-dietary ingestion exposure was also not quantitatively assessed for young children. Unlike treated grass at home or in recreational areas or indoor floor surfaces, for the tau-fluvalinate registered outdoor uses (*e.g.,* flowers, trees, crack and crevice), the potential for exposure via non-dietary ingestion for young children is greatly diminished. Since the extent to which young children engage in the types of activities associated with these areas (*e.g.,* gardening) or utilize these areas for prolonged periods of play is low, significant non-dietary ingestion exposure is not expected.

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.''

The Agency has determined that the pyrethroids and pyrethrins share a common mechanism of toxicity *http://www.regulations.gov;* EPA–HQ–OPP–2008–0489–0006. The members of this group share the ability to interact with voltage-gated sodium channels ultimately leading to neurotoxicity. The cumulative risk assessment (CRA) for the pyrethroids/pyrethrins was published on November 9, 2011 and is available at *http://www.regulations.gov;* EPA–HQ–OPP–2011–0746. No cumulative risks of concern were identified, allowing the agency to consider new uses for pyrethroids. For information regarding EPA's efforts to evaluate the risk of exposure to this class of chemicals, refer to *http://www.epa.gov/oppsrrd1/reevaluation/pyrethroids-pyrethrins.html.*

Tau-fluvalinate was included in the 2011 pyrethroid CRA. In the cumulative assessment, residential exposure was the greatest contributor to the total exposure. There are currently registered tau-fluvalinate products for outdoor residential uses that have not been previously assessed and were not included in the CRA. In order to determine if the currently registered tau-fluvalinate residential uses will significantly contribute to or change the overall findings in the pyrethroid CRA, the Agency performed a quantitative cumulative screening assessment. This assessment used the currently registered application rates for tau-fluvalinate along with the previous assumptions as used in the 2011 CRA (*i.e.,* unit exposures, body weight, and the relative potency factor (RPF) for tau-fluvalinate). The resulting exposures were then compared to the pyrethroid CRA index point of departure (index POD) to calculate the screening MOEs. These screening MOEs were then be directly compared to the MOEs that were calculated in the CRA. If the screening MOEs are similar to, or are greater than, the CRA MOEs, then it can be concluded that any currently registered residential uses will not have an impact on the pyrethroid CRA.

The outdoor garden uses resulting in the highest residential exposures for tau-fluvalinate are selected for the screening assessment (specifically, the backpack sprayer and RTU hose-end sprayer garden scenarios). As there is no post-application inhalation or child incidental oral exposures expected from the garden uses, and there is no dermal hazard for tau-fluvalinate, it is only necessary to perform an adult handler inhalation assessment.

The resulting screening MOEs (adult handler) for tau-fluvalinate garden backpack and hose end sprayer scenarios are 1,300,000 and 61,000, respectively. In the CRA, the garden risk driver was identified as the tau-fluvalinate backpack use and the MOE for that scenario was 1,300. However, since the 2011 CRA, it has been determined that there is no dermal hazard for tau-fluvalinate. With the dermal exposures removed, that MOE would now be 780,000 and would no longer be considered the highest risk driver. Therefore, the next highest risk driver for the CRA garden scenario is used which is the cypermethrin backpack use with a total MOE of 1,400. Since the screening MOEs (1,300,000 and 260,000) are much greater than the CRA MOE (1,400), it can be concluded that the currently registered tau-fluvalinate residential uses will not significantly impact the overall findings in the 2011 pyrethroid CRA.

Dietary exposures make a minor contribution to the total pyrethroid exposure. The dietary exposure assessment performed in support of the pyrethroid cumulative was much more highly refined than that performed for the single chemical. The proposed tolerance for residues of tau-fluvalinate on imported wine grape will make an insignificant contribution to dietary risk to the pyrethroids as a whole.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* After reviewing the extensive body of peer-reviewed literature on pyrethroids, the Agency has no residual uncertainties regarding age-related sensitivity for women of child bearing age as well as for all adult populations and children >6 years of age, based on the absence of pre-natal sensitivity observed in 76 guideline studies for 24

pyrethroids and the scientific literature. Additionally, no evidence of increased quantitative or qualitative susceptibility was seen in the pyrethroid scientific literature related to PD. The Agency is retaining a 3X FQPA Safety Factor to protect for exposures of children ≤6 years of age based on the increased quantitative susceptibility seen in studies on pyrethroid PKs and the increased quantitative juvenile susceptibility observed in high dose studies in the literature.

Although sensitivity was observed in the 2-generation reproduction study, there is a clear NOAEL for the effects (tremors), and the PODs selected for risk assessment are 10-fold lower than where sensitivity was observed, and are therefore protective. When considered within the context of the totality of the database, EPA believes that the apparent sensitivity in the multi-generation reproduction toxicity study in rats is a reflection of the study's design rather than a lifestage sensitivity *per se.* In addition, the LOAELs from the maternal rat prenatal developmental study and the offspring 2-generation reproduction study are ~10 mg/kg/day. There is no sensitivity observed across the rat prenatal developmental and 2-generation reproduction studies.

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 for adults and the general population and 3X to protect for exposures of children ≤6 years of age based on the increased quantitative susceptibility seen in studies on pyrethroid PKs and the increased quantitative juvenile susceptibility observed in high dose studies in the literature. That decision is based on the following findings:

i. The toxicology database is adequate for the evaluation of risks to infants and children. Acceptable studies include: Rat and rabbit developmental toxicity studies, a rat multi-generation reproduction study and chronic toxicity/carcinogenicity studies in mice and rats. In addition, acceptable acute (non-guideline) and subchronic (guideline) neurotoxicity studies in the rat are adequate to evaluate the neurotoxicity of tau-fluvalinate.

EPA is making best use of the extensive scientific knowledge about the adverse outcome pathway of pyrethroids in the risk assessments for this class of pesticides. In this way, information on a subset of pyrethroids can be used to help interpret and understand the toxicological profile for other members of the class. In that regard, a group of pesticide registrants and product formulators known as the Council for the Advancement of Pyrethroid Human Risk Assessment (CAPHRA) has been conducting multiple experiments with permethrin and deltamethrin as model Type I and Type II compounds, respectively, in order to develop an initial extensive database of *in vitro* and *in vivo* toxicology studies and highly refined physiologically-based pharmacokinetic (PBPK) models. In light of the literature studies indicating a possibility of increased sensitivity in juvenile rats at high doses, the agency is expecting additional *in vitro* and *in vivo* data to help elucidate the biological processes underlying the juvenile sensitivity reported in the peer reviewed literature. In 2010, the agency requested proposals for study protocols that could identify and quantify potential juvenile sensitivity and received a single response from the Pyrethrin and Pyrethroids Technical Working Group (PPTWG), a conglomerate of pyrethroid registrants. The PPTWG protocol has been reviewed, the initial study proposal was refined, and the CAPHRA submitted its updated research. Currently, the CAPHRA is continuing to: (1) Develop rat and human PBPK models, including additional PK data, and (2) conduct *in vivo* behavioral testing using auditory startle testing in rats and plans to submit additional data to the agency. For the reasons discussed in Unit III.D.2., the uncertainty regarding the protectiveness of the intraspecies uncertainty factor raised by the literature studies and the absence of the requested data warrant application of an additional 3X for risk assessments for infants and children under 6 years of age.

ii. As with other pyrethroids, tau-fluvalinate causes neurotoxicity from interaction with sodium channels leading to clinical signs of neurotoxicity. Neurotoxicity was observed in several of the toxicity studies for the active ingredient; however, concern is low, because the selected endpoints are protective of the observed effects. The effects are well characterized and adequately assessed by the available guideline and non-guideline studies.

iii. There were no indications of fetal toxicity in the rat developmental toxicity study. In the rabbit developmental toxicity study, there were fetotoxic effects, as indicated by a lower implantation efficiency, higher incidence of resorption and concurrent lower fetal viability in the high-dose group. However, effects were likely secondary to maternal toxicity at the same dose (125 mg/kg/day). There were signs of post-natal sensitivity in the tau-fluvalinate 2-generation reproduction study in rats. The parental generation did not experience any systemic effects up to the highest dose tested, where there were tremors during lactation in both F_1 and F_2 litters, as well as decreased pup body and litter weights in both generations. The degree of concern for these effects in infants is low, because the offspring effects have clearly defined NOAELs/LOAELs and the POD selected for risk assessment is protective of these effects.

iv. There are no residual uncertainties in the exposure database. Dietary exposures to tau-fluvalinate are estimated using tolerance level residues and 100 PCT. The high-end EDWC for tau-fluvalinate is based on the limit of solubility in water. Adequate exposure data are available to assess the residential exposures. These assessments will not underestimate the exposure and risks posed by tau-fluvalinate.

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.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tau-fluvalinate will occupy 20% of the aPAD for adults 50 to 99 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Based on the data summarized in Unit III.A., there is no increase in hazard with increasing dosing duration. Furthermore, chronic dietary exposures will be lower than acute exposures. Therefore, the acute aggregate assessment is protective of potential chronic aggregate exposures.

3. *Short-term risk.* Tau-fluvalinate 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 tau-fluvalinate.

An Aggregate Risk Index (ARI) approach was used to aggregate the

dietary and residential (inhalation) exposures since the levels of concern are not the same for those exposures (100 and 300, respectively). 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 an aggregate ARI of 74 for adults. Because EPA's level of concern for tau-fluvalinate is an ARI of 1 or below, this ARI is 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).

Because no intermediate-term adverse effect was identified, tau-fluvalinate is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, tau-fluvalinate 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 tau-fluvalinate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Acceptable methods are available for enforcement and data collection purposes for both plant and animal commodities. The Pesticide Analytical Manual (PAM) Volume II lists Method I, a GC method with electron capture detection (ECD), for the enforcement of tolerances for fluvalinate in/on plant and animal commodities.

B. International Residue Limits

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

The Codex has not established a MRL for tau-fluvalinate.

C. Revisions to Petitioned-For Tolerances

Finally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of tau-fluvalinate not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, a tolerance is established for residues of tau-fluvalinate, in or on grape, wine at 1.0 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 10, 2016.

Michael Goodis,

Acting 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 § 180.427:

■ a. Revise the introductory text in paragraph (a); and

■ b. Add alphabetically the entry ''Grape, wine'' and footnote 1 to the table in paragraph (a).

The additions and revisions read as follows:

§ 180.427 Tau-Fluvalinate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tau-fluvalinate, including its metabolites and degradates, in or on commodities in the table below. Compliance with the specified tolerance level is to be determined by measuring only tau-fluvalinate, (cyano-(3-phenoxyphenyl)methyl*N*-[2-chloro-4-(trifluoromethyl)phenyl]-D-valinate), in or on the commodity.

Commodity	Parts per million
Grape, wine [1]	1.0
* * * * *	

[1] There is no U.S. registration for use of tau-fluvalinate on wine grapes.

* * * * *

[FR Doc. 2016–29111 Filed 12–2–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0049; FRL–9954–69]

Oxathiapiprolin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of oxathiapiprolin in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation amends the established tolerance for vegetable, tuberous and corm, subgroup 1C; and removes existing tolerances for *Brassica,* head and stem, subgroup 5A, and leafy greens subgroup 4A that are superseded by this action. Interregional Research Project Number 4 (IR–4), E.I. du Pont de Nemours & Company (DuPont), and Syngenta Crop Protection, LLC (Syngenta) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 5, 2016. Objections and requests for hearings must be received on or before February 3, 2017, 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–2016–0049, 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: Michael L. Goodis, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0049 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 February 3, 2017. 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–2016–0049, 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 April 25, 2016 (81 FR 24044) (FRL–9944–86) and May 19, 2016 (81 FR 31581) (FRL–9946–02), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PPs) by DuPont (PP# 5F8435); Interregional Research Project Number 4 (PP# 5E8437) and Syngenta (PP# 5F8441), respectively.

The petition, 5F8437, requested that 40 CFR 180.685 be amended by establishing tolerances for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-

(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, in or on basil, dried leaves at 80 parts per million (ppm); basil, fresh leaves at 10 ppm; *Brassica* head and stem vegetable group 5–14 at 1.5 ppm; *Brassica* leafy greens subgroup 4–14B at 10 ppm; caneberry subgroup 13–07A at 0.5 ppm; leafy greens subgroup 4–14A at 15 ppm; and stalk and stem vegetable subgroup 22A at 2 ppm. The notice of filing for petition, PP# 5E8437, proposed a tolerance for individual crops included in designated crop group/subgroups under a proposed rule, ''Tolerance Crop Grouping Program IV'' on November 14, 2014 (79 FR 68153). This rule proposed certain revisions to EPA's pesticide tolerance crop grouping regulations. The final rule establishing tolerances for these crop groups/subgroups ''Pesticide Tolerance Crop Grouping Program Amendment IV'' published on May 3, 2016 (81 FR 26471).

The Syngenta petition, 5F8441, requested that 40 CFR 180.685 be amended by establishing tolerances for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, in or on: citrus oil at 2.0 ppm; citrus, pulp at 0.09 ppm; fruit, citrus, group 10–10 at 0.06 ppm; potato, wet peel at 0.07 ppm; and requested revising the existing 0.01 ppm tolerance on vegetable, tuberous and corm, subgroup 1C to 0.04 ppm.

The Dupont petition, 5F8435, requested that 40 CFR 180.685 be amended by establishing tolerances for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, in or on: soybean at 0.01 ppm, and sunflower at 0.01 ppm.

A summary of the petitions prepared by IR4 and the registrants, DuPont and Syngenta, are available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filings. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the subject petitions, EPA has revised the proposed tolerance level for certain crops and corrected commodity definitions, as needed, to be consistent with current EPA policy. The reason for these changes are explained in Unit IV.D.

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 oxathiapiprolin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with oxathiapiprolin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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. In the toxicity studies for oxathiapiprolin, no treatment-related effects were seen in any species at doses up to the limit dose (1,000 millgrams/kilogram (mg/kg)/day). No treatment-related effects were seen in subchronic or chronic oral toxicity (rats, mice, or dogs), dermal toxicity, neurotoxicity, or immunotoxicity studies. Additionally, there was no evidence of carcinogenicity in cancer studies with rats or mice. No treatment-related effects were seen in maternal or fetal animals in rat or rabbit developmental toxicity studies. Treatment-related effects were observed in offspring animals in rat reproduction studies (decreased body weight and delayed preputial separation); however, the effects were only observed at doses above the limit dose. Such high doses are not relevant for human health risk. The lack of observed treatment-related oxathiapiprolin toxicity effects is consistent with the low to moderate oral absorption and lack of bioaccumulation reported in the rat metabolism studies. In acute lethality studies, exposure to oxathiapiprolin resulted in low toxicity via the oral, dermal, and inhalation routes of exposure. Oxathiapiprolin was not a dermal or eye irritant, or a skin sensitizer.

Specific information on the studies received and the nature of the adverse effects caused by oxathiapiprolin 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 document, ''Oxathiapiprolin—New Active Ingredient Human Health Risk Assessment of Uses on Turf, Ornamentals, and a Number of Crops'' dated June 25, 2015, in docket ID number EPA–HQ–OPP–2014–0114.

B. Toxicological Points of Departure/Levels of Concern

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

The majority of the toxicity studies for oxathiapiprolin did not demonstrate treatment-related effects, with the exception of the reproduction study. The effects in the reproduction study were minimal and seen at doses (above the limit dose) not relevant for human exposure. There were no adverse acute or chronic effects identified for any population groups (including infants and children). Therefore, due to the limited toxicity in the oxathiapiprolin toxicological database, toxicity endpoints and points of departure were not selected for oxathiapiprolin exposure scenarios and a quantitative risk assessment was not conducted.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to oxathiapiprolin, EPA considered exposure under the petitioned-for tolerances as well as all existing oxathiapiprolin tolerances in 40 CFR 180.685. There is likely to be dietary exposure to oxathiapiprolin from its use as a pesticide on food. Should exposure occur, however, minimal to no risk is expected for the general population, including infants and children, due to the low toxicity of oxathiapiprolin.

2. *Dietary exposure from drinking water.* Exposure to oxathiapiprolin via drinking water from the proposed uses is expected to be minimal due to rapid foliar uptake and limited quantities available in spray drift. No adverse effects were observed in the submitted toxicological studies for oxathiapiprolin regardless of the route of exposure.

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

Oxathiapiprolin is not proposed or registered for any specific use pattern that would result in residential handler exposure. However, some of the uses could involve commercial application in areas where residential post-application activities could occur (*i.e.,* individuals playing on treated golf courses, commercial landscapes or treated ornamentals purchased at a retail location). Since no adverse effects were observed for oxathiapiprolin in the submitted toxicological studies (regardless of the route of exposure), quantitative residential handler or post-application exposure assessments are not needed.

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits. No treatment related effects were seen in maternal or fetal animals in the studies. However, there was evidence of increased quantitative susceptibility in reproduction studies in rats at doses above the limit dose. Decreased pup weight and delayed sexual maturation (preputial separation) were seen in the studies in the absence of maternal toxicity.

3. *Conclusion.* EPA evaluated the available toxicity and exposure data on oxathiapiprolin and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA considers the toxicity database to be complete and has identified no residual uncertainty with regard to prenatal and postnatal toxicity or exposure. No hazard was identified based on the available studies; therefore, EPA concludes that there are no threshold effects of concern to infants, children, or adults from oxathiapiprolin. As a result, EPA concludes that no additional margin of exposure (safety) is necessary.

E. Aggregate Risks and Determination of Safety

Taking into account the available data for oxathiapiprolin, EPA has concluded that given the lack of toxicity of this substance, no risks of concern are expected. Therefore, 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 oxathiapiprolin.

IV. Other Considerations

A. Analytical Enforcement Methodology

Method 30422 (Supplement No. 1) was developed for plant commodities, and Method 31138 was developed for livestock commodities. Residues of oxathiapiprolin and associated metabolites are extracted from crop or livestock commodity samples using a solution of formic acid, water and acetonitrile, and diluted with acetonitrile and water. Both methods use liquid chromotography with tandem mass spectrometry (LC/MS/MS), specifically reverse-phase liquid chromatography (LC), and detection by electrospray tandem mass spectrometry (MS/MS).

The FDA multi-residue methods are not suitable for detection and enforcement of oxathiapiprolin residues or associated metabolites. However, the European Multiresidue Method (DFG Method S19) and the QuEChERS Multiresidue Method have shown success in some matrices.

Adequate enforcement methodology (LC/MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established maximum residue limits (MRLs) for oxathiapiprolin.

C. Response to Comments

A comment was received from an anonymous commenter objecting to EPA ''approving additional uses of oxathiapiprolin that add to the thousands of existing toxic chemical residues as well as the undetermined synergistic effects these toxicants pose to America's population.'' The existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) states that tolerances may be set when the pesticide meets the safety standard imposed by that statute. As required by that statute, EPA conducted a comprehensive assessment of oxathiapiprolin, including its potential for carcinogenicity. Based on its assessment of the available data, the Agency believes that given the observed lack of toxicity of this chemical, no risks of concern are expected. Therefore, 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 oxathiapiprolin.

D. Revisions to Petitioned-For Tolerances

In the notice of filing for petition 5E8437, the titles of the designated new commodity group and subgroups are as listed in the ''Tolerance Crop Grouping Program IV'' proposal of November 14, 2014 (79 FR 68153). In the final rule which published on May 3, 2016, ''Pesticide Tolerances Crop Grouping Program Amendment IV,'' EPA revised the crop group/subgroup titles by roughly retaining the same name and number as the pre-existing group/subgroup, except the number is followed by a hyphen and the final digits of the year established. Hence, the title of the requested ''*Brassica* leafy greens subgroup 4–14B'' (due to the May 3, 2016 final rule as noted above) becomes ''*Brassica* leafy greens subgroup 4–16B.'' Likewise, the requested ''Leafy greens subgroup 4–14A'' becomes ''Leafy greens subgroup 4–16A;'' and the title of the requested ''*Brassica* head and stem vegetable group 5–14'' was revised to ''Vegetable, *Brassica* head and stem, group 5–16.''

To be consistent with current EPA policy, the commodity definitions were corrected for the following crops: vegetable, stalk and stem, subgroup 22A to stalk and stem vegetable subgroup 22A; citrus fruit, crop group 10 10 to fruit, citrus, group 10–10; citrus oil to citrus, oil; citrus pulp to citrus, dried pulp; soybean to soybean, seed; and sunflower to sunflower, seed.

For certain proposed crop tolerances, the Agency corrected the proposed tolerance levels. For caneberry subgroup 13–07A, the corrected tolerance level includes an additional significant figure (0.50 ppm rather than the proposed 0.5 ppm). This is to avoid the situation where rounding of an observed residue to the level of precision of the tolerance expression would be considered non-violative (such as 0.54 ppm being rounded to 0.5 ppm). For the same reason, the corrected tolerance for stalk and stem vegetable subgroup 22A is 2.0 ppm instead of the proposed 2 ppm.

V. Conclusion

Therefore, tolerances are established for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]-ethanone, in or on basil, dried leaves at 80 ppm; basil, fresh leaves at 10 ppm; *Brassica* leafy greens subgroup 4–16B at 10 ppm; caneberry subgroup 13–07A at 0.50 ppm; leafy greens subgroup 4–16A at 15 ppm; citrus, dried pulp at 0.09 ppm; citrus, oil at 2.0 ppm; fruit, citrus, group 10–10 at 0.06 ppm; potato, wet peel at 0.07 ppm; soybean, seed at 0.01 ppm; stalk and stem vegetable subgroup 22A at 2.0 ppm; sunflower, seed at 0.01 ppm and vegetable, *Brassica,* head and stem, group 5–16 at 1.5 ppm. The existing 0.01 ppm tolerance on vegetable, tuberous and corm, subgroup 1C is revised to 0.04 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 10, 2016.

Michael Goodis,

Acting 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. Amend the table in § 180.685(a)(1) as follows:

■ a. Remove the entries for ''*Brassica,* head and stem, subgroup 5A''; and ''Leafy greens subgroup 4A'';

■ b. Revise the entry for ''Vegetable, tuberous and corm, subgroup 1C''; and

■ c. Add alphabetically the entries for ''Basil, dried leaves''; ''Basil, fresh leaves''; ''*Brassica* leafy greens subgroup 4–16B''; ''Caneberry subgroup 13–07A''; ''Citrus, dried pulp''; ''Citrus, oil''; ''Fruit, citrus, group 10–10''; ''Leafy greens subgroup 4–16A''; ''Potato, wet peel''; ''Soybean, seed''; ''Stalk and stem vegetable subgroup 22A''; ''Sunflower, seed'' and ''Vegetable, *Brassica* head and stem, group 5–16''.

The revisions and additions read as follows:

§ 180.685 Oxathiapiprolin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Basil, dried leaves	80
Basil, fresh leaves	10
Brassica leafy greens subgroup 4–16B	10
Caneberry subgroup 13–07A	0.50
Citrus, dried pulp	0.09
Citrus, oil	2.0
Fruit, citrus, group 10–10	0.06
* * * * * * *	
Leafy greens subgroup 4–16A	15
* * * * * * *	
Potato, wet peel	0.07
Soybean, seed	0.01
Stalk and stem vegetable subgroup 22A	2.0
Sunflower, seed	0.01
* * * * * * *	
Vegetable, *Brassica* head and stem, group 5–16	1.5
* * * * * * *	
Vegetable, tuberous and corm, subgroup 1C	0.04

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[FR Doc. 2016–29109 Filed 12–2–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8459]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency

Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Annin, Township of, McKean County	421850	August 7, 1974, Emerg; August 1, 1987, Reg; December 22, 2016, Susp.	December 22, 2016.	December 22, 2016.
Bradford, City of, McKean County	420665	April 15, 1974, Emerg; September 16, 1981, Reg; December 22, 2016, Susp.	.....do *	Do.
Bradford, Township of, McKean County	422245	July 2, 1974, Emerg; September 16, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Ceres, Township of, McKean County ...	421853	August 6, 1974, Emerg; September 18, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Corydon, Township of, McKean County	422473	April 23, 1976, Emerg; March 1, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Eldred, Borough of, McKean County	420666	August 1, 1973, Emerg; September 3, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Foster, Township of, McKean County ...	421855	July 23, 1974, Emerg; November 18, 1981, Reg; December 22, 2016, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Hamilton, Township of, McKean County	421856	April 29, 1975, Emerg; March 1, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Hamlin, Township of, McKean County ..	421857	August 1, 1974, Emerg; March 1, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Lafayette, Township of, McKean County	421858	May 23, 1975, Emerg; June 30, 1976, Reg; December 22, 2016, Susp.	.....do	Do.
Liberty, Township of, McKean County ..	420668	August 24, 1973, Emerg; September 1, 1977, Reg; December 22, 2016, Susp.	.....do	Do.
Norwich, Township of, McKean County	421859	December 19, 1974, Emerg; July 1, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Otto, Township of, McKean County	421860	April 8, 1977, Emerg; June 1, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Port Allegany, Borough of, McKean County.	420671	June 1, 1973, Emerg; June 15, 1979, Reg; December 22, 2016, Susp.	.....do	Do.
Sergeant, Township of, McKean County	422474	August 5, 1975, Emerg; July 3, 1985, Reg; December 22, 2016, Susp.	.....do	Do.
Smethport, Borough of, McKean County	420672	June 29, 1973, Emerg; April 17, 1978, Reg; December 22, 2016, Susp.	.....do	Do.
Region IV				
Florida:				
Auburndale, City of, Polk County	120262	September 26, 1974, Emerg; May 11, 1979, Reg; December 22, 2016, Susp.	.....do	Do.
Bartow, City of, Polk County	120263	June 18, 1975, Emerg; December 16, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Davenport, City of, Polk County	120410	March 1, 1976, Emerg; December 2, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Dundee, Town of, Polk County	120409	February 19, 1976, Emerg; November 19, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Fort Meade, City of, Polk County	120264	June 13, 1975, Emerg; November 5, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Frostproof, City of, Polk County	120265	May 2, 1975, Emerg; May 1, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Haines City, City of, Polk County	120266	May 28, 1975, Emerg; September 16, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Lake Alfred, City of, Polk County	120667	N/A, Emerg; September 24, 2003, Reg; December 22, 2016, Susp.	.....do	Do.
Lake Hamilton, Town of, Polk County ...	120414	March 23, 1976, Emerg; November 5, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Lake Wales, City of, Polk County	120390	November 4, 1982, Emerg; March 16, 1988, Reg; December 22, 2016, Susp.	.....do	Do.
Lakeland, City of, Polk County	120267	June 26, 1975, Emerg; September 16, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Mulberry, City of, Polk County	120268	July 19, 1974, Emerg; February 4, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Polk City, City of, Polk County	120665	N/A, Emerg; March 22, 2005, Reg; December 22, 2016, Susp.	.....do	Do.
Polk County, Unincorporated Areas	120261	September 1, 1977, Emerg; January 19, 1983, Reg; December 22, 2016, Susp.	.....do	Do.
Tennessee:				
Brentwood, City of, Williamson County	470205	March 23, 1973, Emerg; February 1, 1978, Reg; December 22, 2016, Susp.	.....do	Do.
Cheatham County, Unincorporated Areas.	470026	September 27, 1974, Emerg; May 19, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Dickson County, Unincorporated Areas	470046	June 18, 1982, Emerg; June 15, 1984, Reg; December 22, 2016, Susp.	.....do	Do.
Fairview, City of, Williamson County	470242	August 18, 1986, Emerg; September 1, 1990, Reg; December 22, 2016, Susp.	.....do	Do.
Franklin, City of, Williamson County	470206	September 25, 1974, Emerg; July 2, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Kingston Springs, Town of, Cheatham County.	470289	June 11, 1984, Emerg; June 11, 1984, Reg; December 22, 2016, Susp.	.....do	Do.
Pegram, Town of, Cheatham County	470291	April 9, 1987, Emerg; April 9, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Williamson County, Unincorporated Areas.	470204	May 27, 1975, Emerg; April 1, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Region VII				
Kansas:				
Andale, City of, Sedgwick County	200322	August 15, 1975, Emerg; June 11, 1976, Reg; December 22, 2016, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Bel Aire, City of, Sedgwick County	200864	February 15, 1985, Emerg; March 15, 1987, Reg; December 22, 2016, Susp.	.....do	Do.
Belle Plaine, City of, Sumner County	200466	July 25, 1975, Emerg; July 17, 1978, Reg; December 22, 2016, Susp.	.....do	Do.
Bentley, City of, Sedgwick County	200390	N/A, Emerg; August 12, 2009, Reg; December 22, 2016, Susp.	.....do	Do.
Cheney, City of, Sedgwick County	200478	N/A, Emerg; November 30, 2005, Reg; December 22, 2016, Susp.	.....do	Do.
Clearwater, City of, Sedgwick County ...	200482	March 29, 1976, Emerg; August 15, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Colwich, City of, Sedgwick County	200484	January 14, 1976, Emerg; July 11, 1978, Reg; December 22, 2016, Susp.	.....do	Do.
Derby, City of, Sedgwick County	200323	January 17, 1975, Emerg; October 15, 1981, Reg; December 22, 2016, Susp.	.....do	Do.
Garden Plain, City of, Sedgwick County	200498	October 28, 1976, Emerg; September 18, 1985, Reg; December 22, 2016, Susp.	.....do	Do.
Kechi, City of, Sedgwick County	200429	August 3, 1979, Emerg; August 15, 1980, Reg; December 22, 2016, Susp.	.....do	Do.
Maize, City of, Sedgwick County	200520	N/A, Emerg; December 24, 2002, Reg; December 22, 2016, Susp.	.....do	Do.
Mount Hope, City of, Sedgwick County	200325	August 26, 1975, Emerg; June 27, 1978, Reg; December 22, 2016, Susp.	.....do	Do.
Park City, City of, Sedgwick County	200963	May 28, 1982, Emerg; November 19, 1986, Reg; December 22, 2016, Susp.	.....do	Do.
Valley Center, City of, Sedgwick County	200327	May 29, 1975, Emerg; January 14, 1977, Reg; December 22, 2016, Susp.	.....do	Do.
Wichita, City of, Sedgwick County	200328	March 24, 1972, Emerg; May 15, 1986, Reg; December 22, 2016, Susp.	.....do	Do.
Region IX				
Nevada: Carson City, City of, Independent City.	320001	August 6, 1975, Emerg; March 4, 1986, Reg; December 22, 2016, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 21, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–29033 Filed 12–2–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8457]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some

of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Georgia: Monroe, City of, Walton County	130227	March 26, 1975, Emerg; February 16, 1990, Reg; December 8, 2016, Susp.	Dec. 8, 2016	Dec. 8, 2016
Region V				
Indiana: Brown County, Unincorporated Areas.	185174	October 22, 1971, Emerg; April 13, 1973, Reg; December 8, 2016, Susp.	.....do *	Do.
Nashville, Town of, Brown County	180018	October 22, 1971, Emerg; January 24, 1976, Reg; December 8, 2016, Susp.	.....do	Do.
Wisconsin: Boaz, Village of, Richland County.	550357	November 28, 1975, Emerg; September 6, 1989, Reg; December 8, 2016, Susp.	.....do	Do.
Lone Rock, Village of, Richland County	550359	July 7, 1975, Emerg; September 29, 1986, Reg; December 8, 2016, Susp.	.....do	Do.
Richland Center, City of, Richland County.	555576	March 19, 1971, Emerg; June 1, 1973, Reg; December 8, 2016, Susp.	.....do	Do.
Richland County, Unincorporated Areas	550356	June 16, 1975, Emerg; September 27, 1991, Reg; December 8, 2016, Susp.	.....do	Do.
Viola, Village of, Richland and Vernon Counties.	550460	December 5, 1974, Emerg; June 4, 1990, Reg; December 8, 2016, Susp.	.....do	Do.
Yuba, Village of, Richland County	550362	August 25, 1975, Emerg; July 1, 1987, Reg; December 8, 2016, Susp.	.....do	Do.
Region X				
Oregon: Albany, City of, Linn and Benton Counties.	410137	July 2, 1974, Emerg; April 3, 1985, Reg; December 8, 2016, Susp.	.....do	Do.
Benton County, Unincorporated Areas	410008	April 18, 1974, Emerg; August 5, 1986, Reg; December 8, 2016, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Linn County, Unincorporated Areas	410136	April 9, 1974, Emerg; September 29, 1986, Reg; December 8, 2016, Susp.	.....do	Do.
Millersburg, City of, Linn County	410284	July 21, 1982, Emerg; July 21, 1982, Reg; December 8, 2016, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 21, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–29036 Filed 12–2–16; 8:45 am]

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SURFACE TRANSPORTATION BOARD

49 CFR Part 1250

[Docket No. EP 724 (Sub-No. 4)]

United States Rail Service Issues—Performance Data Reporting

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (STB or Board) is adopting a final rule to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis.

DATES: This rule is effective on January 29, 2017. The initial reporting date will be February 8, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board initiated this rulemaking proceeding in response to the service problems that began to emerge in the railroad industry in late 2013. Those service problems affected the transportation of a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges, the Board held two public hearings, in April 2014 in Washington, DC, and in September 2014 in Fargo, ND, to allow interested persons to report on service problems, to hear from rail industry executives on plans to address rail service problems, and to explore options to improve service. During and after these hearings, parties expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,[1] as well as the underlying causes and the prospects for recovery.

Based on these concerns and to better understand railroad operating conditions, the Board issued an order on October 8, 2014, requiring all Class I railroads and the Class I railroad members of the CTCO to file weekly reports containing specific service performance data. *See U.S. Rail Serv. Issues—Data Collection* (*Interim Data Order*), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014).[2] Railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination, and loading metrics for grain and coal service, among other information. The data were intended to give both the Board and its stakeholders access to current information about the operations and performance of the Class I railroads and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating potential losses.

On October 22, 2014, the Class I railroads and the Association of American Railroads (on behalf of the CTCO) filed the first set of weekly reports in response to the *Interim Data Order.* As requested by the Board, each carrier provided an explanation of its methodology for deriving performance data in response to each request. Generally, the reports corresponded to the elements of the *Interim Data Order;* however, some railroads approach individual requests differently, leading to variations in the reported data. The different approaches are due primarily to the railroads' disparate data-keeping systems, different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads have also departed from the Board's prescribed reporting in order to maintain consistency with their own weekly data runs and analyses.

The weekly filings have allowed the Board and its stakeholders to monitor the industry's performance and have allowed the Board to develop baseline data. Based on the Board's experience with the reporting to date, and as expressly contemplated in the *Interim Data Order,* the Board proposed new regulations for permanent reporting by the members of the Class I railroad industry and the CTCO, through its Class I members. *See U.S. Rail Serv. Issues—Performance Data Reporting* (*NPR*), EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).

The proposed reporting requirements in the *NPR* included many of the requests contained in the *Interim Data Order.* The *NPR* proposed nine weekly metrics that would apply to Class I railroads: (1) System average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin and interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by state; (8) for grain cars, the total overdue car orders, average days late, total new grain car orders in the past week, total orders

[1] *See generally* National Grain and Feed Association Letter, *U.S. Rail Serv. Issues,* EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, *U.S. Rail Serv. Issues,* EP 724 (filed Apr. 17, 2014); Apr. Hr'g Tr. 154–155, *U.S. Rail Serv. Issues,* EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5–6, *U.S. Rail Serv. Issues,* EP 724 (filed Sept. 5, 2014); Sept. Hr'g Tr. 48, 290, *U.S. Rail Serv. Issues,* EP 724 (Sept. 4, 2014).

[2] On motion of Canadian Pacific Railway Company, the Board modified the *Interim Data Order* by decision served on February 23, 2016, to allow it to discontinue reporting data related to the Rapid City, Pierre & Eastern Railroad, Inc.

filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region. The *NPR* also proposed metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects. Finally, the *NPR* proposed to exempt Kansas City Southern Railway Company from filing state-specific information in response to Request Nos. 7 and 8, due to the nature of its grain business and its very limited number of customers in a small number of states in its service territory.

Following receipt of comments in response to the *NPR,* the Board issued an order announcing that it would waive its ex parte communications rules in order to allow Board staff to hold meetings with interested parties to develop a more complete record with regard to technical issues in this proceeding. *See U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served Nov. 9, 2015) (with Board Member Begeman concurring in part). Following the meetings, the Board posted a summary of each meeting in this docket and then parties provided additional comments on the summaries. As a result of the comments and meetings, the Board issued a supplemental notice of proposed rulemaking. *See U.S. Rail Serv. Issues—Performance Data Reporting* (*SNPR*), EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), *corrected,* (STB served May 13, 2016). The *SNPR* proposed changes to six of the proposed reporting metrics in the *NPR* (Request Nos. 1, 4, 5, 6, 8, and 9), modifications to the reporting week and definition of a unit train, and the addition of three new metrics (Request Nos. 10, 11, and 12) (grain shuttle/dedicated grain trips per month, weekly originated carloads by commodity, and car order fulfillment percentage for 10 car types). *See SNPR,* slip op. at 24–26. With regard to Request No. 7 and No. 8, KCS was not required to report information by state, but instead only system-wide data. *See NPR,* slip op. at 7; *SNPR,* slip op. at 28.

In response to the *SNPR,* the invitation for stakeholder meetings, and the *NPR,* the Board received a significant volume of comments and proposals from stakeholders. We have carefully reviewed those comments, proposals, and meeting summaries in order to identify both general themes regarding service reporting and better technical methods for collecting information.

The primary purpose of this rulemaking has been to develop a set of performance data that will allow the agency to monitor current service conditions in the industry and to identify trends or aberrations, which may indicate problems. The cumulative data will give the Board reference points for measuring an individual railroad against its past performance. A corollary benefit is that shippers and other stakeholders will have access to the reported data to assist in their business decisions and supply-chain planning. At the same time, the Board has sought to make sure that any rule adopted regarding service data results in the collection of information that will be useful to the agency and its stakeholders. The Board believes that the final rule adopted here is an appropriate balance of considerations that will provide helpful information to both the agency and the public.

These rules will be effective on January 29, 2017. Carriers will begin reporting on Wednesday, February 8, 2017.[3] The data required under 49 CFR 1250.2 and 1250.3(a) must be emailed to *data.reporting@stb.gov,* in Microsoft Excel or other format specified by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). The narrative data required under 49 CFR 1250.3(b) and 1250.4 must be reported to the Director of OPAGAC and emailed to *data.reporting@stb.gov.* Any updates to the method and form for reporting data will be posted on the Board's Web site.

Discussion of Issues Raised in Response to the SNPR

The following parties provided comments in this proceeding, either in the form of written comments or oral comments during the ex parte meetings that were then summarized and posted by the Board, or both:

Alliance for Rail Competition et al.; American Chemistry Council; Association of American Railroads (AAR); BASF Corporation; BNSF Railway Company (BNSF); Canadian Pacific Railway Company (CP); Chicago Metropolitan Agency for Planning (CMAP); CSX Transportation, Inc. (CSXT); Freight Rail Customer Alliance; Highroad Consulting, Ltd. (HRC); Kansas City Southern Railway Company (KCS); Thomas F. McFarland and Gordon P. MacDougall; National Corn Growers Association; National Grain and Feed Association (NGFA); National Industrial Transportation League (NITL); Norfolk Southern Railway Company (NSR); South Dakota Corn Growers Association; The Fertilizer Institute (TFI); Texas Trading and Transportation Services, LLC, et al.; Union Pacific Railway Company (UP); U.S. Department of Agriculture; U.S. Department of Transportation; and Western Coal Traffic League, et al. (WCTL). The Honorable John Thune, Chairman, Senate Committee on Commerce, Science, and Transportation, submitted comments in this proceeding as well.

Below we generally summarize the comments received on the *SNPR,*[4] and explain the changes being adopted in this final rule. Although not all comments and recommendations will be adopted, all of the many comments parties have submitted were carefully reviewed and considered in deciding on the final rule.

Board Authority

AAR's position is that the Board should state a valid regulatory purpose for the rule before adding to the cumulative regulatory burden on the railroads. (AAR SNPR Comments 5.) AAR argues that the rules are not necessary for improving rail service, expressing the view that rail service improved in 2013–2014 ''because of efforts of railroads to serve their customers.'' (*Id.* at 6.) Finally, AAR asserts that the SNPR ''does not articulate how the proposed rules would be useful in carrying out the specific statutory provisions the Board cites'' and argues that each statutory provision requires ''particularized findings related to the specific transportation at issue beyond the proposed data collection.'' (*Id.*)

As the Board stated in the *SNPR,* ''the need and justification for a permanent reporting rule is clear.'' Slip op. at 22. Under the Interstate Commerce Act, the Board has broad authority to require reports by rail carriers under 49 U.S.C. 1321, 11145. The statute also makes clear that service adequacy is a key part of the Board's mandate, beginning with the provisions of the rail transportation policy (RTP) of 49 U.S.C. 10101. *See SNPR,* slip op. at 22. The RTP states that, in regulating the railroad industry, it is policy of the United States Government to minimize the need for regulatory control, 49 U.S.C. 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C.

[3] With the adoption of these final rules, the Board is concurrently issuing a decision in *U.S. Rail Service Issues,* Docket No. EP 724 and *U.S. Rail Service Issues—Data Collection,* Docket No. EP 724 (Sub-No. 3), which will terminate those proceedings and terminate reporting under the *Interim Data Order.* To maintain continuity in data collected by the Board, reporting under the *Interim Data Order* will conclude on Wednesday, February 1, 2017.

[4] Comments on the *NPR* and meeting summaries were summarized in the preamble to the *SNPR.*

10101(3), and encourage efficient management of railroads, 49 U.S.C. 10101(9). The Board finds that having data that will allow it to monitor service across the rail network advances these RTP goals. The data will help promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and react to service issues than it would otherwise have the ability to do.

As also explained in the *SNPR,* slip op. at 22, the Board has the responsibility for monitoring the adequacy of service under specific statutory provisions, including service emergencies under 49 U.S.C. 11123. The Board's powers under section 11123 are extensive [5] and can be initiated by the agency. The potential triggers for Board action, such as ''congestion of traffic'' and ''other failure of traffic movement'' (49 U.S.C. 11123(a)), are clearly implicated by the collection of service metrics, and the Board has explained that reporting would ''improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly.'' *SNPR,* slip op. at 22. Service issues can also be relevant when the Board considers whether railroad service practices are reasonable (49 U.S.C. 10702), whether to force a line sale in the event of inadequate service (49 U.S.C. 10907), and whether railroads are fulfilling their common carrier obligations (49 U.S.C. 11101) or providing safe and adequate car service (49 U.S.C. 11121). *See SNPR,* slip op. at 22 (explaining that ''permanent reporting . . . would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements.''). Accordingly, we disagree with AAR's suggestion that the Board has not articulated a justification for the data's usefulness.

The Board also finds no merit to the AAR's suggestion that the data reporting would be unhelpful in determining if some of the statutory provisions listed by the Board are met. The AAR argues that these statutory provisions require ''particularized findings'' that would necessitate more granular information than would be provided for by the reported data. However, even if more granular information would be required for the Board to act in a particular circumstance, the Board has explained that the reporting will assist it in determining whether to request more granular data or information. *SNPR,* slip op. at 22. Likewise, AAR's suggestion that baseline service metrics would be ''irrelevant'' in common carrier or forced sale-cases limits—in advance—what service information shippers and carriers would find probative in such cases.[6]

The Board believes that the long-term utility of the data collection in this final rule outweighs the additional burden placed on the rail industry. It will also help promote the RTP as outlined above.

Other Recommendations/General Comments

Railroad Interests. The railroads generally oppose metrics focused on particular commodities, train types, or geographic regions. AAR reiterates that a few ''macro-level reporting metrics would best serve the Board's goals of maintaining access to information . . . while balancing the burdens imposed on railroads.'' (AAR SNPR Comments 2.) As such, AAR advocates that the Board's final rule be based on macro-level data that is presently reported to the AAR. It asserts that such macro-level metrics best reflect trends and relative changes in service performance while granular reporting is confusing, potentially misleading, and less useful for comparisons over time. (*Id.*) AAR also states that shipper groups have failed to explain how they actually use the data. (AAR SNPR Reply 2–3.) Finally, AAR warns that the Board ''should be aware that this data inevitably will be . . . cited to the Board as evidence that one railroad is underperforming its peers regardless of whether that conclusion is correct.'' (*Id.* at 3.)

NSR agrees that service performance metrics tailored to specific commodities may create a misleading picture of overall service and asserts that the burdens of such reporting outweigh the benefits. (NSR SNPR Comments 3.) UP and CP likewise assert that the final rule should only include network-specific metrics. (CP SNPR Comments 2; UP SNPR Comments 2–3.) UP asserts that the more detailed metrics are too narrow to provide more meaningful information, and can be required based on service issues. (UP SNPR Comments 2–3.) In addition, UP again opposes NGFA's request for additional grain reporting. (UP SNPR Reply 1–3.).[7]

Shipper Interests and Other Stakeholders. NGFA disagrees with the Board's statement in the *SNPR* that ''the burden of more granular metrics [than those proposed in the *SNPR*] outweigh(s) their value as a tool for identifying regional or national system-wide problems'' and argues that the Board must instead increase the granularity of the rail service performance data it collects. (NGFA SNPR Comments 3, 3–5.) NGFA asserts that the Board should ''consider the benefits of some additional specific data to rail customers in monitoring service, given the diverse and differing rail transportation service that applies to different types of grain-based agricultural products.'' (*Id.* at 3.) NGFA cites findings made in a 2015 National Academy of Sciences/Transportation Research Board report and a 2008 Laurits R. Christensen Associates Inc. report [8] while arguing that: (1) The data the Board proposes to collect are too aggregated to provide meaningful insights into service quality; (2) system-wide performance data is less useful to shippers than data based on route, corridor, or commodity, which are important for identifying and rectifying service issues; and (3) variability in service, which tended to be greater in grain and coal units, can be more costly and problematic than absolute service levels. (*Id.* at 4–5.)

Final Rule. As noted above, the Board's objective in the proceeding is to obtain weekly data that allows the agency to monitor the railroad industry's current performance and to

[5] When requisite statutory criteria are met, the Board can (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; (4) give directions for—(A) preference or priority in transportation; (B) embargoes; or (C) movement of traffic under permits. *See* 49 U.S.C. 11123.

[6] As noted above, AAR expresses its opinion that increased service quality after the 2013–2014 crisis was due to ''efforts of railroads to serve their customers.'' (AAR SNPR Comments 6.) However, the Board need not find that the interim service reporting caused service improvements to justify the permanent collection of service data, which will facilitate the Board's ability to monitor performance and respond to issues in the event of future service disruptions.

[7] UP also asked the Board to discontinue its annual request for a peak season letter, as it would be unnecessary if the Board begins collecting data pursuant to this final rule. (UP SNPR Comments 13.) Chairman Elliott announced in August 2016 that the Board was discontinuing the end-of-year letters, citing, among other things, the weekly collection of service performance reports that the Board began collecting pursuant to the *Interim Data Order.* Press Release, Surface Transportation Board, STB Chairman Daniel R. Elliott III Discontinues Annual Letter to Rail Industry Seeking End-of-Year Outlook (Aug. 22, 2016), *https://www.stb.gov/stb/news/news_releases.html* (follow ''date of issuance within the current year'' or ''prior to the current year'' hyperlink, as appropriate to access 2016 press releases; then follow ''8/22/2016'' hyperlink).

[8] *See* Transp. Research Bd. of the Nat'l Acad, *Modernizing Freight Rail Regulation,* 48–56 (2015); Laurits R. Christensen Associates, *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition,* ES–35 to ES–37 (2009), *https://www.stb.gov/stb/docs/competitionstudy/executive%20summary.pdf.*

build a data set that will allow the Board to observe trends and make comparisons against past performance. The set of requests being adopted today advances these objectives and strikes an appropriate balance of augmenting the Board's ability to better monitor rail service trends without burdening railroads with excessive reporting requirements. The Board is thus declining to either adopt the railroad industry's request to alter the reporting to the ''macro level'' data presently reported to AAR or to adopt, for the most part,[9] the shippers' requests for additional ''granular'' data covering discrete subsets of traffic, specific corridors, or local operations.

Reporting Week and Timing

The *SNPR* proposes defining the reporting week as 12:01 a.m. Saturday to 11:59 p.m. Friday with reports due the following Wednesday.

Railroad Interests. The railroads generally agree with the proposal in the SNPR, with one exception. AAR urges the Board to modify its proposed reporting week for Request No. 11 (weekly carloadings) to conform to the reporting week that railroads have historically used to report the same data to AAR. ''That data has been based on a week ending at 11:59 p.m. Saturday, which permits the weekly report to capture most of the traffic originated during the week by customers who complete their car loading activities by Friday at close of business.'' (AAR SNPR Comments 7.) AAR notes that it has identified no compelling reason why the weekly carloadings data must match the other service metrics. (*Id.*)

In response to NGFA's criticisms of the Wednesday reporting day, AAR states that NGFA provides no support for its assertion that a Monday reporting day is essential. (AAR SNPR Reply 2.) UP also states that it needs until Wednesday afternoon to capture, validate, analyze/process, and compile the information from different sources that goes into its reports. (UP SNPR Reply 3–4.)

Shipper Interests and Other Stakeholders. NITL does not oppose the *SNPR*'s proposed reporting week. (NITL SNPR Comments 2–3.) NGFA also does not oppose the proposed reporting week, but urges the Board to require the weekly reports be filed no later than Monday. (NGFA SNPR Comments 7.)

Final Rule. Except with respect to Request No. 11 (weekly carloadings), the Board will adopt the reporting week and reporting day proposed in the *SNPR* as the final rule. The 12:01 a.m. Saturday to 11:59 p.m. Friday reporting week comports with the railroad industry's internal reporting practices. Allowing railroads to report data on Wednesday gives them sufficient opportunity to collect, review, and assemble the data prior to submission. For purposes of Request No. 11, and consistent with AAR's suggestion, the Board will modify the reporting week proposed in the *SNPR* to 12:01 a.m. Sunday to 11:59 p.m. Saturday with a Wednesday reporting day. This is consistent with how the industry has historically reported and currently reports weekly carloadings to AAR. The Board does not foresee any issue with the fact that this metric would cover a different weekly period (by one day) than the other metrics.

Definition of Unit Train

The *SNPR* proposes that, rather than having a single definition for unit train, each carrier be allowed to report unit train data based on how it assigns train symbols (or codes) in accordance with its own business practices.

Railroad Interests. Railroad interests generally support the SNPR's definition of unit train, stating that ''it will ensure that data collected matches railroads' and their customers' understanding of the traffic.'' (AAR SNPR Comments 4; *see also* UP SNPR Comments 1–2; BNSF SNPR Comments 2.)

Shipper Interests and Other Stakeholders. Shipper interests generally do not oppose the definition of unit train proposed in the *SNPR.* (NGFA SNPR Comments 7; NITL SNPR Comments 2–3.) However, they ask that the Board draw special attention to the definitions of unit train on its Web site to offer clear guidance on how each railroad defines unit train. (NGFA SNPR Comments 7; NITL SNPR Comments 2–3.) NGFA also requests that the Board require each carrier to provide updates if and when it changes its unit train definition. (NGFA SNPR Comments 7.)

Final Rule. The Board will adopt the *SNPR* proposal for defining a unit train as the final rule. In their initial filings under the final rule, the Board will require railroads to explain their practices of making ''unit train'' designations in the ordinary course of business. This information will be accessible to the public on the Board's Web site with other service performance data, so that the public will understand how each carrier is defining ''unit train.'' Railroads will also be required to inform the Board if their practices change in the future, by electronically submitting to OPAGAC a written explanation of the change at the time it goes into effect. The Board's Web site will be updated accordingly.

Request No. 1 (Train Speed), No. 2 (Terminal Dwell Time), and No. 3 (Cars Online)

For Request No. 1, the *SNPR* proposes requiring carriers to provide system-average train speed, measured for line-haul movements between terminals and calculated by dividing total train-miles by total hours operated, for: (a) Intermodal; (b) grain unit; (c) coal unit; (d) automotive unit; (e) crude oil unit; (f) ethanol unit; (g) manifest; (h) fertilizer unit; and (i) system. The *SNPR* modifies the proposal in the *NPR* by adding categories for ''fertilizer unit'' and ''system'' and removing the category for ''all other.''

For Request No. 2, the *SNPR* proposes requiring carriers to provide weekly average terminal dwell time for each carrier's system and its 10 largest terminals. For Request No. 3, the *SNPR* proposes requiring carriers to provide weekly average cars online for several car types, other, and total. The *SNPR* makes no changes to Request No. 2 and Request No. 3 in the *NPR.*

Railroad Interests. Railroad interests generally do not object to Request Nos. 1–3, though they again emphasize that permanent reporting should be limited to those metrics that provide a ''meaningful view of network health.'' (UP SNPR Comments 2–3; *see also* CP SNPR Comments 1; AAR SNPR Reply 8.) UP states that this would include Request Nos. 1–4. (UP SNPR Comments 2–3.) Other carriers identify Request Nos. 1–3, with the potential addition of a weekly carloadings metric, as sufficient to monitor overall network fluidity. (CP NPR Comments 2; AAR NPR Comments 12.) In response to NGFA's requests for additional categories under Request No. 3 (Cars Online), UP counters that NGFA provides no justification for either its hazardous material reporting or for what it alleges is an ''impracticable'' request that industry-placed cars also be included. (UP SNPR Reply 4–5.)

Finally, the railroads generally oppose the addition of fertilizer to Request No. 1 and to all other metrics that would require carriers to report data on fertilizer unit trains or carloads. AAR argues that commodity specific reporting, including fertilizer, is not useful for comparing service metrics for traffic that moves in different service and equipment. (AAR SNPR Comments 7–8.) It states that although there is no single definition of fertilizer, the Board's proposed definition is overbroad and erroneously includes commodities

[9] As explained in greater detail below, the Board will add some granularity to the required reporting by requiring certain fertilizer carload reporting.

which are not fertilizers. (*Id.; see also* CSXT SNPR Comments 1.) CSXT adds that it can accommodate some of the fertilizer data the Board seeks, but using the Board's proposed Standard Transportation Commodity Codes (STCCs) would be difficult and misleading. (CSXT SNPR Comments 1.) NSR reports that in 2015 it moved less than 11% of its fertilizer traffic in unit train service and consequently believes that the data should not be separately reported. (NSR SNPR Comments 1.) It asserts that fertilizer shippers can monitor macro-level service data trends to gauge fertilizer service. (*Id.*)

UP argues that the Board should not adopt new fertilizer metrics based on past service issues that no longer exist. (UP SNPR Comments 3.) Regarding fertilizer unit train reporting, UP argues that, because a small amount of fertilizer moves in unit train service (one in seven UP fertilizer shipments), the proposed metric would not provide useful information to the Board or allow the Board to reach meaningful conclusions about service. (*Id.* at 3–4.) UP expresses concern that separate reporting on fertilizer unit trains could expose confidential, customer-specific volume information. (*Id.* at 4.) UP states that fertilizer accounted for only 2% of UP total carloadings in 2015. (*Id.*) UP argues that there is no reason for separate reporting because (1) the rail network is fluid and currently has the resources to handle demand, and (2) the Board should avoid requiring commodity-specific reporting absent evidence distinguishing a specific commodity from other, non-reported commodities. (*Id.* at 4–5.) Finally, UP argues that fertilizer carloading reporting would create an unnecessary burden and introduce inconsistencies with historical records. (*Id.* at 5.)

Shipper Interests & Other Stakeholders. Shipper interests are generally supportive of the *SNPR* changes to the first three metrics. NITL strongly supports the addition of ''system'' and ''fertilizer'' components to Request No. 1. (NITL SNPR Comments 3.) WCTL continues to support the inclusion of coal unit trains in Request Nos. 1–2. (WCTL SNPR Comments 3.) NGFA continues to advocate for more granular grain unit reporting, however, it narrows its request from its *NPR* comments to add only vegetable oils and vegetable meals to the existing grain categories in Request Nos. 1–2. (NGFA SNPR Comments 5, 8.) NGFA supports Request No. 3, but urges the Board to add a requirement that ''carriers subdivide the 'tank car' reporting requirement to include subcategories for cars hauling 'hazmat' and 'non-hazmat,''' plus require reporting of cars that are industry-placed. (NGFA SNPR Comments 8–9.)

Finally, for Request No. 1 and all other metrics requiring carriers to report data on fertilizer unit trains, TFI recognizes that fertilizer shipments are not evenly distributed across carriers and agrees with UP that reporting fertilizer unit trains may raise confidentiality concerns among railroads with limited shipments. Accordingly, TFI states that it ''no longer advocates for the reporting of fertilizer unit trains.'' (TFI SNPR Reply 2, 6.)

Final Rule. For Request No. 1, the Board will adopt the *SNPR* proposal with one modification as the final rule. We will exclude fertilizer unit trains from average train speed reporting. As noted above, TFI withdrew its request for unit train metrics for fertilizer movements. Additionally, the railroad industry explained that most fertilizer shipments move in manifest service and only a very small annual volume moves in unit trains. Thus, maintaining a fertilizer unit train speed metric would not advance the Board's objectives. Also for Request No. 1, the Board will adopt the *SNPR* proposal to add an overall ''system'' component, which aligns the request with current AAR reporting and provides a fuller picture of service performance. For Request No. 2 and No. 3, the Board will adopt the *SNPR* proposal as the final rule.

The Board will deny NGFA's request to incorporate vegetable oils and vegetable meals into Request Nos. 1–2. Most carloads of vegetable oils move in manifest service as opposed to unit train service. (AAR SNPR Reply 4–5.) NGFA has not demonstrated a strong need for such a specifically tailored metric. Moreover, NGFA fails to explain why the railroads' reporting of system average train speed for manifest trains does not capture the velocity of vegetable oil and vegetable meal traffic, such that a specifically tailored metric is necessary. Similarly, NGFA fails to demonstrate that weekly average terminal dwell time does not adequately reflect terminal dwell for cars of vegetable oils and vegetable meals.[10]

Request No. 4 (Dwell Time at Origin—Unit Train)

The *SNPR* proposes requiring carriers to provide weekly average dwell time at origin for loaded shipments sorted by grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, all other unit trains, and manifest. The *SNPR* modifies the proposal in the *NPR* by adding the fertilizer unit and manifest categories and deleting the interchange component, which would have required carriers to report dwell times for trains at interchanges between carriers.

Railroad Interests. As discussed above, the railroads generally oppose the requirement to report data on fertilizer unit trains. They also oppose the addition of the manifest category to Request No. 4 because an origin dwell metric is inconsistent with how manifest trains operate. (BNSF SNPR Comments 3 n.1; AAR SNPR Comments 8–9; UP SNPR Comments 10.) AAR comments that the data item is ambiguous, explaining that manifest trains ''are not 'released' to a line-haul carrier at 'origin.' Manifest trains are made up at a railroad's yard and moved after the air brake test is completed.'' (AAR SNPR Comments 8–9.) In response to NGFA's request to require carriers to provide industry spot and pull (ISP) reports, UP asserts that shippers already have access to this information for their own traffic and no public interest would be served by public reporting of this customer-specific information. (UP SNPR Reply 3.)

Shipper Interests and Other Stakeholders. WCTL opposes the deletion of the interchange component. (WCTL SNPR Comments 3–4.) It states that customers depending on movements with interchanges found that ''interchange dwell can be a telling measure of how the railroads are performing with their interchange partners, their available resources, and whether their systems are constrained.'' (*Id.* at 4.) WCTL argues that deleting the interchange component removes a potentially important source of data, invites carries to engage in finger pointing, and deprives shippers of insight into where delays actually occur. (*Id.*)

NGFA urges the Board to require carriers to ''provide ISP reports upon one-time written request from rail customers.'' (NGFA SNPR Comments 9.) It argues the ISP reports are an important source of data because they are a truer reflection of service than the current metrics which only reflect velocities from terminal-to-terminal. (NGFA SNPR Comments 6.) NGFA asserts that ISP reports better indicate the service shippers and receivers are actually receiving. (*Id.*) NGFA also asks the Board to expand the metric to

[10] NGFA also requests that the Board incorporate vegetable oils and vegetable meals into Request Nos. 4, 5, 6, 7, and 8. The Board will likewise deny NGFA's requests to add additional grain categories to those requests as it has generally not shown a need to single out these specific commodities for more granular reporting.

include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 9.)

Final Rule. For Request No. 4, the Board will adopt the *SNPR* proposal with two modifications as the final rule. First, for the reasons discussed above, we will delete the fertilizer unit component. Second, we will remove the manifest component, which would have required carriers to report dwell time for manifest trains. As explained by the railroad interests, manifest trains are not released in the same manner as unit trains at shipper origins, and therefore do not ''dwell'' in the same sense that unit trains do.

The Board will adopt the proposed change in the *SNPR* of not including the interchange component. We continue to believe that the ''interchange'' component would not materially enhance the Board's perspective on rail service, in light of other performance data that will be collected under these final rules, such as dwell at origin, terminal dwell, trains holding, and cars that have not moved in 48 hours or longer. Moreover, the Board is sensitive to the potential burden that the ''interchange'' component would create because railroads do not share a common understanding as to when a train is considered to be ''released'' or ''accepted'' at interchange or maintain common practices for measuring a train's idle time at interchange. *See SNPR,* slip op. at 10.

The Board will not mandate that railroads report to shippers upon request their respective ISP percentages for their local service design plans. NGFA's basis for seeking such reporting appears to be its view that other metrics contained in the *SNPR* are too general to allow the Board (and shippers) to assess local service. However, NGFA desires a level of data granularity—tracking at the local level—that exceeds the Board's objectives in monitoring service performance of the Class I railroads. Additionally, NGFA does not address the reporting burden that the volume of shipper requests would impose upon the industry.

Lastly, for the reasons explained above, the Board will decline NGFA's request to expand this metric to include vegetable oils and vegetable meals. Additionally, because these commodities typically do not move in unit train configurations, dwell time at origin would not be a meaningful metric.

Request No. 5 (Trains Holding)

The *SNPR* proposes requiring carriers to provide the weekly average number of trains holding per day, sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). To arrive at these figures, railroads would be instructed to run a daily same-time snapshot and then calculate the weekly averages. The *SNPR* modifies the proposal in the *NPR* in several ways. It removes the proposed requirement that railroads report trains held short of destination or scheduled interchange for longer than six hours. It also removes the ''all other'' train type and the ''track maintenance'' and ''mechanical causes'' that were included in the *NPR.* The *SNPR* adds ''fertilizer unit'' and ''manifest train'' types, and the instruction to run a daily same-time snapshot and then calculate the weekly average.

Railroad Interests. CSXT reiterates that it will be a highly manual process to comply with this metric, including the fertilizer component. However, it states that the *SNPR* proposal is a ''tremendous'' improvement from the *NPR* and supports deletion of the six-hour component and the more limited list of causes. (CSXT SNPR Comments 3.)

Since it was proposed in the *NPR,* BNSF has urged the Board to discontinue this metric, arguing it is not a reliable indicator of railroad performance. (BNSF SNPR Comments 3–4.) BNSF previously expressed that it can only provide a snapshot measure, as proposed here, but is concerned that the snapshot method overstates its numbers. (BNSF Mtg. Summary 2.) BNSF asserts that issues with the metric are exacerbated by the proposal in the *SNPR* to remove the six-hour category. (BNSF SNPR Comments 4.) BNSF also states, in response to the removal of the interchange component, that its current data set does not distinguish between trains that are held short of destination, interchange, or otherwise. (*Id.*)

Shipper Interests and Other Stakeholders. Shippers urge the Board to revisit the decision to eliminate two reportable causes and require more specific reasons for delay rather than ''other.'' (NITL SNPR Comments 3; WCTL SNPR Comments 5.) NITL asserts that it recognizes the carriers' concern that trains held as part of normal operations will be captured in this metric, but argues that ''in the search for the root causes of 'abnormal' operating conditions . . . having more knowledge . . . is preferable.'' (NITL SNPR Comments 3; *see also* WCTL SNPR Comments 5.) NGFA also opposes the elimination of causes and supports BNSF's suggestion to allow data that would identify trains being held on the network for railroad-caused reasons, but urges the Board not to eliminate the metric. (NGFA SNPR Reply 4–5.) NGFA asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 9.)

Final Rule. For Request No. 5, the Board will adopt the *SNPR* proposal as the final rule with one modification. For the reasons discussed above, the fertilizer unit train component will be deleted.

Both railroad and shipper commenters generally support the modification proposed in the SNPR of converting this metric into a weekly average of a daily snapshot of trains holding on each railroad's network, which is consistent with the way the industry monitors fluidity. The Board originally created the six-hour category to capture trains holding outside of their operating plan. However, railroads argued that the category was ineffective because some trains are held for six hours or longer as part of their operating plan. Railroads also argued that it was problematic from a data tracking standpoint because their internal metrics were not programmed to be compatible with the six-hour or longer filter. (BNSF NPR Comments 5–7; UP NPR Comments 15–16.) Accordingly, we will proceed to eliminate it from the final rules. The Board recognizes BNSF's concern that, even by eliminating the six-hour category, the trains holding metric will still capture trains being held as part of their operating plan. Nevertheless, the data will provide value over the course of time by allowing the agency to monitor trends and spot aberrations.

With regard to categorization of trains being held by cause, the Board seeks to simplify reporting, as proposed in the *SNPR.* Although the ''equipment malfunction'' and ''track maintenance'' categories proposed in the *NPR* could be indicative of general service problems, the Board believes that the ''crew shortages'' and ''locomotive shortages'' categories proposed in the *SNPR* are more significant indicators of systemic, long-term service issues. Thus, the Board will reduce the number of assigned causes.

Lastly, for the reasons explained above, the Board will decline NGFA's request to expand this metric to cover vegetable oils and vegetable meals. Additionally, because these commodities typically do not move in unit train configurations, the reported data would not be meaningful as a measure of fluidity as to vegetable oils and vegetable meal.

Request No. 6 (Cars Held)

The *SNPR* proposes requiring carriers to provide the weekly average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). The *SNPR* modifies the proposal in the *NPR* by deleting the category for cars that have not moved in more than 120 hours. The *SNPR* also changes the categorization of such cars held from a period of ''greater than 48 hours, but less than or equal to 120 hours,'' to a period of ''48 hours or more.'' Finally, the *SNPR* modifies the *NPR's* requirement for a daily average of loaded and empty cars held to a weekly average and adds a fertilizer component.

Railroad Interests. BNSF reiterates that there is public confusion regarding the differences in hold times for cars for different commodities under this metric. (BNSF SNPR Comments 4.) It asserts that these ''differences in commodity categories are driven in large part by the ratio of unit train and single car service in the commodity fleet rather than service disruptions or other performance issues.'' (*Id.* at 4–5.) In particular, BNSF explains that approximately half of its grain fleet is in shuttle, or unit train, service, whereas the majority of its crude and coal carloads move in unit train service; because unit trains are built for speed and efficiency, while manifest trains require more holding time, BNSF argues that the data between grain and crude oil will differ. (*Id.*)

Shipper Interests and Other Stakeholders. Shippers are generally supportive of the *SNPR* changes to Request No. 6. (WCTL SNPR Comments 3; NITL SNPR Comments 3; NGFA SNPR 9–10.) NGFA requests that the Board include a component for cars placed in interchange that are being held. (NGFA SNPR Comments 10.) NGFA also asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (*Id.*) TFI supports the inclusion of a separate fertilizer component for this metric, which captures carload (as opposed to unit train) data. However, TFI proposes to narrow the definition of fertilizer to 14 seven-digit STCCs. (TFI SNPR Reply 4.)

Final Rule. For Request No. 6, the Board will adopt the *SNPR* proposal as the final rule with an adjustment to the previously proposed definition of fertilizer. Parties agreed that the 120 hours or greater category proposed in the *NPR* was superfluous because concern arises when a railcar has not moved for 48 hours. *See SNPR,* slip op. at 12. As with Request No. 5, the Board will instruct carriers to use a same-day snapshot approach to develop a weekly average of cars that hit the 48-hour threshold, broken out by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). The Board will also adopt the requirement for reporting of cars in fertilizer service, but will define fertilizer by the 14 STCCs provided by TFI (2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, and 2871451).

Although AAR and some railroads note that fertilizer represents a relatively small fraction of overall rail traffic, the Board believes that it is necessary to help monitor the rail fertilizer supply chain because of its critical importance to the nation's agricultural production. As became apparent to the Board at the April 2014 hearing, disruption of the rail fertilizer supply chain arising from service issues threatened to impede spring planting throughout the Midwest. In order to focus attention on restoring the supply chain, the Board directed certain railroads to report on their progress moving fertilizer over a six-week period. *See generally U.S. Rail Serv. Issues,* EP 724 (Sub-No. 1) (STB served Apr. 15, 2014). Reporting of fertilizer as a stand-alone category of cars holding for 48 hours or longer will allow the Board to monitor the fluidity of this commodity, which is a key element in agricultural production, and facilitate early Board intervention, if appropriate. Lastly, for the reasons explained above, the Board will decline NGFA's request to expand this metric to include vegetable oils and vegetable meals. NGFA has not explained the heightened importance that would warrant separate reporting of these commodities, as has been shown for fertilizer.

Request No. 7 (Grain Cars Loaded and Billed)

The *SNPR* proposes requiring carriers to provide the weekly total number of grain cars loaded and billed, reported by state, and aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). It also proposes requiring carriers to report on the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars. The *SNPR* makes no changes to Request No. 7 in the *NPR.*

Railroad Interests. The railroads did not provide specific additional comment on this metric in response to the proposed metric in the *SNPR.*

Shipper Interests and Other Stakeholders. NGFA generally supports the *SNPR;* however, it asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 10; *see also* NITL SNPR Comments 3.)

Final Rule. For Request No. 7, the Board will adopt the *SNPR* proposal, which was unchanged from the *NPR,* as the final rule. For the reasons discussed above, the Board will decline NGFA's request to expand this metric to include vegetable oils and vegetable meals.

Request No. 8 (Grain Car Orders)

The *SNPR* proposes requiring carriers to provide, for the same STCCs in Request No. 7, a report by state for the following for cars in manifest service: (a) The running total number of orders placed; (b) the running total of orders filled; and (c) for orders which have not been filled, the number of orders that are 1–10 days past due and 11+ days past due. The *SNPR* significantly modifies the *NPR* requirements, which were to report: (a) The total number of overdue car orders; (b) the average number of days late for all overdue grain car orders; (c) the total number of new orders received during the past week; (d) total number of orders filled during the past week; and (e) the number of orders cancelled during the past week.

Railroad Interests. The railroads generally commented that they could report the requested data, subject to various individual limitations in their data systems. NSR explains that it only operates a small portion of its grain transportation on the basis of grain car orders so it would have limited and unrepresentative data in its response. (NSR SNPR Comments 2.) CSXT states that it could generate the required data unless the metric includes unit train placements as car orders. (CSXT SNPR Comments 3.) CSXT also emphasizes that commercial practices of railroads differ substantially between carriers and cautions against comparing data between railroads. (*Id.*) Finally, CSXT notes that it does not roll-over car orders from week-to-week and thus will not show any orders in the 11+ days category. (*Id.*)

Shipper Interests and Other Stakeholders. NGFA suggests that the Board consider requiring each reporting carrier to report the definition of its car-ordering system for shuttles and

manifest traffic. (NGFA SNPR Comments 11.) It also recommends that the Board require each ''carrier to report whether it placed or pulled cars that were ordered or cancelled as a result of a railroad spotting more cars than the facility requested.'' (*Id.*) NGFA also requests that the Board expand the metric to include vegetable oils and vegetable meals to the grain category. (*Id.*)

Final Rule. For Request No. 8, the Board will adopt the *SNPR* proposal as the final rule. This request allows the Board to monitor car order fulfillment for shippers of agricultural products whose traffic moves in manifest (as opposed to unit train) service. Although the Board acknowledges the limitations that CSXT and NSR have noted, the Board believes that, overall, this data will allow the effective monitoring of grain traffic in manifest service over time. With respect to NGFA's suggestion to refine this request by requiring carriers to report certain definitions, such a proposal seems more responsive to the *NPR*'s proposal than the *SNPR*'s proposal, and in any event is not in line with the Board's intent to simplify this request. *See SNPR,* slip op. at 14 (''the Board proposes a simpler approach by asking that railroads report running totals of grain car orders placed versus grain car orders filled by State for cars moving in manifest service''). With respect to NGFA's request for additional data on cars ordered or cancelled, such a proposal does not enhance the Board's view of grain car order fulfilment. Moreover, it is unclear that railroads track the data that NGFA seeks.

Also, for the reasons explained above, the Board will decline NGFA's request to expand this metric to include vegetable oils and vegetable meals.

Request No. 9 (Coal Loadings)

The *SNPR* proposes requiring carriers to provide the weekly average coal unit train loadings or carloadings versus planned loadings by coal production region. The *SNPR* modifies the proposal in the *NPR* by generally returning to the form of the corresponding request (Request No. 10) from the *Interim Data Order,* and adding the requirement to compare actual loadings against railroad service plans.

Railroad Interests. UP asserts that it develops neither its own loading expectations, nor independent daily or weekly planned coal loadings. (UP SNPR Reply 11.) UP states that, to the extent that it has a coal loading plan, the plan is based on confidential customer information. (*Id.* at 10.) As such, UP raises concerns that disclosing any planned weekly loadings could reveal confidential customer information where UP has few coal customers. UP would require a waiver from the Board so that it could aggregate data to prevent revealing that information. (*Id.*) That concern aside, UP argues that comparing planned to actual weekly carloadings provides limited insight into railroad performance because actual carloadings are too dependent upon factors outside the railroad's control. (*Id.*) AAR also questions the usefulness of including a comparison to plan, arguing that it may present unreliable data because plans fluctuate based on customer preference, commercial factors, equipment, and other issues. (AAR SNPR Comments 9.) AAR stresses that coal traffic primarily moves subject to contracts beyond the Board's jurisdiction. (*Id.*)

Shipper Interests and Other Stakeholders. WCTL and others support the addition of the comparison-to-plan component to Request No. 9. (WCTL SNPR Comments 2–3; NITL SNPR Comments 3.) WCTL states that including the comparison-to-plan component is superior to the metric proposed in the *NPR* and ''provides direct and frequent information regarding whether the railroads are meeting the service needs of their customers and even the carriers' own loading plans [and] whether such divergences are continuing or increasing.'' (WCTL SNPR Comments 2–3.) WCTL disagrees with concerns raised by UP that this metric could divulge confidential shipper information, asserting that no specific information would need to be divulged and no shipper has complained under the *Interim Data Order.* (WCTL SNPR Reply 3.) WCTL also argues that ''weekly plan reporting is useful precisely because it reflects the requirements of one of the highest volume commodities on all of the railroads and whether the railroads are able to meet that demand'' and is potentially a valuable data point because the fluidity of coal routes can impact other shippers. (*Id.* at 3–4.) WCTL also asserts that, despite UP's claim that it has no coal loading plans, it ''requires all coal customers to use the [National Coal Transportation Association] coal forecasting tool, which generally results in a railroad-approved monthly loading plan.'' (*Id.* at 4.) Finally, WCTL suggests that, where railroads have a single shipper, they be permitted to withhold the data and make a notation that confidential information might be revealed. (*Id.*)

Final Rule. For Request No. 9, the Board will adopt the *SNPR* proposal as the final rule. The Board believes that there is value in having railroads report their performance versus their plan on a weekly basis for coal loadings. This data will not only allow the agency to track actual loadings, but also to see whether railroads are meeting their own targets. The Board understands the point made by UP that a loading plan is not necessarily static, but is simply a target based on a variety of inputs, which can and does change as surrounding circumstances change. Even so, there is value in seeing whether railroads are meeting, exceeding, or falling short of plans, as it provides context to the reporting of weekly average loadings. To the extent that reporting information about planned loadings under this metric would implicate confidential information, railroads may include a notation in their weekly filing that they are not providing the plan data along with a brief explanation for the data's absence. Finally, AAR's argument that coal traffic primarily moves subject to contracts beyond the Board's jurisdiction does not take into account our statutory responsibility to advance the goals of the RTP, which (as discussed above) includes monitoring service in order to ensure the fluidity of the national rail network. 49 U.S.C. 10101(3), (4). The Board is not asserting jurisdiction regarding the rights and obligations of shippers and carriers associated with coal moving under contracts; rather, the Board is taking action to gain a better understanding of and insight into the general flow of traffic on the system.

Request No. 10 (Grain Unit Train Performance)

The *SNPR* adds this metric not included in the *NPR* seeking the average grain shuttle (or dedicated grain train) trips per month. The *SNPR* explains that because some Class I railroads operations do not support this reporting, the Board anticipates issuing a waiver decision with the final rules that would permit other Class I railroads to satisfy their obligations under Request No. 10 by reporting average grain unit train trips per month for their total system, including this data in their first report of each month, covering the previous calendar month. Such reports would not include planned trips per month or data by region. Under the *SNPR,* for purposes of reporting under this item, other Class I railroads would report for all grain unit train movements, regardless of whether or not they maintain a grain shuttle or dedicated train program.

Railroad Interests. Several railroads state that they do not operate grain shuttles or grain trains that cycle so they

cannot provide data on the average trips per month for those services. (UP SNPR Comments 12; CSXT SNPR Comments 4; NSR SNPR Comments 2.) NSR explains that it would not have any average data to report because it does not cycle grain trains, but states that it could report a gross total of the number of grain unit train trips per month. (NSR SNPR Comments 2.) CSXT states that because it does not manage grain transportation regionally, it will only be able to report average trips per month system-wide. (CSXT SNPR Comments 4.) UP notes that it does not control the origins and destinations of its shuttle trains and that origins and destinations routinely shift, making it difficult to report planned trips per month. (UP SNPR Comments 12.) AAR also states that some railroads cannot report the requested data, and argues that the Board should not adopt a rule that requires some carriers to immediately seek waivers. (AAR SNPR Comments 9.)

Shipper Interests and Other Stakeholders. Shippers generally support the addition of this metric. (NITL SNPR Comments 3; NGFA SNPR Comments 11). NGFA expresses concern that monthly reporting of this metric is insufficient and asks that the Board require weekly reporting instead. (NGFA SNPR Comments 12.) NGFA also urges the Board not to grant waivers from this requirement because it knows of no Class I carrier that would not be able to track shuttle or dedicated grain trips by region or corridor. (*Id.*) However, NGFA states that if the Board does allow for waivers, that process should be transparent. (*Id.*) In its reply, NGFA reiterates its position that shuttle trains and dedicated grain trips should be reported by corridor and region. (NGFA SNPR Reply 3.)

Final Rule. For Request No. 10, the Board will adopt the *SNPR* proposal as the final rule modified to apply only to those carriers operating grain unit trains in shuttle service. The Board will eliminate the requirement for carriers with dedicated grain trains to report trips per month because the disparate data carriers could provide on that type of service would not provide the Board insight into service beyond the velocity data collected elsewhere in this final rule.[11] In the first report of each month, railroads operating grain shuttles will be required to report their average train trips per month for their system and key destination regions versus planned trips per month for their system and key regions for the previous month. Underlying this request is the Board's need for information about how railroads are performing with respect to the agricultural sector. The service problems that emerged during the winter of 2013–2014 resulted in significant backlogs of unfilled grain car orders and increased train cycle times, indicating that railroads were experiencing severe congestion and failing to meet shipper demand. *U.S. Rail Serv. Issues—Grain,* EP 724 (Sub-No. 2), slip op. at 1 (STB served June 20, 2014). Thus, in the *Interim Data Order* the Board requested grain car order fulfillment data, and data on train round trips versus the railroad's service plan. This data proved very useful in monitoring the progress of BNSF and CP as they improved operations on an actual basis and against their service plan. The ''turns versus plan'' data will allow the Board to assess how railroads operating grain shuttles are meeting their own expectations.

Request No. 11 (Originated Carloads by Commodity Group)

The *SNPR* proposes the creation of a second metric not included in the *NPR.* Under this metric, railroads would be required to provide weekly originated carloads by 23 commodity categories.

Railroad Interests. The railroads generally support the addition of this metric. (*See* UP SNPR Comments 12; *see also* CP NPR Comments 2.) UP states that the Board can improve the metric by adding a requirement that carriers report ''weekly carloads originated *and* carloads received in interchange [, which] . . . would be consistent with weekly carloadings data reported by the AAR.'' (*Id.* at 12–13.)

However, as discussed above, the railroads oppose the inclusion of fertilizer in this metric. They assert that creating a line-item for fertilizer will require substantial system changes (AAR SNPR Comments 8; BNSF SNPR Comments 5), and point out that fertilizer is not one of the commodity groups currently reported to the AAR on a weekly basis. (AAR SNPR Comments 8; BNSF SNPR Comments 5–6.) UP states that fertilizer accounted for only 2% of its carloadings in 2015. (UP SNPR Comments 4.) CSXT argues that including fertilizer here would ''compromise the usefulness of a long-standing economic indicator that has been followed . . . for decades.'' (CSXT SNPR Comments 4.)

Shipper Interests and Other Stakeholders. Shippers generally support the addition of this metric. (NITL SNPR Comments 3–4; NGFA SNPR Comments 12–13.) NITL states that it shows some understanding of shippers' requests for additional granularity in commodity groups. (NITL SNPR Comments 4.) NGFA again asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 13.) TFI again states that the definition of fertilizer could be narrowed to the same 14 seven-digit STCCs that it proposed for Request No. 6. (TFI SNPR Reply 4.)

Final Rule. For Request No. 11, the Board will adopt the *SNPR* proposal with two modifications as the final rule. First, per UP's suggestion, the Board will expand the metric to include separate reporting of weekly cars received in interchange, which the railroads are already reporting to the AAR. Second, the Board will require railroads to report, as a separate line item, weekly originated carloads and cars received in interchange for fertilizer, as defined by the 14 seven-digit STCCs proposed by TFI and defined above.

Through this metric, the Board seeks to gain specific data for carloadings and interchange traffic that will allow it to better monitor this commodity group. However, the Board understands the railroads' concern that including fertilizer could disrupt the continuity of reporting cars originated and received in interchange, as presently reported to AAR. Accordingly, the Board will create two subcategories for this metric. In the first subcategory, the Board will require reporting according to the 22 existing traffic categories currently reported to AAR. The second subcategory will include only fertilizer.

By requiring fertilizer reporting in this manner, the Board is not asking railroads to modify or extract traffic from the existing 22 categories, which should be reported in their current form; rather, the agency is adding a new, stand-alone category covering the STCCs identified above.

Request No. 12 (Car Order Fulfillment Rate by Car Type)

The *SNPR* proposes the creation of a third new metric not included in the *NPR.* Under this metric, railroads would be required to provide car order fulfillment percentage by 10 car types.

Railroad Interests. The railroads strongly oppose the addition of this metric. AAR states that the metric is ambiguous and unworkable. (AAR SNPR Comments 10.) It argues that ''Class I railroad practices regarding car supply differ significantly,'' (*id.*),

[11] Accordingly, the waiver decision discussed in the *SNPR* would no longer be necessary. The waiver would have applied to those carriers with operations that would not permit the reporting envisioned there. *See SNPR,* slip op. at 15–16. However, the modification proposed here would obviate the need for a waiver decision by including only those carriers operating grain shuttles.

explaining that ''cars 'due to be placed' and cars placed will not match up week to week.'' The AAR also claims that, because cars that are constructively placed are eventually actually placed, the metric creates a potential double count. (*Id.*) AAR also states certain rail cars are supplied by pool arrangements that would distort individual railroad reporting. (*Id.*) UP states that the car order fulfillment percentage concept ''applies only in situations where a customer orders and requests an empty car to be placed at a customer facility for loading.'' (UP SNPR Comments 5.) UP alleges that there are numerous situations where customers do not place car orders, including intermodal cars, autoracks, covered hoppers, private cars, and pooled cars. (*Id.* at 5–8.) CSXT urges the Board not to adopt the proposed metric, stating that ''in a considerable number of car supply scenarios, it is wholly unworkable.'' (CSXT SNPR Comments 4.) BNSF and NSR also urge the Board not to adopt the metric, identifying a number of issues with the proposed metric. (BNSF SNPR Comments 6–7; NSR SNPR Comments 2–3.) BNSF questions the value of the data because the metric would cover several car types that customers do not order, and because there are significant differences between commodities and customers of similar commodities. (BNSF SNPR Comments 6–7.) NSR states that because it does not have a tariff governing car orders, the reporting will result in ''significant double counting while reporting only actual placement will result in incomplete data.'' (NSR SNPR Comments 3.)

Shipper Interests and Other Stakeholders. NITL and NGFA generally support the addition of this metric. (NITL SNPR Comments 4; NGFA SNPR Comments 13.) NITL stresses that it would provide additional visibility into industry operations that would be beneficial to a large number of shippers. (NITL SNPR Comments 4.) HRC urges the Board to take into consideration the fact that some railroads expire car orders at the end of each week, which will lead to an understatement of backlog orders. (HRC SNPR Comments 2.)

Final Rule. The Board will not adopt the proposed Request No. 12 from the *SNPR* in the final rules. As noted above, the railroad interests pointed out several practical and definitional challenges posed by this request, which make it incompatible in various ways with their operations and internal data tracking. Although shippers expressed support for this additional data, the Board believes that its potential utility would be significantly diminished due to the problems identified by the railroad industry. In a revised form, it would not apply to a significant amount of rail traffic. As such, the limited data would not materially enhance the Board's perspective on service performance.

Chicago

The *SNPR* proposes requiring that the Class I railroads operating at the Chicago gateway jointly report the following performance data elements for the reporting week: (1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso; and (2) average daily number of trains held for delivery to Chicago sorted by receiving carrier. Moreover, the request would require Class I railroad members of the CTCO to provide certain information regarding the CTCO Alert Level status and protocols.

Railroad Interests. CP reiterates its suggestion that the Board require certain data from the Belt Railway of Chicago (BRC) and Indiana Harbor Belt (IHB), which it states are the heart of the Chicago terminal. (CP SNPR Comments 3.) CP suggests a number of metrics that the two carriers could report on a weekly basis: Number of cars arrived per day, number of cars humped or processed per day, number of cars re-humped or re-processed per day, number of cars pulled per day, number of trains departed each day by railroad, average terminal dwell, average departure yard dwell, and percentage of trains departed on-time each day by railroad. CP believes much of the data is already kept by the switching carriers. (*Id.* at 3 n.3.) CP asserts that, in contrast to the other commodity and geographic specific data the Board proposes to require, information from BRC and IHB ''is likely to provide early warnings of rail service issues and more likely to be useful in averting a significant service disruption.'' (*Id.* at 3.)

AAR reports that the railroads have agreed to provide CMAP and other Illinois entities with a weekly report related to the Chicago terminal. (AAR SNPR Comments 10.) AAR states that ''the railroads have begun to provide the Chicago entities a report that include[s] cars en route to Chicago and cars processed, each broken out by cars terminated in Chicago and those transitioning through . . . . [and] a 7-day average freight transit time through Chicago.'' (*Id.*) AAR states that it would not object to making the report part of the weekly CTCO report to the Board. (*Id.*) Additionally, in its reply, AAR urges the Board to reject CMAP's request for additional data. (AAR SNPR Reply 6–7.)

Shipper Interests and Other Stakeholders. NITL states that additional information from BRC and IHB would be helpful to many stakeholders and recommends that the Board contact the Bureau of Transportation Statistics for guidance on designing not overly burdensome operating statistics for these two carriers. (NITL SNPR Comments 4.) NITL also states that ''a cooperative joint effort between the Class I carriers that 'feed' the Chicago region and the two belt lines to define a set of best measures would likely yield good results.'' (*Id.*) NGFA reiterates its recommendation that the Board require three Chicago-specific metrics touching on idled cars in Chicago-area yards. (*Id.*) In its reply, NGFA urges the Board to evaluate whether AAR's proposed metrics would improve the Board's understanding of conditions in Chicago. (NGFA SNPR Reply 5.)

As noted above, CMAP also reports that it has reached an agreement with AAR to receive weekly information on ''yard inventories, terminal dwell times for railcar yards, the number of railcars en route and processed, and the overall crosstown transit times'' for the Chicago terminal, and that it agrees with AAR's suggestion to share this report with the Board. (CMAP SNPR Comments 1.) CMAP recommends that the Board also require additional performance metrics focusing on intermodal trains. (*Id.*) CMAP also reiterates its suggestion that the Board expand the number of yards included in its terminal dwell metric, and add metrics covering crosstown travel times; speed, volume, and train length for all key rail corridors in the Chicago terminal; and delay and intermodal lifts. (*Id.* at 2.)

Final Rule. The Board will adopt the *SNPR* proposal for Chicago gateway reporting as the final rule. The Board will also accept the AAR's voluntary offer to include the data it is reporting to CMAP in CTCO's report to the Board.

While the Board appreciates CP's recommendations for extending certain reporting requirements to IHB and BRC, the Board believes that the data reporting currently provided by the CTCO, through its Class I members, already provides focused visibility and heightened attention into this key gateway. The final rule, as augmented by the data that AAR has offered to submit voluntarily, will continue to maintain a robust view of operating conditions in the Chicago gateway. In the Chicago metrics, the Board will receive average daily car volumes at eleven key yards in the Chicago

gateway, including yards operated by BRC and IHB, and data showing average daily number of trains held for delivery at Chicago, sorted by carrier. Also, under Request No. 2, the Board will receive weekly average terminal dwell time for several Chicago gateway yards. This data will allow the Board to sufficiently monitor operating conditions and spot congestion or fluidity issues in the Chicago gateway. Therefore, the Board will not require the reporting of additional granularity at this time.

Infrastructure Reporting

The *SNPR* proposes requiring that each Class I railroad, annually on March 1 with an update on September 1, report a description of significant rail infrastructure projects (defined as anticipated expenditures of $75 million or more over the life of the project) that will commence during the current calendar year. The narrative report would require a brief description of each project, its purpose, location (state/counties), and projected date of completion. The *SNPR* modifies the *NPR*'s proposal by changing the reporting period from a quarterly report to annual with one annual update, and by increasing the lower limit for projects required to be reported on from $25 million to $75 million.

Railroad Interests. The railroads are generally supportive of the changes to this metric in the *SNPR.* (UP SNPR Comments 2; AAR SNPR Comments.) In its reply, AAR urges the Board to reject some shippers' push for more extensive reporting, stating that the *SNPR* ''strikes a balance of keeping the Board apprised on the progress of significant infrastructure improvements without unduly burdening railroads with its reporting requirements.'' (AAR SNPR Reply 5.) AAR stresses that because none of the infrastructure reports can be automated, the requirement will draw on the time and effort of personnel to write the narrative. (*Id.*)

Shipper Interests and Other Stakeholders. Although some shippers support the modified infrastructure reporting requirements (NITL SNPR Comments 4), others urge the Board to adopt the *NPR* proposal (NGFA SNPR Comments 14; WCTL SNPR Comments 5). NGFA states that it sees one of the fundamental objectives of this proceeding as being the creation of ''a one-stop-shop for more standardized information affecting rail service,'' which should include information on the impacts of infrastructure investment that would have been required under the *NPR.* (NGFA SNPR Comments 14.) NGFA asserts that access to this type of information can vary widely between carriers. (*Id.*) NGFA stresses that having timely access to information on potential disruption to service is extremely important to shippers and, thus, asks the Board to require carriers to report the predicted time frames when freight traffic may be interrupted as a result of infrastructure projects. (*Id.*) WCTL states that infrastructure projects with a projected cost of $25–$75 million, which would not be reported under the *SNPR* proposal, can impact quality of service and together have an enormous impact on whether a railroad achieves and maintains fluidity. (WTCL SNPR Comments 6.) It also argues that curtailed reporting could undermine the Board's ability to carry out its responsibility to monitor the adequacy of service by rail carriers and their compliance with the common carrier obligation. (*Id.*)

Final Rule. The Board will adopt the *SNPR* proposal as the final rule. The Board believes that the request for an initial narrative response (due March 1) and a six-month update (due September 1) strikes an appropriate balance between the Board's need for current information about rail infrastructure projects and the burden of reporting on the railroads. Rather than specifying certain required elements, as in the initial proposal, the Board will allow railroads to exercise discretion and flexibility in preparing their narrative responses.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. sections 601–604. In its final rule, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' section 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The final rules adopted here are limited to Class I railroads and, thus, will not have a significant economic impact upon a substantial number of small entities.[12] Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In a supplemental **Federal Register** notice, published at 81 FR 27,069 on May 5, 2016 (correction published at 81 FR 32268 on May 23, 2016), the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521 and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d), regarding: (1) Whether the collection of information in the proposed rule is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Any comments relating to these issues are addressed in the decision above.

The proposed collection was submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. OMB withheld approval pending submission of the final rule. The Board has submitted the collection contained in this final rule to OMB for approval. Once approval is received, the Board will publish a notice in the **Federal Register** stating the control number and the expiration date for this collection. Under the PRA and 5 CFR 1320.11, an agency may not conduct or sponsor, and a person is not required to respond to,

[12] Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual carrier operating revenues of $20 million or less in 1991 dollars, or $36,633,120 or less when adjusted for inflation using 2015 data. Class II carriers have annual carrier operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $457,913,998 and $36,633,120 respectively, when adjusted for inflation using 2015 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

a collection of information unless the collection displays a currently valid OMB control number.

It is ordered:

1. The final rule set forth below is adopted and will be effective on January 29, 2017. The initial reporting date will be February 8, 2017. Notice of the rule adopted here will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

Summary of Final Rule

Having considered all written and oral comments on the *SNPR,* the following changes are reflected in the final rule for the new regulations to be codified at 49 CFR 1250.1–1250.2 to require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board reports on railroad performance. The regulations are below. The table below provides a brief description of the differences between the *SNPR* and this final rule, which were explained in detail above.

TABLE 1—SUMMARY OF CHANGES IN THE DATA REQUESTS BETWEEN THE SNPR AND THE FINAL RULE

SNPR	Final rule
Saturday through Friday reporting week with reports to be filed the following Wednesday.	Modify the reporting week for Request No. 11 to Sunday through Saturday.
Allow carriers to report unit train data based on their assignment of train codes in the ordinary course of business.	Add the requirement to submit the definition of a unit train to the Board for publication on its Web site and update that definition should it change.
(1) System-average train speed for intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, manifest, fertilizer unit, and, system.	Delete the fertilizer unit component.
(2) Weekly average terminal dwell time for each carrier's system and its 10 largest terminals.	No changes.
(3) Weekly average cars online for seven car types, other, and total	No changes.
(4) Weekly average dwell time at origin for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, fertilizer unit, all other unit trains, and manifest.	Delete the fertilizer unit and manifest components.
(5) Weekly total number of loaded and empty trains held short of destination or scheduled interchange by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). Instruct railroads to run a same-time snapshot of trains holding each day and then calculate the average for the reporting week.	Delete the fertilizer unit component.
(6) Weekly average number of loaded and empty cars operating in normal movement, which have not moved in ≥ 48 hours, sorted by service type and measured by a daily same-time snapshot.	Modify the definition of fertilizer.
(7) Weekly total number of grain cars loaded and billed, by state, for certain STCCs. Also include total cars loaded and billed in shuttle service versus all other ordering systems.	No changes.
(8) For the STCCs delineated in Request No. 7, running totals of grain car orders in manifest service submitted versus grain car orders filled, and for unfilled orders, the number of car orders that are 1–10 days past due and 11+ days past due.	No changes.
(9) Weekly total coal unit train loadings or carloadings versus planned loadings by coal production region.	No changes.
(10) Grain shuttle (or dedicated grain train) trips per month	Modify to apply only to grain shuttles, not other grain trains.
(11) Weekly originated carloads by 23 commodity categories	Add cars received in interchange. Delete fertilizer from the main reporting category, but add a second category requiring carriers to report fertilizer originated carloads and cars received in interchange by the STCCs defined in Request No. 6.
(12) Car order fulfillment percentage for the reporting week by 10 car types.	Delete this proposed request.
Chicago. Class Is operating in Chicago must jointly report each week: Average daily car volume in certain yards, and average daily number of cars held for delivery to Chicago sorted by receiving carrier. Class I railroad members of the CTCO must provide certain information regarding the CTCO Alert Level status and protocols.	No changes.
Infrastructure. An annual report of significant rail infrastructure projects that will be commenced during that calendar year, and a six-month update on those projects. The report is to be in a narrative form briefly describing each project, its purpose, location, and projected date of completion. The Board proposes to define a significant project as one with a budget of $75 million or more.	No changes.

List of Subjects in 49 CFR Part 1250

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: November 29, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, subchapter C, of the Code of Federal Regulations by adding part 1250 to read as follows:

PART 1250—RAILROAD PERFORMANCE DATA REPORTING

Sec.

Authority: 49 U.S.C. 1321 and 11145.

§ 1250.1 General.

(a) The reporting period covers:

(1) For § 1250.2(a)(1)–(9), 12:01 a.m. Saturday–11:59 p.m. Friday;

(2) For § 1250.2(a)(10), the previous calendar month;

(3) For § 1250.2(a)(11), 12:01 a.m. Sunday–11:59 p.m. Saturday;

(4) For § 1250.3(a)(1)–(2), 12:01 a.m. Saturday–11:59 p.m. Friday.

(b) The data required under § 1250.2 and § 1250.3(a) must be reported to the Board via the method and in the form prescribed by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) by 5 p.m. Eastern Time on Wednesday of each week. In the event that a particular Wednesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.

(c) Each reporting railroad shall provide an explanation of its methodology for deriving the data with its initial filing and an update if and when that methodology changes. This explanation should include the unit train definition that the railroad will use in its data reporting, which shall reflect its assignment of train codes in accordance with its normal business practices. If and when a railroad changes its definition of unit train it shall notify the Board of the change at the time it goes into effect in the form prescribed by OPAGAC.

(d) Unless otherwise provided, the performance data, Chicago data and alert levels, narrative infrastructure reporting, and any methodologies or explanations of data collection reported to the Board under this part will be publicly available and posted on the Board's Web site.

§ 1250.2 Railroad performance data elements.

(a) Each Class I railroad must report the performance data elements in paragraphs (a)(1)–(9) and (11) of this section on a weekly basis, and the data elements in paragraph (a)(10) on a monthly basis, for the reporting period, as defined in § 1250.1(a). However, with regard to data elements in paragraph (a)(7) and (8), Kansas City Southern Railway Company is not required to report information by state, but instead shall report system-wide data.

(1) System-average train speed for the overall system and for the following train types for the reporting week. (Train speed should be measured for line-haul movements between terminals. The average speed for each train type should be calculated by dividing total train-miles by total hours operated.)

(i) Intermodal.
(ii) Grain unit.
(iii) Coal unit.
(iv) Automotive unit.
(v) Crude oil unit.
(vi) Ethanol unit.
(vii) Manifest.
(viii) System.

(2) Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (*i.e.,* cars that arrive at, and depart from, a terminal on the same through train), for the carrier's system and its 10 largest terminals in terms of railcars processed. (Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.)

(3) Weekly average cars on line by the following car types for the reporting week. (Each railroad shall average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (*e.g.,* at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.)

(i) Box.
(ii) Covered hopper.
(iii) Gondola.
(iv) Intermodal.
(v) Multilevel (Automotive).
(vi) Open hopper.
(vii) Tank.
(viii) Other.
(ix) Total.

(4) Weekly average dwell time at origin for the following train types: Grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, and all other unit trains. (For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin until actual movement by the receiving carrier.)

(5) The weekly average number of trains holding per day sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and manifest) and by cause (crew, locomotive power, or other). (Railroads are instructed to run a same-time snapshot of trains holding each day, and then to calculate the average for the reporting period.)

(6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer (the following Standard Transportation Commodity Codes (STCCs): 2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, and 2871451), and all other). In order to derive the averages for the reporting period, carriers should run a same-time snapshot each day of the reporting period, capturing cars that have not moved in 48 hours or more. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting period. In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (*e.g.,* ballast).

(7) The weekly total number of grain cars loaded and billed, reported by state, aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). ''Total grain cars loaded and billed'' includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service), if any, versus total cars loaded and billed in all other ordering systems, including private cars.

(8) For the aggregated STCCs listed in § 1250.2(a)(7), for railroad-owned or leased cars that will move in manifest

service, each railroad shall report by state the following:

(i) Running total of orders placed;

(ii) The running total of orders filled;

(iii) For orders which have not been filled, the number of orders that are 1–10 days past due and 11+ days past due, as measured from when the car was due for placement under the railroad's governing tariff.

(9) Weekly average coal unit train loadings or carloadings versus planned loadings for the reporting week by coal production region. Railroads have the option to report unit train loadings or carloadings, but should be consistent week over week.

(10) For Class I carriers operating a grain shuttle program, the average grain shuttle turns per month, for the total system and by region, versus planned turns per month, for the total system and by region. This data shall be included in the first weekly report of each month, covering the previous calendar month.

(11) Weekly carloads originated and carloads received in interchange by 23 commodity categories, separated into two subgroups:

(i) Twenty-two historical commodity categories.

(A) Chemicals.

(B) Coal.

(C) Coke.

(D) Crushed Stone, Sand and Gravel.

(E) Farm Products except Grain.

(F) Food and Kindred Products.

(G) Grain Mill Products.

(H) Grain.

(I) Iron and Steel Scrap.

(J) Lumber and Wood Products.

(K) Metallic Ores.

(L) Metals.

(M) Motor Vehicles and Equipment.

(N) Non Metallic Minerals.

(O) Petroleum Products.

(P) Primary Forest Products.

(Q) Pulp, Paper and Allied Products.

(R) Stone, Clay and Glass Products.

(S) Waste and Scrap Materials.

(T) All Other.

(U) Containers.

(V) Trailers.

(ii) Fertilizer commodity category.

(A) Fertilizer (for STCCs defined in paragraph (a)(6) of this section).

(B) [Reserved]

(b) [Reserved]

§ 1250.3 Chicago terminal reporting.

(a) Each Class I railroad operating at the Chicago gateway must jointly report the following performance data on a weekly basis for the reporting period, as defined in § 1250.1(a). The reports required under this section may be submitted by the Association of American Railroads (AAR).

(1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and

(2) Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week.

(i) For purposes of this request, ''held for delivery'' refers to a train staged by the delivering railroad short of its scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.

(ii) If Chicago terminal yards not identified in § 1250.2(b)(1) are included in the Chicago Transportation Coordination Office's (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in § 1250.2(b)(1) shall also be reported for those yards.

(b) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file on behalf of all Class I railroad members, or AAR) must:

(1) File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.

(2) If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.

(c) Reports under paragraph (b) of this section shall be reported to the Director of the Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) via the method and in the form prescribed by OPAGAC.

§ 1250.4 Rail infrastructure projects reporting.

(a) Class I railroads shall submit annually a narrative report of significant rail infrastructure projects that will be commenced during the current calendar year, and a six-month update on those projects. The reports should briefly describe each project, its purpose, location (state/counties), and projected date of completion.

(b) A ''significant rail infrastructure project'' is defined as a project with anticipated expenditures of $75 million or more over the life of the project.

(c) The narrative report should be submitted no later than March 1 of each calendar year and the update no later than September 1 of each calendar year via email to the Board's Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) via the method and in the form prescribed by OPAGAC. In the event that March 1 or September 1 is a Federal holiday, weekend, or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.

[FR Doc. 2016–29131 Filed 12–2–16; 8:45 am]

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Proposed Rules

Federal Register
Vol. 81, No. 233
Monday, December 5, 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

Agricultural Marketing Service

7 CFR Parts 33 and 35

[Doc. No. AMS–FV–14–0099; FV15–33/35–1 PR]

Regulations Issued Under Authority of the Export Apple Act and Export Grapes and Plums; Changes to Export Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35). This change would require shippers of apples and grapes exported from the United States to electronically enter an Export Form Certificate number or a USDA-defined exemption code into the Automated Export System (AES). This rule would also define ''shipper,'' shift the current file retention requirement from carriers to shippers, and require shippers to provide, upon request, copies of the certificates to the Agricultural Marketing Service (AMS). These changes would enable AMS to track exported apple and grape shipments to ensure that exports meet inspection and certification requirements. This action is also required to support the International Trade Data System (ITDS), a key White House economic initiative that will automate the filing of export and import information by the trade. This proposal would also remove obsolete regulations and make clarifying changes. It also announces AMS' intention to request revision to a currently approved information collection for exported apples and grapes.

DATES: Comments must be received by January 4, 2017.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Shannon.Ramirez@ams.usda.gov* or *VincentJ.Fusaro@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (together hereinafter referred to as the ''Export Fruit Acts''). The Export Fruit Acts promote foreign trade of U.S.-grown fruit by authorizing the implementation of regulations related to quality, container markings, and inspection requirements. These regulations are contained in 7 CFR part 33 (Regulations Issued under the Export Apple Act) and 7 CFR part 35 (Export Grapes and Plums).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect and shall not abrogate nor nullify any other regulations, whether State or Federal, dealing with the same subjects. It is intended that all such regulations shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587; 7 U.S.C. 597).

The Export Fruit Acts provide for administrative proceedings that must be exhausted before parties may file suit in court. Pursuant to 7 U.S.C. 586 and sections 33.13 and 33.14 of the regulations (for apples) and 7 U.S.C. 596 and sections 35.14 and 35.15 of the regulations (for grapes), any person subject to the Export Fruit Acts may file with USDA a request for hearing, along with a written responsive answer to alleged violations of the provisions of the Export Fruit Acts and regulations, no later than 10 days after service of notice of alleged violations. After opportunity for hearing, the Secretary is

authorized to refuse the issuance of certificates under the Export Fruit Acts for a period not exceeding 90 days.

This proposed rule would change the reporting of export certificate information under regulations issued pursuant to both the Export Apple Act and the Export Grape and Plum Act (7 CFR part 33, ''Regulations Issued Under Authority of the Export Apple Act,'' and 7 CFR part 35, ''Export Grapes and Plums,'' respectively). Shippers of apples and grapes exported from the United States subject to inspection would be required to enter the certificate number from inspection certificates (*i.e.,* Export Form Certificates) into AES. For apples shipped to Canada in bulk containers, which are exempt from inspection requirements, shippers would be required to enter a special USDA-defined exemption code in lieu of an Export Form Certificate number. Shippers would also be required to maintain paper or electronic copies of the certificates and to provide copies to AMS upon request. AMS is responsible for monitoring apple and grape export shipments, and these proposed regulatory changes would help ensure that these shipments comply with inspection and certification requirements.

This proposed rule would also define ''shipper'' and would remove the requirement that carriers of exported apples and grapes retain certificates on file (because the requirement to retain the certificates would shift to shippers of exported apples and grapes). It would also remove regulations that are no longer applicable to grape exports and add structure and language to clarify the regulations.

Plums are not currently regulated under the Export Grape and Plum Act; therefore, this change would not impact shipments of plums exported from the United States. If plums exported from the United States are regulated in the future under the Export Grape and Plum Act, the reporting of export certificate information similar to what is being proposed herein for exported grapes and apples would be proposed.

Sections 33.11(a) and 35.12(b) of the regulations issued under the Export Fruit Acts for apples and grapes, respectively, specify that, prior to export, the fruit must be inspected by the Federal or Federal-State Inspection Service (unless the fruit is otherwise exempted from inspection under the Export Fruit Acts). These sections further specify that Export Form Certificates must be issued by the inspection service and must contain a statement indicating the fruit meets the requirements of the Export Fruit Acts. Additionally, these sections currently require that shippers provide a copy of the certificates to the export carrier or, in those instances where the fruit is inspected and certified at any location other than the port of exportation, to the agent of the first carrier who transports the fruit to port for exportation. These two sections also currently contain requirements related to the retention of certificates by export carriers and spray residue tolerance.

Section 33.12 of the export apple regulations specifies those apples that are not subject to regulation, including apples shipped to Canada in bulk containers (§ 33.12(d)), which are containers that hold a quantity of apples weighing more than 100 pounds.

Sections 33.2 and 33.4 of the export apple regulations and §§ 35.2 and 35.4 of the export grape regulations define ''person'' and ''carrier,'' respectively. The term ''shipper'' is used in parts 33 and 35 but is not currently defined in either of those regulations.

Filing Export Information in the Automated Export System (AES)

The Foreign Relations Authorization Act (FRAA) (Pub. L. 107–228) authorizes regulations requiring that all persons who are required to file export information under Chapter 9 of Title 13 of the U.S. Code (Collection and Publication of Foreign Commerce and Trade Statistics) file such information through the Automated Export System (AES) for all shipments where a paper Shipper's Export Declaration was previously required. As such, shippers of most U.S.-grown apples and grapes are required to electronically file export shipment information in AES.

AES is a joint venture between U.S. Customs and Border Protection (CBP) and the U.S. Census Bureau (Census) that was implemented in phases, starting in 1995. It is a nationwide system, available at all U.S. ports, that serves as a central point for the electronic collection of export data that are used by several different Federal government agencies including Census and CBP. Census regulations issued under the authority of the FRAA and related to AES include the Foreign Trade Regulations (15 CFR part 30) and the Export Clearance Requirements (15 CFR part 758).

AMS is responsible for enforcing the regulations under the Export Fruit Acts, including verifying that exported apples and grapes that are subject to regulation are inspected and certified as meeting quality requirements. However, the Export Fruit Acts regulations do not currently require that shippers provide AMS with information about inspected and certified fruit.

AMS has determined that access to the Census Bureau's AES data would allow AMS to monitor compliance with and enforce the regulations issued under the Export Fruit Acts. As a result, AMS and Census have entered into a Memorandum of Understanding that will give AMS access to certain specific data in the AES related to apple and grape exports, including an Export Form Certificate number that is associated with each lot of inspected and certified fruit or, in lieu of a certificate number, a USDA-defined exemption code (BULK CONTRS) for apples shipped to Canada in bulk containers.

For those apples and grapes subject to inspection, information about each inspected lot of apples or grapes is noted on an Export Form Certificate (FV–205 or FV–207 paper form; FV–205e and FV–207e electronic form) that is completed by an inspector. In addition to stating whether the lot meets the export requirements, the certificate also contains information about the date and place of inspection; the name of the applicant; and the quantity, variety, and identification marks of the lot. The certificate is provided to the shipper and is identified with a unique certificate number. The inspection service that inspects and certifies the export shipment will also electronically maintain the certificate information.

AMS believes that the most effective way to verify that apple and grape exports meet export inspection and certification requirements would be to have shippers enter the unique Export Form Certificate numbers into the AES. AMS would then verify the validity of a certificate number by cross-referencing it and the associated shipment information with inspection data (*e.g.,* certificate number, variety, quantity) that AMS would receive from its Specialty Crops Inspection (SCI) Division.

Some exported apples and grapes are exempt from the inspection requirements of the Export Fruit Acts regulations pursuant to § 33.12 for apples and §§ 35.12 and 35.13 for grapes. In most instances, information about a shipment (*e.g.,* the weight and destination of the shipment) that is entered by a shipper (or shipper's agent) into AES will determine if the shipper is required to also enter an Export Form Certificate number in AES. As an example, a shipment of apples weighing less than 5,000 pounds exported to any foreign country is exempt from inspection requirements. If a shipment of apples weighing 4,000 pounds is destined for Canada, this information

would be entered into AES. From that AES shipment information, the system would determine that entry of an Export Form Certificate number was not required because the shipment is exempt from inspection requirements.

In comparison, if a shipment of apples weighing 6,000 pounds in bulk containers is destined for Canada, the shipper's entry of that shipment's weight and destination into AES would trigger the requirement that the shipper enter an Export Form Certificate number because the weight and destination of the shipment would meet the parameters associated with mandatory inspection. However, apples in bulk containers destined for Canada are exempt from inspection requirements pursuant to § 33.12(d). Currently, there is no mechanism within AES that will recognize this exemption, so USDA has created a special exemption code (BULK CONTRS) that shippers of these apples would enter in the Export Form Certificate field in lieu of a certificate number. Entry of this special USDA-defined exemption code would enable shippers of apples in bulk containers destined for Canada to complete the entry of information in AES.

In the future, AMS intends to work with Census to develop a new harmonized tariff schedule (HTS) code specifically for exported apples in bulk containers that are destined for Canada. Once this HTS code is developed, shippers would enter that code into AES, which would signal to AES that the shipment is exempt and would therefore not require entry of the special exemption code. Once this new HTS code becomes available, changes to the regulations would be proposed to remove the requirement to enter the special BULK CONTRS exemption code.

As noted earlier, most shippers are accustomed to entering data about exports into AES to create mandatory Electronic Export Information (EEI) about each shipment. There are various methods for filing EEI into AES, such as through AES-certified software from a third-party vendor or through AES*Direct,* a free Internet application supported by Census. The EEI contains basic information about an export including but not limited to the names and addresses of the parties to a transaction; the Harmonized Tariff Schedule number; and the description, quantity, and value of the exported items. In 2014, the Census Bureau agreed to mandate entry of the Export Form Certificate number (or the exemption code for apples shipped in bulk containers to Canada) by shippers in the AES for AMS' tracking and enforcement purposes. Shippers would be required to electronically enter Export Form Certificate numbers or the exemption code for bulk container apples destined for Canada (BULK CONTRS) in AES. To require that shippers enter the Export Form Certificate number or, when applicable, the BULK CONTRS exemption code, the Export Fruit Acts regulations would be revised to add a new § 33.11(b) for apples and a new § 35.12(d) for grapes.

This proposed action would also require a shipper to maintain and submit, upon request, a paper or electronic copy of the Export Form Certificate to AMS. As previously noted, AMS would compare EEI from AES against inspection information from its SCI Division. However, there could be instances when AMS might need further verification of inspection and would, therefore, need to request a copy of the Export Form Certificate from the shipper. For example, if a certificate number in AES does not match any certificate numbers in SCI-provided data, AMS might require that the shipper provide a copy of an Export Form Certificate to AMS so that the information on that certificate could be compared against the EEI from AES. These proposed changes would give AMS the ability to track exports of apples and grapes to confirm that quality requirements are being met. Accordingly, this requirement would be added to the Export Fruit Acts regulations in § 33.11(c) for apples and § 35.12(c) for grapes.

In conjunction with these proposed new recordkeeping requirements, this proposed action would also remove the requirement in § 33.11(a) for apples and § 35.12(c) for grapes that carriers of exported fruit retain a copy of the Export Form Certificate. This requirement would no longer be necessary for AMS compliance monitoring because, as proposed herein, shippers would be required to retain a copy of the certificate (and upon request, the shipper would be required to provide such copy, electronically or in paper form, to AMS).

Streamlining the Export Process Under the International Trade Data System (ITDS)

Changing the Export Fruit Acts regulations to provide for the electronic entry of an Export Form Certificate number supports the International Trade Data System (ITDS), a key White House economic initiative that has been under development for over ten years and is mandated for completion by December 31, 2016 (pursuant to Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses,* signed by President Obama on February 19, 2014; 79 FR 10657). Under ITDS, the export and import trade will file shipment data through an electronic ''single window,'' instead of completing multiple paper-based forms to report the same information to different government agencies. ITDS will greatly reduce the burden on America's export and import trade while still providing information necessary for the United States to ensure compliance with its laws.

By the end of 2016, the ITDS ''single window'' will be presented to the export and import trade through CBP's Automated Commercial Environment (ACE) platform. ACE will be the primary system through which the global trading community will file information about imports and exports so that admissibility into the U.S. may be determined and government agencies may monitor compliance.

In March 2014, AES functionality was incorporated into ACE, and export transactions are now processed in ACE. The migration of AES functionality to ACE was, for the most part, transparent to filers of export shipment data. This system migration supports the ITDS ''single window'' because, as noted earlier, ACE will be the system primarily used by the trade community to file import and export shipment data, with the functionality of AES embedded within that system.

Prior to the implementation of the ITDS ''single window,'' CBP is requiring that the 47 partnering government agencies (PGAs) that are participating in the ITDS project, including AMS, ensure that agency regulations provide for the electronic entry of export and/or import information.

AMS' Marketing Order and Agreement Division (MOAD) is currently developing the functionality of a new automated system called the Compliance and Enforcement Management System (CEMS) that will store and analyze data in support of ITDS. CEMS will receive export data from the ACE system that will be utilized in monitoring compliance with regulations under the Export Fruit Acts.

The revised reporting requirements for exported apples and grapes will meet CBP's requirements for ITDS/ACE by providing for the electronic entry of the Export Form Certificate number (or the special BULK CONTRS exemption code, when applicable).

Miscellaneous Proposed Changes

In addition to the previously described changes, this action would make changes to update and clarify the regulations. First, a definition of

''shipper'' would be added to the regulations in § 33.9 for apples and § 35.9 for grapes. This change is intended to provide clarity about a commonly used term.

Additionally, gender-specific language would be changed from ''he'' to ''he or she'' in new § 33.11(d) and § 35.12(e).

In addition, existing § 35.12(d) would be removed because it is no longer needed. The requirements in § 35.12(d) were enacted to fulfill provision 2 of the Export Grape and Plum Act (7 U.S.C. 592), which provides that grapes could be shipped in fulfillment of contracts that were entered into prior to the effective date of the Export Grape and Plum Act regulations, as long as those grapes were shipped within 2 months of the date of the contracts. The intent of § 35.12(d) was to provide exporters with an opportunity to meet prior contractual obligations and comply with the newly enacted regulations without meeting additional requirements. Because the need for § 35.12(d) no longer exists, this section would be removed.

Finally, in addition to new paragraphs being added to §§ 33.11 and 33.12, existing §§ 33.11(a) and 35.12(b)(2) would be reorganized into multiple paragraphs in an effort to make the regulations easier to read, understand, and follow. Adding additional requirements to already lengthy paragraphs might cause confusion and misunderstanding; therefore, reorganization was deemed to be appropriate. To further improve the overall readability of §§ 33.11 and 35.12, headings would also be added at the beginning of each paragraph to help the reader quickly identify the paragraph's content.

Initial 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 action on small entities. Accordingly, AMS has prepared this initial 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. Small agricultural service firms, including shippers and carriers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

This proposed rule would change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act and the Export Grape and Plum Act (7 CFR part 33, ''Regulations Issued Under Authority of the Export Apple Act,'' and 7 CFR part 35, ''Export Grapes and Plums,'' respectively) by requiring shippers of apples and grapes exported from the United States to enter into AES the certificate numbers of Export Form Certificates for such exports (or, in lieu of certificate numbers, the exemption code BULK CONTRS for apples in bulk bins destined for Canada). It would also require shippers to provide, upon request, paper or electronic copies of the certificates to AMS. It would also remove the requirement that carriers retain copies of the certificates. Plums are not currently regulated under 7 CFR part 35, so this change has no impact on exporters or carriers of plums.

Requiring shippers of apples and grapes to electronically enter an export certificate number (or the BULK CONTRS exemption code) would have very little impact on them. The certificate number is currently provided to shippers on the certificate they receive from the Federal or Federal-State Inspection Service, and AMS is providing the special BULK CONTRS exemption code to shippers for those instances when it is required. Also, shippers already use AES to enter Electronic Export Information (EEI) about shipments, currently approved for collection under OMB No. 0607–0152, and entry of the certificate number or exemption code would be part of that EEI process.

Finally, shippers currently provide copies of Export Form Certificates to other parties, such as carriers, as required by the Export Fruit Acts regulations. Therefore, requiring shippers to provide AMS with a copy of an Export Form Certificate (upon request, when other methods of compliance verification are not available to AMS) would be a usual and customary practice. This proposed action would also require that shippers maintain certificates (electronic or paper) on file for a minimum of three (3) years in the event AMS would require that a shipper provide proof of inspection for compliance purposes. Maintaining records, such as export certificates, is a standard business practice and, therefore, should not have a major economic impact on shippers.

These proposed changes would create a minimal burden on shippers while providing AMS with the ability to properly monitor export shipments for compliance with the regulations.

Removing the requirement that carriers of exported apples and grapes retain copies of inspection certificates (Export Form Certificates) would reduce the recordkeeping burden on those carriers.

According to apple industry statistics, there are approximately 60 shippers of exported apples subject to regulation under the Export Apple Act. USDA's Foreign Agricultural Service (FAS) data estimates the value of fresh apple exports subject to regulation in 2015 was approximately $1.0 billion. Therefore, the estimated receipts for shippers of exported apples is well over $7,500,000.

According to grape industry information, there are approximately 14 shippers of exported grapes subject to regulation under the Export Grape and Plum Act. Data provided by FAS indicate that the estimated value of grape exports in 2015 that were subject to these regulations was $512 million. Therefore, the estimated receipts for shippers of exported grapes is well over $7,500,000.

USDA estimates there are approximately 15 carriers of exported apples and 5 carriers of exported grapes that would be impacted by the lessening of regulatory requirements proposed by this action. USDA does not have access to data about the business sizes of these carriers.

Based on the above information, it may be concluded that a majority of shippers of exported apples and grapes would not be classified as small businesses. USDA is unable to make a determination about whether carriers of exported apples and grapes could be classified as small businesses.

This proposed rule is issued under the authority of the Export Apple Act (7 U.S.C. 581–590), and the Export Grape and Plum Act (7 U.S.C. 591–599). This proposed rule proposes changing ''Regulations Issued under Authority of the Export Apple Act'' (7 CFR part 33) and ''Export Grapes and Plums'' (7 CFR part 35). This action would require shippers of apples and grapes exported from the United States to enter the Export Form Certificate number for those exports into the U.S. Census Bureau's Automated Export System (AES) (or, in lieu of a certificate number, to enter exemption code BULK CONTRS for apples in bulk containers destined for Canada). It would also require shippers to maintain and provide, upon request, a paper or electronic copy of the Export Form Certificate to AMS and would remove the requirement that carriers retain copies of the certificates. These changes to the reporting requirements would allow AMS to

verify that shipments of exported apples and grapes are in compliance with the quality requirement regulations.

There are estimated to be 60 shippers of U.S.-grown apples, 14 shippers of U.S.-grown grapes, and 20 carriers of these apples and grapes subject to the Export Fruit Acts regulations. The shippers currently receive copies of Export Form Certificates from the Federal or Federal-State Inspection Service upon completion of an inspection of apples or grapes destined for export. The regulations currently require that the shippers provide copies of the certificates to the export carriers who transport the fruit, and these carriers are, in turn, required to keep these certificates on file for at least three years following the date of export. The burden of recordkeeping for the maintenance of these certificates is currently approved by the Office of Management and Budget (OMB) under OMB No. 0581–0143, ''Export Fruit Acts'' (7 U.S.C. 581–590 and 7 U.S.C. 591–599).

Regarding alternatives to this proposed action, AMS considered making no changes to the Export Fruit Acts regulations. However, AMS determined that having the Export Form Certificate number for apples and grapes exported from the United States is necessary for monitoring compliance of these shipments with the regulations. AMS also considered not requiring shippers of apples in bulk containers destined for Canada to enter a special USDA-defined exemption code in lieu of a certificate number. However, until a new HTS code is created for these exempt apples, shipments of bulk containers of apples destined for Canada will require entry of data in the AES export certificate number field; therefore, the BULK CONTRS exemption code would enable shippers of these apples to complete the electronic entry of export data in AES.

AMS also considered requiring shippers to provide AMS with a paper or electronic copy of all Export Form Certificates (rather than just upon request) but determined that entering the certificate number in AES would be less burdensome for shippers. AMS also determined that this change would meet CBP's requirement that all government agencies who are partnering with CBP on the ITDS project (including AMS) update their regulations to provide for the electronic entry of export and import shipment data.

AMS also considered not requesting a shipper to submit a copy of an Export Form Certificate upon request; however, there may be some unique cases where additional verification of compliance would be required if AES or SCI data were not sufficient.

Finally, AMS considered keeping the requirement that carriers maintain copies of the Export Form Certificates on file; however, AMS determined that the other changes proposed herein would make this requirement redundant and burdensome. Therefore, alternatives to this proposed rule were rejected.

This proposed rule would revise the information collection currently approved under OMB No. 0581–0143 by increasing the existing recordkeeping burden on shippers and reducing the existing recordkeeping burden on carriers. These changes in burden will be further explained in the Paperwork Reduction Act section below.

AMS is responsible for enforcing the regulations of the Export Fruit Acts, including verification that export shipments of apples and grapes meet quality requirements. Currently, the regulations do not require shippers of these export fruits to provide AMS with proof of inspection and certification compliance. Without this proposed change to the regulations, AMS will lack the ability to effectively meet its duty of enforcement.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because (1) the export industry is fully aware of ITDS and its goal to streamline and automate paper-based processes and has attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. government over the past few years, and (2) CPB is requiring the timely update of import and export regulations to meet the ITDS electronic data submission requirement. All written comments timely received will be considered before a final determination is made on this matter.

All written comments timely received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS announces its intention to submit a revision to a currently approved information collection.

Title: Export Fruit Acts, 7 U.S.C. 581–590 and 7 U.S.C. 591–599.

OMB Number: 0581–0143.

Type of Request: Revision.

Abstract: The information collection requirements contained in this request are necessary for the administration of proposed amendments to regulations authorized by the Export Apple Act and the Export Grape and Plum Act (''Export Fruit Acts''). These regulations are found at 7 CFR part 33, ''Regulations Issued under Authority of the Export Apple Act,'' and 7 CFR part 35, ''Export Grape and Plum Act.''

Under the Export Fruit Acts regulations, unless otherwise exempted by those Acts, each shipment of fresh apples and grapes must be inspected by the Federal or Federal-State Inspection Service to ensure the fruit meets quality and other requirements effective under the Acts. This inspection and certification must occur prior to export. If the inspection service determines that a lot of apples or grapes intended for export meets the applicable quality requirements, the inspector completes an Export Form Certificate (currently, a paper FV–207 or electronic FV–207e for non-Canadian export destinations and a paper FV–205 or electronic FV–205e for exports to Canada), certifying the fruit meets quality export requirements and providing shipping identification information. This certificate is provided to the shipper of the apples or grapes. In turn, the shipper must then provide a copy of the certificate to the export carrier or, if the fruit is inspected and certified somewhere other than the port of exportation, to the agent of the first carrier who transports the fruit to port for exportation. Currently, export carriers must keep these certificate copies on file for at least three years after the date of export.

A shipper does not currently complete any form or file with USDA any form or form-related information as part of this inspection and certification process.

This proposed action would establish a requirement that shippers enter the Export Form Certificate number assigned to each inspection certificate into the Automated Export System (AES), an existing system that facilitates

the electronic entry of information about export shipments. The Marketing Order and Agreement Division (MOAD) would cross-reference this certificate number and the associated export shipment information (EEI) with inspection information provided electronically to MOAD by SCI, thereby allowing MOAD to monitor compliance with the regulations. The collection of AES data, which would include the Export Form Certificate number or the special BULK CONTRS exemption code, is approved under the Census Bureau's OMB No. 0607–0152; therefore, the estimated burden associated with the electronic entry of the certificate number will not be included in this USDA action.

In addition, this proposed action would require shippers to maintain and provide, upon request, a paper or electronic copy of the Export Form Certificate to MOAD when needed to monitor compliance with regulations. MOAD anticipates that the majority of its compliance monitoring would be accomplished by verifying the Export Form Certificate number and other EEI entered by a shipper into AES against inspection data provided by SCI; however, when needed, MOAD would request copies of these certificates from shippers to help verify that apple and grape exports meet export inspection and certification requirements.

Finally, this proposed action would remove the requirement that carriers retain a copy of the Export Form Certificate. As noted above, this action would add a requirement that a shipper maintain and provide to MOAD, upon request, a paper or electronic copy of the certificate. MOAD would require a shipper to submit a copy of the certificate in those cases when it would be needed to monitor compliance. Because shippers would be responsible for maintaining and submitting the certificates, upon request, MOAD would no longer require a carrier to retain a copy of these certificates for its compliance purposes.

A shipper's failure to provide proof of compliance to MOAD could result in a compliance investigation and legal action, if warranted.

The information collection under OMB No. 0581–0143 was last approved in 2013. On June 14, 2016, AMS published a 60-day Notice in the **Federal Register** announcing its intent to renew the collection (81 FR 38656–57), followed by a 30-day Notice in the **Federal Register** for OMB review (81 FR 55428).

The currently approved collection authorizes the use of FV–207 (inspection certificate for export shipments bound for non-Canadian destinations). In the 2016 renewal, AMS added the FV–205 form (inspection certificate for Canadian-bound export shipments) that is also used by SCI (the FV–205 was not previously approved under this or any other OMB collection) and revised it to combine information from the existing FV–205 and FV–207 forms. As a result, the existing FV–207 will be discontinued. In the 2016 renewal, AMS is also seeking OMB approval to decrease the burden per certificate from the currently approved 15 minutes to 5 minutes. This is sufficient time to complete the related recordkeeping actions.

In the last renewal of the collection in 2013, it was reported that a total of 102 respondents (68 shippers and 15 carriers for exported apples, and 14 shippers and 5 carriers for exported grapes) use FV–207. Current industry data indicate a slight reduction in the estimated number of export apple shippers (60) but no changes in the estimated number of export grape shippers (14) or carriers of export apples (15) and grapes (5).

The 2013 renewal reported the number of certificates per year to be approximately one response per respondent. This suggested that there were only 102 certificates issued per year. This was reported in error, and the 2016 renewal provides more accurate figures. USDA's Foreign Agricultural Service estimates that, for the five-year period 2011–2015, the average number of export apple and grape shipments requiring inspection per year was 42,326 for apples and 10,462 for grapes, for a total five-year average of 52,788 certificates per year that would need to be maintained.

Based on this information and the proposed decreased burden per certificate, the 2016 renewal estimates a total recordkeeping burden of 4,381 hours, an increase of 4,356 burden hours from the currently approved 25 burden hours.

In addition, AMS estimates it may require shippers to submit approximately 10 percent of these certificates (5,279) upon request. The estimated burden for maintaining the revised FV–205 form certificates as well as for submitting an estimated 10 percent of those certificates to AMS, when requested, would be 5 minutes, which is less than the current 15-minute recordkeeping burden. As a result of this action, the information collection package would be revised to reflect a total estimated recordkeeping burden of 4,837 hours. Since carriers would no longer be required to keep copies of the certificates, the current recordkeeping burden for carriers of apples and grapes would be removed. AMS would submit a Justification for Change to OMB for approval that encompasses these revisions.

As noted earlier, the FV–205 form is being revised to combine the information contained on the existing FV–205 and FV–207 forms; this change will result in discontinuance of the FV–207 form. The FV–205 update also adds instructions for the shipper regarding entry of the Export Form Certificate number in AES for exported apples and grapes and revises the text to include a burden statement and other minor modifications, such as updating the program name in the form heading. SCI will continue to use the existing electronic versions of the forms (FV–205e and FV–207e) until SCI's Fresh Electronic Inspection Reporting System (FEIRS) is modified to reflect the data contained in the revised FV–205 form. FEIRS allows inspectors to electronically enter and report inspection data; it is able to electronically transmit a certificate to an email address or fax number, or the certificate may be printed. Once the necessary FEIRS revisions are completed to enable entry of data to the revised FV–205e form, the FV–207e form will be discontinued.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5 minutes per response for retention of the certificate by shippers and also for submission, upon request, of the certificate by shippers to MOAD.

Respondents: Shippers of apple exports and grape exports.

Estimated Number of Respondents: 74 (60 for apples and 14 for grapes).

Estimated Total Annual Responses: 58,067 (42,326 certificates maintained and 4,233 certificates potentially submitted to MOAD for apples; and 10,462 certificates maintained and 1,046 certificates potentially submitted to MOAD for grapes).

Estimated Number of Responses per Respondent: 775 for apples and 822 for grapes.

Estimated Total Annual Burden on Respondents: 4,837 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should reference OMB No. 0581–0143 and ''Export Fruit Acts.'' Comments should be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects

7 CFR Part 33

Apples, Exports, Pears, Reporting and recordkeeping requirements.

7 CFR Part 35

Administrative practice and procedure, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR parts 33 and 35 as follows:

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE ACT

■ 1. The authority citation for 7 CFR part 33 continues to read as follows:

Authority: 48 Stat. 124; 7 U.S.C. 581–590.

■ 2. Add new § 33.9 to read as follows:

§ 33.9 Shipper.

Shipper means any person who ships or offers for shipment apples to any foreign destination.

■ 3. Revise § 33.11 to read as follows:

§ 33.11 Inspection and certification.

(a) *Inspection and certification.* Each person shipping, or offering for shipment, apples to any foreign destination shall cause them to be inspected by the Federal or Federal-State Inspection Service in accordance with regulations governing the inspection and certification of fresh fruits, and vegetables and other products (Part 51 of this title) and certified as meeting the requirements of the Act and this part. No carrier shall transport apples, or receive apples for transportation to any foreign destination unless they have been so inspected and certified. Inspection and certification may be obtained at any time prior to exportation of the apples. Such a Federal or Federal-State certificate shall be designated as an ''Export Form Certificate'' and shall include the following statement: ''Meets requirements of Export Apple Act.''

(b) *Export Form Certificate number.* The shipper (or shipper's authorized agent) shall enter the Export Form Certificate number in the Automated Export System (AES), pursuant to the Electronic Export Information (EEI) filing requirements under the Foreign Trade Regulations (15 CFR part 30) and Export Clearance Requirements (15 CFR part 758), except the exemption code BULK CONTRS shall be entered for apples in bulk containers destined for Canada.

(c) *Delivery and filing of Export Form Certificate.* The shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the export carrier. Whenever apples are inspected and certified at any point other than the port of exportation, the shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the agent of the first carrier that thereafter transports such apples, and such agent shall deliver the copy to the proper official of the carrier on which the apples, covered by the certificate or memorandum, are to be exported. The shipper shall also maintain an electronic or paper copy of the Export Form Certificate for a period of not less than three (3) years after date of export and shall submit, upon request from USDA, an electronic or paper copy of the Export Form Certificate to USDA, AMS, Specialty Crops Program, Marketing Order and Agreement Division, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–4607; fax (202) 720–5698; or email *AMSCompliance@ams.usda.gov.*

(d) *Spray residue tolerance.* If the inspector has reason to believe that samples of a lot of apples have been obtained for a determination as to compliance with tolerance for spray residue, established under the Federal Food, Drug and Cosmetic Act, as amended (52 Stat. 1040; 21 U.S.C. 301 *et seq.*), he or she shall not issue a certificate on the lot unless it complies with such tolerances.

PART 35—EXPORT GRAPES AND PLUMS

■ 4. The authority citation for 7 CFR part 35 continues to read as follows:

Authority: 74 Stat. 734; 75 Stat. 220; 7 U.S.C. 591–599.

■ 5. Add § 35.9 to read as follows:

§ 35.9 Shipper.

Shipper means any person who ships or offers for shipment any variety of vinifera species table grapes to any foreign destination.

■ 6. Revise § 35.12 to read as follows:

§ 35.12 Inspection and certification.

(a) *Inspection.* Each person shipping or offering for shipment any variety of vinifera species table grapes to any foreign destination other than destinations in Canada or Mexico shall cause them to be inspected within 14 days prior to date of export by the Federal or Federal-State Inspection Service in accordance with regulations governing the inspection and certification of fresh fruits, vegetables, and other products (part 51 of this title) and certified as meeting the requirements of the Act and this part.

(b) *Certification.* The Federal or Federal-State certificate shall be designated as an ''Export Form Certificate'' and shall include one of the following statements as applicable:

(1) For any variety meeting specifications of paragraph (a) of § 35.11 ''Meets requirements of Export Grape and Plum Act'' or (2) For any variety meeting specifications of paragraph (b) of § 35.11 ''Meets requirements of Export Grape and Plum Act except for export to destinations in Europe, Greenland, or Japan.'' No carrier shall transport or receive for transportation any such variety to any foreign destination other than Canada or Mexico unless a copy of the Export Form Certificate issued thereon showing that the grapes meet requirements for the applicable export destination is surrendered to such carrier when such variety is received.

(c) *Delivery and filing of Export Form Certificate.* The shipper shall deliver a copy of the Export Form Certificate covering the shipment to the export carrier. Whenever grapes are inspected and certified at any point other than port of exportation, the shipper shall deliver a copy of the Export Form Certificate to the agent of the first carrier that thereafter transports such grapes, and such agent shall deliver such copy to the proper official of the carrier on which the grapes are to be exported. The shipper shall also maintain an electronic or paper copy of the Export Form Certificate for a period of not less than three (3) years after date of export and shall submit, upon request from USDA, an electronic or paper copy of the Export Form Certificate to USDA, AMS, Specialty Crops Program, Marketing Order and Agreement

Division, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–4607; fax (202) 720–5698; or email *AMSCompliance@ams.usda.gov.*

(d) *Export Form Certificate number.* The shipper (or shipper's authorized agent) shall enter the Export Form Certificate number in the U.S. Census Bureau's Automated Export System (AES), pursuant to the Electronic Export Information (EEI) filing requirements under the Foreign Trade Regulations (15 CFR part 30) and Export Clearance Requirements (15 CFR part 758).

(e) *Spray residue tolerance.* If the inspector has reason to believe that samples of a lot of any variety of vinifera species table grapes have been obtained for a determination as to compliance with tolerance for spray residue, established under the Federal Food, Drug and Cosmetic Act, as amended (52 Stat. 1040; 21 U.S.C. 301 *et seq.*), he or she shall not issue a certificate on the lot unless it complies with such tolerances.

Dated: November 29, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–29017 Filed 12–2–16; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2014–BT–STD–0031]

RIN 1904–AD20

Energy Conservation Program: Energy Conservation Standards for Residential Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Reopening of public comment period.

SUMMARY: On September 23, 2016, the U.S. Department of Energy (DOE) published a supplemental notice of proposed rulemaking (SNOPR) and announcement of public meeting pertaining to proposed energy conservation standards for residential furnaces in the **Federal Register**. The notice provided an opportunity for submitting written comments, data, and information by November 22, 2016. This document announces a reopening of the public comment period for submitting comments and data on the SNOPR or any other aspect of the rulemaking for residential furnaces. The comment period is reopened until January 6, 2017.

DATES: The comment period for the supplemental notice of proposed rulemaking published on September 23, 2016 (81 FR 65719) is reopened. DOE will accept comments, data, and information regarding this rulemaking received no later than January 6, 2017.

ADDRESSES: *Instructions:* Any comments submitted must identify the SNOPR on Energy Conservation Standards for Residential Furnaces, and provide docket number EERE–2014–BT–STD–0031 and/or regulatory information number (RIN) 1904–AD20. Comments may be submitted using any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: ResFurnaces2014STD0031@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

(3) *Postal Mail:* Appliance and Equipment Standards Program, 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:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0031.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *residential_furnaces_and_boilers@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On September 2, 2016, DOE issued a pre-publication supplemental notice of proposed rulemaking (September 2016 SNOPR) pertaining to proposed energy conservation standards for residential furnaces on the Appliance and Equipment Standards Web page *http://energy.gov/eere/buildings/downloads/issuance-2016-09-02-energy-conservation-program-energy-conservation*. DOE also posted on the same Web page its analytical tools and supplementary documentation for residential furnaces. In that pre-publication notice, DOE provided for a 30-day comment period. Following the issuance of the pre-publication notice, Spire Inc., the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), and the American Gas Association and American Public Gas Association (AGA/APGA, jointly) submitted requests that DOE extend the 30-day comment period by 60 additional days. (Spire, No. 219 at p. 1; AGA/APGA, No. 220 at pp. 1–3; AHRI, No. 221 at p. 1) These commenters requested additional time to review DOE's analytical tools and supplementary materials supporting the September 2016 SNOPR. To accommodate those requests, DOE extended the comment period by 30 days when it published in the **Federal Register** the September 23, 2016 SNOPR, providing for a comment period of 60 days ending November 22, 2016. 81 FR 65719. During the SNOPR public meeting on October 17, 2016, DOE noted that between the date of issuance of the pre-publication notice (along with analytical tools and documentation) and the end of the comment period on November 22, 2016, interested parties would have had 81 days to review the notice, analytical tools and supplementary documentation. (DOE, No. 243 at p. 213)

Following publication in the **Federal Register** of the September 2016 SNOPR on September 23, 2016, commenters again requested that DOE extend the

comment period to provide for a 90 day total comment period. (AGA/APGA, No. 232 at p. 1; Spire, No. 234 at p. 14; APGA, No. 235 at p. 2; Lennox, No. 245 at pp. 1–2; Heating, Air-conditioning, and Refrigeration Distributors International and Air-Conditioning Contractors of America, No. 251 at p. 1; APGA, SNOPR Public Meeting Transcript, No. 243 at p. 31) Some commenters subsequently submitted requests for an even longer extension, equivalent to a total 120 day comment period. (Spire, No. 241 at pp. 1–2; AGA/APGA, No. 242 at pp. 1–2; AHRI, No. 244 at p. 1; Carrier, No. 250 at p. 1) Spire submitted an additional comment that a 90-day comment period would be acceptable, and AGA requested that DOE issue a written response to the comment period extension requests. (Spire, No. 247 at p.1; AGA, No. 249 at p.1) In general, commenters suggested that the quantity of supplemental information supporting the rulemaking analysis warranted additional time for review. The National Resource Defense Council (NRDC) suggested that DOE's extension from the 30-day comment period in the pre-publication notice to the 60-day period at publication represented a delay, and recommended that DOE not extend the comment period any further. (NRDC, SNOPR Public Meeting Transcript, No. 243 at p. 50)

In view of the requests for an additional comment period extension for the September 2016 SNOPR, DOE has determined that a reopening of the public comment period and a 45-day extension to January 6, 2017 for the September 2016 SNOPR is appropriate. The comment period is reopened until January 6, 2017. DOE further notes that any submissions of comments or other information submitted between the original comment end date and January 6, 2017 will be deemed timely filed.

Issued in Washington, DC, on November 21, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–29080 Filed 12–2–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9432; Directorate Identifier 2016–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–800, –900, and –900ER series airplanes. This proposed AD was prompted by reports indicating in-flight valve failure of the left temperature control valve and control cabin trim air modulating valve. This proposed AD would require replacing the left temperature control valve and control cabin trim air modulating valve. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 19, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9432.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9432; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9432; Directorate Identifier 2016–NM–116–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports indicating in-flight valve failure of the left temperature control valve and control cabin trim air modulating valve. These valves can fail in their open positions causing elevated temperatures in the flight deck or the passenger cabin during cruise. Operators have reported events where they were unable to control the flight deck and passenger cabin temperatures during cruise. This condition, if not corrected, could result in temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which

could lead to the impairment of the flightcrew and consequent risk of loss of continued safe flight and landing. Such elevated temperatures could result in diverted flights since the flight deck door cannot be opened for an extended time during cruise. Airplanes on extended operation routes are most at risk because they can be 3 hours away from the nearest airport.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016. The service information describes procedures for replacing the left temperature control valve and control cabin trim air modulating valve, part number 398908–4, with new part number 398908–3 or 398908–5. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9432.

Costs of Compliance

We estimate that this proposed AD affects 319 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of valves ..	9 work-hours × $85 per hour = $765 per replacement.	$4,800	$5,565 per replacement	$1,775,235 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9432; Directorate Identifier 2016–NM–116–AD.

(a) Comments Due Date

We must receive comments by January 19, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports indicating in-flight valve failure of the left temperature control valve and control cabin trim air modulating valve. We are issuing this AD to prevent temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which could lead to the impairment of the flightcrew and consequent risk of loss of continued safe flight and landing.

(f) Compliance

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

(g) Replacement of the Left Temperature Control Valve and Control Cabin Trim Air Modulating Valve

Within 60 months after the effective date of this AD, replace the left temperature control valve and control cabin trim air modulating valve, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a temperature control valve, part number 398908–4, on either the left temperature control valve location or the control cabin trim air modulating valve location on any Model 737–800, -900, or -900ER airplane.

(i) Exception to the Service Information

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

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

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact: Stanley Chen, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6585; fax: 425–917–6590; email: *stanley.chen@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28631 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9434; Directorate Identifier 2016–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the web lap splices in the aft pressure bulkhead are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections of the web lap splices in the aft pressure bulkhead for cracking of the fastener holes, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 19, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9434.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9434; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9434; Directorate Identifier 2016–NM–136–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We

will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

Analysis by the DAH has determined that the web lap splices in the aft pressure bulkhead are susceptible to WFD for certain Model 737–600, –700, –700C, –800, and –900 series airplanes. This cracking, if left undetected, could result in possible rapid decompression and loss of structural integrity of the airplane.

During in-service inspections of a 737–300 aft pressure bulkhead, one operator reported two cracks on the web lap splices outside the specified inspection area. Since Model 737–600, –700, –700C, –800, and –900 series airplanes have a similar structural design for the aft pressure bulkhead, cracks could develop in the same location on these airplanes.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016. The service information describes procedures for a low frequency eddy current inspection to detect cracking of each web lap splice of the aft pressure bulkhead at the fastener row common to the stiffener, and a high frequency eddy current inspection to detect cracking of each web lap splice of the aft pressure bulkhead at the fastener row not common to the stiffener. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between this Proposed AD and the Service Information.''

Difference Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016, specifies to contact the manufacturer for certain instructions, but this proposed AD would require using repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 693 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Inspections	26 work-hours × $85 per hour = $2,210 per inspection cycle	$2,210 per inspection cycle ...	$1,531,530 per inspection cycle.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9434; Directorate Identifier 2016–NM–136–AD.

(a) Comments Due Date

We must receive comments by January 19, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the web lap splices in the aft pressure bulkhead are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracks of the web lap splices in the aft pressure bulkhead, which could result in possible rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Except as provided by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016: Do a low frequency eddy current (LFEC) inspection to detect cracking of each web lap splice of the aft pressure bulkhead at the fastener row common to the stiffener, and a high frequency eddy current (HFEC) inspection to detect cracking of each web lap splice of the aft pressure bulkhead at the fastener row not common to the stiffener, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016.

(1) If no crack is found: Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016.

(2) If any crack is found: Do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Repair the crack before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Although Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016, specifies to contact Boeing for repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair as specified in this paragraph.

(ii) On areas that are not repaired, repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016.

(h) Service Information Exception

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1353, dated July 21, 2016, specifies a compliance time ''after the Original Issue date of this Service Bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) Except as required by paragraph (g)(2)(i) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28664 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9433; Directorate Identifier 2016–NM–159–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model MD–90–30 airplanes. This proposed AD was prompted by a report of cracking in a horizontal stabilizer rear spar cap. This proposed AD would require repetitive open hole eddy current high frequency (ETHF) or surface eddy current low frequency (ETLF) inspections for any crack in the left and right side horizontal stabilizer rear spar upper caps, and repair or replacement if necessary. We are proposing this AD to prevent the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 19, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9433.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9433; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9433; Directorate Identifier 2016–NM–159–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of cracking in an MD–90 horizontal stabilizer rear spar cap at station XE = +/ − 5.931. The affected airplane had accumulated 36,588 total flight hours and 24,975 total landing cycles. Without routine inspections, such cracks could grow to critical length before being detected. This condition, if not corrected, could result in fatigue cracking of the horizontal stabilizer rear spar upper cap, which could adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016. The service information describes procedures for repetitive open hole ETHF or surface ETLF inspections for any crack in the left and right side horizontal stabilizer rear spar upper caps common to the elevator hinge fitting at station XE = +/ − 5.931, and repair or replacement. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9433.

Costs of Compliance

We estimate that this proposed AD affects 105 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.	$71,400 per inspection cycle.

We estimate the following costs to do any necessary repairs or replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Upper cap splice repair or replacement (each side)	368 work-hours × $85 per hour = $31,280	$64,306	$95,586.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9433; Directorate Identifier 2016–NM–159–AD.

(a) Comments Due Date

We must receive comments by January 19, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by a report of cracking in a horizontal stabilizer rear spar cap at station XE = +/ − 5.931. We are issuing this AD to detect and correct fatigue cracking of the horizontal stabilizer rear spar upper cap, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Open Hole Eddy Current High Frequency or Surface Eddy Current Low Frequency Inspections

Except as required by paragraph (i) of this AD, at the applicable times specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016: Do either an open hole eddy current high frequency (ETHF) or a surface eddy current low frequency (ETLF) inspection for any crack in the left and right side horizontal stabilizer rear spar upper caps common to the elevator hinge fitting at station XE = +/ − 5.931, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016, except as required by paragraph (i) of this AD. Repeat the inspection thereafter at the time specified in tables 1 through 4, as applicable, of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016.

(h) Horizontal Rear Spar Upper Cap Splice Repair or Replacement

If any crack is found during any inspection required by paragraph (g) of this AD, repair or replace before further flight in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016.

(i) Service Information Exceptions

Where Boeing Alert Service Bulletin MD90–55A018, dated June 29, 2016, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector

or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

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

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled ''RC Exempt,'' then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 17, 2016.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–28668 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

43 CFR Part 30

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Probate Regulation Updates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Tribal consultation; reopening of comment period.

SUMMARY: On June 20, 2016, the Bureau of Indian Affairs announced Tribal consultation on potential updates to probate regulations and announced that it would accept written comments until August 1, 2016. We are reopening the comment period to allow additional time for Tribal and public comment and will accept all comments received before January 4, 2017.

DATES: The comment period announced on June 20, 2016 (81 FR 39874) is reopened. Written comments must be received by January 4, 2017.

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

- *Email: consultation@bia.gov.*
- *By hard copy:* Submit by U.S. mail or hand delivery to: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., MS–3071–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION: As described below, we have identified three areas for modification that will have an immediate impact in streamlining the probate process. We are seeking comments with regard to the following topics, and welcome insight on other aspects of the probate regulatory framework that could be improved.

Probate Revisions Currently Under Consideration

1. Increasing the monetary limit for distribution of IIM account funds to pay for funeral services from $1,000 to $5,000.

The regulation, at 25 CFR 15.301, currently establishes a monetary limit of $1,000 for distribution of Individual Indian Money (IIM) account funds to pay for funeral expenses. There is an ongoing concern that $1,000 is not sufficient to pay for funeral expenses. While individuals may submit funeral related claims to be paid from estate account funds at any time before the conclusion of the first hearing by the Office of Hearings and Appeals (OHA), the Bureau of Indian Affairs (BIA) is aware that family members sometimes suffer financial hardship and lengthy delays as the estate is finalized and claims are approved.

Revisions under consideration:

- The BIA is considering a modification to this subpart that would increase the amount of funds available to use for funeral expenses. One proposed modification would amend current regulations by increasing the amount an individual may request from the decedent's IIM to no more than $5,000 for funeral expenses. The account must still contain a minimum balance of $2,500 in order to approve an expense under this section.
- In the interests of preserving estate account funds for heirs and other claimants, an alternative option would be to likewise raise the maximum payout to $5,000, *but* with the limitation that the total payments could not exceed 40% of the available account balance.

2. Allowing BIA to make minor estate inventory corrections.

The current regulation, at 43 CFR 30.126, requires a judge to issue a modification order if trust or restricted property belonging to a decedent is omitted from the inventory of an estate. As a result, it can take significant time to make minor estate inventory corrections to include omitted property.

Revision under consideration:

- The BIA is considering a regulatory modification to grant the BIA the authority to make estate inventory modifications when heirship has already been determined by an OHA order. The BIA would notify all interested parties to an estate in the event property interests were to be added. As in this current regulatory section, any modification that would result in property taking a different line of descent would still require OHA issuing a decision to re-determine heirs. For example, if adding property to a decedent's estate would cause that interest to become 5% or more of the parcel, and thus no longer subject to the American Indian Probate Reform Act's highly fractionated interest provisions, OHA would need to issue a new decision to re-determine descent and distribution of those interests. There would be no change to the requirement that any *removal* of property from a

decedent's inventory would require action by OHA. *See* 43 CFR 30.127.

3. Clarifying OHA's authority to order distribution of trust funds.

The current regulation at 43 CFR 30.254 governs how a judge distributes a decedent's trust or restricted property when the decedent died without a valid will and has no heirs. The rule establishes different distributions based on whether 25 U.S.C. 2206(a) applies, but does not identify trust personalty as a stand-alone category of trust property for distribution (where there are no land interests in the decedent's estate or within the jurisdiction of any tribe).

Revision under consideration:

• A modification to this regulation would provide clear authority for OHA to order distribution of trust funds when there are either no land interests in a decedent's estate or no land interests within the jurisdiction of any tribe. Additionally, where the estate contains trust personalty associated with one tribe but interests in trust lands associated with another, OHA would order the trust personalty distributed to the tribe with sufficient nexus to the funds, as determined by the judge, and the land distributed to the tribe with jurisdiction over those interests.

Dated: November 18, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–28751 Filed 12–2–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102952–16]

RIN 1545–BN43

Tax Return Preparer Due Diligence Penalty Under Section 6695(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that will modify the existing regulations related to the penalty under section 6695(g) of the Internal Revenue Code (Code) relating to tax return preparer due diligence. The temporary regulations implement recent law changes that expand the tax return preparer due diligence penalty under section 6695(g) so that it applies to the child tax credit (CTC), additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 6, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–102952–16), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–102952–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–102952–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rachel L. Gregory, 202–317–6845; concerning submissions of comments and the hearing, Regina Johnson, 202–317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in current § 1.6695–2 was previously reviewed and approved under control number 1545–1570. Control number 1545–1570 was discontinued in 2014, as the burden for the collection of information contained in § 1.6695–2 is reflected in the burden on Form 8867, ''Paid Preparer's Due Diligence Checklist,'' under control number 1545–1629.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR 1.6695–2 by imposing due diligence requirements on tax return preparers with respect to determining the eligibility for, or the amount of, the CTC/ACTC or AOTC, in addition to the EIC, on any return or claim for refund. The temporary regulations also amend section 1.6695–2 to reflect the changes made by section 208(c), Div. B of the Tax Increase Prevention Act of 2014, Public Law 113–295 (128 Stat. 4010, 4073 (2014)), requiring the IRS to index the penalty for inflation for returns and claims for refund filed after December 31, 2014.

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. When an agency issues a notice of proposed rulemaking, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect tax return preparers who determine the eligibility for, or the amount of, the EIC, the CTC/ACTC and/or the AOTC. The North American Industry Classification System (NAICS) code that relates to tax return preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to this notice of proposed rulemaking. Entities identified as tax return preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $20.5 million. The IRS estimates that approximately 75 to 85 percent of the 505,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has therefore determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has further determined, however, that the economic impact on entities affected by the proposed rules will not be significant. The current regulations under section 6695(g) already require tax return preparers to complete the Form 8867 when a return or claim for refund includes a claim of the EIC. Tax return preparers also must currently maintain records of the checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer.

The information needed to document eligibility for the CTC/ACTC and the AOTC largely duplicates the information needed to compute the EIC and complete other parts of the return or claim for refund. Even if certain preparers are required to maintain the checklists and complete Form 8867 for the first time, the IRS estimates that the total time required should be minimal for these tax return preparers. Further, the IRS does not expect that the requirements in these proposed regulations would necessitate the purchase of additional software or equipment in order to meet the additional information retention requirements.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Rachel L. Gregory, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) and (ii), (b)(4)(i)(B) and (C), (c)(3), and (e) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain credits.

(a) [The text of the proposed amendment to § 1.6695–2(a) is the same as the text of § 1.6695–2T(a) published elsewhere in this issue of the **Federal Register**].

(b) * * *

(1) * * *

(i) [The text of the proposed amendment to § 1.6695–2(b)(1)(i) is the same as the text of § 1.6695–2T(b)(1)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(ii) [The text of the proposed amendment to § 1.6695–2(b)(1)(ii) is the same as the text of § 1.6695–2T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.6695–2(b)(2) is the same as the text of § 1.6695–2T(b)(2) published elsewhere in this issue of the **Federal Register**].

(3) * * *

(i) [The text of the proposed amendment to § 1.6695–2(b)(3)(i) is the same as the text of § 1.6695–2T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to § 1.6695–2(b)(3)(ii) is the same as the text of § 1.6695–2T(b)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(4) * * *

(i) * * *

(B) [The text of the proposed amendment to § 1.6695–2(b)(4)(i)(B) is the same as the text of § 1.6695–2T(b)(4)(i)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to § 1.6695–2T(b)(4)(i)(C) is the same as the text of § 1.6695–2T(b)(4)(i)(C) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(3) [The text of the proposed amendment to § 1.6695–2T(c)(3) is the same as the text of § 1.6695–2T(c)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) *Applicability date.* The rules of this section apply to tax returns and claims for refunds prepared on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** with respect to tax years beginning after December 31, 2015.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–28995 Filed 12–2–16; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R04–OAR–2012–0689; FRL–9955–95–Region 4]

Air Plan Disapproval; AL; Prong 4 Visibility for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the visibility transport (prong 4) portion of a revision to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), addressing the Clean Air Act (CAA or Act) infrastructure SIP requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is proposing to disapprove the prong 4 portion of Alabama's August 20, 2012, 2008 8-hour ozone infrastructure SIP submission. All other applicable infrastructure requirements for this SIP submission have been addressed in separate rulemakings.

DATES: Comments must be received on or before December 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2012–0689 at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), prohibit any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement, respectively.

On March 12, 2008, EPA revised the 8-hour ozone NAAQS to 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the 2008 8-hour ozone NAAQS to EPA no later than March 12, 2011. For the 2008 8-hour ozone NAAQS, this proposed action only addresses the prong 4 element of Alabama's infrastructure SIP submission that EPA received on August 20, 2012. Through this action, EPA is proposing to disapprove the prong 4 portion of Alabama's infrastructure SIP submission for the 2008 8-hour ozone NAAQS. All other applicable infrastructure SIP requirements for this SIP submission have been addressed in separate rulemakings.

II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''each such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of Title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portion of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submission.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Greenhouse Gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; [10] (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[11] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address Section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[11] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[14]

III. What are the prong 4 requirements?

Section 110(a)(2)(D)(i)(II) requires a state's SIP to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources that impacts the visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out two ways in which a state's infrastructure SIP may satisfy prong 4. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with visibility protection in other air agencies' jurisdiction.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

IV. What is EPA's analysis of how Alabama addressed prong 4?

Alabama's August 20, 2012, 2008 8-hour ozone infrastructure submission cites to the State's regional haze SIP alone to satisfy prong 4 requirements.[15] Alabama's regional haze SIP relies on the Clean Air Interstate Rule (CAIR)[16] as an alternative to the best available retrofit technology (BART) requirements for its CAIR-subject electricity generating units (EGUs).[17] Although this reliance on CAIR was consistent with the CAA at the time the State submitted its regional haze SIP, CAIR has since been replaced by the Cross-State Air

[12] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[13] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[15] As mentioned above, a state may meet the requirements of prong 4 without a fully approved regional haze SIP by showing that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Alabama did not, however, provide a demonstration in the infrastructure SIP submission subject to this proposed action that emissions within its jurisdiction do not interfere with other states' plans to protect visibility.

[16] CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions in 28 eastern states, including Alabama, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

[17] Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress towards the national goal of achieving natural visibility conditions in certain Class I areas. The 156 mandatory Class I federal areas in which visibility has been determined to be an important value are listed at subpart D of 40 CFR part 81. For brevity, these areas are referred to here simply as ''Class I areas.''

Implementation plans must give specific attention to certain stationary sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. Under the Regional Haze Rule, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.

Pollution Rule (CSAPR) [18] and can no longer be relied upon as an alternative to BART or as part of a long-term strategy (LTS) for addressing regional haze. Therefore, EPA finalized a limited disapproval of Alabama's 2008 regional haze SIP submission to the extent that it relied on CAIR to satisfy the BART and LTS requirements.[19] *See* 77 FR 33642 (June 7, 2012).

In that limited disapproval action, EPA also amended the Regional Haze Rule to provide that CSAPR can serve as an alternative to BART, *i.e.,* that participation by a state's EGUs in a CSAPR trading program for a given pollutant achieves greater reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas than source-specific BART for those EGUs for that pollutant.[20] *See* 40 CFR 51.308(e)(4); 77 FR 33642. A state can participate in the trading program through either a federal implementation plan (FIP) implementing CSAPR or an integrated CSAPR state trading program implemented through an approved SIP revision. In promulgating this amendment to the Regional Haze Rule, EPA relied on an analytic demonstration of visibility improvement from CSAPR implementation relative to BART based on an air quality modeling study.

At the time of the rule amendment, questions regarding the legality of CSAPR were pending before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) and the court had stayed implementation of the rule. The D.C. Circuit subsequently vacated and remanded CSAPR in August 2012, leaving CAIR in place temporarily.[21] However, in April 2014, the Supreme Court reversed the vacatur and remanded to the D.C. Circuit for resolution of the remaining claims.[22] The D.C. Circuit then granted EPA's motion to lift the stay and to toll the rule's deadlines by three years.[23] Consequently, implementation of CSAPR Phase 1 began in January 2015 and implementation of Phase 2 is scheduled to begin in January 2017.

Following the Supreme Court remand, the D.C. Circuit conducted further proceedings to address the remaining claims. In July 2015, the court issued a decision denying most of the claims but remanding the Phase 2 sulfur dioxide (SO_2) emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season nitrogen oxides (NO_X) budgets for eleven states to EPA for reconsideration.[24] Since receipt of the D.C. Circuit's 2015 decision, EPA has engaged the affected states to determine appropriate next steps to address the decision with regard to each state.[25] In a November 10, 2016 proposed rulemaking, EPA stated that it expects that potentially material changes to the scope of CSAPR coverage resulting from the remand will be limited to withdrawal of the CSAPR FIP requiring Texas to participate in the Phase 2 trading programs for annual emissions of SO_2 and NO_X and withdrawal of Florida's CSAPR FIP requirements for ozone-season NO_X, which EPA recently finalized in another action.[26]

Due to these expected changes to CSAPR's scope, EPA conducted a sensitivity analysis to the 2012 analytic CSAPR ''alternative to BART'' demonstration showing that the analysis would have supported the same conclusion if the actions that EPA has proposed to take or has already taken in response to the D.C. Circuit's remand of various CSAPR Phase 2 budgets—specifically, the proposed withdrawal of $PM_{2.5}$-related CSAPR Phase 2 FIP requirements for Texas EGUs and the recently finalized withdrawal of ozone-related CSAPR Phase 2 FIP requirements for Florida EGUs—were reflected in that analysis. EPA's November 10, 2016 notice of proposed rulemaking seeks comment on this analysis. *See* 81 FR 78954.

Alabama sought to convert the 2012 limited approval/limited disapproval of the State's regional haze SIP to a full approval through a SIP revision submitted on October 26, 2015. This SIP revision intended to adopt the CSAPR trading program into the SIP, including the Phase 2 annual NOx and annual SO_2 CSAPR budgets for the State, and to use this adoption to replace reliance on CAIR with reliance on CSAPR to satisfy the BART and LTS requirements. Although EPA has approved the CSAPR trading program into the Alabama SIP,[27] EPA is currently seeking comment on its proposal that CSAPR continue to be available as an alternative to BART. EPA thus cannot approve the portion of Alabama's 2015 SIP submission seeking to replace reliance on CAIR with reliance on CSAPR to satisfy the BART and LTS requirements at this time. Because Alabama's prong 4 SIP submission relies solely on the State having a fully approved regional haze SIP, EPA is not currently in a position to approve the prong 4 element of Alabama's August 20, 2012, 2008 8-hour ozone infrastructure SIP revision.

EPA is therefore proposing to disapprove the prong 4 element of Alabama's August 20, 2012, 2008 8-hour ozone infrastructure SIP submission. Alabama did not submit this infrastructure SIP to meet requirements for Part D or a SIP call; therefore, if EPA takes final action to disapprove the prong 4 portion of this submission, no sanctions will be triggered. However, if EPA finalizes this proposed disapproval, that final action will trigger the requirement under section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than two years from the date of the disapproval unless EPA approves a SIP revision satisfying prong 4 requirements before EPA promulgates such a FIP.

V. Proposed Action

As described above, EPA is proposing to disapprove the prong 4 portion of Alabama's August 20, 2012, 2008 8-hour ozone infrastructure SIP submission. All other applicable infrastructure requirements for this SIP submission have been addressed in separate rulemakings.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

[18] CSAPR addresses the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the eastern United States.

[19] EPA finalized a limited approval of Alabama's regional haze SIP on March 30, 2012. *See* 77 FR 19098.

[20] Legal challenges from state, industry, and other petitioners to EPA's determination that CSAPR can be an alternative to BART are pending. *Utility Air Regulatory Group* v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[21] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012).

[22] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014), *reversing* 696 F.3d 7 (D.C. Cir. 2012).

[23] Order, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. issued October 23, 2014).

[24] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015). The D.C. Circuit did not remand the CSAPR ozone season NO_X budgets for Alabama.

[25] As discussed below, Alabama submitted a SIP revision to EPA on October 26, 2015, to incorporate the Phase 2 annual NO_X and annual SO_2 CSAPR budgets for the State into the SIP. EPA approved this SIP revision in a final action published on August 31, 2016. *See* 81 FR 59869.

[26] See 81 FR 78954 (November 10, 2016) for further discussion regarding EPA's expectations and the proposed withdrawal of the CSAPR FIP for Texas.

[27] *See* 81 FR 59869 (August 31, 2016).

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. EPA is proposing to determine that the prong 4 portion of the aforementioned SIP submission does not meet Federal requirements. Therefore, this proposed action does not impose additional requirements on the state beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 23, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–28871 Filed 12–2–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 155, 156, 160, 165, 168, 170, and 172

[EPA–HQ–OPP–2016–0227; FRL–9945–77]

RIN 2070–AK13

Notification of Submission to the Secretary of Agriculture; Pesticides; Removal of Obsolete Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document concerning removal of obsolete information. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0227 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory 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: Kathryn Boyle, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; email address*: boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15–day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects

40 CFR Part 152

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

40 CFR Part 153

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 155

Environmental protection, Administrative practice and procedure, Confidential business information, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 160

Environmental protection, Laboratories, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 165

Environmental protection, Packaging and containers, Pesticides and pests.

40 CFR Part 168

Environmental protection, Administrative practice and procedure, Advertising, Exports, Labeling, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 170

Environmental protection, Agricultural worker, Employer, Farms, Forests, Greenhouses, Nurseries, Pesticide handler, Pesticides, Worker protection standard.

40 CFR Part 172

Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Reporting and recordkeeping requirements, Research.

Dated: November 28, 2016.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

[FR Doc. 2016–29113 Filed 12–2–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 175

[Docket No. PHMSA–2015–0100 (HM–259)]

RIN 2137–AF10

Hazardous Materials: Notification of the Pilot-in-Command and Response to Air Related Petitions for Rulemaking (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In consultation with the Federal Aviation Administration (FAA), PHMSA proposes to amend the Hazardous Materials Regulations (HMR) to align with current international standards for the air transportation of hazardous materials. The proposals in this rule would amend certain special provisions, packaging requirements, notification of pilot-in-command (NOTOC) requirements, and exceptions for passengers and crew members. In addition to harmonization with international standards, several of the proposals in this rule are responsive to petitions for rulemaking submitted by the regulated community. PHMSA invites all interested persons to provide comments regarding these proposed revisions.

DATES: Comments must be received by February 3, 2017.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: Include the agency name and Docket Number PHMSA–2015–0100 (HM–259) or RIN 2137–AF10 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed, stamped postcard.

Privacy Act: 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 document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://www.regulations.gov.*

Docket: You may view the public docket online at *http://www.regulations.gov* or in person at the Docket Operations Office at the above address (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Aaron Wiener, Office of Hazardous Materials Standards, International Standards, (202) 366–4579, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In consultation with the Federal Aviation Administration (FAA), PHMSA (also ''we'' or ''us'') proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to more closely align with certain provisions of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods (ICAO TI). This NPRM also responds to four petitions for rulemaking submitted by the regulated community. The intended effect of these amendments is to update miscellaneous regulatory requirements for hazardous materials offered for transportation, or transported, in commerce by aircraft. The petitions are included in the docket for this proceeding and are discussed at length in Section II (''Overview of Proposals in this NPRM'') of this rulemaking.

II. Overview of Proposals in This NPRM

A. Transportation by Air Intermediate Packaging Requirements for Certain Low and Medium Danger Hazardous Materials (P–1637)

The Dangerous Goods Advisory Council petitioned PHMSA to remove the additional intermediate packaging requirements found in special provisions A3 and A6, *see* 49 CFR 172.102(b)(2), by deleting these special provisions and all references to them in the Hazardous Materials Table (HMT) in § 172.101. *See* P–1637.[1] Special provisions A3 and A6 apply to certain commodities as assigned in column (7) of the HMT when transported by aircraft:

- Special provision A3 states that if glass inner packagings are used for transportation of referenced commodities, they must be packed with absorbent material in tightly closed metal receptacles before being packed in outer packagings.
- Special provision A6 states that if plastic inner packagings are used for transportation of referenced commodities, they must be packed in tightly closed metal receptacles before being packed in outer packagings.

The petitioner notes that the packaging requirements imposed by special provisions A3 and A6 are domestic provisions not found in the ICAO TI and that maintaining these differences creates both a trade barrier to U.S. exports and a burden to the domestic market. The petitioner contends that the requirement for ''metal receptacles'' is overly restrictive and provides a competitive advantage to shippers in countries that allow these products to be shipped without additional intermediate packagings.

The petitioner further notes that the following requirements in § 173.27(d) and (e) of the HMR make special provisions A3 and A6 unnecessary: (1) When transported by air, inner packagings of Packing Group (PG) I materials currently assigned A3, A6, or both are already required to be packed in either a rigid and leakproof receptacle or an intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before packing the inner packaging in its outer package; and (2) PG II and III commodities are already subject to secondary closure requirements. Therefore, the petitioner asks that the intermediate packaging requirements in special provisions A3 and A6 be removed.

Section 173.27(d) establishes the type of closure required for transportation of liquid hazardous materials by air. It states that the inner packaging for PG I liquid hazardous materials must have a secondary means of closure applied. The inner packaging for PG II or PG III liquid hazardous materials must have a secondary closure applied unless the secondary closure is impracticable. If the secondary closure is impracticable, the closure requirements for PG II and PG III liquids may be satisfied by securely closing the inner packaging and placing it in a leakproof liner or bag before placing the inner packaging in the outer packaging.

Section 173.27(e) sets the absorbency requirements for PG I liquid hazardous materials of Classes 3, 4, or 8, or Divisions 5.1 or 6.1, when the materials are packaged in glass, earthenware, plastic, or metal inner packagings and offered or transport by air. It requires that inner packagings be packed in a rigid and leakproof receptacle or intermediate packaging that that is sufficiently absorbent to absorb the entire contents of the inner packaging before the inner package is packed in the outer package.

After reviewing the petition, PHMSA agrees that current requirements in § 173.27(d) and (e) make special provisions A3 and A6 redundant for liquid PG I materials. We also agree that the requirements in § 173.27(d) for inner packagings to have a secondary means of closure or a leakproof liner or bag adequately address the hazards that special provision A6 was designed to mitigate for PG II and III materials. However, we maintain that the material of construction of the inner packaging referenced in special provision A3 (glass) necessitates an intermediate package to perform a containment function in the event an inner packaging breaks.

Therefore, we propose to: (1) Amend special provision A3 in § 172.102 to authorize rigid and leakproof receptacles for intermediate packaging; (2) remove references to special provision A3 from assigned PG I entries in the HMT; and (3) remove references to special provision A6 from assigned liquids in the HMT.

Four solid materials (UN Nos. 1326, 1390, 1889 and 3417) are currently assigned special provisions A6 in the HMT. Unlike the liquids currently assigned special provision A6, these solid materials are not subject to the intermediate or secondary packaging provisions in § 173.27. PHMSA solicits public comment on maintaining special provision A6 for currently assigned solid materials or whether revisions to the packaging provisions for these materials should be considered in a future rulemaking

B. Quantity Limits for Portable Electronic Medical Devices Carried by Passengers, Crewmembers, and Air Operators (P–1649)

Phillips Healthcare petitioned PHMSA to revise § 175.10(a)(18)(i) to increase the quantity limits applicable to the transportation of portable medical electronic devices (*e.g.,* automated external defibrillators (AED); nebulizers; continuous positive airway pressure (CPAP) devices containing lithium metal batteries; and spare batteries) carried on aircraft by passengers and crewmembers. *See* P–1649.[2] The current HMR requirements limit all lithium metal batteries carried on an aircraft by passengers or crew for personal use to a lithium content of not more than 2 grams per battery. The ICAO TI allow portable medical electronic devices containing lithium metal batteries and spare batteries for these devices to contain up to 8 grams of lithium content per battery to be carried by passengers with the approval of the operator. The petitioner states:

> A global increase in air travel, as well as a growing aged population in many countries, makes it reasonable to assume that there will be a significant increase in older passengers and passengers with illness. An automated external defibrillator can make the difference between life and death during cardiac arrest.

The petitioner further asserts that the current HMR requirements prohibit many people who need to travel with their portable medical electronic devices from doing so because the lithium content exceeds the amount allowed.

In addition, the petitioner notes that increasing the quantity limits for portable medical electronic devices containing lithium metal batteries and spare batteries would be consistent with section 828 of the ''FAA Modernization and Reform Act of 2012'' (Pub. L. 112–98, 126 Stat. 133; Feb. 14, 2012),[3] which prohibits the Secretary of Transportation from issuing or enforcing any regulation or other requirement regarding the air transportation of lithium cells or batteries if the requirement is more stringent than the requirements of the ICAO TI.

PHMSA agrees that harmonizing the HMR with the ICAO TI on the issue

[1] *https://www.regulations.gov/docket?D=PHMSA-2014-0094.*

[2] *https://www.regulations.gov/docket?D=PHMSA-2015-0107.*

[3] *See http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt381/pdf/CRPT-112hrpt381.pdf.*

portable medical electronic devices with lithium batteries is consistent with the intent of section 828 of the FAA Modernization and Reform Act. Therefore, we propose to amend § 175.10 to align HMR provisions with those in the ICAO TI.

The petitioner further asks that portable medical electronic devices with increased lithium contents be authorized for transport by passengers or crew members without the approval of the operator. PHMSA points the petitioner to the ICAO TI part 8, table 8–1 provisions with which we are proposing to harmonize and notes that, under the ICAO TI, approval of the operator is required for lithium metal battery powered portable medical electronic devices and their spare batteries exceeding 2 grams of lithium content but not exceeding 8 grams of lithium content. PHMSA is not compelled by the reasoning in the petition to be less restrictive than what international standards currently prescribe. Moreover, we believe that operator approval can be an important safety provision, especially in the context of large lithium metal batteries otherwise forbidden for transportation in carry-on or checked baggage. Accordingly, PHMSA does not propose to eliminate the operator approval provision.

In this NPRM, we propose to amend § 175.10(a)(18)(i) to authorize passengers and crewmembers to carry on board an aircraft lithium metal battery-powered portable medical electronic devices and two spare batteries for those devices exceeding 2 grams of lithium content per battery, but not exceeding 8 grams of lithium content per battery, with the approval of the operator.

Consistent with the ICAO TI and the current HMR prohibitions, spare lithium batteries (*i.e.,* batteries that are not packed with or contained in equipment) of any type and for any application continue to be prohibited from checked baggage. FAA's Safety Alert to Operators (SAFO) 15010 *Carriage of Spare Lithium Batteries in Carry-on and Checked Baggage* provides additional guidance to operators on this issue.

C. NOTOC Harmonization With the ICAO TI (P–1487)

The United Parcel Service petitioned PHMSA to revise the notification of the captain/pilot-in-command (NOTOC) requirements to match the ICAO TI. The pilot-in-command must receive the NOTOC in order to appropriately consider the presence, amount and location of hazardous materials onboard the aircraft in an emergency. *See* P–1487.[4] This information, which also includes the hazard classification, proper shipping name, and packing group of the hazmat onboard the aircraft can help to inform the flight crew's decision-making. If an in-flight emergency did occur, the flight crew or the air carrier's ground personnel would need to convey information to air traffic control and/or emergency responders in order to support a safe and effective response.

In its petition, the United Parcel Services asks PHMSA to amend the domestic NOTOC requirements in § 175.33 to reduce what it considers extraneous information and more closely align the HMR with existing international practices. The petitioner stated that harmonization with more elements of the ICAO TI's NOTOC requirements will reduce the regulatory burden for operators, as well as the costs associated with training employees and contract personnel to two sets of standards.

PHMSA proposes adding each of the following requirements to the HMR: (a) The operator must provide to the flight dispatcher the same information as provided on the NOTOC; (b) the information must be provided to pilots and dispatchers prior to an aircraft moving under its own power; (c) the air operator must retain the pilot-in-command's confirmation via signature or other appropriate indication that the required information was received; and (d) the person responsible for loading must provide a signed confirmation or other form of indication that no damaged or leaking packages or packages showing evidence of damage or leakage were loaded on the aircraft. These changes and other general changes discussed below will result in PHMSA harmonizing more closely with the ICAO TI in regards to the information required to be provided in the NOTOC.

- *Requirement that the operator provide the same information to the flight dispatcher that is required to be provided to the pilot-in-command.* In an emergency, a dispatcher may be more readily able to communicate with air traffic control and emergency responders about the nature and location of hazardous materials onboard an aircraft than the flight crew. Harmonizing with the ICAO TI and requiring dispatchers to have the same information as pilots regarding the nature, amounts, and locations of hazardous materials improves information sharing in an emergency situation. The current ICAO requirement to provide information to the dispatcher was proposed by the U.S. Panel Member on the ICAO Dangerous Goods Panel after consultation with stakeholders.[5] Incorporating this provision into the HMR is also relevant to NTSB Safety Recommendation A–11–042, which recommends that the FAA ''develop a method to quickly communicate information regarding the number of persons on board and the presence of hazardous materials to emergency responders when airport emergency response or search and rescue is activated.'' [6]

For operations subject to the HMR where no dispatcher is required, other personnel with responsibilities for operational control of the aircraft (*e.g.,* the flight operations officer or designated ground personnel responsible for flight operations) would serve as the additional contact. Consistent with the ICAO TI, operators are responsible for addressing in their relevant manuals the job title and specific functions of the person who will receive this information.

Providing an additional and potentially quicker means for airport rescue and firefighting (ARFF) personnel to receive the NOTOC underscores that the ARFF community is as much an intended consumer of the NOTOC as flight crews. We note that ARFF training in hazardous materials incidents is required under 14 CFR 139, which specifies the FAA's requirements for certificated airports.

- *Requirement that the NOTOC be provided to pilots and dispatchers prior to an aircraft moving under its own power.* The current HMR require pilots-in-command to receive written information meeting the requirements in § 175.33 as early as practicable before departure of the aircraft. Consistent with the ICAO TI, PHMSA believes that this information should be provided to both the pilot-in-command and dispatchers prior to the aircraft moving under its own power. The flight crew should not be burdened with additional information or processes during taxiing and final preparations for takeoff. This proposed change would also allow the flight crew additional time to address any safety concerns identified after a

[4] *https://www.regulations.gov/docket?D=PHMSA-2006-26159.*

[5] *See* ICAO Dangerous Goods Panel Working Paper DGP/23–WP/35 (October 2011). In addition to regularly occurring public meetings before ICAO meetings, the FAA and PHMSA held a public meeting specific to NOTOCs in March 2011. For background information, visit: *https://www.federalregister.gov/articles/2011/03/01/2011-4237/notification-of-pilot-in-command-notice-of-public-meeting.*

[6] *See http://www.ntsb.gov/safety/safety-recs/recletters/A-11-039-047.pdf.*

review of the NOTOC before taxiing. For example, flight crews will be more likely to have the opportunity to physically inspect (*e.g.,* packages, paperwork, etc.), ask questions, or otherwise act on the information in the NOTOC if they so choose.

• *Requirement that the air operator obtains and retains a confirmation (e.g., a signed confirmation from the pilot-in-command or notation via an operator's computer system) that the NOTOC was received by the pilot in command.* The current HMR require the information to be provided to the pilot-in-command by the operator and for the operator to maintain a record of the NOTOC for 90 days, but there is no requirement for the pilot to indicate receipt of the NOTOC. To be consistent with the ICAO TI, PHMSA is proposing to require the operator to obtain and retain documentation of the pilot-in-command's receipt of the NOTOC.

• *Requirement for a signed confirmation or some other indication from the person responsible for loading the aircraft that no evidence of damaged or leaking packages were loaded on the aircraft.* The current HMR require a confirmation that no damaged or leaking packages were loaded on board an aircraft, but there is no requirement for a signature or other means of verification from the person responsible for loading the aircraft. Requiring a signed confirmation or other indication from the person responsible for loading results in a more accountable safety system that helps to ensure that there is no evidence of damage to or leakage from the packages or evidence of leakage from the unit load device loaded on an aircraft. Operators are responsible for addressing in their relevant manuals the job title and specific functions of the ''responsible loader,'' as well as how information should be communicated from other loaders to the responsible loader for each flight prior to this confirmation/indication being provided on the NOTOC.

• *General harmonization with the ICAO TI in regards to information required to be provided in the NOTOC associated with (and linked to) requirements for shipping papers.* The current HMR require the additional description requirements of §§ 172.202 and 172.203 to be provided in the NOTOC. These additional information requirements necessitate the inclusion of items such as descriptions of the physical or chemical form of radioactive materials, an indication that the materials being transported are packaged under limited quantity exceptions, an indication that marine pollutants are present, etc. By more closely aligning with the ICAO TI, PHMSA believes that the removal of additional description requirements from the NOTOC will result in decreased complexity and training costs for operators without negatively impacting safety. However, we invite comment from the ARFF community pertaining to the effect this proposed rule would have had on past incident or accident responses.

The current HMR contain a requirement that a notification prepared in accordance with the ICAO TI must also include any additional elements required to be shown on shipping papers by subpart C of part 171 of this subchapter. The additional elements currently required are: An indication of the ''EX Number'' for Division 1.4G safety devices; an indication of ''RQ'' and technical names if applicable for hazardous substances; an indication that the hazardous material is a ''Waste'' for hazardous wastes; and the inclusion of the words ''Poison-Inhalation Hazard'' or ''Toxic-Inhalation Hazard'' and the words ''Zone A,'' ''Zone B,'' ''Zone C,'' or ''Zone D'' for gases, or ''Zone A'' or ''Zone B'' for liquids, as appropriate for Division 2.3 materials meeting the definition of a material poisonous by inhalation. PHMSA proposes to remove the requirement for a NOTOC made in accordance with the ICAO TI to include these additional elements. This information would still be required on shipping papers.

General harmonization between the HMR NOTOC requirements and those found in the ICAO TI will ensure consistency for operators subject to both regulatory systems, thus reducing inconsistencies and the cost of complying with two different sets of standards. However, minor differences between the two regulations will remain even if PHMSA adopts the provisions of this NPRM into a final rule. One noteworthy difference is that the HMR requires that the date of the flight be included on the NOTOC. We believe that maintaining the flight date provides a benefit by adding another safety control to ensure pilots have the correct form and will result in a negligible compliance burden by those required to prepare and maintain a NOTOC under the HMR.

D. Amendments to Package Inspection (P–1671) and Securing Requirements

Labelmaster Services petitioned PHMSA to amend § 175.30(c)(1) by removing language prohibiting any package, outside container, or overpack containing hazardous materials from being transported on an aircraft if it has holes. *See* P–1671.[7] The petitioner notes that airlines and freight forwarders have declined to transport packages with minor abrasions, tears, dents, cuts, small holes, or other minor damage from normal conditions of transportation and handling. Even where these examples of minor damage or holes did not compromise the packaging's integrity, airlines and freight forwarders declined to transport them on the basis of § 175.30(c)(1). The petitioner asks that PHMSA add a new paragraph § 173.24(b)(5) to provide transport guidance on packages with minor damage, as the HMR do not presently address this issue.

PHMSA agrees that the wording of the current requirement may be construed to prohibit carriage of such items whenever any hole is found in the package, outside container, or overpack. PHMSA believes the current restriction prohibiting acceptance of any of these containment methods with holes to be overly prescriptive, especially as the paramount safety requirement is that there must not be any indication that the integrity of the containment method has been compromised. In this NPRM, consistent with the ICAO TI, PHMSA proposes to amend § 175.30(c)(1) to remove language prohibiting packages, outside containers, or overpacks containing hazardous materials from being transported on an aircraft simply due to the presence of holes when the holes do not compromise the integrity of the containment device. Under the proposed amendment to § 175.30(c)(1), aircraft operators would be authorized to accept packages with small holes that do not compromise the integrity of the containment method during transportation aboard an aircraft. However, we note that operators may continue to have more restrictive standards as a part of their business practice. Moreover, operators are ultimately responsible for their decision to accept such a package for transportation, as the acceptance of the package is tantamount to the operator's determination that the hole will not compromise the integrity of the package.

The petitioner's request to add a new paragraph in § 173.24 is outside the scope of this rulemaking and may be considered in a future rule.

Additionally, we propose to amend § 175.88(c) to require hazardous materials loaded in an aircraft be protected from damage, including by the

[7] *https://www.regulations.gov/docket?D=PHMSA-2015-0281.*

movement of baggage, mail, stores,[8] or other cargo and during loading operations, so that accidental damage is not caused through dragging or mishandling.

III. Section-by-Section Review

The following is a section-by-section review of the amendments proposed in this NPRM:

Part 172

Section 172.101

Section 172.101 contains the Hazardous Materials Table (HMT) and provides instructions for its use. Section 172.101(h) describes column (7) of the HMT, which specifies codes for special provisions applicable to hazardous materials. PHMSA proposes revisions to the column (7) special provisions. Please review all changes for a complete understanding of the amendments and see ''Section 172.102 special provisions'' for a detailed discussion of the proposed deletions to the special provisions addressed in this NPRM.

PHMSA specifically proposes to remove: (1) Special provision A3 from all assigned PG I HMT entries in column (7); and (2) special provision A6 from all assigned liquid HMT entries in column (7). Table 1 illustrates the HMT entries for which changes are proposed:

TABLE 1

Proper shipping name	UN ID No.	SP deletion proposed
Acetaldehyde	UN1089	A3.
Acetic acid, glacial *or* Acetic acid solution, *with more than 80 percent acid, by mass*	UN2789	A6.
Acetic acid solution, *not less than 50 percent but not more than 80 percent acid, by mass*	UN2790	A6.
Acetic anhydride	UN1715	A6.
Acetyl chloride	UN1717	A6.
Alkali metal alloys, liquid, n.o.s	UN1421	A3.
Alkali metal amalgam, liquid	UN1389	A3.
Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable	UN3482	A3.
Alkali metal dispersions, *or* Alkaline earth metal dispersions	UN1391	A3.
Alkylphenols, liquid, n.o.s. *(including C2–C12 homologues) (PG I)*	UN3145	A6.
Allyl iodide	UN1723	A6.
Amines, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s. (PG I)	UN2734	A3, A6.
Amines, liquid, corrosive, n.o.s, *or* Polyamines, liquid, corrosive, n.o.s. (PG I)	UN2735	A3, A6.
Amyl mercaptan	UN1111	A6.
Antimony pentafluoride	UN1732	A6.
Benzyl chloroformate	UN1739	A3, A6.
Boron trifluoride diethyl etherate	UN2604	A3.
Butyl mercaptan	UN2347	A6.
Chlorite solution	UN1908	A6.
2-Chloropropene	UN2456	A3.
Chromium oxychloride	UN1758	A3, A6.
Chromosulfuric acid	UN2240	A3, A6.
Corrosive liquid, acidic, inorganic, n.o.s. (PG I)	UN3264	A6.
Corrosive liquid, acidic, organic, n.o.s. (PG I)	UN3265	A6.
Corrosive liquid, basic, inorganic, n.o.s. (PG I)	UN3266	A6.
Corrosive liquid, basic, organic, n.o.s. (PG I)	UN3267	A6.
Corrosive liquid, self-heating, n.o.s. (PG I)	UN3301	A6.
Corrosive liquids, flammable, n.o.s. (PG I)	UN2920	A6.
Corrosive liquids, n.o.s. (PG I)	UN1760	A6.
Corrosive liquids, oxidizing, n.o.s.	UN3093	A6.
Corrosive liquids, toxic, n.o.s. (PG I)	UN2922	A6.
Corrosive liquids, water-reactive, n.o.s.	UN3094	A6.
Dichloroacetic acid	UN1764	A6.
Dichloroacetyl chloride	UN1765	A6.
Difluorophosphoric acid, anhydrous	UN1768	A6.
Disinfectant, liquid, corrosive, n.o.s.	UN1903	A6.
Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s (PG I)	UN2801	A6.
Ethyl mercaptan	UN2363	A6.
Ethyldichlorosilane	UN1183	A3.
Fluoroboric acid	UN1775	A6.
Fluorophosphoric acid anhydrous	UN1776	A6.
Fluorosilicic acid	UN1778	A6.
Fluorosulfonic acid	UN1777	A3, A6.
Hexafluorophosphoric acid	UN1782	A6.
Hydrazine, anhydrous	UN2029	A3, A6.
Hydriodic acid (PG II)	UN1787	A6.
Hydrobromic acid, *with not more than 49 percent hydrobromic acid* (PG II)	UN1788	A6.
Hydrochloric acid (PG II)	UN1789	A6.
Hydrofluoric acid and Sulfuric acid mixtures	UN1786	A6.
Hydrofluoric acid, *with more than 60 percent strength*	UN1790	A6.
Hydrofluoric acid, *with not more than 60 percent strength*	UN1790	A6.
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water, and not more than 5 percent peroxyacetic acid.*	UN3149	A6.
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary).*	UN2014	A6.
Lithium aluminum hydride, ethereal	UN1411	A3.

[8] References to stores in this rule are consistent the ICAO TI's definition under ICAO TI Part 1; 3.1.1.

Stores (supplies). a) Stores (supplies) for consumption; and b) Stores (supplies) to be taken away.

Stores (supplies) for consumption. Goods, whether or not sold, intended for consumption by the passengers and the crew on board aircraft, and goods necessary for the operation and maintenance of aircraft, including fuel and lubricants.

Stores (supplies) to be taken away. Goods for sale to the passengers and the crew of aircraft with a view to being landed.

TABLE 1—Continued

Proper shipping name	UN ID No.	SP deletion proposed
Mercaptans, liquid, flammable, toxic, n.o.s. *or* Mercaptan mixtures, liquid, flammable, toxic, n.o.s (PG III)	UN1228	A6.
Mercaptans, liquid, toxic, flammable, n.o.s. *or* Mercaptan mixtures, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C.*	UN3071	A6.
Methyldichlorosilane	UN1242	A3.
Morpholine	UN2054	A6.
Nitric acid *other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid*	UN2031	A6.
Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid*	UN2031	A6.
Nitric acid *other than red fuming, with not more than 20 percent nitric acid*	UN2031	A6.
Nitric acid *other than red fuming, with more than 70 percent nitric acid*	UN2031	A3.
Nitrohydrochloric acid	UN1798	A3.
Nitrosylsulfuric acid, liquid	UN2308	A6.
Organotin compounds, liquid, n.o.s. (PG I)	UN2788	A3.
Oxidizing liquid, corrosive, n.o.s (PG I)	UN3098	A6.
Oxidizing liquid, n.o.s (PG I)	UN3139	A6.
Oxidizing liquid, toxic, n.o.s (PG I)	UN3099	A6.
Perchloric acid *with more than 50 percent but not more than 72 percent acid, by mass*	UN1873	A3.
Phosphorus tribromide	UN1808	A6.
Propanethiols	UN2402	A6.
Propylene oxide	UN1280	A3.
1,2-Propylenediamine	UN2258	A6.
Propyleneimine, stabilized	UN1921	A3.
Selenium oxychloride	UN2879	A3, A6.
Silicon tetrachloride	UN1818	A6.
Sulfur chlorides	UN1828	A3.
Sulfuric acid, fuming *with less than 30 percent free sulfur trioxide*	UN1831	A3.
Trichloroacetic acid, solution	UN2564	A6.
Trifluoroacetic acid	UN2699	A3, A6.
Valeryl chloride	UN2502	A6.
Vanadium oxytrichloride	UN2443	A6.
Vanadium tetrachloride	UN2444	A3, A6.
Vinyl ethyl ether, stabilized	UN1302	A3.
Xylyl bromide, liquid	UN1701	A6.

Section 172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA proposes, to replace the existing requirement for tightly closed metal receptacles in special provision A3 from § 172.102(b)(2), which applies only to transportation by aircraft, with a requirement for rigid and leakproof receptacles or intermediate packaging packed with absorbent material.

Part 175

Section 175.10

Section 175.10 provides exceptions for passengers, crewmembers, and air operators. PHMSA proposes to revise § 175.10(a)(18)(i) to authorize passengers and crewmembers to carry on board aircraft portable medical electronic devices containing lithium metal batteries with a lithium content exceeding 2 grams per battery, but not exceeding 8 grams of lithium content per battery, and no more than two individually protected lithium metal spare batteries for these portable medical electronic devices each exceeding 2 grams of lithium content, but not exceeding 8 grams of lithium content, with the approval of the operator. Consistent with the ICAO TI and the current HMR prohibitions, spare lithium batteries (*i.e.* batteries that are not packed with or contained in equipment) of any type and for any application continue to be prohibited from checked baggage. FAA's Safety Alert to Operators (SAFO) 15010 *Carriage of Spare Lithium Batteries in Carry-on and Checked Baggage* provides additional guidance to operators on this issue.

Section 175.30

Section 175.30 prescribes requirements for the inspection and acceptance of hazardous materials. PHMSA proposes revising § 175.30(c)(1) to no longer prohibit packages, outside containers, overpacks, or ULDs containing hazardous materials from being transported on an aircraft if there are one or more holes present when the hole(s) or other indications do not indicate compromised integrity to the package, overpack, freight container, or ULD. This change will harmonize the HMR with language in ICAO TI part 7; 1.3.1(i), which states ''the package, overpack, freight container or unit load device is not leaking and there is no indication that its integrity has been compromised.''

Section 175.33

Section 175.33 establishes requirements for shipping papers and for the notification of the pilot-in-command (NOTOC) when hazardous materials are transported by aircraft. PHMSA proposes to harmonize the HMR NOTOC requirements with those found in the ICAO TI. Specifically, we propose to more closely align the information that is required to be provided in the NOTOC; ensure the NOTOC is provided to dispatchers or when dispatchers are not utilized, other ground support personnel designated in the operator's manual assigned to the flight; harmonize with ICAO requirements addressing when the NOTOC must be provided to the pilots and dispatchers; require confirmation via signature or other appropriate indication by the pilot-in-command (PIC) to indicate that the required information was received; and require confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages or packages showing evidence of damage or leakage have been loaded on the aircraft.

Finally, and consistent with the ICAO TI, we propose to amend § 175.33 by removing the requirement to include additional informational requirements in § 175.33(a)(1)(i) and (ii). This information will continue to be required on shipping papers.

Section 175.88

Section 175.88 prescribes requirements for inspection, orientation, and securing packages of hazardous materials aboard aircraft. PHMSA proposes revisions to § 175.88(c) to require hazardous materials loaded in an aircraft to be protected from damage, including by the movement of baggage, mail, stores, or other cargo, consistent with general loading requirements found in the ICAO TI. This proposed change would require that packages be protected from damage during loading operations through dragging or mishandling of packages containing hazardous materials and further harmonize specific portions of the general loading/securement requirements pertaining to appropriate securing and loading practices of the HMR with those found in the ICAO TI.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the statutory authority of the Federal hazardous materials transportation law (Federal hazmat law). 49 U.S.C. 5101 *et seq.* Section 5103(b) of the Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5120(b) of the Federal hazmat law authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. The Secretary has delegated these authorizations to the Administrator for PHMSA. *See* 49 CFR 1.97.

This rule proposes to amend regulations to increase alignment with international standards by incorporating various amendments, including changes to special provisions, packaging requirements, air transport notification of pilot-in-command (NOTOC) requirements, and allowances for hazardous materials to be carried on board an aircraft by passengers and crewmembers. To this end, this rule proposes to more fully align the HMR with the ICAO TI. The large volume of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible.

Harmonization serves to facilitate international commerce, while also promoting the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and operators were required to comply with two or more conflicting sets of regulatory requirements. PHMSA's goal is to harmonize without sacrificing the current HMR level of safety or imposing undue burdens on the regulated community. Additionally, we consulted the Federal Aviation Administration in the development of this rule.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (Feb. 26, 1979).

Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), supplements and reaffirms Executive Order 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

Benefits of Harmonization

Pursuant to Executive Order 13563, PHMSA analyzed the expected benefits of these proposed provisions. Typically the benefits of rules are derived from (1) enhanced health and safety factors and (2) reduced expenditures, such as private-sector savings, government administrative savings, gains in work time, harmonization impacts, and costs of compliance. In the case of this NPRM, most of the benefits from the rule will be derived from health and safety factors, and reduced compliance costs.

The quantifying health and safety benefits specifically attributable to modifications of the NOTOC requirements are not easily calculable with any degree of accuracy. The pilot signature and stronger confirmation requirements from the person responsible for loading the aircraft will result in more effective and efficient response in the event of an aviation incident. The proposed requirement that packages be protected from damage during loading operations will result in increased safety and environmental protection. Benefits would also be realized through a more efficient response time as a result of emergency response personnel having quicker access to hazardous materials information for each flight.

The primary reduced expenditures benefits expected from this NPRM result from reduced packaging costs in relation to the removal of special provision A3 from all assigned PG I HMT entries and special provision A6 from all assigned liquid HMT entries, as well as cost savings from general harmonization of NOTOC requirements.

Currently, compliance with special provisions A3 and A6 requires domestic shippers to use extra [9] or more expensive [10] materials. Shippers also incur higher freight charges for shipping packages with higher package weights.[11] PHMSA estimates that the partial removal of A3 and complete removal of A6 for liquids, as well as that of the associated intermediate packaging requirements, from the HMR will provide an undiscounted annual benefit of $1,814,643 in reduced packaging costs to shippers.

To arrive at this benefit, PHMSA (1) analyzed commodity flow survey data for commodities assigned A3, A6, or both in the HMR, (2) determined an estimate of total tons of freight for affected commodities offered for transportation by aircraft annually, (3) used this general commodity flow survey data to estimate the number of impacted packages, and (4) determined a cost basis for packages prepared under existing requirements versus proposed requirements.

The reduced expenditure cost savings associated with general harmonization are not easily calculable with any degree of accuracy. Inconsistent hazardous materials regulations result in additional compliance costs for industry and increase compliance training efforts, whereas consistency of regulations reduces regulatory compliance costs and helps to avoid rejected or frustrated shipments.

[9] A metal container enclosing either a plastic or glass container.

[10] A metal or glass container rather than a plastic container.

[11] Having a metal container enclosing a plastic/glass container will add weight. Likewise using a metal or glass container rather than a plastic container will add weight.

PHMSA expects the increased harmonization of the HMR and ICAO TI NOTOC provisions to generate cost savings by streamlining the processes for NOTOC generation.

Costs of Harmonization

The primary costs associated with this NPRM are time costs related to proposed requirements for (1) confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages were loaded on the aircraft, and (2) confirmation via signature or other appropriate indication by the pilot-in-command to indicate that the required information was received. PHMSA estimates the annual costs associated with harmonizing the HMR NOTOC requirements with those found in the ICAO TI to be $705,590. PHMSA notes that many air operators already comply with the ICAO TI NOTOC requirements; therefore, the estimated cost of harmonizing likely is overestimated in this analysis. The HMR currently requires confirmation that no damaged or leaking packages have been loaded on the aircraft. In satisfying this current requirement, it is assumed that many operators are already using the proposed specific confirmation requirement (signature or other indication) from the person responsible loading the aircraft and are already be accounted for in time costs. Under current practice, the NOTOC is transmitted to the pilot-in-command. We assume the additional provision of identical NOTOC information to the dispatcher (or other personnel) will incur negligible costs, if any, especially as we understand this to be a common industry practice. PHMSA invites comments on this assumption and on any unanticipated costs associated with this proposed requirement.

PHMSA expects the adoption of the proposal to eliminate the intermediate packaging requirements provided in special provision A6 for liquids (and A3 for PG I materials) to yield a modest increase in safety costs due to increased transport volumes that may result from the reduced packaging costs. Based on an estimated 10 percent increase in transport volumes of commodities currently assigned special provisions A3 and A6, PHMSA estimates the annual increased safety cost attributable to the removal of these special provisions as proposed in this NPRM is $2,051.

Net Benefit

Based on the previous discussions of benefits and costs, PHMSA estimates the net benefit associated with this NPRM (2137–AF10) to be $1,107,002.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999). This proposed rule may preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision, 49 U.S.C. 5125(b), that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (2), (3), and (5) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to harmonize with international standards. If the proposed changes are not adopted into the HMR, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249 (Nov. 9, 2000). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

This proposed rule was developed in accordance with Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), and DOT's Policies and Procedures to promote compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and ensure that potential impacts of draft rules on small entities are properly considered. The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities.

This proposed rule facilitates the transportation of hazardous materials in international commerce by increasing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, aircraft operators, and training companies. As previously discussed in Section IV, Subsection B (''Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures''), PHMSA expects that the majority of amendments in this proposed rule will result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this NPRM will relieve U.S. companies, including small entities competing in foreign markets, from the

burden of complying with a dual system of regulations. However, PHMSA requests comment on the economic impacts of the proposed rule on a small entities.

F. Paperwork Reduction Act

PHMSA currently has approved information collection under Office of Management and Budget (OMB) Control Number 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information.'' We anticipate that this proposed rule will result in an increase in the annual burden of this information collection because of an increase in the amount of time needed to complete the NOTOC due to additional requirements for (1) confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages were loaded on the aircraft, and (2) confirmation via signature or other appropriate indication by the pilot-in-command that the required information was received.

This rulemaking identifies a revised information collection that PHMSA will submit to OMB for approval based on the requirements in this NPRM. PHMSA has developed burden estimates to reflect changes in this NPRM and estimates that the information collection and recordkeeping burden in this rule are as follows:

OMB Control Number: 2137–0034.

Annual Increase in Number of Respondents: 150.

Annual Increase in Annual Number of Responses: 1,976,475.

Annual Increase in Annual Burden Hours: 5,474.

Annual Increase in Annual Burden Costs: $483,083.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. PHMSA specifically invites comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these proposed requirements. Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period as identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974. Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations that implement NEPA, 40 CFR parts 1500–1508, require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the both the proposed action and the alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

In this NPRM, PHMSA proposes to amend the HMR in to increase harmonization with international standards and to address four petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives. These proposed revisions are intended to harmonize with international standards, while also maintaining or enhancing safety. Specifically, PHMSA, consistent with P–1487, proposes to harmonize the HMR with the 2015–2016 ICAO TI requirements for the NOTOC, the ICAO TI requirement for the air operator to provide a copy of the NOTOC to the flight dispatcher, and the ICAO TI requirement for the air operator to obtain and retain a confirmation that the NOTOC was received and agreed to by the pilot. This NPRM addresses three additional petitions for rulemaking (P–1637, P–1649, and P–1671), proposing to: (1) More closely harmonize with the ICAO TI in regard to intermediate packaging requirements for certain low and medium danger hazardous materials; (2) add an exception to allow passengers to bring on board an aircraft portable medical electronic devices containing lithium batteries that exceed the lithium battery limits in § 175.10(a)(18)(i), as well as spare batteries for these devices with the approval of the operator; and (3) remove language prohibiting any package, outside container, or overpack containing hazardous materials from being transported on an aircraft if it has holes when there is no indication that the integrity of the containment method has been compromised. All of these proposals more closely harmonize U.S. regulations with international standards.

This action is necessary to: (1) Fulfill our statutory directive to promote transportation safety; (2) fulfill our statutory directive under the Administrative Procedure Act (APA) that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule, 5 U.S.C. 553(e); (3) align the HMR with international transport standards and requirements to the extent practicable in accordance with Federal hazmat law, *see* 49 U.S.C. 5120; and (4) simplify and clarify the regulations in order to promote understanding and compliance. Specifically, this rulemaking achieves these goals by responding to petitions (P–1487, P–1637, P–1649, and P–1671).

With this action, we intend to more closely align the HMR with international transport standards and requirements, without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated public.

2. Alternatives

In proposing this rulemaking, PHMSA is considering the following alternatives:

No Action Alternative:

If PHMSA were to choose this alternative, we would not proceed with any rulemaking on this subject and the current regulatory standards would remain in effect.

Preferred Alternative:

This alternative is the current proposal as it appears in this NPRM, applying to transport of hazardous materials by air. The proposed amendments included in this alternative are more fully addressed in the preamble and regulatory text sections of this NPRM. However, they generally include the following:

(1) *More closely harmonize the HMR and ICAO TI notification requirements.* In this NPRM, PHMSA proposes to more closely align NOTOC requirements between the HMR and the ICAO TI. This includes information required in the notification, when the NOTOC must be provided to pilots and dispatchers, and requirements for verifying that the information was received by the pilot-in-command.

(2) *More closely harmonize with ICAO TI in regard to intermediate packaging requirements for certain low and medium danger hazardous materials.* In this NPRM, PHMSA proposes to remove all references to special provision A6 assigned to liquids in the Hazardous Materials Table. Additionally, this NPRM proposes to amend special provision A3 to authorize additional intermediate packagings.

(3) *Add an exception to allow passengers, with the approval of the operator, to bring on board an aircraft a portable medical electronic device that exceeds the lithium battery limits in § 175.10(a)(18)(i).* In this NPRM, PHMSA proposes to amend § 175.10(a)(18)(i) to increase the quantity limits applicable to the transportation of portable medical electronic devices containing lithium metal batteries and spare batteries for these devices carried on an aircraft. The current HMR limit all lithium metal batteries to a lithium content of not more than 2 grams per battery regardless of end use, whereas the ICAO TI allow portable medical electronic devices containing lithium metal batteries to contain up to 8 grams of lithium (as well as spare batteries for these devices) to be carried on board an aircraft.

(4) *Amend the Package Inspection and Securing Requirements.* In this NPRM, PHMSA proposes to amend § 175.30(c)(1) to remove language prohibiting any package, outside container, or overpack containing hazardous materials from being transported on an aircraft if it has holes. Additionally, PHMSA proposes revisions to § 175.88(c) to require hazardous materials loaded in an aircraft to be protected from damage, including by the movement of baggage, mail, stores, or other cargo, consistent with general loading requirements found in the ICAO TI.

3. Probable Environmental Impacts of the Alternatives

No Action Alternative:

If PHMSA were to choose the No Action Alternative, we would not proceed with any rulemaking on this subject and the current regulatory standards would remain in effect. However, efficiencies gained through harmonization in updates to transport standards would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on air transport hazard communication (hazcom) issues of potentially much greater environmental impact.

Additionally, the Preferred Alternative encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and less environmental and safety incidents. Not adopting the proposed environmental and safety requirements in the NPRM under the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Greenhouse gas emissions would remain the same under the No Action Alternative.

Preferred Alternative:

If PHMSA selects the provisions as proposed in this NPRM, we believe that safety and environmental risks would be reduced and that protections to human health and environmental resources would be increased. Consistency between U.S. and international notification requirements can enhance the safety and environmental protection of hazardous materials transportation, reduce compliance costs, increase the flow of hazardous materials from their points of origin to their points of destination (or diversion airport when required), and improve the emergency response in the event of a hazardous materials incident or accident.

Overall, harmonization will result in more targeted and effective training and thereby enhanced environmental protection. These proposed amendments will reduce inconsistent hazardous materials regulations, which can increase the time and cost of compliance training. For ease of compliance with appropriate regulations, air carriers engaged in the transportation of hazardous materials generally elect to accept and transport hazardous materials in accordance with the ICAO TI, as appropriate. Increasing consistency between these international regulations and the HMR allows shippers and carriers to more efficiently train hazmat employees in their responsible functions. PHMSA believes that these proposed amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment:

(1) *More closely harmonize the HMR and ICAO TI notification requirements.* Harmonizing the HMR and ICAO TI notification requirements will (1) allow air carriers to streamline compliance and training programs, (2) result in emergency response personnel having quicker access to hazmat information for each flight, (3) remove the requirement to supply data elements required under shipping paper provisions, and (4) provide dispatchers access to hazmat information and relieve the flight crew of the responsibility of communicating this information to Air Traffic Control (ATC) and Aircraft Rescue and Firefighting (ARFF) personnel.

Greenhouse gas emissions would remain the same under this proposed amendment.

(2) *More closely harmonize with the ICAO TI in regard to intermediate packaging requirements for certain low and medium danger hazardous materials.* Deleting the assignment of special provisions A3 (partial) and A6 (for liquids) more closely harmonizes the HMR with the packing instructions of the ICAO TI and removes a requirement that, according to the petitioner, is a barrier to trade for U.S. exports, while still maintaining an appropriate level of safety. Existing requirements in § 173.27(d) and (e) for inner packagings to have a secondary means of closure and to be placed in either a rigid and leakproof receptacle or an intermediate packaging with absorbent material make special provisions A3 and A6 redundant for PG I commodities. Additionally, the requirements in § 173.27(d) for inner packagings to have a secondary means of closure or a leakproof liner or bag adequately address the hazards that special provision A6 was designed to mitigate for PG II and III liquid materials.

Greenhouse gas emissions would remain the same under this proposed amendment.

(3) *Add an exception to allow passengers, with the approval of the operator, to bring on board an aircraft a portable medical electronic device that exceeds the lithium battery limits in § 175.10(a)(18)(i).* Harmonizing with the ICAO TI in this area would assist the traveling public who rely on their portable medical electronic devices. This revision will be consistent with the FAA Modernization and Reform Act. PHMSA has found no data on increased incidents in countries allowing the ICAO TI lithium battery limits for portable electronic medical devices.

Greenhouse gas emissions would remain the same under this proposed amendment.

(4) *Amend the Package Inspection and Securing Requirements.* Harmonizing with the ICAO TI in this area will address the overly prescriptive requirements for package inspection and securing, which currently result in acceptance rejections from airlines and freight forwarders. Further, harmonization will result in more targeted and effective training and thereby enhanced environmental protection. These proposed amendments will reduce inconsistent hazardous materials regulations, which hamper compliance training efforts.

Greenhouse gas emissions would remain the same under this proposed amendment.

4. Agencies Consulted

PHMSA has coordinated with the U.S. Federal Aviation Administration in the development of this proposed rule. PHMSA will consider the views expressed in comments to the NPRM submitted by members of the public, State and local governments, and industry.

5. Conclusion

The provisions of this proposed rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by aircraft, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA believes the net environmental impact will be positive and that there are no significant environmental impacts associated with this proposed rule.

PHMSA welcomes any views, data, or information related to environmental impacts that may result if the proposed requirements are adopted, as well as possible alternatives and their environmental impacts.

J. Privacy Act

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 document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**, 65 FR 19477 (April 11, 2000) or you may visit *http://www.dot.gov/privacy.html.*

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, ''Promoting International Regulatory Cooperation,'' 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979, Public Law 96–39, as amended by the Uruguay Round Agreements Act, Public Law 103–465, prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA and the FAA participate in the establishment of international standards to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the proposed rule is designed to facilitate international trade by eliminating differences between the domestic and international air transportation requirements. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272 note, directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This proposed rule does not involve voluntary consensus standards.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

Regulations Text

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.101, the Hazardous Materials Table is amended by revising the following entries in the appropriate alphabetical sequence:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*	*		*			
	Acetaldehyde	3	UN1089	I	3	B16, T11, TP2, TP7	None	201	243	Forbidden	30 L	E.	
	*	*	*	*	*	*	*	*		*			
	Acetic acid, glacial *or* Acetic acid solution, *with more than 80 percent acid, by mass.*	8	UN2789	II	8, 3	A3, A7, A10, B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A.	
	Acetic acid solution, *not less than 50 percent but not more than 80 percent acid, by mass.*	8	UN2790	II	8	148, A3, A7, A10, B2, IB2, T7, TP2.	154	202	242	1 L	30 L	A.	
	*	*	*	*	*	*	*	*		*			
	Acetic anhydride	8	UN1715	II	8, 3	A3, A7, A10, B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40.
	*	*	*	*	*	*	*	*		*			
	Acetyl chloride	3	UN1717	II	3, 8	A3, A7, IB1, N34, T8, TP2	150	202	243	1 L	5 L	B	40.
	*	*	*	*	*	*	*	*		*			
	Alkali metal alloys, liquid, n.o.s.	4.3	UN1421	I	4.3	A2, A7, B48, N34	None	201	244	Forbidden	1 L	D	13, 52, 148.
	Alkali metal amalgam, liquid	4.3	UN1389	I	4.3	A2, A7, N34	None	201	244	Forbidden	1 L	D	13, 40, 52, 148.
	*	*	*	*	*	*	*	*		*			
	Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable.	4.3	UN3482	I	4.3, 3	A2, A7	None	201	244	Forbidden	1 L	D	13, 52, 148.
	Alkali metal dispersions, *or* Alkaline earth metal dispersions.	4.3	UN1391	I	4.3	A2, A7	None	201	244	Forbidden	1 L	D	13, 52, 148.
	*	*	*	*	*	*	*	*		*			
	Alkylphenols, liquid, n.o.s. *(including C2–C12 homologues).*	8	UN3145	I	8	T14, TP2	None	201	243	0.5 L	2.5 L	B.	
				II	8	IB2, T11, TP2, TP27	154	202	242	1 L	30 L	B.	
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A.	
	*	*	*	*	*	*	*	*		*			
	Allyl iodide	3	UN1723	II	3, 8	A3, IB1, N34, T7, TP2, TP13.	150	202	243	1 L	5 L	B	40.
	*	*	*	*	*	*	*	*		*			
G	Amine, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s.	8	UN2734	I	8, 3	N34, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	A	52.
				II	8, 3	IB2, T11, TP2, TP27	None	202	243	1 L	30 L	A	52.
G	Amines, liquid, corrosive, n.o.s.,*or* Polyamines, liquid, corrosive, n.o.s.	8	UN2735	I	8	B10, N34, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	A	52.

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				II	8	B2, IB2, T11, TP1, TP27	154	202	242	1 L	30 L	A	52.
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	52.
		*	*	*	*	*	*	*		*			
	Amyl mercaptan	3	UN1111	II	3	A3, IB2, T4, TP1	None	202	242	5 L	60 L	B	95, 102.
		*	*	*	*	*	*	*		*			
	Antimony pentafluoride	8	UN1732	II	8, 6.1	A3, A7, A10, IB2, N3, N36, T7, TP2.	None	202	243	Forbidden	30 L	D	40, 44, 89, 100, 141.
		*	*	*	*	*	*	*		*			
	Benzyl chloroformatef	8	UN1739	I	8	B4, N41, T10, TP2, TP13	None	201	243	Forbidden	2.5 L	D	40.
		*	*	*	*	*	*	*		*			
	Boron trifluoride diethyl etherate.	8	UN2604	I	8, 3	A19, T10, TP2	None	201	243	0.5 L	2.5 L	D	40.
		*	*	*	*	*	*	*		*			
	Butyl mercaptan	3	UN2347	II	3	A3, IB2, T4, TP1	150	202	242	5 L	60 L	D	52, 95, 102.
		*	*	*	*	*	*	*		*			
	Chlorite solution	8	UN1908	II	8	A3, A7, B2, IB2, N34, T7, TP2, TP24.	154	202	242	1 L	30 L	B	26, 44, 89, 100, 141.
				III	8	A3, A7, B2, IB3, N34, T4, TP2, TP24.	154	203	241	5 L	60 L	B	26, 44, 89, 100, 141.
		*	*	*	*	*	*	*		*			
	2-Chloropropene	3	UN2456	I	3	N36, T11, TP2	150	201	243	1 L	30 L	E.	
		*	*	*	*	*	*	*		*			
	Chromium oxychloride	8	UN1758	I	8	A7, B10, N34, T10, TP2	None	201	243	0.5 L	2.5 L	C	40, 66, 74, 89, 90.
		*	*	*	*	*	*	*		*			
	Chromosulfuric acid	8	UN2240	I	8	A7, B4, B6, N34, T10, TP2, TP13.	None	201	243	0.5L	2.5L	B	40, 66, 74, 89, 90.
		*	*	*	*	*	*	*		*			
G	Corrosive liquid, acidic, inorganic, n.o.s.	8	UN3264	I	8	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40.
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40.
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40.
G	Corrosive liquid, acidic, organic, n.o.s.	8	UN3265	I	8	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40.
				II	8	148,B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40.
				III	8	386, IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40.
G	Corrosive liquid, basic, inorganic, n.o.s.	8	UN3266	I	8	T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40, 52.
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40, 52.
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40, 52.
G	Corrosive liquid, basic, organic, n.o.s.	8	UN3267	I	8	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40, 52.

				II	8	B2, IB2, T11, TP2, TP27	154	202	242	1 L	30 L	B	40, 52.
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40, 52.
G	Corrosive liquid, self-heating, n.o.s.	8	UN3301	I	8, 4.2	B10	None	201	243	0.5 L	2.5 L	D.	
				II	8, 4.2	B2, IB1	154	202	242	1 L	30 L	D.	
G	Corrosive liquids, flammable, n.o.s.	8	UN2920	I	8, 3	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	C	25, 40.
				II	8, 3	B2, IB2, T11, TP2, TP27	154	202	243	1 L	30 L	C	25, 40.
G	Corrosive liquids, n.o.s	8	UN1760	I	8	A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40.
				II	8	B2, IB2, T11, TP2, TP27	154	202	242	1 L	30 L	B	40.
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40.
G	Corrosive liquids, oxidizing, n.o.s.	8	UN3093	I	8, 5.1	A7	None	201	243	Forbidden	2.5 L	C	89.
				II	8, 5.1	A7, IB2	None	202	243	1 L	30 L	C	89.
G	Corrosive liquids, toxic, n.o.s	8	UN2922	I	8, 6.1	A7, B10, T14, TP2, TP13, TP27.	None	201	243	0.5 L	2.5 L	B	40.
				II	8, 6.1	B3, IB2, T7, TP2	154	202	243	1 L	30 L	B	40.
				III	8, 6.1	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	B	40
G	Corrosive liquids, water-reactive, n.o.s.	8	UN3094	I	8, 4.3	A7	None	201	243	Forbidden	1 L	E	13, 148.
				II	8, 4.3	A7	None	202	243	1 L	5 L	E	13, 148.
		*	*		*	*	*	*		*			
	Dichloroacetic acid	8	UN1764	II	8	A3, A7, B2, IB2, N34, T8, TP2.	154	202	242	1 L	30 L	A.	
		*	*		*	*	*	*		*			
	Dichloroacetyl chloride	8	UN1765	II	8	A3, A7, B2, B6, IB2, N34, T7, TP2.	154	202	242	1 L	30 L	D	40.
		*	*		*	*	*	*		*			
	Difluorophosphoric acid, anhydrous.	8	UN1768	II	8	A7, B2, IB2, N5, N34, T8, TP2.	None	202	242	1 L	30 L	A	40.
		*	*		*	*	*	*		*			
G	Disinfectant, liquid, corrosive, n.o.s.	8	UN1903	I	8	A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B.	
		*	*		*	*	*	*		*			
G	Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.	8	UN2801	I	8	11, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	A.	
				II	8	11, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	A.	
				III	8	11, IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A.	
		*	*		*	*	*	*		*			
	Ethyl mercaptan	3	UN2363	I	3	T11, TP2, TP13	None	201	243	Forbidden	30 L	E	95, 102.
		*	*		*	*	*	*		*			
	Ethyldichlorosilane	4.3	UN1183	I	4.3, 8, 3	A2, A7, N34, T14, TP2, TP7, TP13.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100.
		*	*		*	*	*	*		*			
	Fluoroboric acid	8	UN1775	II	8	A7, B2, B15, IB2, N3, N34, T7, TP2.	154	202	242	1 L	30 L	A.	
	Fluorophosphoric acid anhydrous.	8	UN1776	II	8	A7, B2, IB2, N3, N34, T8, TP2.	None	202	242	1 L	30 L	A.	
		*	*		*	*	*	*		*			
	Fluorosilicic acid	8	UN1778	II	8	A7, B2, B15, IB2, N3, N34, T8, TP2.	None	202	242	1 L	30 L	A.	
	Fluorosulfonic acid	8	UN1777	I	8	A7, A10, B6, B10, N3, N36, T10, TP2.	None	201	243	0.5 L	2.5 L	D	40.

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*	*		*			
	Hexafluorophosphoric acid	8	UN1782	II	8	A7, B2, IB2, N3, N34, T8, TP2.	None	202	242	1 L	30 L	A.	
	*	*	*	*	*	*	*	*		*			
	Hydrazine, anhydrous	8	UN2029	I	8, 3, 6.1	A7, A10, B7, B16, B53	None	201	243	Forbidden	2.5 L	D	40, 52, 125.
	*	*	*	*	*	*	*	*		*			
	Hydriodic acid	8	UN1787	II	8	A3, B2, IB2, N41, T7, TP2	154	202	242	1 L	30 L	C.	
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	C	8.
	*	*	*	*	*	*	*	*		*			
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*	8	UN1788	II	8	A3, B2, B15, IB2, N41, T7, TP2.	154	202	242	1 L	30 L	C.	
				III	8	A3, IB3, T4, TP1	154	203	241	5 L	60 L	C	8.
	*	*	*	*	*	*	*	*		*			
	Hydrochloric acid	8	UN1789	II	8	386, A3, B3, B15, B133, IB2, N41, T8, TP2.	154	202	242	1 L	30 L	C.	
				III	8	A3, IB3, T4, TP1	154	203	241	5 L	60 L	C	8.
	*	*	*	*	*	*	*	*		*			
	Hydrofluoric acid and Sulfuric acid mixtures.	8	UN1786	I	8, 6.1	A7, B15, B23, N5, N34, T10, TP2, TP13.	None	201	243	Forbidden	2.5 L	D	40.
	*	*	*	*	*	*	*	*		*			
	Hydrofluoric acid, *with more than 60 percent strength.*	8	UN1790	I	8, 6.1	A7, B4, B15, B23, N5, N34, T10, TP2, TP13.	None	201	243	0.5 L	2.5 L	D	12, 25, 40.
	Hydrofluoric acid, *with not more than 60 percent strength.*	8	UN1790	II	8, 6.1	A7, B15, IB2, N5, N34, T8, TP2.	154	202	243	1 L	30 L	D	12, 25, 40.
	*	*	*	*	*	*	*	*		*			
	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water, and not more than 5 percent peroxyacetic acid.*	5.1	UN3149	II	5.1, 8	145, A2, A3, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	202	243	1 L	5 L	D	25, 66, 75.
	*	*	*	*	*	*	*	*		*			
	Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	5.1, 8	A2, A3, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37.	None	202	243	1 L	5 L	D	25, 66, 75.
	*	*	*	*	*	*	*	*		*			
	Lithium aluminum hydride, ethereal.	4.3	UN1411	I	4.3, 3	A2, A11, N34	None	201	244	Forbidden	1 L	D	13, 40, 148.

	*	*	*	*	*	*	*	*	*					
	Mercaptans, liquid, flammable, toxic, n.o.s. *or* Mercaptan mixtures, liquid, flammable, toxic, n.o.s.	3	UN1228	II	3, 6.1	IB2, T11, TP2, TP27	None	202	243	Forbidden	60 L	B	40, 95, 102.
				III	3, 6.1	B1, IB3, T7, TP1, TP28	150	203	242	5 L	220 L	A	40, 95, 102.
	Mercaptans, liquid, toxic, flammable, n.o.s. *or* Mercaptan mixtures, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN3071	II	6.1, 3	IB2, T11, TP2, TP13, TP27	153	202	243	5 L	60 L	C	40, 102, 121.
	*	*	*	*	*	*	*	*	*					
	Methyldichlorosilane	4.3	UN1242	I	4.3, 8, 3	A2, A7, B6, B77, N34, T14, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100.
	*	*	*	*	*	*	*	*	*					
	Morpholine	8	UN2054	I	8, 3	T10, TP2	None	201	243	0.5 L	2.5 L	A.		
	*	*	*	*	*	*	*	*	*					
	Nitric acid *other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid.*	8	UN2031	II	8, 5.1	B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	66, 74, 89, 90.
	Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid.*	8	UN2031	II	8	B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	44, 66, 74, 89, 90.
	Nitric acid *other than red fuming with not more than 20 percent nitric acid.*	8	UN2031	II	8	B2, B47, B53, IB2, T8, TP2	None	158	242	1 L	30 L	D.		
	*	*	*	*	*	*	*	*	*					
	Nitric acid *other than red fuming, with more than 70 percent nitric acid.*	8	UN2031	I	8, 5.1	B47, B53, T10, TP2, TP12, TP13.	None	158	243	Forbidden	2.5 L	D	44, 66, 89, 90, 110, 111.
	*	*	*	*	*	*	*	*	*					
	Nitrohydrochloric acid	8	UN1798	I	8	B10, N41, T10, TP2, TP13	None	201	243	Forbidden	2.5 L	D	40, 66, 74, 89, 90.
	*	*	*	*	*	*	*	*	*					
	Nitrosylsulfuric acid, liquid	8	UN2308	II	8	A3, A7, B2, IB2, N34, T8, TP2.	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90.
	*	*	*	*	*	*	*	*	*					
	Organotin compounds, liquid, n.o.s.	6.1	UN2788	I	6.1	N33, N34, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	40.	
				II	6.1	A3, IB2, N33, N34, T11, TP2, TP13, TP27.	153	202	243	5 L	60 L	A	40.	
				III	6.1	IB3, T7, TP2, TP28	153	203	241	60 L	220 L	A	40.	
	*	*	*	*	*	*	*	*	*					
G	Oxidizing liquid, corrosive, n.o.s.	5.1	UN3098	I	5.1, 8	62	None	201	244	Forbidden	2.5 L	D	13, 56, 58, 138.	
				II	5.1, 8	62, IB1	None	202	243	1 L	5 L	B	13, 56, 58, 138.	
				III	5.1, 8	62, IB2	152	203	242	2.5 L	30 L	B	13, 56, 58, 138.	
G	Oxidizing liquid, n.o.s	5.1	UN3139	I	5.1	62, 127, A2	None	201	243	Forbidden	2.5 L	D	56, 58, 138.	
				II	5.1	62, 127, 148, A2, IB2	152	202	242	1 L	5 L	B	56, 58, 138.	
				III	5.1	62, 127, 148, A2, IB2	152	203	241	2.5 L	30 L	B	56, 58, 138.	
G	Oxidizing liquid, toxic, n.o.s	5.1	UN3099	I	5.1, 6.1	62	None	201	244	Forbidden	2.5 L	D	56, 58, 138.	
				II	5.1, 6.1	62, IB1	152	202	243	1 L	5 L	B	56, 58, 95, 138.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	5.1, 6.1	62, IB2	152	203	242	2.5 L	30 L	B	56, 58, 95, 138.
		*	*		*	*	*	*		*			
	Perchloric acid *with more than 50 percent but not more than 72 percent acid, by mass.*	5.1	UN1873	I	5.1, 8	A2, N41, T10, TP1	None	201	243	Forbidden	2.5 L	D	66.
		*	*		*	*	*	*		*			
	Phosphorus tribromide	8	UN1808	II	8	A3, A7, B2, B25, IB2, N34, N43, T7, TP2.	None	202	242	Forbidden	30 L	C	40.
		*	*		*	*	*	*		*			
	Propanethiols	3	UN2402	II	3	IB2, T4, TP1, TP13	150	202	242	5 L	60 L	E	95, 102.
		*	*		*	*	*	*		*			
	Propylene oxide	3	UN1280	I	3	N34, T11, TP2, TP7	None	201	243	1 L	30 L	E	40.
		*	*		*	*	*	*		*			
	1,2-Propylenediamine	8	UN2258	II	8, 3	A3, IB2, N34, T7, TP2	None	202	243	1 L	30 L	A	40.
	Propyleneimine, stabilized	3	UN1921	I	3, 6.1	N34, T14, TP2, TP13	None	201	243	1 L	30 L	B	40.
		*	*		*	*	*	*		*			
	Selenium oxychloride	8	UN2879	I	8, 6.1	A7, N34, T10, TP2, TP13	None	201	243	0.5 L	2.5 L	E	40.
		*	*		*	*	*	*		*			
	Silicon tetrachloride	8	UN1818	II	8	A3, B2, B6, T10, TP2, TP7, TP13.	None	202	242	Forbidden	30 L	C	40.
		*	*		*	*	*	*		*			
	Sulfur chlorides	8	UN1828	I	8	5, A7, A10, B10, B77, N34, T20, TP2.	None	201	243	Forbidden	2.5 L	C	40.
		*	*		*	*	*	*		*			
	Sulfuric acid, fuming *with less than 30 percent free sulfur trioxide.*	8	UN1831	I	8	A7, N34, T20, TP2,TP13	None	201	243	Forbidden	2.5 L	C	14, 40.
		*	*		*	*	*	*		*			
	Trichloroacetic acid, solution	8	UN2564	II	8	A3, A7, B2, IB2, N34, T7, TP2.	154	202	242	1 L	30 L	B.	
				III	8	A3, A7, IB3, N34, T4, TP1	154	203	241	5 L	60 L	B	8.
		*	*		*	*	*	*		*			
	Trifluoroacetic acid	8	UN2699	I	8	A7, B4, N3, N34, N36, T10, TP2.	None	201	243	0.5 L	2.5 L	B	12, 25, 40.
		*	*		*	*	*	*		*			
	Valeryl chloride	8	UN2502	II	8, 3	A3, A7, B2, IB2, N34, T7, TP2.	154	202	243	1 L	30 L	C	40.
		*	*		*	*	*	*		*			
	Vanadium oxytrichloride	8	UN2443	II	8	A3, A7, B2, B16, IB2, N34, T7, TP2.	154	202	242	Forbidden	30 L	C	40.

*	*	*	*	*	*	*	*	*	*	*	*	*			
Vanadium tetrachloride	8	UN2444	I	8	A7, B4, N34, T10, TP2	None	201	243	Forbidden	2.5 L	C	40.			
*	*	*	*	*	*	*	*	*	*	*	*	*			
Vinyl ethyl ether, stabilized	3	UN1302	I	3	T11, TP2	None	201	243	1 L	30 L	D.				
*	*	*	*	*	*	*	*	*	*	*	*	*			
Xylyl bromide, liquid	6.1	UN1701	II	6.1	A3, A7, IB2, N33, T7, TP2, TP13.	None	340	None	Forbidden	60 L	D	40.			
*	*	*	*	*	*	*	*	*	*	*	*	*			

* * * * *

■ 3. In § 172.102 paragraph (c)(2), special provision A3 is revised as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(2) * * *

A3 For combination packagings, if glass inner packagings (including ampoules) are used, they must be packed with absorbent material in tightly closed rigid and leakproof receptacles before packing in outer packagings.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 4. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 5. In § 175.10, paragraphs (a)(18) and (a)(18)(i) are revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(18) Except as provided in § 173.21 of this subchapter, portable electronic devices (*e.g.,* watches, calculating machines, cameras, cellular phones, laptop and notebook computers, camcorders, medical devices etc.) containing dry cells or dry batteries (including lithium cells or batteries) and spare dry cells or batteries for these devices, when carried by passengers or crew members for personal use. Portable electronic devices powered by lithium batteries may be carried in either checked or carry-on baggage. Spare lithium batteries must be carried in carry-on baggage only. Each installed or spare lithium battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria, part III, sub-section 38.3 and each spare lithium battery must be individually protected so as to prevent short circuits (*e.g.,* by placement in original retail packaging, by otherwise insulating terminals by taping over exposed terminals, or placing each battery in a separate plastic bag or protective pouch). In addition, each installed or spare lithium battery must not exceed the following:

(i) For a lithium metal battery, the lithium content must not exceed 2 grams. With the approval of the operator, portable medical electronic devices (*e.g.* automated external defibrillators (AED), nebulizer, continuous positive airway pressure (CPAP), etc.) may contain lithium metal batteries exceeding 2 grams but not exceeding 8 grams. No more than two individually protected lithium metal batteries each exceeding 2 grams, but not exceeding 8 grams, may be carried as spare batteries for portable medical electronic devices in carry-on baggage and must be carried with the portable medical electronic device they are intended to operate;

* * * * *

■ 6. In § 175.30, paragraphs (c) and (c)(1) are revised to read as follows:

§ 175.30 Inspecting shipments.

* * * * *

(c) A hazardous material may be carried aboard an aircraft only if, based on the inspection by the operator, the package, outside container, freight container, overpack, or unit load device containing the hazardous material:

(1) Has no leakage or other indication that its integrity has been compromised; and

* * * * *

■ 7. Section 175.33 is revised to read as follows:

§ 175.33 Shipping paper and notification of pilot-in-command.

(a) When a hazardous material subject to the provisions of this subchapter is carried in an aircraft, a copy of the shipping paper required by § 175.30(a)(2) must accompany the shipment it covers during transportation aboard the aircraft. The operator of the aircraft must provide the pilot-in-command and dispatcher (or other ground support personnel with responsibilities for operational control of the aircraft as designated in the operator's manual) assigned to the flight with accurate and legible written information as early as practicable before departure of the aircraft, but in no case later than when the aircraft moves under its own power, which specifies at least the following:

(1) The air waybill number (when issued);

(2) The proper shipping name, hazard class, subsidiary risk(s) corresponding to a required label(s), packing group and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter). In the case of Class 1 materials, the compatibility group letter also must be shown.

(3) The total number of packages;

(4) The location of the packages aboard the aircraft;

(5) The net quantity or gross weight, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided. For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper;

(6) For Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their category, transport index (if applicable), and their location aboard the aircraft;

(7) Confirmation that the package must be carried only on cargo aircraft if its transportation aboard passenger-carrying aircraft is forbidden;

(8) The airport at which the package(s) is to be unloaded;

(9) An indication, when applicable, that a hazardous material is being carried under terms of a special permit;

(10) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew; and

(11) The date of the flight;

(12) For UN1845, Carbon dioxide, solid (dry ice), only the UN number, proper shipping name, hazard class, total quantity in each hold aboard the aircraft, and the airport at which the package(s) is to be unloaded must be provided.

(13) For UN 3480, Lithium ion batteries, and UN 3090, Lithium metal batteries, the information required by paragraph (a) of this section may be replaced by the UN number, proper shipping name, class, total quantity at each specific loading location, and whether the package must be carried on cargo aircraft only. UN 3480 (Lithium ion batteries) and UN 3090 (Lithium metal batteries) carried under an approval must meet all of the requirements of this section.

(b)(1) The information provided to the pilot-in-command must also include a signed confirmation or some other indication from the person responsible for loading the aircraft that there was no evidence of any damage to or leakage from the packages or any leakage from the unit load devices loaded on the aircraft;

(2) A copy of the written notification to pilot-in-command shall be readily available to the pilot-in-command and dispatcher during flight. Emergency response information required by subpart G of part 172 of this subchapter must be maintained in the same manner as the written notification to pilot-in-command during transport of the hazardous material aboard the aircraft.

(3) The pilot-in-command must indicate on a copy of the information provided to the pilot-in-command, or in some other way, that the information has been received.

(c) The aircraft operator must—

(1) Retain a copy of the shipping paper required by § 175.30(a)(2) or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained by the operator for one year after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper notifies the air carrier that a shipment is ready for transportation, as indicated on the air waybill or bill of lading, as an alternative to the date the shipment is picked up or accepted by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification, as required by § 172.204 of this subchapter.

(2) Retain a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days at the airport of departure or the operator's principal place of business.

(3) Have the information required to be retained under this paragraph readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg.

(4) Make available, upon request, to an authorized official of a Federal, State, or local government agency (which includes emergency responders) at reasonable times and locations, the documents or information required to be retained by this paragraph. In the event of a reportable incident, as defined in § 171.15 of this subchapter, the aircraft operator must make immediately available to an authorized official of a Federal, State, or local government agency (which includes emergency responders), the documents or information required to be retained by this paragraph.

(d) The documents required by paragraphs (a) and (b) this section may be combined into one document if it is given to the pilot-in-command before departure of the aircraft.

* * * * *

■ 8. In § 175.88, paragraph (c) is revised to read as follows:

§ 175.88 Inspection, orientation and securing packages of hazardous materials.

* * * * *

(c) Packages containing hazardous materials must be:

(1) Secured in an aircraft in a manner that will prevent any shifting or change in the orientation of the packages;

(2) Protected from being damaged, including by the movement of baggage, mail, stores, or other cargo;

(3) Handled so that accidental damage is not caused through dragging or mishandling; and

(4) When containing Class 7 (radioactive) materials, secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

Issued in Washington, DC, on November 21, 2016 under authority delegated in 49 CFR 1.97.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–28403 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0132; 4500030115]

Endangered and Threatened Wildlife and Plants; 90-Day Findings on Three Petitions; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction.

SUMMARY: On November 30, 2016, we, the U.S. Fish and Wildlife Service (Service), published a document in the **Federal Register** announcing 90-day findings on three petitions to list or reclassify wildlife or plants under the Endangered Species Act of 1973, as amended (Act). That document included a not-substantial finding for *Tetraneuris verdiensis* (Verde four-nerve daisy). In the finding, we mistakenly attributed the petition to list *Tetraneuris verdiensis* as endangered or threatened and to designate critical habitat for this plant to the Center for Biological Diversity; however Glenn Rink submitted that petition to us. With this document, we correct that error. If you sent a comment previously, you need not resend the comment.

DATES: Correction issued on December 5, 2016. To ensure that we will have adequate time to consider submitted information during the status reviews for the leopard and lesser prairie-chicken, we request that we receive information no later than January 30, 2017.

FOR FURTHER INFORMATION CONTACT: Regarding *Tetraneuris verdiensis,* contact Shaula Hedwall, 928–556–2118; *shaula_hedwall@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 2016 (81 FR 86315), in FR Doc. 2016–28513, on page 86317, in the first column, under the heading Evaluation of a Petition to List Tetraneuris verdiensis (Verde Four-nerve Daisy) as an Endangered or Threatened Species Under the Act, and the subheading *Petition History,* remove the words ''the Center for Biological Diversity'' and add in their place the words ''Glenn Rink''.

Dated: November 30, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–29055 Filed 12–2–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 233
Monday, December 5, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–12–0060; NOP–12–14]

National Organic Program: Notice of Final Guidance on Classification of Materials and Materials for Organic Crop Production

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of final guidance.

SUMMARY: This notice announces availability of final guidance intended for use by accredited certifying agents, certified operations, material evaluation programs, and other organic industry stakeholders. The first set of guidance documents, NOP 5033, follows recommendations from the National Organic Standards Board (NOSB) concerning the classification of materials under the USDA organic regulations (7 CFR part 205). The Classification of Materials guidance, NOP 5033, details the procedures and decision trees for classifying materials used for organic crop production, livestock production, and handling. The second set of guidance documents, NOP 5034, clarifies certain materials for use in organic crop production. These documents include an illustrative list of allowed natural and synthetic materials and a limited appendix of materials prohibited in organic crop production.

The guidance explains the policy of the National Organic Program (NOP) concerning the portions of the regulations in question, referenced herein.

DATES: The final guidance documents announced by this notice are effective on December 6, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250. Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 2013, the Agricultural Marketing Service (AMS) published in the **Federal Register** a notice of availability with request for public comment on two sets of draft guidance documents (78 FR 19637). These included NOP 5033—Classification of Materials and NOP 5034—Materials for Organic Crop Production. The draft guidance documents on Classification of Materials were developed in response to NOSB recommendations. The documents also address the identified need to develop guidance for certifying agents and certified operations for clarification on the classification of materials and for more definitive information on materials used in organic crop production.

The draft guidance documents can be viewed online at *http://www.ams.usda.gov/NopDraftGuidance.* The 60-day comment period closed on June 3, 2013.

AMS received 47 public comments on the draft guidance. Based on the comments received, NOP revised and is publishing final guidance on these topics.

The final guidance documents are available from NOP through ''The Program Handbook: Guidance and Instructions for Certifying Agents and Certified Operations.'' The Program Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/nop.*

Under the Organic Foods Production Act (OFPA) (7 U.S.C. 6501–6522), the National List of Allowed and Prohibited Substance section of the USDA organic regulations must include synthetic substances that are permitted for use in organic crop production, and nonsynthetic (natural) substances that are prohibited for use in organic crop production.

Because industry typically uses the word ''material'' to describe ''substance,'' for the purposes of these guidance documents, ''substance'' and ''material'' are synonymous and interchangeable.

Nonsynthetic (natural) materials are generally permitted to be used in organic production, but are not required to be included in the National List. At times, this construction of the National List has led to inconsistent determinations by industry on which input materials are allowed for organic production, since permitted nonsynthetic materials (*e.g.,* feather meal, fish meal, botanical pesticides) are not specifically identified in the standards.

The guidance document NOP 5033, Classification of Materials, provides guidance to the industry on how materials are classified as nonsynthetic, synthetic, agricultural, or nonagricultural. The terms ''nonsynthetic,'' ''synthetic,'' ''agricultural,'' and ''nonagricultural'' are defined at 7 CFR 205.2 of the USDA organic regulations. This guidance implements a series of NOSB recommendations and clarifies the classification of these defined terms. NOP 5033–1 includes a decision tree for classifying a material as synthetic or nonsynthetic. NOP 5033–2 includes a decision tree for classifying a material as agricultural or nonagricultural. For materials used in organic crop production, the classification guidance is intended to be used in conjunction with the final guidance NOP 5034, Materials for Organic Crop Production.

The guidance document NOP 5034, Materials for Organic Crop Production, guides the industry on materials used in organic crop production. NOP 5034–1 is a tool for organic producers to understand which input materials are allowed in organic crop production. The guidance includes substances that are specifically allowed in section 205.601 of the USDA organic regulations, as well as materials that are permitted, but are not required to be included on the National List. The appendix NOP 5034–2 provides a list of materials that are specifically prohibited in organic crop production. Neither list is intended to be all inclusive. NOP 5034–2 does include items that have been previously reviewed by the NOSB and not recommended for use or whose use in organic crop production has expired. The appendix of prohibited materials also includes materials that are specifically listed in section 205.602 of

the National List as prohibited for use in organic crop production (*e.g.,* lead salts) or that are otherwise prohibited by the USDA organic regulations (*e.g.,* sewage sludge). The guidance does not grant new allowances for any synthetic substance to be used in organic production that have not been specifically recommended by the NOSB and added to the National List through rulemaking.

II. Significance of Guidance

These final guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. These final guidance documents represent NOP's current positions on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind NOP or the public. Guidance documents are intended to offer uniform methods for operations that comply with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522) and USDA organic regulations, thereby reducing the burden on operators of developing their own methods and to simplify audits and inspections. Alternative approaches that can demonstrate compliance with the OFPA and its implementing regulations are also acceptable. As with any alternative compliance approach, NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

III. Electronic Access

Persons with access to Internet may obtain a copy of final guidance documents from the NOP's Web site at *http://www.ams.usda.gov/nop.* Request for hard copies of the final guidance documents can be obtained by submitting a written request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notification of availability.

Authority: 7 U.S.C. 6501–6522.

Dated: November 29, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–29018 Filed 12–2–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lyon-Mineral Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lyon-Mineral Resource Advisory Committee (RAC) will meet in Yerington, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held January 12, 2017, at 1:00 p.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Lyon County Administration Complex, Commissioners Meeting Room, 27 South Main Street, Yerington, Nevada.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bridgeport Ranger Station, HC62, Box 1000, Bridgeport, California. Please call ahead at 760–932–7070 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jeremy Marshall, Designated Federal Officer by phone at 760–932–5801, or via email at *jmarshall02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss new project proposals; and
2. Receive an update on current and completed projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 3, 2017, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jeremy Marshall, Designated Federal Officer, Bridgeport Ranger District, HC 62, Box 1000, Bridgeport, California 93517; or by email to *jmarshall02@fs.fed.us,* or via facsimile to 760–932–5899.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: November 28, 2016.

Jeremy Marshall,

Bridgeport District Ranger.

[FR Doc. 2016–29067 Filed 12–2–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Office of Inspector General

Succession, Delegations of Authority, and Signature Authorities, No. IG–1313, Change 8

AGENCY: Office of Inspector General, USDA.

ACTION: Notice.

SUMMARY: On November 9, 2016, USDA Inspector General Phyllis K. Fong, pursuant to authority vested in her by the Federal Vacancies Reform Act (5 U.S.C. 3345–3349d) and the Inspector General Act of 1978, as amended (5 U.S.C. app. 3), issued IG–1313, Change 8, Succession, Delegations of Authority, and Signature Authorities. This directive is a revised succession order and reflects delegations of authority for the Office of Inspector General. This directive has been revised to update the lines of succession and delegation, and to clarify procedures to be followed in the event the Office of Inspector General (OIG) headquarters must be relocated. This directive provides guidance on the transfer of functions and duties of the Inspector General (IG), as well as other OIG central management functions,

regardless of what events necessitate such transfer.

DATES: November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Christy Slamowitz, Counsel to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 441–E, Washington, DC 20250–2308, Telephone: (202) 720–9110.

SUPPLEMENTARY INFORMATION: The OIG proposes revising the succession and delegations of authority for OIG by publishing a detailed sequence of succession within the Washington, DC, headquarters, followed by a detailed sequence of succession by region and position. This action is taken pursuant to authority vested in the Inspector General by the Federal Vacancies Reform Act (5 U.S.C. 3345–3349d) and the Inspector General Act of 1978 (5 U.S.C. app. 3).

For the reasons stated in the preamble, IG–1313, Change 8, Succession, Delegations of Authority, and Signature Authorities, has been revised to give notice of a delegation of authority and the line of succession from the Inspector General as follows:

I. Pursuant to authority vested in me by the Federal Vacancies Reform Act (5 U.S.C. 3345–3349d) and the Inspector General Act of 1978, as amended (5 U.S.C. app. 3), during any period in which the Inspector General (IG), United States Department of Agriculture (USDA), resigns, dies, or is otherwise unable to perform the functions and duties of the office, and unless the President shall designate another officer to perform the functions and duties of the position, the Deputy IG, as the designated first assistant to the IG, shall temporarily perform the IG's functions and duties in an acting capacity, pursuant to and subject to the Federal Vacancies Reform Act (5 U.S.C. 3345–3349d). In the absence of the IG and Deputy IG, the officials designated below, in the order listed, shall become the acting Deputy IG and so shall temporarily perform the functions and duties of the IG. This order may be changed by a delegation in writing from the IG, or by the Deputy IG while acting in the absence of the IG:

1. Assistant IG for Audit (AIG/A);
2. Assistant IG for Investigations (AIG/I);
3. Assistant IG for Management (AIG/M);
4. Assistant IG for Data Sciences (AIG/DS);
5. Counsel to the IG;
6. Deputy Assistant IG for Audit (DAIG/A), by seniority;
7. Deputy Assistant IG for Investigations (DAIG/I);

The following officials for the listed locations in the following order:

8. Audit Directors, by seniority, then Investigations Director, Technical Crimes Division—Kansas City, Missouri;
9. Special Agent-in-Charge (SAC)—Temple, Texas;
10. Audit Director—Beltsville, Maryland;
11. SAC—New York, New York;
12. Audit Director, then SAC—Oakland, California;
13. Audit Director, then SAC—Atlanta, Georgia;
14. Audit Director, then SAC—Chicago, Illinois;
15. Director, Office of Compliance and Integrity; or
16. Director, Office of Diversity and Conflict Resolution.

II. For purposes of this order of succession, a designated official is a person holding a permanent appointment to the position. Persons filling positions in an acting capacity do not substitute for officials holding a permanent appointment to a position. If a position is vacant or an official occupying the position on a permanent basis is absent or unavailable, authority passes to the next available official occupying a position in the order of succession.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operation of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

IV. The authorities delegated herein may not be redelegated.

Authority: 5 U.S.C. 3345–3349d; 5 U.S.C. app. 3.

Dated: November 29, 2016.

Phyllis K. Fong,

Inspector General.

[FR Doc. 2016–29096 Filed 12–2–16; 8:45 am]

BILLING CODE 3410–23–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 161107999–6999–01]

Voting Rights Act Amendments of 2006, Determinations Under Section 203

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: As required by Section 203 of the Voting Rights Act of 1965, as amended, this notice publishes the Bureau of the Census (Census Bureau) Director's determinations as to which political subdivisions are subject to the minority language assistance provisions of the Act. As of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by the Act.

EFFECTIVE DATE: This notice is effective on December 5, 2016.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Mr. James Whitehorne, Chief, Census Redistricting and Voting Rights Data Office, Bureau of the Census, United States Department of Commerce, Room 4H057, 4600 Silver Hill Rd, Washington, DC 20233, by telephone at 301–763–4039, or visit the Redistricting & Voting Rights Data Office Internet site at *http://www.census.gov/rdo/.*

For information regarding the applicable provisions of the Act, please contact T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue NW., Washington, DC 20530, by telephone at (800) 253–3931 or visit the Voting Section Internet site at *https://www.justice.gov/crt/voting-section.*

SUPPLEMENTARY INFORMATION: In July 2006, Congress amended the Voting Rights Act of 1965, now codified at Title 52, United States Code (U.S.C.), § , 10301 *et seq.* (See Pub. L. 109–246, 120 Stat. 577 (2006)). Among other changes, the sunset date for minority language assistance provisions set forth in Section 203 of the Act was extended to August 5, 2032.

Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than five (5) percent of voting age citizens are members of a single-language minority group and do not ''speak or understand English adequately enough to participate in the electoral process'' and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than five (5) percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision is also covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not ''speak

or understand English adequately enough to participate in the electoral process,'' and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than five (5) percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Area, as defined for the purposes of the decennial census, are members of a single language minority group, do not ''speak or understand English adequately enough to participate in the electoral process,'' and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that American Indian Area, is covered by the minority language assistance provision set forth in Section 203. For the 2010 Census, American Indian areas and Alaska Native Regional Corporations were identified by the federally recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indians and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas (OTSA), Tribal Designated Statistical Areas (TDSA), State Designated Tribal Statistical Areas (SDTSA), and Alaska Native Village Statistical Areas (ANVSA).

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of Section 203. The state and political subdivisions obligated to comply with the requirements are listed in the attachment to this Notice.

Section 203 also provides that the ''determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court.'' Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have legal obligation to provide the minority language assistance prescribed in Section 203 of the Act. In the cases where a state is covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203.

Dated: November 22, 2016.

John H. Thompson,

Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015

State and political subdivision	Language minority group
Alaska:	
Aleutians East Borough	Filipino.
Aleutians East Borough	Hispanic.
Aleutians East Borough	Yup'ik.
Aleutians West Census Area	Aleut.
Aleutians West Census Area	Filipino.
Bethel Census Area	Inupiat.
Bethel Census Area	Yup'ik.
Bristol Bay Borough	Yup'ik.
Dillingham Census Area	Yup'ik.
Kenai Peninsula Borough	Yup'ik.
Kodiak Island Borough	Yup'ik.
Lake and Peninsula Borough	Yup'ik.
Nome Census Area	Inupiat.
Nome Census Area	Yup'ik.
North Slope Borough	Inupiat.
Northwest Arctic Borough	Inupiat.
Southeast Fairbanks Census Area	Alaskan Athabascan.
Valdez-Cordova Census Area	Alaskan Athabascan.
Wade Hampton Census Area	Inupiat.
Wade Hampton Census Area	Yup'ik.
Yukon-Koyukuk Census Area	Alaskan Athabascan.
Yukon-Koyukuk Census Area	Inupiat.
Arizona:	
Apache County	American Indian (Navajo).
Coconino County	American Indian (Navajo).
Gila County	American Indian (Apache).
Graham County	American Indian (Apache).
Maricopa County	Hispanic.
Navajo County	American Indian (Navajo).
Pima County	Hispanic.
Pinal County	American Indian (Apache).
Santa Cruz County	Hispanic.
Yuma County	Hispanic.
California:	
State Coverage	Hispanic.
Alameda County	Chinese (including Taiwanese).
Alameda County	Filipino.
Alameda County	Hispanic.
Alameda County	Vietnamese.
Colusa County	Hispanic.
Contra Costa County	Chinese (including Taiwanese).
Contra Costa County	Hispanic.
Del Norte County	American Indian (All other American Indian Tribes).
Fresno County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015—Continued

State and political subdivision	Language minority group
Glenn County	Hispanic.
Imperial County	Hispanic.
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Cambodian.
Los Angeles County	Chinese (including Taiwanese).
Los Angeles County	Filipino.
Los Angeles County	Hispanic.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Chinese (including Taiwanese).
Orange County	Hispanic.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Sacramento County	Chinese (including Taiwanese).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	American Indian (All other American Indian Tribes).
San Diego County	Chinese (including Taiwanese).
San Diego County	Filipino.
San Diego County	Hispanic.
San Diego County	Vietnamese.
San Francisco County	Chinese (including Taiwanese).
San Francisco County	Hispanic.
San Joaquin County	Hispanic.
San Mateo County	Chinese (including Taiwanese).
San Mateo County	Hispanic.
Santa Barbara County	Hispanic.
Santa Clara County	Chinese (including Taiwanese).
Santa Clara County	Filipino.
Santa Clara County	Hispanic.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Conejos County	Hispanic.
Costilla County	Hispanic.
Denver County	Hispanic.
La Plata County	American Indian (Ute).
Montezuma County	American Indian (Ute).
Saguache County	Hispanic.
Connecticut:	
Bridgeport town	Hispanic.
East Hartford town	Hispanic.
Hartford town	Hispanic.
Kent town	American Indian (All other American Indian Tribes).
Meriden town	Hispanic.
New Britain town	Hispanic.
New Haven town	Hispanic.
New London town	Hispanic.
Waterbury town	Hispanic.
Windham town	Hispanic.
Florida:	
State Coverage	Hispanic.
Broward County	Hispanic.
DeSoto County	Hispanic.
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Lee County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Pinellas County	Hispanic.
Polk County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015—Continued

State and political subdivision	Language minority group
Seminole County	Hispanic.
Georgia:	
Gwinnett County	Hispanic.
Hawaii:	
Honolulu County	Chinese (including Taiwanese).
Honolulu County	Filipino.
Idaho:	
Lincoln County	Hispanic.
Illinois:	
Cook County	Asian Indian.
Cook County	Chinese (including Taiwanese).
Cook County	Hispanic.
Kane County	Hispanic.
Lake County	Hispanic.
Iowa:	
Buena Vista County	Hispanic.
Tama County	American Indian (All other American Indian Tribes).
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Haskell County	Hispanic.
Seward County	Hispanic.
Maryland:	
Montgomery County	Hispanic.
Massachusetts:	
Boston city	Hispanic.
Chelsea city	Hispanic.
Holyoke city	Hispanic.
Lawrence city	Hispanic.
Lowell city	Cambodian.
Lowell city	Hispanic.
Lynn city	Hispanic.
Malden city	Chinese (including Taiwanese).
Quincy city	Chinese (including Taiwanese).
Revere city	Hispanic.
Southbridge town	Hispanic.
Springfield city	Hispanic.
Worcester city	Hispanic.
Michigan:	
Colfax township	Hispanic.
Fennville city	Hispanic.
Hamtramck city	Bangladeshi.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).
Noxubee County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Nebraska:	
Colfax County	Hispanic.
Dakota County	Hispanic.
Dawson County	Hispanic.
Nevada:	
Clark County	Filipino.
Clark County	Hispanic.
New Jersey:	
Bergen County	Hispanic.
Bergen County	Korean.
Camden County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Asian Indian.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015—Continued

State and political subdivision	Language minority group
New Mexico:	
Bernalillo County	American Indian (Navajo).
Bernalillo County	Hispanic.
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Doña Ana County	Hispanic.
Guadalupe County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Lincoln County	American Indian (Apache).
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
Mora County	Hispanic.
Otero County	American Indian (Apache).
Rio Arriba County	American Indian (Navajo).
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	American Indian (Pueblo).
Socorro County	American Indian (Navajo).
Socorro County	Hispanic.
Union County	Hispanic.
Valencia County	Hispanic.
New York:	
Bronx County	Hispanic.
Kings County	Chinese (including Taiwanese).
Kings County	Hispanic.
Nassau County	Hispanic.
New York County	Chinese (including Taiwanese).
New York County	Hispanic.
Queens County	Asian Indian.
Queens County	Chinese (including Taiwanese).
Queens County	Hispanic.
Queens County	Korean.
Suffolk County	Hispanic.
Westchester County	Hispanic.
Oklahoma	
Texas County	Hispanic.
Pennsylvania:	
Berks County	Hispanic.
Lehigh County	Hispanic.
Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city	Hispanic.
Pawtucket city	Hispanic.
Providence city	Hispanic.
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallam County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015—Continued

State and political subdivision	Language minority group
Edwards County	Hispanic.
El Paso County	American Indian (Pueblo).
El Paso County	Hispanic.
Floyd County	Hispanic.
Fort Bend County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Hale County	Hispanic.
Hansford County	Hispanic.
Harris County	Chinese (including Taiwanese).
Harris County	Hispanic.
Harris County	Vietnamese.
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Hudspeth County	Hispanic.
Jeff Davis County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Jones County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
Knox County	Hispanic.
La Salle County	Hispanic.
Lamb County	Hispanic.
Live Oak County	Hispanic.
Lynn County	Hispanic.
Martin County	Hispanic.
Matagorda County	Hispanic.
Maverick County	American Indian (All other American Indian Tribes).
Maverick County	Hispanic.
McMullen County	Hispanic.
Medina County	Hispanic.
Menard County	Hispanic.
Midland County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Ochiltree County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
San Patricio County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Sherman County	Hispanic.
Starr County	Hispanic.
Sterling County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Tarrant County	Vietnamese.
Terry County	Hispanic.
Titus County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Willacy County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah:	

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2015—Continued

State and political subdivision	Language minority group
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
Virginia:	
Fairfax County	Hispanic.
Fairfax County	Vietnamese.
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Chinese (including Taiwanese).
King County	Vietnamese.
Yakima County	Hispanic.
Wisconsin:	
Arcadia city	Hispanic.
Madison town	Hispanic.
Milwaukee city	Hispanic.

[FR Doc. 2016–28969 Filed 12–2–16; 8:5 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Extension of Deadline for Nominations of Members To Serve on the Commerce Data Advisory Council (CDAC)

AGENCY: Economics and Statistics Administration (ESA), Department of Commerce.

ACTION: Extension of deadline for nominations of members to the Commerce Data Advisory Council (CDAC).

SUMMARY: The Secretary of Commerce is requesting nomination of individuals to the Commerce Data Advisory Council. The Secretary will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criterial.

DATES: The Economics and Statistics Administration must receive nominations of members by midnight December 16, 2016.

ADDRESSES: Please submit nominations to the email account *DataAdvisoryCouncil@doc.gov,* this account is specifically set up to receive Data Advisory Council applications. Nominations may also be submitted by postal delivery to Burton Reist, Director of External Affairs, Economics and Statistics Administration/DFO CDAC, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Burton Reist, Director of External Affairs, Economics and Statistics Administration, Department of Commerce, at (202) 482–3331 or email *BReist@doc.gov,* also at 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Commerce (Department) collects, compiles, analyzes, and disseminates a treasure trove of data, including data on the Nation's economy, population, and environment. This data is fundamental to the Department's mission and is used for the protection of life and property, for scientific purposes, and to enhance economic growth. However, the Department's capacity to disseminate the increasing amount of data held and to disseminate it in formats most useful to its customers is significantly constrained.

In order to realize the potential value of the data the Department collects, stores, and disseminates, the Department must minimize barriers to accessing and using the data. Consistent with privacy and security considerations, the Department is firmly committed to unleashing its untapped data resources in ways that best support downstream information access, processing, analysis, and dissemination.

The Commerce Data Advisory Council (CDAC) provides advice and recommendations, to include process and infrastructure improvements, to the Secretary on ways to make Commerce data easier to find, access, use, combine and disseminate. The aim of this advice shall be to maximize the value of Commerce data to all users including governments, businesses, communities, academia, and individuals.

The Secretary will draw CDAC membership from the data industry academia, non-profits and state and local governments with a focus on recognized expertise in collection, compilation, analysis, and dissemination. As privacy concerns span the entire data lifecycle, expertise in privacy protection also will be represented on the Council. The Secretary will select members that represent the entire spectrum of Commerce data including demographic, economic, scientific, environmental, patent, and geospatial data. The Secretary will select members from the information technology, business, non-profit, and academic communities, and state and local governments. Collectively, their knowledge will include all types of data Commerce distributes and the full lifecycle of data collection, compilation, analysis, and dissemination.

II. Description of Duties

The Council shall advise the Secretary on ways to make Commerce data easier to find, access, use, combine, and disseminate. Such advice may include recommended process and infrastructure improvements. The aim of this advice shall be to maximize the value of Commerce data to governments, businesses, communities, and individuals.

In carrying out its duties, the Council may consider the following:

—Data management practices that make it easier to track and disseminate integrated, interoperable data for diverse users;

—Best practices that can be deployed across Commerce to achieve common, open standards related to taxonomy, vocabulary, application programming interfaces (APIs), metadata, and other key data characteristics;

—Policy issues that arise from expanding access to data, including issues related to privacy,

confidentiality, latency, and consistency;
—Opportunities and risks related to the combination of public and private data sources and the development of joint data products and services resulting from public-private partnerships;
—External uses of Commerce data and similar federal, state, and private data sets by businesses; and,
—Methods to enhance communication and collaboration between stakeholders and subject-matter experts at Commerce on data access and use.

The Council meets up to four times a year, budget permitting. Special meetings may be called when appropriate.

Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees, is the governing instrument for the CDAC.

III. Membership

1. The Council shall consist of up to 20 members.

2. The Secretary shall select and appoint members and members shall serve at the pleasure of the Secretary.

3. Members shall represent a cross-section of business, academic, non-profit, and non-governmental organizations.

4. The Secretary will choose members of the Council who ensure objectivity and balance, a diversity of perspectives, and guard against potential for conflicts of interest.

5. Members shall be prominent experts in their fields, recognized for their professional and other relevant achievements and their objectivity.

6. In order to ensure the continuity of the Commerce Data Advisory Council, the Council shall be appointed so that each year the terms expire of approximately one-third of the members of the Council.

7. Council members serve for terms of two years and may be reappointed to any number of additional terms. Initial appointments may be for 12-, 18- and 24-month increments to provide staggered terms.

8. Nominees must be able to actively participate in the tasks of the Council, including, but not limited to regular meeting attendance, Council meeting discussant responsibilities, and review of materials, as well as participation in conference calls, webinars, working groups, and special Council activities.

9. Should a council member be unable to complete a two-year term and when vacancies occur, the Secretary will select replacements who can best either replicate the expertise of the departing member or provide the CDAC with a new, identified needed area of expertise. An individual chosen to fill a vacancy shall be appointed for the remainder of the term of the member replaced or for a two-year term as deemed. A vacancy shall not affect the exercise of any power of the remaining members to execute the duties of the Council.

10. No employee of the federal government can serve as a member of the Census Scientific Advisory Committee.

All members of the Commerce Data Advisory Council shall adhere to the conflict of interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

IV. Compensation

1. Membership is under voluntary circumstances and therefore members do not receive compensation for service on the Commerce Data Advisory Council.

2. Members shall receive per diem and travel expenses as authorized by 5 U.S.C. 5703, as amended, for persons employed intermittently in the Government service.

V. Nominations Information

The Secretary will consider nominations of all qualified individuals to ensure that the CDAC includes the areas of subject matter expertise noted above (see ''Background and Membership''). Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the CDAC. Nominations shall state that the nominee is willing to serve as a member of the Council. A nomination package should include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise;

2. A biographical sketch of the nominee and a copy of his/her resume or curriculum vitae; and

3. The name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership. The Department has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates. The Department of Commerce also encourages geographic diversity in the composition of the Council. All nomination information should be provided in a single, complete package and received by the stated deadline, December 16, 2016. Interested applicants should send their nomination package to the email or postal address provided above.

Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Council to permit evaluation of possible sources of conflicts of interest. Finally, nominees will be required to certify that they are not subject to the Foreign Agents Registration Act (22 U.S.C. 611) or the Lobbying Disclosure Act (2 U.S.C. 1601 *et seq.*).

Dated: November 28, 2016.

Burton Reist,

Director of External Affairs, Economics and Statistics Administration.

[FR Doc. 2016–29037 Filed 12–2–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Suspension Agreement on Sugar From Mexico; Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

DATES: Effective December 5, 2016.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the Agreement Suspending the Countervailing Duty Investigation of Sugar from Mexico (the CVD Agreement) for the period December 19, 2014, through December 31, 2015 (CVD review). Based upon the current record of this review, there is some indication that certain individual

transactions of subject merchandise may not be in compliance with the CVD Agreement, and further, that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act). The Department, therefore, needs to obtain additional information in order to confirm whether the Government of Mexico (GOM)—the signatory to the CVD Agreement—is in compliance with the terms of the CVD Agreement, and whether the current CVD Agreement continues to meet the relevant statutory requirements referenced above. The preliminary results are set forth in the section titled ''Methodology and Preliminary Results,'' infra. Absent the issuance of a revised suspension agreement, we intend to issue a post-preliminary finding on these issues as soon as practicable. In addition, we expect to issue the final results of review within 120 days after publication of these preliminary results in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–0408.

SUPPLEMENTAL INFORMATION:

Scope of Review

Merchandise covered by this CVD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this CVD Agreement is dispositive.[1]

Methodology and Preliminary Results

On December 19, 2014, the Department signed an agreement under section 704(c) of the Act, with the GOM, suspending the countervailing duty investigation on sugar from Mexico.[2] On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the U.S. International Trade Commission (the ITC) to conduct a review to determine whether the injurious effects of imports of the subject merchandise are eliminated completely by the CVD Agreement (a section 704(h) review).[3] On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the CVD investigation.[4] On March 19, 2015, in a unanimous vote, the ITC found that the CVD Agreement eliminates completely the injurious effects of imports of sugar from Mexico.[5] Subsequently, on April 24, 2015, the Department determined that AmCane and Imperial had standing to request continuation of this investigation and, as a result, published a continuation notice on May 4, 2015.[6] On September 23, 2015, the Department issued a final affirmative determination in the CVD investigation.[7] On November 16, 2015, the ITC published its final affirmative finding that an industry in the United States is materially injured by reason of imports of sugar from Mexico found to be subsidized by the GOM.[8] Because the ITC determined that such injury did exist, consistent with section 704(f)(3)(B) of the Act, the CVD Agreement remained in force.[9]

On December 30, 2015, Imperial and AmCane submitted requests for an administrative review of the CVD Agreement.[10] On December 31, 2015, the American Sugar Coalition and its Members [11] (Petitioners) filed a request for an administrative review of the CVD Agreement.[12]

The review of the CVD Agreement was initiated on February 9, 2015,[13] for the December 19, 2014 through December 31, 2014, period of review (POR) but was extended on March 16, 2016, to include calendar year 2015.[14] On June 2, 2016, the Department selected mandatory respondents [15] and issued its questionnaire to the GOM, the signatory to the CVD Agreement, and asked the GOM to send full questionnaires (Attachment 2) to two companies (and their respective affiliates): Central Motzorongo S.A. de C.V. (Motzorongo) and Fideicomiso Ingenio San Cristobal (San Cristobal). The Department also asked that the GOM forward a more limited questionnaire (Attachment 1) to all Mexican producers and exporters of sugar to whom the GOM issued an export license in the POR.[16]

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[1] For a complete description of the Scope of the Order, see Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Carole Showers, Director, Office of Policy, ''Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' dated concurrently with and adopted by this notice (''Preliminary Decision Memorandum'').

[2] *See Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico,* 79 FR 78044 (December 29, 2014), at Attachment, ''Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico'' (the CVD Agreement).

[3] *See* Letter from Imperial, ''Sugar from Mexico—Notice of Filing of Petition for Review of Suspension Agreements to Eliminate the Injurious Effect of Subject Imports,'' January 8, 2015; *see also* Letter from AmCane, ''Sugar from Mexico: Notice of Petition for Review of Suspension Agreements,'' January 8, 2015.

[4] *See* Letter from Imperial, ''Sugar from Mexico, Inv. Nos. A–201–845 and C–201–846—Request for Continuation of Investigations,'' January 16, 2015; *see also* Letter from AmCane, ''Sugar from Mexico: Request for Continuation of Investigations,'' January 16, 2015.

[5] *See* Department Memorandum, ''Requests to Continue the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,'' March 19, 2015.

[6] *See id.*

[7] *See Sugar from Mexico: Final Affirmative Countervailing Duty Determination,* 80 FR 57337 (September 23, 2015).

[8] *See Sugar from Mexico* (Investigation Nos. 701–TA–513 and 731–TA–1249 (Final)), 80 FR 70833 (November 16, 2015).

[9] *See Final CVD Determination,* 80 FR at 57339. Pursuant to section 704(f)(3)(B) of the Act, the CVD Agreement remains in force and the Department shall not issue an countervailing order so long as (i) the CVD Suspension Agreement remains in force, (ii) the CVD Suspension Agreement continues to meet the requirements of subsections 704(c) and 704(d) of the Act, and (iii) the parties to the CVD Suspension Agreement carry out their obligations under the CVD Suspension Agreement in accordance with its terms.

[10] *See* Letter from Imperial, ''Sugar from Mexico, Inv. No. C–201–846—Request for Administrative Review of the Agreement Suspending the Countervailing Duty Investigation,'' December 30, 2015; Letter from AmCane, ''Sugar from Mexico: Request for Administrative Reviews,'' December 30, 2015.

[11] The members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

[12] *See* Letter from American Sugar Coalition and its Members, ''Sugar from Mexico: Request for Administrative Review,'' December 31, 2015.

[13] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016).

[14] On March 16, 2016, the Department expanded the period of review for the CVD Agreement from December 19, 2014, through December 31, 2014, to include calendar year 2015. As such, the period of review for the instant review is December 19, 2014, through December 31, 2015. *See* Memorandum to Lynn Fischer Fox entitled ''First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Extending the Period of Review'' (March 16, 2016).

[15] *See* Department Memorandum, ''First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Questionnaire Issuance,'' June 2, 2016.

[16] *See* Questionnaire Regarding the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico for the December 19, 2014 through December 31, 2015 Period of Review, dated June 2, 2016.

The Department has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that the Department shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' Pursuant to the CVD Agreement, the GOM agreed that the subject merchandise would be subject to export limits as outlined in the CVD Agreement.[17] The Government also agreed to other conditions including limits on Refined Sugar[18] and the issuance of shipment-specific export licenses.[19] In addition, in this review, the Department is reassessing whether suspension of the CVD Agreement is in the ''public interest,'' including the availability of supplies of sugar in the U.S. market, and whether ''effective monitoring'' is practicable.[20]

After reviewing the information received to date from the respondent companies in their questionnaire responses, there is some indication that certain individual transactions of subject merchandise may not be in compliance with the CVD Agreement and that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Tariff Act of 1930 (the Act). However, based on the Department's review to date of the record information, we do not yet find a sufficient basis to make a reliable judgment as to whether the GOM and the Mexican respondent mills have adhered to the terms of the CVD Agreement and whether the CVD Agreement continues to meet the relevant requirements of the Act for such agreements. As detailed above, the Department found it necessary, late in the review, to seek additional information, *i.e.,* in supplemental questionnaires issued to the GOM and to its two selected mill respondents on November 18, 2016, in order to reach a determination as to whether the Agreement is functioning as intended, is in the public interest and whether it can be effectively monitored. For a full description of the methodology underlying our conclusions, see Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available via Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Department's Central Records Unit, located in Room 18022 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at *http://www.trade.gov/enforcement.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

[17] *See* Agreement, 79 FR 78040, 78047 at Export Limits.

[18] *See id.,* 79 FR 78046–78047 at Definitions and Export Limits.

[19] *See id.,* 79 FR 78048 at Export Limits and Implementation.

[20] *See* Memorandum to Paul Piquado entitled ''Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments) (December 19, 2014) at pages 3–5.

Public Comment

As discussed above, the Department needs additional information before making a definitive preliminary finding. Therefore, absent the issuance of a revised suspension agreement, we intend to issue our post-preliminary finding on these issues as soon as practicable. The comment period on these preliminary results as well as the post-preliminary results will be stated with the release of the post-preliminary results. At that time interested parties will have the opportunity to submit case and rebuttal briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of the issuance of the post-preliminary results. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–29075 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Antidumping Duty Suspension Agreement on Sugar From Mexico; Administrative Review

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the Agreement Suspending the Antidumping Duty Investigation of Sugar from Mexico (the AD Agreement) for the period December 19, 2014, through November 30, 2015 (AD review). Based upon the current record of this review, there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the AD Agreement, and further, that the AD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act). The Department, therefore, needs to obtain additional information in order to confirm whether the Mexican signatories subject to individual examination in this review are in compliance with the terms of the AD Agreement, and whether the current AD Agreement continues to meet the relevant statutory requirements referenced above. The preliminary results are set forth in the section titled ''Methodology and Preliminary Results,'' *infra.* Absent the issuance of a revised suspension agreement, we intend to issue a post-preliminary finding addressing these issues as soon as practicable. In addition, we expect to issue the final results of review within 120 days after publication of these preliminary results in the **Federal Register**.

DATES: Effective December 5, 2016.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Julie H. Santoboni, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–3063.

SUPPLEMENTARY INFORMATION:

Scope of Review

Merchandise covered by this AD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this AD Agreement is dispositive.[1]

Methodology and Preliminary Results

On December 19, 2014, the Department signed an agreement under section 734(c) of the Act, with a representative of Mexican sugar producers/exporters accounting for substantially all imports of sugar from Mexico, suspending the antidumping duty investigation on sugar from Mexico.[2] On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the U.S. International Trade Commission (the ITC) to conduct a review to determine whether the injurious effects of imports of the subject merchandise are eliminated completely by the AD Agreement (a section 734(h) review).[3] On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the AD investigation.[4] On March 19, 2015, in a unanimous vote, the ITC found that the AD Agreement eliminates completely the injurious effects of imports of sugar from Mexico.[5] Subsequently, on April 24, 2015, the Department determined that AmCane and Imperial had standing to request continuation of this investigation and, as a result, published a continuation notice on May 4, 2015.[6]

On September 23, 2015, the Department issued a final affirmative determination in the AD investigation.[7] On November 16, 2015, the ITC published its final affirmative finding that an industry in the United States is materially injured by reason of imports of sugar from Mexico.[8] Because the ITC determined that such injury did exist, consistent with section 734(f)(3)(B) of the Act, the AD Agreement remained in force.[9]

On December 30, 2015, Imperial and AmCane submitted requests for an administrative review of the AD Agreement.[10] On December 31, 2015, the American Sugar Coalition and its Members (Petitioners) filed a request for an administrative review of the AD Agreement.[11]

The review of the AD Agreement was initiated on February 9, 2015, for the December 19, 2014 through November 30, 2015, period of review.[12] On June 2, 2016, the Department selected mandatory respondents,[13] the two largest signatories, Central Motzorongo S.A. de C.V. and its affiliates (Motzorongo) and Fideicomiso Ingenio San Cristobal and its affiliates (San Cristobal).

The Department has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that the Department shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' Pursuant to the AD Agreement, each signatory producer/exporter individually agrees that it will not sell the subject merchandise at less than the reference prices established in Appendix I to the AD Agreement.[14] Each signatory producer/exporter also individually agrees that, for each entry, 85 percent of the dumping determined in the investigation will be eliminated.[15] In addition, in this review, the Department is reassessing whether suspension of the AD Agreement is in the ''public interest,'' including the availability of supplies of sugar in the U.S. market, and whether ''effective monitoring'' is practicable.

After reviewing the information received to date from the respondent companies in their questionnaire responses, there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the AD Agreement, and further, that the AD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 734(c) and (d) of the Tariff Act of 1930 (the Act). However, based on the Department's review to date of the record information, we do not yet find a sufficient basis to make a reliable judgment as to whether the respondents have adhered to the terms of the AD Agreement and whether the AD Agreement continues to meet the relevant requirements of the Act for such agreements. As detailed above, the Department found it necessary, late in the review, to seek additional information, *i.e.,* in supplemental questionnaires issued to the two respondents on November 18, 2016, in order to reach a determination as to whether the Agreement is functioning as intended, is in the public interest and whether it can be effectively monitored. For a full description of the methodology underlying our conclusions, see Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a business proprietary document and a public version is made available via Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Department's Central Records Unit, located in Room 18022 of the main Department of Commerce building. In addition, the public version of the Preliminary Decision Memorandum can be found on the Internet at *http://www.trade.gov/enforcement.* The signed

[1] For a complete description of the Scope of the Order, see Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Carole Showers, Director, Office of Policy, ''Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' dated concurrently with and adopted by this notice (''Preliminary Decision Memorandum'').

[2] *See Sugar from Mexico: Suspension of Antidumping Duty Investigation,* 79 FR 78039 (December 29, 2014), at Attachment, ''Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico'' (the AD Agreement).

[3] *See Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations,* 80 FR 25278, 25279 (May 4, 2015) (Continuation Notice).

[4] *See id.*

[5] *See id.,* at 25280.

[6] *See id.*

[7] *See Sugar from Mexico: Final Determination of Sales at Less Than Fair Value,* 80 FR 57341 (September 23, 2015) (*Final LTVF Determination*).

[8] *See Sugar from Mexico* (Investigation Nos. 701–TA–513 and 731–TA–1249 (Final)), 80 FR 70833 (November 16, 2015).

[9] *See also Final LTVF Determination,* 80 FR at 57342. Pursuant to section 734(f)(3)(B) of the Act, the AD Agreement remains in force the Department shall not issue an antidumping order so long as (1) the AD Suspension Agreement remains in force, (2) the AD Suspension Agreement continues to meet the requirements of subsections (c) and (d) of the Act, and (3) the parties to the AD Suspension Agreement carry out their obligations under the AD Suspension Agreement in accordance with its terms.

[10] *See* Letter from Imperial, ''Sugar from Mexico, Inv. No. A–201–845—Request for Administrative Review of the Agreement Suspending the Antidumping Duty Investigation,'' December 30, 2015; Letter from AmCane, ''Sugar from Mexico: Request for Administrative Reviews,'' December 30, 2015.

[11] *See* Letter from American Sugar Coalition and its Members, ''Sugar from Mexico: Request for Administrative Review,'' December 31, 2015.

[12] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016).

[13] *See* Department Memorandum, ''First Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: Questionnaire Issuance,'' June 2, 2016.

[14] *See* Agreement, 79 FR 78040, 78041.

[15] *See id.,* at 78042.

Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Public Comment

As discussed above, the Department needs additional information before making a definitive preliminary finding. Therefore, absent the issuance of a revised suspension agreement, we intend to issue our post-preliminary findings on these issues as soon as practicable. The comment period on these preliminary results as well as the post-preliminary results will be established at the release of the post-preliminary results. At that time interested parties will have the opportunity to submit case and rebuttal briefs, as well as to request a hearing pursuant to 19 CFR 351.310(c).

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–29074 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–843]

Prestressed Concrete Steel Rail Tie Wire From Mexico: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on prestressed concrete steel rail tie wire from Mexico for the period June 1, 2015, through May 31, 2016.

DATES: Effective December 5, 2016.

FOR FURTHER INFORMATION CONTACT: Aqmar Rahman or Jesus Saenz, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0768 and (202) 482–8184, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2016, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on prestressed concrete steel rail tie wire from Mexico for the period of June 1, 2015, through May 31, 2016.[1]

On June 20, 2016, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Aceros Camesa, S.A. de C.V. (Camesa), a Mexican producer and exporter of the subject merchandise, to conduct an administrative review.[2] Camesa was the only party to request an administrative review in this segment of the proceeding.

On August 11, 2016, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on prestressed concrete steel rail tie wire from Mexico.[3] On November 7, 2016, Camesa timely withdrew its request for review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Camesa timely withdrew its review request before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, in response to the timely withdrawal of the review request, the Department is rescinding in its entirety the administrative review of the antidumping duty order on prestressed concrete steel rail tie wire from Mexico covering the period June 1, 2015, through May 31, 2016.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 35301 (June 2, 2016).

[2] *See* Camesa's letter, ''Prestressed Concrete Steel Rail Tie Wire from Mexico; Request for Administrative Review,'' dated June 20, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 53121 (August 11, 2016).

[4] *See* Camesa's letter, ''Prestressed Concrete Steel Rail Tie Wire from Mexico: Withdrawal of Camesa's Administrative Review Request,'' dated November 7, 2016.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of prestressed concrete steel rail tie wire from Mexico. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 41 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: November 30, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–29073 Filed 12–2–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–847, A–791–822, A–489–828]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Final Determinations of Sales at Less Than Fair Value and Affirmative Final Determinations of Critical Circumstances for Brazil and the Republic of Turkey

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that imports of certain carbon and alloy steel cut-to-length plate (CTL Plate) from Brazil, South Africa, and the Republic of Turkey (Turkey) are being, or likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2015, through March 31, 2016. The final estimated dumping margins of sales at LTFV are shown in the ''Final Determinations'' section of this notice.

DATES: Effective December 5, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Kennedy at (202) 482–7883 (Brazil); Julia Hancock or Susan Pulongbarit at (202) 482–1394 or (202) 482–4031, respectively (South Africa); or Dmitry Vladimirov at (202) 482–0665 (Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2016, and September 22, 2016, the Department published, respectively, the preliminary affirmative determinations of critical circumstances concerning Brazil and Turkey, and the preliminary affirmative determinations of sales at LTFV in the investigations of CTL Plate from Brazil, South Africa, and Turkey.[1] We invited interested parties to comment on these preliminary determinations. We only received comments regarding the scope of these investigations. Additionally, no interested party requested a hearing.

Scope of the Investigations

The products covered by these investigations are CTL plate. For a full description of the scope of the Brazil and Turkey investigations, *see* the ''Scope of the Investigations: Brazil and Turkey,'' in Appendix I of this notice. For a full description of the scope of the South Africa investigation, *see* the ''Scope of the Investigation: South Africa,'' in Appendix II of this notice.

Prior to the *Preliminary LTFV Determinations,* the Department issued a Preliminary Scope Decision Memorandum.[2] Since the *Preliminary LTFV Determinations,* the Department issued an Additional Preliminary Scope Decision Memorandum, which referenced several changes to the scope.[3] Subsequently, various interested parties submitted case [4] and rebuttal [5] briefs concerning scope. The Department reviewed these briefs, considered the arguments therein, and is not making any additional changes to the scope of the investigations. For further discussion, *see* the Department's Final Scope Decision Memorandum.[6] The Department is modifying the scope language as it appeared in the *Preliminary LTFV Determinations* to provide a precise reference, where applicable, to the existing hot-rolled flat-rolled steel antidumping duty orders. The scope in Appendix I and Appendix II reflects, respectively, the final scope language.

Verification

Because the mandatory respondents in these investigations did not provide the information requested, the Department did not conduct verifications.

Analysis of Comments Received, Changes Since the Preliminary Determinations, and Use of Adverse Facts Available

As noted above, we received no comments pertaining to the *Preliminary LTFV Determinations.* As stated in the *Preliminary LTFV Determinations,* we found that the mandatory respondents in these investigations, Companhia Siderurgica Nacional (CSN) and Usinas Siderurgicas de Minas Gerais SA (Usiminas) (Brazil), Evraz Highveld Steel and Vanadium Corp. (Evraz Highveld) (South Africa) and Ereğli Demir ve Çelik Fabrikalari T.A.Ş. (Erdemir) (Turkey), did not cooperate to the best of their abilities and, accordingly, we determined it appropriate to apply facts otherwise available with adverse inferences, in accordance with section 776(a)–(b) of the Tariff Act of 1930, as amended (the Act).[7] For the purposes of the final determinations, the Department has made no changes to the *Preliminary LTFV Determinations.*

Final Affirmative Determinations of Critical Circumstances

For Brazil, in accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to the mandatory respondents, CSN and Usiminas, and the ''All-Others'' group.[8]

For Turkey, in accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to the mandatory respondent, Erdemir, and the ''All-Others'' group.[9]

As stated above, the Department did not receive any comments concerning the preliminary determinations. Thus, for these final determinations, we continue to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist for imports from all producers and exporters of CTL plate from Brazil and Turkey.

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[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey; Antidumping and Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances,* 81 FR 61666 (September 7, 2016) (*Preliminary Critical Circumstances Determinations*); and *Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Preliminary Determinations of Sales at Less Than Fair Value,* 81 FR 65337 (September 22, 2016) (*Preliminary LTFV Determinations*).

[2] *See Preliminary LTFV Determinations,* 81 FR at 65337–38.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs,'' dated October 13, 2016 (Additional Preliminary Scope Decision Memorandum).

[4] These parties include Misumi USA, Inc., PCS Company, Hitachi Metals, Ltd., Friedr. Lohmann GmbH, AG der Dillinger Huettenwerke, Dillinger France S.A., voestalpine AG, voestalpine Grobblech GmbH, voestalpine Steel & Service Center GmbH, Bohler Bleche GmbH & Co KG, Bohler Uddeholm Corporation, Simonds International Holding, Inc., and The KnifeSource LLC.

[5] These parties include ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, the petitioners).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Final Scope Comments Decision Memorandum,'' dated November 29, 2016 (Final Scope Decision Memorandum).

[7] *See Preliminary LTFV Determinations,* 81 FR at 65338.

[8] *See Preliminary Critical Circumstances Determinations.*

[9] *Id.*

All-Others Rate

As discussed in the *Preliminary LTFV Determinations,* the Department based the selection of the ''All-Others'' rates in Brazil, South Africa, and Turkey, on the Petitions,[10] in accordance with section 735(c)(5)(B) of the Act. We made no changes to the selection of these rates for these final determinations.[11]

Final Determinations

The final estimated weighted-average dumping margins are as follows:

BRAZIL

Exporter/producer	Weighted-average dumping margin (percent)
Companhia Siderurgica Nacional	74.52
Usinas Siderurgicas de Minas Gerais SA	74.52
All Others	74.52

SOUTH AFRICA

Exporter/producer	Weighted-average dumping margin (percent)
Evraz Highveld Steel and Vanadium Corp.	94.14
All Others	87.72

TURKEY

Exporter/producer	Weighted-average dumping margin (percent)
Ereğli Demir ve Çelik Fabrikalari T.A.Ş.	50.00
All Others	42.02

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, for these final determinations, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of CTL Plate from Brazil and Turkey, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after June 24, 2016 (90 days prior to the date of publication of the *Preliminary LTFV Determinations*) because we continue to find that critical circumstances exist with regard to imports from all producers and exporters of CTL Plate from Brazil and Turkey.

In accordance with section 735(c)(1)(B) of the Act, for this final determination, the Department will instruct CBP to continue to suspend liquidation of all entries of CTL Plate from South Africa, as described in Appendix II of this notice, which were entered, or withdrawn from warehouse, for consumption on or after September 22, 2016, the date of publication of the preliminary determination of the South Africa investigation in the **Federal Register**.

With respect to Brazil, pursuant to pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For CSN and Usiminas, the cash deposit rate will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers or exporters will be 74.52 percent, as discussed in the ''All Others Rate'' section, above.

With respect to South Africa, pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For Evraz Highveld, the cash deposit rate will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers or exporters will be 87.72 percent, as discussed in the ''All Others Rate'' section, above.

With respect to Turkey, pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For Erdemir, the cash deposit rate will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers or exporters will be 42.02 percent, as discussed in the ''All Others Rate'' section, above.

These instructions suspending liquidation will remain in effect until further notice.

Disclosure

The weighted-average dumping margins assigned to the mandatory respondents in these investigations in the *Preliminary LTFV Determinations* were based on adverse facts available. As we made no changes to these margins since the *Preliminary LTFV Determinations,* no disclosure of calculations is necessary for these final determinations.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determinations of sales at LTFV and final affirmative determinations of critical circumstances for Brazil and Turkey. Because the final determinations in these proceedings are affirmative, the ITC will make its final determinations as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CTL Plate from Brazil, South Africa, and Turkey, in accordance with section 735(b)(2) of the Act. If the ITC determines that such injury does not exist, these proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury exists, the Department will issue antidumping duty orders directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

[10] *See* Letter to the Secretary of Commerce from the petitioners, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated April 8, 2016 (the Petitions).

[11] *See Preliminary LTFV Determinations,* 81 FR at 65338.

with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These determinations are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: November 29, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigations: Brazil and Turkey

The products covered by these investigations are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*i.e., Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016)); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the investigations are products in which:

(1) Iron predominates, by weight, over each of the other contained elements; and

(2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of these investigations unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of these investigations:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90ksi min and UTS 110ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigations may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

Appendix II—Scope of the Investigation: South Africa

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'', (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–29071 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF055

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of decision and availability of decision documents on the issuance of six ESA section 10(a)(1)(A) research/enhancement permits for take of threatened species.

SUMMARY: This notice advises the public that six direct take permits have been issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA) for continued operation, monitoring, and evaluation of hatchery program rearing and releasing salmon in Northeast Oregon and Southeast Washington portions of the Snake River basin, and associated decision documents. The permits were issued to the Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, and the Bureau of Indian Affairs.

DATES: The permits were issued on October 28, 2016, subject to certain conditions set forth therein. Subsequent to issuance, the necessary countersignatures by the applicants were received. The permits expire on December 31, 2027.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Sustainable Fisheries Division, NOAA's National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, Oregon 97232. The documents are also available online at *www.westcoast.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Brett Farman, Portland, Oregon, at phone number: (503) 231–6222, email: *brett.farman@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs):

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally produced and artificially propagated Snake River spring/summer.

Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Snake River.

Dated: November 29, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–29029 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF053

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of determination and availability of analysis documents on ten hatchery programs rearing salmon and steelhead in Hood Canal, Puget Sound, Washington State.

SUMMARY: NMFS has evaluated ten Hatchery and Genetics Management Plans (HGMPs) submitted to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The HGMPs specify the propagation of Chinook, coho, pink, and fall chum salmon and steelhead in the Hood Canal watershed of Washington State. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to Limit 6 of the ESA 4(d) Rule for salmon and steelhead that implementing and enforcing the plans will not appreciably reduce the likelihood of survival and recovery of Puget Sound Chinook salmon, Hood Canal summer chum, and Puget Sound steelhead.

DATES: The final determination on the HGMPs was made on October 17, 2016.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Sustainable Fisheries Division, NOAA's National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, Oregon 97232. The documents are also available on the Internet at *www.westcoast.fisheries .noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Hurst, Portland, Oregon, at phone number: (503) 230–230–5409, email: *charlene.hurst@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, Puget Sound, naturally produced and artificially propagated.

Steelhead (*O. mykiss*): Threatened, Puget Sound, naturally produced and artificially propagated.

Chum salmon (*O. keta*): Threatened, naturally produced and artificially propagated Hood Canal summer-run.

Background

The Washington Department of Fish and Wildlife (WDFW), the Port Gamble S'Klallam Tribe, The Skokomish Tribe, the United States Fish and Wildlife Service (USFWS), and NOAA's National Marine Fisheries Service (NMFS) Northwest Fisheries Science Center submitted ten Hatchery and Genetics Management Plans (HGMP) for salmon and steelhead hatchery programs in Hood Canal. The ten HGMPs were submitted for review and determination under Limit 6 of the ESA 4(d) Rule, 50 CPR 223.203(b)(6) (65 FR 42422; July 10, 2000, as amended 70 FR 37160; June 28, 2012).

Two of these programs are designed to preserve and bolster the natural spawning abundance of the native Hood Canal populations and contribute to recovery of the listed species. The remaining eights programs are operated for harvest augmentation purposes.

As required by § 223.203(b)(6) of the ESA 4(d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the ten plans for Hood Canal salmon and steelhead hatchery programs would appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU, Hood Canal Summer Chum ESU, or Puget Sound Steelhead DPS. NMFS must take comments on how the plans address the criteria in § 223.203(b)(5) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

Two of the programs, the Hamma Hamma Chinook salmon and Hood Canal Steelhead Supplementation programs, provide conservation benefits for species listed under the Endangered Species Act (ESA). The remaining eight programs are implemented to help meet tribal fishery harvest allocations guaranteed through treaties, as affirmed in *United States* v. *Washington* (1974) and through Pacific Salmon Treaty harvest sharing agreements with Canada.

The programs are intended to conserve native, ESA-listed and non-listed populations of salmon and steelhead in Hood Canal. NMFS' Sustainable Fisheries Division prepared, pursuant to section 7 of the ESA, a biological opinion to evaluate the effects of the action on listed salmonids. As described in SFD's biological opinion, the approval of the HGMPs is not likely to jeopardize the continued existence or recovery of listed Puget Sound Chinook salmon, Hood Canal Summer Chum Salmon, or Puget Sound steelhead, nor result in the destruction or adverse modification of their critical habitat.

The programs may also help attenuate impacts associated with climate change over the short-term by providing a refuge from adverse effects for the propagated species through circumvention of potentially adverse migration, natural spawning, incubation, and rearing conditions.

The HGMPs include provisions for annual reports that will assess compliance with performance standards established through the HGMPs. Reporting and inclusion of new information derived from HGMP research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the West Coast Region Web site at *http://www.westcoast.fisheries .noaa.gov.*

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the plans for public review and comment on March 3, 2016 (81 FR 11192). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days.

During the public comment period, NMFS received one comment letter. None of the comments raised issues that required substantive modification of the NMFS 4(d) or NEPA documents. The comments and NMFS' detailed responses are available on the West Coast Region Web site, as an appendix to the environmental assessment. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Hood Canal salmon and steelhead hatchery plans.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a plan developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422; July 10, 2000).

Dated: November 30, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–29068 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Native American Tribal Insignia Database

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A), is proposing an extension of an existing information collection; the Native American Tribal Insignia Database.

DATES: Written comments must be submitted on or before February 3, 2017.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0048 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Deputy Commissioner for Trademark Examination Policy, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105–330, 302, 112 Stat. 3071) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database.

The USPTO database of official tribal insignias provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia. The database thereby assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database is also available to the public on the USPTO Web site at *http://www.uspto.gov.*

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) A depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) A document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0048.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 4 responses per year.

Estimated Time per Response: The USPTO estimates that a federally or state-recognized Native American tribe will require an average of 45 minutes (0.75 hours) to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 3 hours.

Estimated Total Annual Respondent Cost Burden: $256.50. The USPTO expects that the information in this collection will be prepared by both paraprofessionals and administrative staff. The estimated rate of $85.50 per hour used in this submission is an average of the paraprofessional rate of $141 per hour and the administrative rate of $30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $256.50 per year.

IC #	Item	Estimated time for response (minutes) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b)/60 = (c)	Rate ($/hr)
1	Request to Record an Official Insignia of a Federally Recognized Tribe.	45	3	2.25	$85.50
2	Request to Record an Official Insignia of a State-Recognized Tribe.	45	1	0.75	85.50
	Totals		4	3	

Estimated Total Annual Non-Hour Respondent Cost Burden: $4.80. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) cost burden in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be $1.20 (based on a large 9″ by 12″ envelope weighing 2 ounces) and that 4 submissions will be mailed to the USPTO per year. Therefore, the total annual (non-hour) respondent cost burden for this collection is estimated to be approximately $4.80 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: November 30, 2016.

Marcie Lovett,

Records Management Division Director, OCIO, United States Patent and Trademark Office.

[FR Doc. 2016–29095 Filed 12–2–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Air Force Materiel Command.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license agreement to Protective Innovations, LLC, a corporation of the State of Delaware.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Room 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. AFD–1509 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant the exclusive patent license agreement for the invention described in:

—U.S. Patent Application Serial No. 62/341,678, filed 26 May 2016.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–29100 Filed 12–2–16; 8:45 am]

BILLING CODE 5001–10 –P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Air Force Materiel Command.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intention to grant an exclusive patent license agreement to The University of Utah, an educational institution duly organized, validly existing, and in good standing in the State of Utah, having a place of business at 615 Arapeen Drive, Suite 310, Salt Lake City, UT 84108. Authority: 35 U.S.C. 209; 37 CFR 404.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. AIT–160711A–JA in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109;

Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant an exclusive patent license agreement for the invention described in:

• U.S. Provisional Application No. 62/054,835, entitled, ''EBOLAVIRUS PREHAIRPIN INTERMEDIATE MIMICS,'' by Tracy Clinton, Michael Jacobsen, Matthew Weinstock, Brett Welch, Debra Eckert, and Michael Kay, and filed on 24 September 2014; and

• International Application No. PCT/US15/052,061, entitled, ''EBOLAVIRUS PRE-HAIRPIN INTERMEDIATE MIMICS AND METHODS OF USE,'' by Tracy Clinton, Michael Jacobsen, Matthew Weinstock, Brett Welch, Debra Eckert, and Michael Kay, filed on 24 September 2015, and published as International Application Publication No. WO 2016/049380.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–29101 Filed 12–2–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of cancellation of open teleconference.

SUMMARY: On November 25, 2016, the Department of Energy (DOE) published a notice of open teleconference scheduled for December 12, 2016, of the President's Council of Advisors on Science and Technology. This notice announces the cancellation of this meeting. The meeting is being cancelled because the board will not have a quorum due to scheduling conflicts by members.

DATES: The teleconference scheduled for December 12, 2016, announced in the November 25, 2016, issue of the **Federal Register** (FR Doc. 2016–28281, 81 FR 227), is cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Michael at email: *Jennifer_L_Michael@ostp.eop.gov* or by phone: (202) 456–4444.

Issued at Washington, DC on November 29, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–29070 Filed 12–2–16; 8:45 am]

BILLING CODE 6450–01–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 by docket 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. CP15–138–000	11–14–2016	Terry L. McDonald.
2. CP13–492–000, CP13–483–000	11–14–2016	Grand Junction Area Chamber of Commerce.
3. CP16–10–000	11–14–2016	Private Citizen.
4. CP15–93–000	11–17–2016	Wade Pilgreen.
5. CP15–138–000	11–22–2016	Warren Reif.
Exempt:		
1. EL16–108–000	11–10–2016	FERC Staff.[1]
2. CP14–103–000	11–16–2016	U.S. Senator Johnny Isakson.
3. CP14–96–000	11–21–2016	U.S. House Representative Stephen F. Lynch.
4. P–2484–000, P–2464–000	11–25–2016	FERC Staff.[2]

[1] Memo reporting meeting on October 20, 2016 with staff of MISO and MISO Independent Market Monitor.
[2] Email communication dated November 10, 2016 with Shawn Puzen of Mead & Hunt regarding Upper Mead Lake.

Dated: November 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29099 Filed 12–2–16; 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: EC17–40–000.

Applicants: Heartland Energy Group, Inc., Interstate Power and Light Company.

Description: Application of Interstate Power and Light Company, et al. for transaction approval pursuant to Federal Power Act Section 203.

Filed Date: 11/29/16.

Accession Number: 20161129–5236.

Comments Due: 5 p.m. ET 12/20/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2254–003.

Applicants: Scrubgrass Generating Company, L.P.

Description: Compliance filing: Informational Filing to be effective N/A.

Filed Date: 11/29/16.

Accession Number: 20161129–5103.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER16–1213–001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance effective date notice of BTM–NG tariff revisions to be effective 12/13/2016.

Filed Date: 11/29/16.

Accession Number: 20161129–5213.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER16–1738–001.

Applicants: Beacon Solar 4, LLC.

Description: Compliance filing: Beacon Solar 4, LLC MBR Tariff to be effective 7/18/2016.

Filed Date: 11/29/16.

Accession Number: 20161129–5151.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER16–2010–001.

Applicants: Hancock Wind, LLC.

Description: Notice of Non-Material Change in Status of Hancock Wind, LLC.

Filed Date: 11/28/16.

Accession Number: 20161128–5275.

Comments Due: 5 p.m. ET 12/19/16.

Docket Numbers: ER17–366–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Amended Filing-Revisions to Prospectively Require All VERs to Register as DVERs to be effective 1/15/2017.

Filed Date: 11/29/16.

Accession Number: 20161129–5142.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–420–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2016–11–28 553, 554, & 565–NSP NOC Filing to be effective 11/29/2016.

Filed Date: 11/28/16.

Accession Number: 20161128–5223.

Comments Due: 5 p.m. ET 12/19/16.

Docket Numbers: ER17–421–000.

Applicants: Public Service Company of New Mexico.

Description: Tariff Cancellation: Notice of Cancellation of PPA between PNM and Jicarilla Apache Nation to be effective 11/30/2016.

Filed Date: 11/29/16.

Accession Number: 20161129–5152.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–422–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2016–11–29 CapX Brookings Filing to be effective 4/16/2016.

Filed Date: 11/29/16.

Accession Number: 20161129–5192.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–423–000.

Applicants: Rubicon NYP Corp.

Description: Baseline eTariff Filing: RubiconNYPinitialMBR to be effective 1/30/2017.

Filed Date: 11/29/16.

Accession Number: 20161129–5207.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–424–000.

Applicants: Footprint Power Salem Harbor Development LP.

Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 11/30/2016.

Filed Date: 11/29/16.

Accession Number: 20161129–5252.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–425–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA SunSelect Produce (California), Inc. Project SA No. 918 to be effective 1/29/2017.

Filed Date: 11/29/16.

Accession Number: 20161129–5253.

Comments Due: 5 p.m. ET 12/20/16.

Docket Numbers: ER17–426–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Missouri River Energy Services Member Formula Rate (Denison) to be effective 2/1/2017.

Filed Date: 11/29/16.

Accession Number: 20161129–5263.

Comments Due: 5 p.m. ET 12/20/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD17–2–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretation of Reliability Standard CIP–002–5.1a.

Filed Date: 11/28/16.

Accession Number: 20161128–5254.

Comments Due: 5 p.m. ET 12/20/16.

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: November 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–29098 Filed 12–2–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0439; FRL–9955–83–OW]

Peer Review of EPA's Biologically Based Dose-Response (BBDR) Model for Perchlorate in Drinking Water—Final List of Peer Reviewers, Notice of the Public Peer Review Meeting and Final Peer Review Charge Questions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final peer reviewer selection, public peer review meeting and final peer review charge questions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing

the final peer reviewers assembled by Versar, Inc., an EPA contractor, for the external peer review of EPA's draft Biologically Based Dose-Response (BBDR) Model for perchlorate in drinking water and an accompanying draft model report. The draft model report is entitled ''Biologically Based Dose-Response Models for the Effect of Perchlorate on Thyroid Hormones in the Infant, Breast Feeding Mother, Pregnant Mother, and Fetus: Model Development, Revision, and Preliminary Dose-Response Analyses.'' EPA is also announcing availability of the final peer review charge. The charge provides the purpose and context for the assessment and will guide the peer review experts by identifying the key scientific issues associated with the review of the model and report. EPA is also announcing that Versar, Inc., will organize and conduct the public peer review meeting for the draft BBDR model and draft model report on January 10 and 11, 2017, in Arlington, Virginia. The meeting will be devoted to discussion and deliberation of major issues identified by the peer reviewers regarding EPA's draft BBDR model and draft model report and will be guided by the final charge questions. Versar, Inc., invites the public to register to attend this two-day meeting as observers, either in-person or via teleconference. Time will be set aside at the meeting for brief oral statements from the public regarding the draft BBDR model and model report.

DATES: The public peer review meeting will be held on January 10 and 11, 2017. The meeting will be held from approximately 8:30 a.m. to 5 p.m., eastern time, on January 10; and from approximately 8:30 a.m. to 2 p.m., eastern time, on January 11. The registration deadline to attend the meeting in-person or via teleconference, and to request to make a brief oral statement at the meeting, is January 3, 2017. See the **SUPPLEMENTARY INFORMATION** section for instructions of how to register.

ADDRESSES: The public peer review meeting will be held at the Crystal City Marriott at Reagan National Airport, located at 1999 Jefferson Davis Highway, Arlington, Virginia. The phone number for the teleconference line will be provided to registered observers prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Questions regarding logistics or registration for the external peer review meeting should be directed to Versar, Inc., at 6850 Versar Center, Springfield, VA 22151; by email: *perchlorate@versar.com* (subject line: Perchlorate Peer Review); or by phone: (301) 304–3121 (ask for Tracey Cowen). For additional information concerning the draft BBDR model and the draft report, please contact Russ Perkinson at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Standards and Risk Management Division (Mail Code 4607M), 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 202–564–4901; or email: *perkinson.russ@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Registration Instructions

To attend the peer review meeting as an observer, either in-person or via teleconference, register no later than January 3, 2017. You may register by sending an email to *perchlorate@versar.com* (Subject line: Perchlorate Peer Review Registration; and include your name, title, affiliation, full address, email and phone number); calling Versar at (301) 304–3121 (ask for Tracey Cowen); or sending a facsimile to (703) 642–6809, ATTN: Perchlorate Peer Review Registration (include your name, title, affiliation, full address, email and phone number). Please indicate which day(s) you plan to attend the meeting and whether you plan to attend via teleconference or in-person. Space is limited, and registrations will be accepted on a first-come, first-served basis. There will be a limited amount of time for oral statements from the public near the beginning of the peer review meeting on the first day. If you wish to make an oral statement during the meeting, you must notify Versar of your request to speak no later than January 3, 2017. Versar will notify speakers of specific time limits for their oral statements. Versar will accept requests to make oral statements on a first-come, first-served basis, and may limit the amount of time for each speaker as well as the number of speakers due to time constraints.

II. Information on EPA's Biologically Based Dose-Response (BBDR) Model for Perchlorate in Drinking Water

EPA announced the release of the draft BBDR model for perchlorate in drinking water and accompanying draft model report for purposes of public comment (scientific views) and peer review on September 30, 2016, in the **Federal Register** (81 FR 67350). The original 45-day public comment period ended on November 14, 2016, but the public comment period was extended until November 25, 2016. EPA will consider peer reviewer and public comments when finalizing the BBDR model and model report. The draft model and draft model report and public comments submitted during the public comment period may be viewed at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2016–0438). The Agency will seek peer review of a second report that evaluates methods to apply the final BBDR model to develop a maximum contaminant level goal for perchlorate in drinking water in a future **Federal Register** notice.

III. Information on Final Peer Review Charge Questions

EPA announced the release of the draft peer review charge questions on September 30, 2016, in the **Federal Register** (81 FR 67347). The 21-day public comment period ended on October 21, 2016. EPA considered the public comments when finalizing the charge questions. The final peer review charge questions are available through the docket at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2016–0439).

IV. Information About the Peer Reviewers

Consistent with guidelines for the peer review of highly influential scientific assessments, EPA tasked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft BBDR model and draft model report. Versar, Inc., evaluated 35 candidates who were either nominated during two previous public comment periods (March 1 to 31, 2016, and June 3 to July 5, 2016) or were identified by Versar to augment the list of publically-nominated candidates. Versar narrowed the list of potential reviewers to 19 candidates and solicited public comments on the interim list on September 30, 2016, in the **Federal Register** (81 FR 67347). Using the selection criteria described in **Federal Register** notices dated March 1, 2016, (81 FR 10617) and June 3, 2016, (81 FR 35760), Versar selected eight final peer reviewers who, collectively, best provide expertise spanning the multiple subject matter areas covered by the draft model and model report, and to the extent feasible, best provide a balance of perspectives. The final list of the eight selected peer reviewers is provided below.

Name of Nominee, Degree—Place of Employment

1. Hugh A. Barton, Ph.D.—Pfizer, Inc.
2. Claude Emond, Ph.D.—University of Montreal
3. Dale Hattis, Ph.D.—George Perkins Marsh Institute, Clark University
4. Angela M. Leung, M.D., M.Sc.—UCLA David Geffen School of Medicine
5. Michael H. Lumpkin, Ph.D., DABT—Center for Toxicology and

Environmental Health, LLC

6. Elizabeth N. Pearce, M.D., M.Sc.—Boston Medical Center/Boston University School of Medicine
7. Stephen M. Roberts, Ph.D.—University of Florida
8. Joanne F. Rovet, Ph.D.—The Hospital for Sick Children (Toronto)

EPA requests that no individual or organization contact in any way the peer reviewers regarding the subject of the peer review meeting, send them written materials regarding the subject of the meeting, or make any offers or requests to any of them that appear to be linked to their participation in the peer review. The contractor (Versar, Inc.) will direct the reviewers to report any such contacts to the contractor (Versar, Inc.), who will take appropriate action in consultation with EPA to ensure the independence and impartiality of the peer review.

V. Information About the Peer Review Meeting

EPA has charged the peer reviewers with evaluating and preparing written comments on the draft BBDR model and draft model report. Specifically, reviewers will provide general comments, their overall impressions of the draft model and draft model report and responses to the charge questions. Reviewers will also consider the appropriateness of the quality, accuracy and relevance of the data in the documents. Versar will provide a summary of comments (along with the full text of the comments) submitted to EPA's public docket (Docket ID No. EPA–HQ–OW–2016–0438) during the 56-day public comment period on the draft model and draft model report to the peer reviewers ahead of the meeting for their consideration.

Peer reviewers will participate in the two-day, public peer review meeting to discuss the scientific basis supporting EPA's draft BBDR model and model report. Following the peer review meeting, Versar will provide a peer review summary report to EPA containing the comments and recommendations from the peer reviewers. EPA will make the final peer review report available to the public.

In preparing the final BBDR model and model report, EPA will consider Versar's report of the comments and recommendations from the external peer review meeting, as well as written public comments received through the official public docket during the previous 56-day comment period on the draft model and draft model report.

Dated: November 22, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–29108 Filed 12–2–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft Technical Release: Conforming Amendments to Technical Releases for SFFAS 50, Establishing Opening Balances for General Property, Plant, and Equipment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft Technical Release titled *Conforming Amendments to Technical Releases for SFFAS 50, Establishing Opening Balances for General Property, Plant, and Equipment.*

The exposure draft is available on the FASAB Web site at *http://www.fasab.gov/documents-for-comment/*. Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by January 9, 2017, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mailstop 6H19, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: November 29, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016–29021 Filed 12–2–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0433]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before February 3, 2017. If you anticipate that you will submit comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,265 respondents and 5,265 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hours: 20 hours.

Total Annual Burden: 105,300 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR 76.1803. The records must be retained by cable operators.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2016–29040 Filed 12–2–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Meeting; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting.

DATES: Wednesday, December 7th, 2016 in the Commission Meeting Room, from 10:00 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: At the December 7th meeting, the FCC Technological Advisory Council will final recommendations on its work program agreed to at its initial meeting on March 9th, 2016. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Ira R. Keltz,

Deputy Chief, Office of Engineering and Technology.

[FR Doc. 2016–28290 Filed 12–2–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0653, 3060–0960, 3060–1167, 3060–1215, 3060–XXXX]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 4, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the

''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Sections 64.703(b) and (c), Consumer Information—Posting by Aggregators.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,075 respondents; 5,339,038 responses.

Estimated Time per Response: .017 hours (1 minute) to 3 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 226 [47 U.S.C. 226] Telephone Operator Services codified at 47 CFR 64.703(b) Consumer Information.

Total Annual Burden: 174,401 hours.

Total Annual Cost: $1,343,721.

Privacy Act Impact Assessment: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Nature and Extent of Confidentiality: No impact(s).

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0653, requires aggregators (providers of telephones to the public or to transient users of their premises) under 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) of the Commission's rules, to post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) of the Commission's rules requires the posted consumer information to be added when an aggregator has changed the pre-subscribed operator service provider (OSP) no later than 30 days following such change. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules and 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,428 respondents and 9,636 responses.

Estimated Time per Response: 0.5–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 9,272 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.122, 76.123 and 76.124 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network syndicated in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

OMB Control Number: 3060–1167.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 4,541 respondents; 54,064 responses.

Estimated Time per Response: .50 hours (30 minutes) to 35 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 155,419 hours.

Total Annual Cost: $17,510.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance'', which became effective on September 24, 2014. In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy5FImpact5FAssessment.html.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: On October 7, 2011, in document FCC 11–151, the FCC released a Report and Order adopting final rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). See Public Law 111–260, 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible, if readily achievable. 47

U.S.C. 255. Section 718 of the Act requires Web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619. On April 29, 2013, in document FCC 13–57, the FCC released a Second Report and Order adopting final rules to implement section 718 of the Act. On March 12, 2015, in document FCC 15–24, the FCC released a Report and Order on Remand, Declaratory Ruling, and Order reclassifying broadband Internet access service (BIAS) as a telecommunications service that is subject to the Commission's regulatory authority under Title II of the Act and applying section 255 of the Act and the Commission's implementing rules to providers of BIAS and manufacturers of equipment used for BIAS.

Among other things, the FCC established procedures in document FCC 11–151 to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

The filing of a request for dispute assistance is used to initiate a 30-day period which must precede the filing of an informal complaint. The burdens associated with filing requests for dispute assistance and informal complaints are contained in the collection found in OMB control number 3060–0874. Therefore, the Commission extracted those burdens from the collection found in OMB control number 3060–1167. In addition, the Commission has revised its estimate of the number of requests for dispute assistance and the number of informal complaints that it expects to receive and the burdens associated with the processing and handling of those requests and complaints.

OMB Control Number: 3060–1215.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 247 respondents; 247 responses.

Estimated Time per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement; upon commencement of service, or within 3 years of effective date of rules; and at end of license term, or 2024 for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 363 hours.

Total Annual Cost: $196,875.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In this collection, the Commission adopted new licensing, service, and technical rules for bands 27.5–28.35 GHz band (28 GHz band), the 38.6–40 GHz band (39 GHz band), and the 37–38.6 GHz band (37 GHz band), to include 64–71 GHz band under Part 15. In so doing, the Commission created a consistent framework across all of the bands that can serve as a template for additional bands in the future.

The rules adopted by the Commission, in FCC 16–89, contain the following information collections:

Section 25.136—This rule contains both a third party coordination requirement and a filing requirement. Both requirements are necessary to ensure that Fixed Satellite Service earth stations can receive interference protection without having an undue impact on terrestrial deployment.

Section 30.3—This rule contains a filing requirement which is necessary to ascertain compliance with the foreign ownership restrictions contained in the Communications Act and the Commission's rules.

Section 30.8—This rule contains a requirement that each licensee file a statement describing its network security plans and related information, which shall be signed by a senior executive within the licensee's organization with personal knowledge of the security plans and practices within the licensee's organization. This statement is necessary to ensure that licensees properly take security into consideration when designing their systems.

Section 30.105—This rule contains filing requirements relating to demonstration of compliance with the Commission's buildout requirements. These filings are necessary in order to ensure that licensees are placing the spectrum in use and not warehousing spectrum.

Section 30.107—This rule contains filing requirements that apply when licensees propose to discontinue service. These filings are necessary in order to ensure that licensees are placing the spectrum in use and not warehousing spectrum.

OMB Control Number: 3060–XXXX.

Title: National Deaf-Blind Equipment Distribution Program.

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; state, local, or tribal governments.

Number of Respondents and Responses: 78 respondents; 3,631 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, semiannual, quarterly, monthly, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefit. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), and 719 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

Total Annual Burden: 7,995 hours.

Total Annual Cost: $600.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the Commission's system of records notice (SORN), FCC/CGB–3, ''National Deaf-Blind Equipment Distribution Program,'' which became effective on February 28, 2012.

Privacy Impact Assessment: The Commission completed a Privacy Impact Assessment (PIA) on December 31, 2012. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy5FImpact5FAssessment.html.* The Commission is in the process of updating the PIA with respect to the Commission's adoption of rules in document FCC 16–101 on August 4, 2016, which converted the pilot program to a permanent program without change to the PII covered by these information collections.

Needs and Uses: Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010

(CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Public Law 111–260, 124 Stat. 2751 (2010); Public Law 111–265, 124 Stat. 2795 (2010) (making technical corrections); 47 U.S.C. 620. Section 719 of the Act requires the Commission to establish rules that define as eligible for up to $10,000,000 of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind. 47 U.S.C. 620(a), (c). Accordingly, on April 6, 2011, the Commission released a Report and Order, document FCC 11–56, adopting rules to establish the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program. See 47 CFR 64.610(a) through (k). The FCC's Consumer and Governmental Affairs Bureau (CGB or Bureau) launched the pilot program on July 1, 2012. In an Order released on May 27, 2016, document FCC 11–69, the Commission extended the pilot program to June 30, 2017, at which time distributing equipment and providing related services under the pilot program will cease.

On August 5, 2016, the Commission released a Report and Order, document FCC 16–101, adopting rules to establish the NDBEDP, also known as ''iCanConnect,'' as a permanent program. See 47 CFR 64.6201 through 64.6219. In document FCC 16–101, the Commission clarified that the pilot program will not terminate until after all reports have been submitted, all payments and adjustments have been made, and all wind-down activities have been completed, and no issues with regard to the NDBEDP pilot program remain pending. Information collections related to NDBEDP pilot program activities are included in OMB Control Number 3060–1146, Implementation of the Twenty-first Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10–210, which will expire June 30, 2018.

Rules for the NDBEDP permanent program that are subject to the PRA will become effective on the date specified in a notice published in the **Federal Register** announcing OMB approval. At that time, in accordance with document 16–101, the Bureau will announce the timing of the 60-day period for new and incumbent entities to apply for certification to participate in the permanent NDBEDP. To minimize any disruption of service in the transition between the pilot program and the permanent program, the Bureau will announce its selection of the entities certified to participate in the NDBEDP permanent program as soon as possible, but certifications to participate in the NDBEDP permanent program will not become effective before July 1, 2017.

Because the information collection burdens related to NDBEDP pilot program activities overlap in time with the information collection burdens related to NDBEDP permanent program activities, the Commission is seeking approval for a new collection for the information burdens associated with the permanent NDBEDP.

In document FCC 16–101, the Commission adopted rules requiring the following:

(a) Entities must apply to the Commission for certification to receive reimbursement from the TRS Fund for NDBEDP activities.

(b) A program wishing to relinquish its certification before its certification expires must provide written notice of its intent to do so.

(c) Certified programs must disclose to the Commission actual or potential conflicts of interest.

(d) Certified programs must notify the Commission of any substantive change that bears directly on its ability to meet the qualifications necessary for certification.

(e) A certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted.

(f) When a new entity is certified as a state's program, the previously certified entity must take certain actions to complete the transition to the new entity.

(g) Certified programs must require an applicant to provide verification that the applicant is deaf-blind.

(h) Certified programs must require an applicant to provide verification that the applicant meets the income eligibility requirement.

(i) Certified programs must re-verify the income and disability eligibility of an equipment recipient under certain circumstances.

(j) Certified programs must permit the transfer of an equipment recipient's account when the recipient relocates to another state.

(k) Certified programs must include an attestation on consumer application forms.

(l) Certified programs must conduct annual audits and submit to Commission-directed audits.

(m) Certified programs must document compliance with NDBEDP requirements, provide such documentation to the Commission upon request, and retain such records for at least five years.

(n) Certified programs must submit reimbursement claims as instructed by the TRS Fund Administrator, and supplemental information and documentation as requested. In addition, the entity selected to conduct national outreach will submit claims for reimbursement on a quarterly basis.

(o) Certified programs must submit reports every six months as instructed by the NDBEDP Administrator. In addition, the entity selected to conduct national outreach will submit an annual report.

(p) Informal and formal complaints may be filed against NEDBEDP certified programs, and the Commission may conduct such inquiries and hold such proceedings as it may deem necessary.

(q) Certified programs must include the NDBEDP whistleblower protections in appropriate publications.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–29039 Filed 12–2–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 8, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016–21: Great America PAC
Draft Advisory Opinion 2016–22: 6 Libertarian State Committees
Draft Advisory Opinion 2016–24: Independence Party of Minnesota
2017 Meeting Dates
Election of Officers
REG 2016–04: Technical Amendments and Corrections
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2016–29267 Filed 12–1–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2016.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *First Boston Holdings, Inc.,* Boston, Massachusetts; to become a savings and loan holding company by acquiring all of the voting stock of Admirals Bank, Boston, Massachusetts.

Board of Governors of the Federal Reserve System, November 30, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29094 Filed 12–2–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Sargent Bankshares, Inc.,* Forman, North Dakota; to acquire 100 percent of First National Bank, Milnor, North Dakota.

Board of Governors of the Federal Reserve System, November 30, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29091 Filed 12–2–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Moi M. Monroe and Ida M. Monroe Trust (Moi M Monroe III, Waycross, Georgia, William Joseph Monroe, Jr., Savannah, Georgia, Hannah Hopkins Franklin, Knoxville, Tennessee, Synovus Bank, Columbus Georgia, trustees), Moi M. Monroe III, Waycross, Georgia, Martha M Veon, Muskatine, Iowa, Cheryl B Monroe, Waycross, Georgia, Ann M. Hammond, Atlanta, Georgia, Ellen Monroe Colberg, Mount Holly, North Carolina, Emily Monroe Pridgen, Rincon, Georgia, The William & Elizabeth Hickam Living Trust (William Hickam, Centennial, Colorado, and Elizabeth Hickam, Centennial, Colorado, trustees), Elizabeth Monroe Grantham, Nicholls, Georgia, Mr. and Mrs. David Bolton, Snellville, Georgia, Walter Hopkins, Amelia Island, Florida, Carolyn Hopkins, Amelia Island, Florida, Mary Hopkins Bailey, Knoxville, Tennessee, William Joseph Monroe, Jr., Savannah, Georgia, Patricia M. Monroe, Waycross, Georgia, Mary Helen Monroe, Fernandina Beach, Florida, Patricia Monroe Fievet, High Point, North Carolina, Ivy S Monroe, Savannah, Georgia, Caroline Jordan Monroe, Savannah, Georgia, William Joseph Monroe, III, Savannah, Georgia, J. E. Stewart Jr, Waycross, Georgia, Edwina J Stewart, Waycross, Georgia, J. E. Stewart III, Waycross, Georgia, James E. Stewart IV, Waycross, Georgia, John T Stewart, Waycross,*

Georgia, Joseph Cook Stewart, Waycross, Georgia, Amy Fletcher, Waycross, Georgia, Mary Stewart Weir, Waycross, Georgia, Sara Stewart Cotton, Atlanta, Georgia, Steven Collins Cotton, Jr., Atlanta, Georgia, Claire Morgan Cotton, Atlanta, Georgia, Sam G. Stewart, Waycross, Georgia, Samuel Gaskin Stewart Jr., Waycross, Georgia, Caroline Devane Stewart, Waycross, Georgia, Deen J. Stewart, Waycross, Georgia, Deen Jordan Stewart Jr., Waycross, Georgia, and Courtney Nicole Stewart, Waycross, Georgia; to acquire as a group voting shares of WB & T Bankshares Inc., Waycross, Georgia, and thereby own shares of Waycross Bank & Trust in Waycross, Georgia, Guardian Bank, Valdosta, Georgia, and South Coast Bank & Trust, Brunswick, Georgia.

Board of Governors of the Federal Reserve System, November 30, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–29092 Filed 12–2–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'').

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 OMB for a three-year extension of the current PRA clearance for the FTC's portion of the information collection requirements contained in the Consumer Financial Protection Bureau's Regulation N (the Mortgage Acts and Practices—Advertising Rule). The FTC shares enforcement of Regulation N with the Consumer Financial Protection Bureau (''CFPB''). This clearance expires on December 31, 2016.

DATES: Comments must be received by January 4, 2017.

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 ''Regulation N: FTC File No. P134811; K05'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/regulationnpra2* 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 Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Acts and Practices—Advertising (Regulation N), 12 CFR 1014.

OMB Control Number: 3084–0156.

Type of Review: Extension of a currently approved collection.

Abstract: The FTC's Mortgage Acts and Practices—Advertising Rule, 16 CFR 321, was issued by the FTC on July 19, 2011, at *www.ftc.gov,* published in the **Federal Register**, 76 FR 43845, and became effective on August 19, 2011.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [1] substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (CFPB) the Commission's rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule on, and effective, April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.[2] The FTC and the CFPB share enforcement authority for Regulation N and thus the two agencies share burden estimates [3] for Regulation N.

Regulation N's recordkeeping requirements constitute a ''collection of information'' [4] for purposes of the PRA.[5] The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period. A failure to keep such records would be an independent violation of the Rule.

Commission staff believes these recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers; real estate brokers and agents; home builders, and advertising agencies.[6] As to these persons, the retention of these documents does not constitute a ''collection of information,'' as defined by OMB's regulations that implement the PRA.[7] Certain other covered persons such as lead generators and rate aggregators may not currently maintain these records in the ordinary course of business.[8] Thus, the

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] The Commission also retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule's issuance in July 2011 until the CFPB's republished rule, Regulation N, became effective on December 30, 2011.

[3] The CFPB clearance for their information collections associated with Regulation N was approved by the OMB on September 30, 2015 (OMB Control Number 3170–0009) through September 30, 2018.

[4] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

[5] *See* 44 U.S.C. 3502(3)(A).

[6] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.,* Fla. Stat. 494.00165 (2016); Ind. Code Ann. 23–2–5–18 (2016); Kan. Stat. Ann. 9–2208 (2015); Minn. Stat. 58.14 (2015); Wash. Rev. Code 19.146.060 (2015). Many mortgage brokers, lenders (including finance companies), and servicers are subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.,* Mich. Comp. Laws Serv. 445.1671 (2016); N.Y. Banking Law 597 (Consol. 2015); Tenn. Code Ann. 45–13–206 (2015). Lenders and mortgagees approved by the Federal Housing Administration must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See* 24 CFR 202. Various other entities, such as real estate brokers and agents, home builders, and advertising agencies can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law. *See, e.g.,* 76 Del. Laws, c. 421, § 1.

[7] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[8] *See, e.g., United States* v. *Intermundo Media, LLC, dba Delta Prime Refinance,* No. 1:14–cv–2529 (D. Colo. filed Sept. 12, 2014) (D. Colo. Oct.7, 2014)

Continued

recordkeeping requirements for those persons would constitute a ''collection of information.''

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

On August 31, 2016, the Commission sought comment on the Rule's information collection requirements.[9] No germane comments were received.[10]

As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Lead generators and rate aggregators.

Estimated Annual Hours Burden: 1,500 hours.

- Derived from 1,000 likely respondents[11] × approximately 3 hours each respondent per year to do these tasks = 3,000 hours.
- Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.[12]

Estimated Annual Cost Burden: $21,570, which is derived from 1,500 hours × $14.38 per hour.[13]

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 January 4, 2017. Write ''Regulation N: FTC File No. P134811; K05'' 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.

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/regulationnpra2,* 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 ''Regulation N: FTC File No. P134811; K05'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., 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.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 4, 2017. 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.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2016–29060 Filed 12–2–16; 8:45 am]

BILLING CODE 6750–01–P

(stipulated order for permanent injunction and civil penalty judgment), *available at https://www.ftc.gov/system/files/documents/cases/140912deltaprimestiporder.pdf.* The complaint charged this lead generator with numerous violations of Regulation N, including recordkeeping, and of other federal mortgage advertising mandates.

[9] *See* 81 FR 60001.

[10] The Commission received five non-germane comments, of which one was a duplicate.

[11] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: 1,000 lead generators and rate aggregators, based on staff's administrative experience. The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the Rule, *i.e.,* providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

[12] This estimate reflects a decrease in burden compared to prior FTC estimates, because many entities can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law, as discussed above. *See supra* note 6. The FTC notes that the CFPB's recent information collection filing with OMB for Regulation N also reflects the view that, in large part, most entities either retain records in the ordinary course of business or to demonstrate compliance with other laws. See generally Bureau of Consumer Financial Protection, Agency Information Collection Activities: Submission for OMB Review; Comment Review, 80 FR 45645 (July 31, 2015), available at *https://www.gpo.gov/fdsys/pkg/FR-2015-07-31/pdf/2015-18809.pdf.*

[13] This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. See U.S. Bureau of Labor Statistics, Occupational Employment and Wages—May 2015, table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation''), released Mar. 30, 2016, available at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has added the title Deputy Assistant Secretary for Native American Affairs to Commissioner, Administration for Native Americans position.

FOR FURTHER INFORMATION CONTACT: Jeff Hild, ACF Chief of Staff, 330 C Street SW., Washington, DC 20201, (202) 401–5180.

Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) is being amended at Chapter K, Administration for Children and Families, as last amended at 81 FR 49223 as follows:

I. Under Chapter K, ACF, delete K.10 Organization in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (HHS). The Administration for Children and Families is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary; the Chief of Staff; the Deputy Assistant Secretary for Administration; the Deputy Assistant Secretary for Policy; the Deputy Assistant Secretary for Early Childhood Development; the Deputy Assistant Secretary for Native American Affairs and Commissioner, Administration for Native Americans; the Deputy Assistant Secretary for External Affairs; and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Administration on Children, Youth and Families (KB)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Regional Operations (KJ)
Office of Planning, Research and Evaluation (KM)
Office of Communications (KN)
Office of the Deputy Assistant Secretary for Administration (KP)
Office of the Chief Information Officer (KQ)
Office of Refugee Resettlement (KR)
Office of Legislative Affairs and Budget (KT)
Office of Head Start (KU)
Office of Child Care (KV)
Office of Human Services Emergency Preparedness and Response (KW)***

II. Under Chapter KA, Office of the Assistant Secretary for Children and Families, delete KA.20 Functions, Paragraph A in its entirety and replace with the following:

KA.20 Functions. A. Office of the Assistant Secretary for Children and Families: The Office of the Assistant Secretary for Children and Families is responsible to the Secretary for carrying out ACF's mission and providing executive supervision of the major components of ACF. These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to ensure their effectiveness; approving instructions, policies, publications, and grant awards issued by ACF; and representing ACF in relationships with governmental and nongovernmental organizations. The Principal Deputy Assistant Secretary serves as an alter ego to the Assistant Secretary for Children and Families on program matters and acts in the absence of the Assistant Secretary for Children and Families. The Chief of Staff advises the Assistant Secretary for Children and Families and provides executive leadership and direction to the operations of ACF. The Deputy Assistant Secretary for External Affairs provides executive leadership and direction to the Offices of Regional Operations and Communications. The Deputy Assistant Secretary for Early Childhood Development serves as a key liaison and representative to the Department for early childhood development on behalf of the Assistant Secretary, ACF, and to other agencies across the government on behalf of the Department. The Deputy Assistant Secretary for Native American Affairs and Commissioner of the Administration for Native Americans is responsible for handling a variety of assignments requiring knowledge and expertise in advising the Assistant Secretary, ACF, in the formulation of policy views, positions, and implementation strategies related to American Indians, Alaska Natives, and Native Americans as delineated in the Native American Programs Act (NAPA). The incumbent will also serve as a key liaison and representative to all ACF program and staff offices on behalf of the Assistant Secretary related to tribal and Native American affairs. The Deputy Assistant Secretary for Policy has responsibility for cross-program coordination of ACF initiatives, including efforts to promote interoperability and program integration.

Dated: November 29, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2016–29112 Filed 12–2–16; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0095]

Clinical Pharmacology Section of Labeling for Human Prescription Drug and Biological Products—Content and Format; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Clinical Pharmacology Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' This guidance is one of a series of guidance documents intended to assist applicants in complying with FDA regulations on the content and form at of labeling for human prescription drug and biological products. The guidance describes the recommended information to include in the CLINICAL PHARMACOLOGY section of labeling that pertains to the safe and effective use of human prescription drug and biological products. This guidance finalizes the 2014 revised draft guidance entitled ''Clinical Pharmacology Labeling for Human Prescription Drug and Biological Products—Considerations, Content, and Format.''

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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–2009–D–0095 for ''Clinical Pharmacology Section of Labeling for Human Prescription Drug and Biological Products—Content and Format; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, 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 assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph Grillo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3177, Silver Spring, MD 20993–0002, 301–796–5008; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 24, 2006 (71 FR 3922), FDA published a final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' to revise the Agency's previous regulations on labeling (effective June 30, 2006). The final rule, commonly referred to as the Physician Labeling Rule (PLR), is designed to make information in prescription drug labeling easier for health care practitioners to access, read, and use, thereby increasing the extent to which health care providers rely on labeling for prescribing decisions.

In the **Federal Register** of March 3, 2009 (74 FR 9250), FDA announced the availability of a draft guidance on the format and content of the CLINICAL PHARMACOLOGY section of labeling. After considering received comments on the 2009 draft guidance, the Agency announced the availability of a revised draft guidance entitled ''Clinical Pharmacology Labeling for Human Prescription Drug and Biological Products—Considerations, Content, and Format'' in the **Federal Register** of August 14, 2014 (79 FR 47650). After carefully reviewing received comments on the 2014 revised draft guidance and in light of the Agency's increased regulatory experience implementing the PLR and FDA's labeling and communication initiatives to ensure consistency and clarity, FDA has finalized the guidance.

II. Guidance

FDA is announcing the availability of a guidance for industry entitled ''Clinical Pharmacology Section of Labeling for Human Prescription Drug and Biological Products—Content and Format'' as one of a series of guidance documents intended to assist applicants in complying with FDA regulations on the content and format of labeling for human prescription drug and biological products. This guidance provides clarity on the information that should be included in section 12 CLINICAL PHARMACOLOGY of the prescription

drug labeling under the PLR (21 CFR 201.57(c)(13)) and provides guidance on the inclusion of clinical recommendations based on clinical pharmacology findings in other sections of the labeling. The guidance is also intended to ensure consistency, as appropriate, in labeling of the CLINICAL PHARMACOLOGY section for all prescription drug products approved by FDA.

This guidance provides a general framework and set of recommendations that should be adapted to specific drugs and their conditions of use. Not all of the information identified in this guidance for inclusion in the CLINICAL PHARMACOLOGY section of product labeling will be applicable for every drug. For the purposes of this notice, all references to drugs include both human drugs and biological products unless otherwise specified.

The guidance outlines the use of subsections, headings, and subheadings to provide organization for the CLINCAL PHARMACOLOGY section in labeling. The guidance also emphasizes the importance of providing variability measures related to pharmacokinetic measures and parameters, pharmacodynamic measures, and other clinical pharmacology study results.

In addition to clarifications and edits throughout the guidance on various subsections of section 12, some notable changes from the revised draft guidance include:

- Addressing whether applicants are expected to revise current approved labeling if reserved sections 12.4 and 12.5 have already been used for other topics, and
- Providing revised recommendations on the inclusion of pregnancy and lactation information to be consistent with recommendations in FDA's ''Pregnancy and Lactation Labeling Rule'' (*https://www.federalregister.gov/documents/2014/12/04/2014-28241/content-and-format-of-labeling-for-human-prescription-drug-and-biological-products-requirements-for*) (December 2014) and draft guidance for industry entitled ''Pregnancy, Lactation, and Reproductive Potential: Labeling for Human Prescription Drug and Biological Products—Content and Format'' (*http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm425398.pdf*) (December 2014).

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 inclusion of clinical pharmacology information in section 12 CLINICAL PHARMACOLOGY of product labeling. 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 requirement of the applicable statutes and regulations.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572; the collections of information related to pharmacogenomic data have been approved under OMB control number 0910–0557.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: November 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29125 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Health Document Submission Requirements for Tobacco Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a revised guidance for industry entitled ''Health Document Submission Requirements for Tobacco Products.'' The guidance provides information to assist persons making health document submissions to FDA as required by the Family Smoking Prevention and Tobacco Control Act. We received several comments to the draft guidance, and those comments were considered as the guidance was finalized.

DATES: Submit either electronic or written comments on Agency guidances 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–2009–D–0600 for ''Health Document Submission Requirements for Tobacco Products.'' 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 guidance to the Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Katherine Collins, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised guidance for industry entitled ''Health Document Submission Requirements for Tobacco Products.''

The revised guidance includes guidance for manufacturers or importers of newly deemed tobacco products that are subject to chapter IX of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 387). Cigarettes, cigarette tobacco, roll-your-own, and smokeless tobacco were immediately subject to chapter IX of the FD&C Act, including section 904(a)(4), which requires the submission of certain health documents. Section 901(b) of the FD&C Act grants FDA authority to deem all other tobacco products subject to chapter IX of the FD&C Act as well. Pursuant to that authority, FDA issued a final rule deeming all other products that meet the statutory definition of ''tobacco product,'' set forth in section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), except for accessories of those products, subject to the Chapter IX of the FD&C Act (81 FR 28973). FDA published the final rule on May 10, 2016 (81 FR 28973) and it became effective on August 8, 2016. Therefore, manufacturers and importers of such tobacco products are now required to comply with chapter IX of the FD&C Act, including section 904(a)(4).

II. Significance of Guidance

FDA is issuing this guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on health document submission requirements. 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. Paperwork Reduction Act of 1995

This guidance also refers to previously approved collections of information found in FDA statute. The guidance includes information and recommendations for how to provide health document submissions. The collections of information in section 904 (a)(4) of the FD&C Act have been approved under OMB control number 0910–0654.

IV. Electronic Access

Persons with access to the Internet may obtain an electronic version of the guidance at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.*

Dated: November 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29117 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–1875]

Compliance Policy Guide Sec. 615.115 on Extralabel Use of Medicated Feeds for Minor Species; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised Compliance Policy Guide (CPG) 615.115 entitled ''Extralabel Use of Medicated Feeds for Minor Species.'' In advance of the January 1, 2017, date on which we anticipate that a number of drugs will convert from over-the-counter (OTC) to veterinary feed directive (VFD) status, this revised CPG clarifies policy and regulatory action guidance to FDA staff on the Agency's exercise of regulatory discretion with regard to the extralabel use of medicated feeds containing those drugs in minor species.

DATES: The Agency is soliciting public comment, but is implementing this CPG immediately because the Agency has determined that prior public participation is not feasible or appropriate. You may submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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–1999–D–1875 for ''Compliance Policy Guide Sec. 615.115 Extralabel Use of Medicated Feeds for Minor Species.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://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 CPG to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

FOR FURTHER INFORMATION CONTACT: Amber McCoig, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5556, *Amber.McCoig@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The revised CPG is intended to clarify policy and regulatory action guidance to FDA staff on the Agency's exercise of regulatory discretion with regard to the extralabel use of medicated feed in minor species. We are implementing this CPG without prior public comment because we have determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). Although this CPG is immediately in effect, it remains subject to comment in accordance with FDA's good guidance practices regulation.

The treatment of minor species is especially challenging for two reasons. First, many minor species, such as fish and game birds, have very few drugs approved for their use. As a result, veterinarians often times have to treat these species in an extralabel manner, using drugs that are not approved for them. Further, some minor species cannot practically be medicated in any way other than through the use of medicated feeds. Because extralabel use of medicated feeds is not permitted, veterinarians face an additional challenge to prevent unnecessary suffering and death of minor species.

In 2001, FDA published CPG 615.115 to provide guidance to FDA staff concerning the Agency's exercise of regulatory discretion with regard to the extralabel use of medicated feeds in minor species. The CPG was silent regarding the different marketing statuses of medicated feeds and did not explicitly address situations involving feeds containing VFD drugs.

In the **Federal Register** of December 12, 2013, FDA announced Guidance for Industry (GFI) #213 entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions With Guidance for Industry #209'' (78 FR 75570). As a result of GFI #213, FDA anticipates that, beginning January 1, 2017, a number of drugs, including some drugs used in medicated feeds, will convert from OTC marketing status to VFD marketing status. As this conversion occurs, drugs that previously were available OTC for producers and veterinarians for use in medicated feed will become VFD drugs. Because the current CPG is silent regarding the different marketing statuses of medicated feeds, to avoid potential confusion and harm to minor species requiring treatment with certain drug products converting from OTC to VFD, the Agency has decided to revise CPG 615.115 to explicitly clarify our intent to exercise regulatory discretion over both OTC and VFD feeds. In order to inform stakeholders before January 1, 2017, of the Agency's expectations regarding the extralabel use of VFD feeds in minor species, we are implementing this CPG immediately. We are soliciting public comment on this CPG, but immediate implementation will give stakeholders the opportunity to operate under the provisions of this CPG before they submit comments.

II. Significance of Guidance

This CPG is being issued as a level 1 guidance for FDA staff consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG represents the current thinking of FDA on the extralabel use of medicated feeds for minor species. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons with access to the Internet may obtain the CPG at either *http://www.fda.gov/AnimalVeterinary/*

GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm or *http://www.regulations.gov.*

Dated: November 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29133 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–0617; FDA–2016–E–0619]

Determination of Regulatory Review Period for Purposes of Patent Extension; BEXSERO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BEXSERO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 3, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 5, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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 Nos. FDA–2016–E–0617 and FDA–2016–E–0619 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BEXSERO.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award

(for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product BEXSERO (Meningococcal Group B vaccine). BEXSERO is indicated for active immunization to prevent invasive disease caused by *Neisseria meningitidis* serogroup B and is approved for use in individuals 10 through 25 years of age. Subsequent to this approval, the USPTO received patent term restoration applications for BEXSERO (U.S. Patent Nos. 8,273,360 and 8,663,656) from GlaxoSmithKline Biologicals SA, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated April 20, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of BEXSERO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BEXSERO is 3,963 days. Of this time, 3,779 days occurred during the testing phase of the regulatory review period, while 184 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* March 20, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 20, 2004.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): July 24, 2014. FDA has verified the applicant's claim that the biologics license application (BLA) for BEXSERO (BLA 125546/0) was initially submitted on July 24, 2014.

3. *The date the application was approved:* January 23, 2015. FDA has verified the applicant's claim that BLA 125546/0 was approved on January 23, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 518 days or 255 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29025 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2896]

Public Meeting on Pre-Market Evaluation of Abuse-Deterrent Properties of Opioid Drug Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the public meeting on Pre-Market Evaluation of Abuse-Deterrent Properties of Opioid Drug Products that was announced in the **Federal Register** on October 6, 2016. In that **Federal Register** notice, FDA requested comments on the approach to testing FDA recommended in its draft guidance ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products'' and FDA's efforts to develop standardized in vitro testing methodologies for evaluating the abuse deterrence of opioid drug products. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the Public Meeting on Pre-Market Evaluation of Abuse-Deterrent Properties of Opioid Drug Products published October 6, 2016 (81 FR 69532). Submit either electronic or written comments by January 3, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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–N–2896 for ''Public Meeting on Pre-Market Evaluation of Abuse-Deterrent Properties of Opioid Drug Products; Extension of Comment Period.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michelle Eby, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6184, Silver Spring, MD 20993, 301–796–4714, *Michelle.Eby@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 2016 (81 FR 69532), FDA published a notice announcing a public meeting and requesting comments on the approach to testing FDA recommended in its draft guidance ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products'' [1] and FDA's efforts to develop standardized in vitro testing methodologies for evaluating the abuse deterrence of opioid drug products. The comment period ends on December 1, 2016. Because the Agency has received requests for an extension to allow interested persons additional time to submit comments, FDA is extending the comment period until January 3, 2017.

Additional comments specific to the draft guidance ''General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products'' should be submitted to the docket for the draft guidance (FDA–2016–D–0785) in lieu of, or in addition to, the docket for the public meeting. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 1, 2016. Other comments should be submitted to this docket by January 3, 2016. FDA has committed to taking steps to address the epidemic of opioid abuse transparently and in close cooperation with stakeholders and will provide other opportunities to comment, as appropriate. For example, FDA intends to issue a general guidance for public comment describing the Agency's recommendations for standardized in vitro testing to evaluate purported abuse-deterrent properties and considerations for a potential applicant as it develops an abuse-deterrent formulation of an opioid drug product.

Dated: November 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29097 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

[1] *http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm492172.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1089]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recommended glossary and educational outreach to support use of symbols on labels and in labeling of in vitro diagnostic devices intended for professional use.

DATES: Submit either electronic or written comments on the collection of information by February 3, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–1089 for ''Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use—OMB Control Number 0910–0553—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device to avoid misbranding. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.

In the **Federal Register** of November 30, 2004 (69 FR 69606), FDA published a notice of availability of the guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' The document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA's labeling requirements for IVDs; and (2) FDA's labeling requirements for biologics, including IVDs under 21 CFR parts 610 and 660.

The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information help to ensure that IVD users have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the FD&C Act and section 351 of the PHS Act.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

The glossary activity is inclusive of both domestic and foreign IVD manufacturers. FDA receives submissions from approximately 689 IVD manufacturers annually. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for

the specific symbols used in labels or labeling for the IVDs manufactured.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Glossary	689	1	689	4	2,756

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 30, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29104 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2544]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device: Current Good Manufacturing Practice Quality System Regulations

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 January 4, 2017.

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 0910–0073. 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, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Medical Device: Current Good Manufacturing Practice Quality System Regulations— OMB Control Number 0910–0073—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a device, but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to Current Good Manufacturing Practice (CGMP), as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the FD&C Act.

The CGMP/Quality System (QS) regulation implementing authority provided by this statutory provision is found under part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under sections 501, 502, 510, 513, 514, 515, 518, 519, 520, 522, 701, 704, 801, and 803 of the FD&C Act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems.

Requirements are compatible with specifications in the international standards ''ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.'' The CGMP/QS information collections will assist FDA inspections of manufacturers for compliance with QS requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review the following topics: (1) The quality policy, (2) the organizational structure, (3) the quality plan, and (4) the quality system procedures of the organization. Section 820.22 requires the conduct and documentation of QS audits and re-audits. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j) requires, in respective order, the establishment, maintenance, and/or documentation of the following topics: (1) Procedures to control design of class III and class II devices and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying, and validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document

changes. Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance, and documentation of required records (documents) and changes to those records.

Section 820.50(a) and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a) through (e), (g)(1) through (g)(3), (h), and (i) requires the establishment, maintenance, and/or documentation of the following topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning, and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings, procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a), (b)(1), and (b)(2); and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Equipment calibration and inspection procedures; (2) national, international, or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for incoming acceptance by inspection, test, or other verification; (2) procedures for ensuring that in process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results, and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1), and (b)(2) and 820.100 require, respectively, the establishment, maintenance and/or documentation of the following topics: (1) Procedures for identifying, recording, evaluating, and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes, and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records, investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and (4) appropriate distribution and managerial review of corrective and preventive action information. Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d); 820.130; 820.140; 820.150(a) and (b); 820.160(a) and (b); and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for controlling and recording the storage, examination, release, and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date, and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c); 820.181(a) through (e); 820.184(a) through (f); and 820.186 require, respectively, the maintenance of records that are: (1) Retained at prescribed site(s), made readily available and accessible to FDA, and retained for the device's life expectancy or for 2 years; (2) contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) contained in a DHR and demonstrate the manufacture of each unit, lot, or batch of product in conformance with DMR and regulatory requirements include manufacturing and distribution dates, quantities, acceptance documents, labels and labeling, and control numbers; and (4) contained in a quality system record, consisting of references, documents, procedures, and activities not specific to particular devices.

Sections 820.198(a) through (c); and 820.200(a) through (d), respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Complaint files and procedures for receiving, reviewing, and evaluating complaints; (2) complaint investigation records identifying the device, complainant, and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, which are written and based on valid statistical rationale; and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation added design and purchasing controls, modified previous critical device requirements, revised previous validation and other requirements, and harmonized device CGMP requirements with QS specifications in the international standard ''ISO 9001: Quality Systems Model for Quality

Assurance in Design/Development, Production, Installation, and Servicing.'' The rule does not apply to manufacturers of components or parts of finished devices, or to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation. The rule imposes burden upon: (1) Finished device manufacturer firms, which are subject to all recordkeeping requirements; (2) finished device contract manufacturers, specification developers; and (3) re-packer, re-labelers, and contract sterilizer firms, which are subject only to requirements applicable to their activities. In addition, remanufacturers of hospital single-use devices are now considered to have the same requirements as manufacturers in regard to the regulation.

The establishment, maintenance, and/or documentation of procedures, records, and data required by the regulation assists FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective, and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

The CGMP/QS regulation applies to approximately 24,738 respondents. A query of the Agency's registration and listing database shows that approximately 13,294 domestic and 11,444 foreign establishments are respondents to this information collection.[1] Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to Quality Policy (§ 820.20(a)), Document Control (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to subpart C, Design Controls. The Paperwork Reduction Act burden placed on the 24,738 establishments is an average burden.

In the **Federal Register** of September 8, 2016 (81 FR 62144), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Quality policy—820.20(a)	24,738	1	24,738	7	173,166
Organization—820.20(b)	24,738	1	24,738	4	98,952
Management review—820.20(c)	24,738	1	24,738	6	148,428
Quality planning—820.20(d)	24,738	1	24,738	10	247,380
Quality system procedures—820.20(e)	24,738	1	24,738	10	247,380
Quality audit—820.22	24,738	1	24,738	33	816,354
Training—820.25(b)	24,738	1	24,738	13	321,594
Design procedures—820.30(a)(1)	24,738	1	24,738	2	49,476
Design and development planning—820.30(b)	24,738	1	24,738	6	148,428
Design input—820.30(c)	24,738	1	24,738	2	49,476
Design output—820.30(d)	24,738	1	24,738	2	49,476
Design review—820.30(e)	24,738	1	24,738	23	568,974
Design verification—820.30(f)	24,738	1	24,738	37	915,306
Design validation—820.30(g)	24,738	1	24,738	37	915,306
Design transfer—820.30(h)	24,738	1	24,738	3	74,214
Design changes—820.30(i)	24,738	1	24,738	17	420,546
Design history file—820.30(j)	24,738	1	24,738	3	74,214
Document controls—820.40	24,738	1	24,738	9	222,642
Documentation approval and distribution and document changes—820.40(a) and (b)	24,738	1	24,738	2	49,476
Purchasing controls—820.50(a)	24,738	1	24,738	22	544,236
Purchasing data—820.50(b)	24,738	1	24,738	6	148,428
Identification—820.60	24,738	1	24,738	1	24,738
Traceability—820.65	24,738	1	24,738	1	24,738
Production and process controls—820.70(a)	24,738	1	24,738	2	49,476
Production and process changes and environmental control—820.70(b) and (c)	24,738	1	24,738	2	49,476
Personnel—820.70(d)	24,738	1	24,738	3	74,214
Contamination control—820.70(e)	24,738	1	24,738	2	49,476
Equipment maintenance schedule, inspection, and adjustment—820.70(g)(1)–(g)(3)	24,738	1	24,738	1	24,738
Manufacturing material—820.70(h)	24,738	1	24,738	2	49,476
Automated processes—820.70(i)	24,738	1	24,738	8	197,904
Control of inspection, measuring, and test equipment—820.72(a)	24,738	1	24,738	5	123,690
Calibration procedures, standards, and records—820.72(b)(1)–(b)(2)	24,738	1	24,738	1	24,738
Process validation—820.75(a)	24,738	1	24,738	3	74,214
Validated process parameters, monitoring, control methods, and data—820.75(b)	24,738	1	24,738	1	24,738
Revalidation—820.75(c)	24,738	1	24,738	1	24,738

[1] Based on fiscal year 2015 data.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Acceptance activities—820.80(a)–(e)	24,738	1	24,738	5	123,690
Acceptance status—820.86	24,738	1	24,738	1	24,738
Control of nonconforming product—820.90(a)	24,738	1	24,738	5	123,690
Nonconforming product review/disposition procedures and rework procedures—820.90(b)(1)–(b)(2)	24,738	1	24,738	5	123,690
Procedures for corrective/preventive actions—820.100(a)(1)–(a)(7)	24,738	1	24,738	12	296,856
Corrective/preventive activities—820.100(b)	24,738	1	24,738	1	24,738
Labeling procedures—820.120(b)	24,738	1	24,738	1	24,738
Labeling documentation—820.120(d)	24,738	1	24,738	1	24,738
Device packaging—820.130	24,738	1	24,738	1	24,738
Handling—820.140	24,738	1	24,738	6	148,428
Storage—820.150(a) and (b)	24,738	1	24,738	6	148,428
Distribution procedures and records—820.160(a) and (b)	24,738	1	24,738	1	24,738
Installation—820.170	24,738	1	24,738	2	49,476
Record retention period—820.180(b) and (c)	24,738	1	24,738	2	49,476
Device master record—820.181	24,738	1	24,738	1	24,738
Device history record—820.184	24,738	1	24,738	1	24,738
Quality system record—820.186	24,738	1	24,738	1	24,738
Complaint files—820.198(a), (c), and (g)	24,738	1	24,738	5	123,690
Servicing procedures and reports—820.200(a) and (d)	24,738	1	24,738	3	74,214
Statistical techniques procedures and sampling plans—820.250	24,738	1	24,738	1	24,738
Total					8,608,824

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29028 Filed 12–2–16; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0117]

Agency Information Collection Activities; Proposed Collection; Comment Request; Providing Information About Pediatric Uses of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection regarding ''Providing Information About Pediatric Uses of Medical Devices Under Section 515A of the Federal Food, Drug, and Cosmetic Act.''

DATES: Submit either electronic or written comments on the collection of information by February 3, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0117 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Providing Information About Pediatric Uses of Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Providing Information About Pediatric Uses of Medical Devices Under Section 515A of the Federal Food, Drug, and Cosmetic Act—OMB Control Number 0910–0762—Extension

The guidance document entitled ''Providing Information About Pediatric Uses of Medical Devices—Guidance for Industry and Food and Drug Administration Staff'' suggests that applicants who submit certain medical device applications include, if readily available, pediatric use information for diseases or conditions that the device is being used to treat, diagnose, or cure that are outside the device's approved or proposed indications for use, as well as an estimate of the number of pediatric patients with such diseases or conditions. The information submitted will allow FDA to identify pediatric uses of devices outside their approved or proposed indication for use to determine areas where further pediatric device development could be useful. This recommendation applies to applicants who submit the following applications: (1) Any request for a humanitarian device exemption submitted under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)); (2) any premarket approval application (PMA) or supplement to a PMA submitted under section 515 of the FD&C Act (21 U.S.C. 360e); and (3) any product development protocol submitted under section 515 of the FD&C Act.

Respondents are permitted to submit information relating to uses of the device outside the approved or proposed indication if such uses are described or acknowledged in acceptable sources of readily available information. We estimate that 20 percent of respondents submitting information required by section 515A of the FD&C Act will choose to submit this information and that it will take 30 minutes for them to do so.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Description	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Uses outside approved indication	148	1	148	0.5 (30 minutes)	74

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–29105 Filed 12–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Health Workforce Connector

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than February 3, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Health Workforce Connector.

OMB No.: 0906–xxxx—New.

Abstract: The Health Workforce Connector is being developed to expand on the current National Health Service Corps (NHSC) Jobs Center, which includes positions approved for NHSC scholarship and loan repayment obligors. The new Health Workforce Connector will provide a central platform to connect participants in both the NHSC and NURSE Corps programs and facilities that are approved for performance of their NHSC or NURSE Corps service obligation. The Health Workforce Connector will become a resource that engages any health care professional or student interested in providing primary care services in underserved communities with facilities in need of health care providers. The Health Workforce Connector will also allow users to create a profile, search for NHSC and NURSE Corps sites, find job opportunities, and be searchable by Site Points of Contact. Like the current NHSC Jobs Center, individuals will be able to use the Health Workforce Connector's search capability with Google Maps.

Need and Proposed Use of the Information: Information will be collected from users in the following two ways:

(1) *Account Creation:* Creating an account is optional, but to create an account, the user will be required to enter their first name, last name, and email address. Those are the only mandatory fields in the profile account creation process and will be used to send an automated email allowing the user to validate their login credentials. This information will also be used to validate any users who already exist within the Bureau of Health Workforce Management Information Systems Solution (BMISS) database and allow an initial import of existing data at the request of the user.

(2) *Profile Completion:* Users may fill out a profile, but this function will be completely optional and will include fields such as location, discipline, specialty, and languages spoken. The information collected, if 'published' by the user, will allow internal BMISS Site Point of Contacts the ability to search on anyone who may be a potential candidate for job opportunities at the site. All information collected will be stored within existing secure BMISS databases and will be used internally for report generation on an as-needed basis.

Likely Respondents: Potential users will include individuals searching for a health care job opportunity or a NHSC or NURSE Corps health care facility, and health care facilities searching for potential candidates to fill open health care job opportunities at their sites.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Account Creation	15,600	1	15,600	.08	1,248
Complete Profile	9,400	1	9,400	1	9,400
Total	15,600 [1]	.....	15,600	.....	10,648

[1] The 9,400 respondents who complete their profiles are a subset of the 15,600 respondents who create accounts.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–29079 Filed 12–2–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Announcement for the Physician-Focused Payment Model Technical Advisory Committee Required by the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the meeting date for the Physician-Focused Payment Model Technical Advisory Committee (hereafter referred to as ''the Committee'') on Friday, December 16, 2016 in Washington, DC.

DATES: The meeting will be held on Friday, December 16, 2016, from 10:30 a.m. to 12:00 p.m. Eastern Daylight Time (EST) and it is open to the public.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol by the Smithsonian Museums in Capitol Room I, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ann Page, Designated Federal Officer, at the Office of Health Policy, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–6870.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Physician-Focused Payment Model Technical Advisory Committee (''the Committee'') is required by the Medicare Access and CHIP Reauthorization Act of 2015, 42 U.S.C 1395ee. This Committee is also governed by provisions of the Federal Advisory Committee Act, as amended (5 U.S.C App.), which sets forth standards for the formation and use of federal advisory committees. In accordance with its statutory mandate, the Committee is to review physician-focused payment model proposals and prepare recommendations regarding whether such models meet criteria that were established through rulemaking by the Secretary of Health and Human Services (the Secretary). The Committee is composed of 11 members appointed by the Comptroller General.

II. Agenda

The Committee will continue discussions about the process by which physician-focused payment model proposals will be received and reviewed by the Committee based on the criteria established by the Secretary for physician-focused payment models. The Committee will also discuss the role of non-physician stakeholders including beneficiaries and employers in payment models and in the Committee's processes. There will be time allocated for public comment on these agenda items. Documents will be posted on the Committee Web site and distributed on the Committee listserv prior to the public meeting.

III. Meeting Attendance

The December 16, 2016 meeting is open to the public; however, in-person attendance is limited to space available. Priority to attend the meeting in-person will be given to those who pre-register. If the meeting venue reaches its seating capacity, other registrants will be limited to participating by telephone.

Meeting Registration: The public may attend the meeting in-person or listen by phone via audio teleconference. Space is limited and registration is *required* in order to attend in-person or by phone. Registration may be completed online at *www.regonline.com/PTACMeetingsRegistration.*

All the following information must be submitted when registering:

Name.

Company name.

Postal address.

Email address.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Angela Tejeda, no later than December 8, 2016 by sending an email message to *Angela.Tejeda@hhs.gov* or calling 202–401–8297.

Persons wishing to attend this meeting must register by following the instructions in the ''Meeting Registration'' section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. Special Accommodations

Individuals requiring special accommodations must include the request for these services during registration.

V. Copies of the Charter

The Secretary's Charter for the Physician-Focused Payment Model Technical Advisory Committee is available on the ASPE Web site at *https://aspe.hhs.gov/medicare-access-and-chip-reauthorization-act-2015.* Information about how to subscribe to the Committee's email listserv is found at *https://aspe.hhs.gov/contact-physician-focused-payment-model-technical-advisory-committee.*

Dated: November 29, 2016.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–29066 Filed 12–2–16; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–1005]

Area Maritime Security Advisory Committee (AMSC), Eastern Great Lakes and Regional Sub-Committee Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on the Area Maritime Security Committee (AMSC), Eastern Great Lakes, and the four regional sub-committees: Northeast Ohio Region, Northwestern Pennsylvania Region, Western New York Region, and Eastern New York Region submit their applications for membership to the Captain of the Port, Buffalo. The Committee assists the Captain of the Port, Buffalo, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the U.S. Coast Guard Captain of the Port, Buffalo, on January 4, 2017.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: Captain of the Port, Buffalo, Attention: LCDR Karen Jones, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the AMSC in general, contact:

For the Northeast Ohio Region Sub-Committee Executive Coordinator: Mr. Peter Killmer at 216–937–0136.

For the Northwestern Pennsylvania Region Sub-Committee Executive Coordinator: Mr. Joseph Fetscher at 216–937–0126.

For the Western New York Region Sub-Committee Executive Coordinator: LCDR Karen Jones at 716–843–9373.

For the Eastern New York Region Sub-Committee Executive Coordinator: Mr. Ralph Kring at 315–343–1217.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of

2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App. 2). The AMSCs shall assist the Captain of the Port in the development, review, update, and exercising of the Area Maritime Security Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the Captain of the Port in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least five years of expertise related to maritime or port security operations. The AMSC Eastern Great Lakes Committee has 16 members. The Northeast Ohio Region Sub-Committee has 31 members. The Northwestern Pennsylvania Region Sub-Committee has 23 members. The Western New York Region Sub-Committee has 29 members. The Eastern New York Region Sub-Committee has 60 members. We are seeking to fill the following vacancies with this submission:

(A) Northeast Ohio Region Sub-Committee (2 members): (1) Executive Board member representing the maritime (on-water) Port Harbormaster community of Northeast Ohio {*e.g.,* qualified harbormasters operating in local ports [list not all inclusive] of Vermilion, Lorain, Cleveland, Fairport Harbor, Ashtabula, Conneaut, etc.}; and (2) Executive Board member representing the regulated MTSA facilities community of Northeast Ohio.

(B) Northwestern Pennsylvania Region Sub-Committee (1 member): Executive Board member to serve as Chairperson of the Sub-Committee and concurrently as member of the Eastern Great Lakes AMSC when so convened by the FMSC.

(C) Western New York Region Sub-Committee (no new members): No applications are being taken for this Sub-Committee at this time.

(D) Eastern New York Region Sub-Committee (1 member): Executive Board member to serve as Vice Chairperson of the Sub-Committee and concurrently as member of the Eastern Great Lakes AMSC when so convened by the FMSC.

Applicants may be required to pass an appropriate security background check prior to appointment to the Committee. Applicants must register with and remain active as Coast Guard HOMEPORT users if appointed. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In accordance with 33 CFR 103, members may be selected from the Federal, Territorial, or Tribal governments; the State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies.

The Department of Homeland Security (DHS) does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: November 10, 2016.

J.S. Dufresne,

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

[FR Doc. 2016–29107 Filed 12–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–90]

30-Day Notice of Proposed Information Collection: Family Report, Moving to Work (MTW) Family Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 4, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 26, 2016 at 81 FR 66070.

A. Overview of Information Collection

Title of Information Collection: Family Report, Moving to Work (MTW) Family Report.

OMB Approval Number: 2577–0083.

Type of Request: Extension of currently approved collection.

Form Number: Form HUD 50058 Family Report, and HUD 50058 MTW Family Report.

Description of the need for the information and proposed use: The Office of Public and Indian Housing of the Department of Housing and Urban Development (HUD) provides funding to Public Housing Agencies (PHAs) to administer assisted housing programs. Form HUD–50058 MTW Family Reports solicit demographic, family profile, income and housing information on the entire nationwide population of tenants residing in assisted housing. The information collected through the Form HUD–50058 MTW will be used to monitor and evaluate the Office of Public and Indian Housing, Moving to Work (MTW) Demonstration program which includes Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates and Vouchers, Section 8 Moderate Rehabilitation and Moving to Work (MTW) Demonstration programs. Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificate, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

Information collection	Number of respondents (PHA) (with responses)	*Average number of reponses per respondent (with responses)	Total annual responses	Hours per response	Total hours	Total cost (at a rate of $17.50/hr)
Form HUD–50058 New Admission	4,114	87	357,918	.67	239,805.06	$4,196,588.55
Form HUD–50058 Recertification	4,114	583	2,398,462	.33	791,492.46	$13,851,118.05
Form HUD–50058 MTW New Admission	39	529	20,631	.67	13,822.77	$241,898.48
Form HUD–50058 MTW Recertification	39	4,018	156,702	.33	51,711.66	$904,954.05
Totals	4,153		2,933,713		1,096,831.95	

* Average Number of Responses per Respondents = Total Annual Responses/Number of Respondents.

Estimated annualized hourly cost to respondents (PHA); Form HUD–50058: To report using Form HUD–50058 Family Report, it will cost the average PHA $1,020.08 annually to enter and submit all data for New Admission and $3,366.83 annually for Recertification.

- Total Cost for all PHAs; Form HUD–50058 Family Report New Admissions =
  - 239,805.06 Total Hours × $17.50/hour = $4,196,588.55
- Cost per PHA = $4,196,588.55 Total cost for all PHAs ÷ 4,114 PHAs (with responses) = $1,020.08 per PHA annually
- Total Cost for all PHAs; Form HUD–50058 Family Report Recertification =
  - 791,492.46 Total Hours × $17.50/hour = $13,851,118.05
- Cost per PHA = $13,851,118.05 Total cost for all PHAs ÷ 4,114 PHAs (with responses) = $3,366.83 per PHA annually

Estimated annualized hourly cost to respondents (PHA); Form HUD–50058 MTW: To report using Form HUD–50058 Family Report, it will cost the average PHA $6,171.67 annually to enter and submit all data for New Admissions and $23,438.33 annually for Recertification.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 28, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–29120 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–88]

30-Day Notice of Proposed Information Collection: FHA Adjustable Rate Mortgages (ARMS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 4, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 31, 2016 at 81 FR 60016.

A. Overview of Information Collection

Title of Information Collection: FHA Adjustable Rate Mortgages (ARMS).

OMB Approval Number: 2502–0322.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The Housing and Urban-Rural Recovery Act of 1983 amended the National Housing Act to permit FHA to insure adjustable rate mortgages (ARMS). The term of all ARMS insured by HUD–FHA is required to be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect the adjustment to the interest rate and monthly mortgage amount. Lenders must electronically indicate that the mortgage to be insured is an ARM and the term or type of the ARM.

Respondents: (i.e., affected public): Business or other for-profit.

Estimated Number of Respondents: 2,535.

Estimated Number of Responses: 164,447.

Frequency of Response: On Occasion.

Average Hours per Response: .05.

Total Estimated Burden: 8,222.35.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–29121 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5911–N–02]

60-Day Notice of Proposed Information Collection: Affirmative Fair Housing Marketing Plan

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 3, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Affirmative Fair Housing Marketing Plan.

OMB Approval Number: 2529–0013.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–935.2A, 935.2B, 935.2C.

Description of the need for the information and proposed use: The Department of Housing and Urban Development (HUD) is requesting that the Office of Management and Budget (OMB) approve the extension of forms: HUD–935.2A Affirmative Fair Housing Marketing Plan—Multifamily Housing, HUD–935.2B Affirmative Fair Housing Marketing Plan—Single Family Housing, and HUD–935.2C Affirmative Fair Housing Marketing Plan—Condominiums or Cooperatives. These forms assist HUD in fulfilling its duty under the Fair Housing Act (the Act) to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing, by promoting a condition in which individuals of similar income levels in the same housing market area have available to them a like range of housing choices, regardless of race, color, national origin, religion, sex, disability, or familial status. This collection also promotes compliance with Executive Order 11063, which requires Federal agencies to take all necessary and appropriate action to prevent discrimination in federally insured and subsidized housing. Under the AFHM Regulations (24 CFR part 200, subpart M), all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs that involve the development or rehabilitation of multifamily projects or manufactured home parks of five or more lots, units, or spaces must submit an AFHM Plan on a prescribed form. In addition, all applicants for participation in FHA subsidized and unsubsidized housing programs that involve the development or rehabilitation of single family housing or condominium or cooperative units that intend to sell five or more properties in the next year, or sold five or more properties in the past year, and where a lender is submitting initial applications for HUD mortgage

insurance, must submit one of several agreements or statements, among which is an AFHM Plan on a prescribed form. If this information was not collected, it would prevent HUD from ensuring compliance with affirmative fair housing marketing requirements.

Respondents: Applicants for FHA subsidized and unsubsidized housing programs.

Estimated Number of Respondents: 8,080 (HUD 935.2A: On an annual basis, there are approximately 300 respondents that submit new plans, 4,030 respondents that review their existing plans and submit updated plans, and 3,720 respondents that review their existing plans, but are not required to submit updated plans. HUD 935.2.B & C: On an annual basis, there are approximately 30 respondents that submit new plans.)

Estimated Number of Responses: 8,080.

Frequency of Response: 1 per annum.

Average Hours per Response: The average hours per response is 3.16 hours. (For the HUD–935.2A, the hours per response are: 6 hours (new plans), 4 hours (review and update plans), and 2 hours (review of existing plans only). For the 935.2B & C, the hours per response is 6 hours.

Total Estimated Burdens: 25,540 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–935.2A (MFH).	8,050	1	8,050	(New MFH) 6 × 300. (Reviews MFH) 2 × 3,720. (Reviews & Updates MFH) 4 × 4,030.	(New MFH) 1800. (Reviews MFH) 7,440. (Reviews & Updates) 16,120.	Respondents: $35/hr (professional work). $16/hr (clerical work) $1.25 per report mailing. Government: $38.56/hr [1] (professional work). $17.55/hr [2] (clerical work).	Respondents: (New MFH) = ($35 × 4 × 300) + ($16 × 2 × 300) = $51,600. (Reviews MFH) = ($35 × 2 × 3,720) = $260,400. (Reviews & Updates MFH) = ($35 × 2 × 4030). +. ($16 × 2 × $4030) = $411,060. MFH mailing costs = $1.25 × 4,330 = $5,412.50. Government: (New MFH) = ($38.56 × 3 × 300) + ($17.55 × 0.5 × 300) = $37,336.50. (Review & Updates MFH) = ($38.56 × 3 × 4,030) + ($17.55 × 0.5 × $4,030) = $501,553.65.
HUD–935.2B (SFH) & C (Condos and Co-Ops).	30	1	30	6	180	Respondents: $35/hr (professional work). $16/hr (clerical work) $1.25 per report mailing. Government: $38.56/hr (professional work). $17.55/hr (clerical work).	Respondents: (New SFH) = ($35 × 4 × 30) + ($16 × 2 × 30) = $5,160. SFH mailing costs = $1.25 × 30 = $37.50. Government: (New SFH) = ($38.56 × 3 × 30) + ($17.55 × 0.5 × 30) = $3,733.65.
Total	8,080	1 each	8,080	Avg. of 3.16	25,540	Avg. of $28.73	Respondents: $733,670. Government: $542,623.80.

[1] $35/hr approximate rate for GS 12 Step 5 ($38.56/hr) based on the salary information available on *OPM.gov.*
[2] $16/hr approximate rate for GS 5 step 5 ($17.55/hr) based on the salary information available on *OPM.gov.*

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 29, 2016.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2016–29123 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–85]

30-Day Notice of Proposed Information Collection: Uniform Physical Standards and Physical Inspection Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 4, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 17, 2016 at 81 FR 54819.

A. Overview of Information Collection

Title of Information Collection: Uniform Physical Standards and Physical Inspection Requirements.

OMB Approval Number: 2502–0369.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: All multifamily properties owned by HUD or with HUD-insured mortgages must be inspected regularly to ensure that they are maintained in a condition that is decent, safe, sanitary, and in good repairs.

Respondents: Affected public.

Estimated Number of Respondents: 12,125.

Estimated Number of Responses: 12,125.

Frequency of Response: Annual.

Average Hours per Response: 6.

Total Estimated Burden: 72,750.00.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–29122 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–89]

30-Day Notice of Proposed Information Collection: Financial Statement of Corporate Applicant for Cooperative Housing Mortgage

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 4, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 26, 2016 at 81 FR 66073.

A. Overview of Information Collection

Title of Information Collection: Financial Statement of Corporate Applicant for Cooperative Housing Mortgage.

OMB Approval Number: 2502–0058.

Type of Request: Extension of currently approved collection.

Form Number: HUD–93232A.

Description of the need for the information and proposed use: Information is a critical element and the source document by which HUD determines the cooperative member and group capacity to meet the statutory requirements. Credit reports on the individual members and their personal financial statements are submitted on form HUD–93232–A in order to determine their credit standing, ability to pay and stability of employment.

Respondents: Affected public.

Estimated Number of Respondents: 13.

Estimated Number of Responses: 13.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 13.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 28, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–29124 Filed 12–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N209; FXES11140400000–178–FF04E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

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 (Act) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given in **ADDRESSES** by January 4, 2017.

ADDRESSES: *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

Submitting Comments: If you wish to comment, you may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* Fish and Wildlife Service's Regional Office (see above).
- *Email: permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 205–726–2667 (telephone) or 205–726–2479 (fax).

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. With some exceptions, the Act prohibits activities with listed species unless a Federal permit is issued that allows such activities. The Act requires that we invite public comment before issuing these permits.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Applications

Permit Application Number: TE 054973–5

Applicant: Nick Haddad, North Carolina State University, Raleigh, NC

The applicant requests renewal of his permit to take (capture, mark, transport, release, recapture, and salvage) the endangered Saint Francis' satyr butterfly (*Neonympha mitchellii francisci*) for population monitoring, scientific research, captive propagation, and release into suitable habitat in North Carolina.

Permit Application Number: TE 95412A–0

Applicant: Kentucky Department for Environmental Protection, Division of Water, Frankfort, KY

The applicant requests a permit to take (capture, handle, release) 19 species of endangered and threatened freshwater mussels and the threatened Big Sandy crayfish (*Cambarus callainus*) for presence/absence surveys in Kentucky.

Permit Application Number: TE 81756A–2

Applicant: Jason B. Robinson, Lexington, KY

The applicant requests renewal of his permit to continue take (capture with mist nets or harp traps, handle, identify, band, radio-tag, salvage) of Indiana bats (*Myotis sodalis*), gray bats (*Myotis grisescens*), and northern long-eared bats (*Myotis septentrionalis*) for presence/absence surveys and monitoring in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia, and an amendment to authorize take (capture, handle, release) of blackside dace (*Phoxinus cumberlandensis*) in Kentucky and Tennessee, Kentucky arrow darters (*Etheostoma spilotum*) in Kentucky, and Big Sandy crayfish (*Cambarus callainus*) in Kentucky, Virginia, and West Virginia, for presence/absence surveys.

Permit Application Number: TE 59798B–1

Applicant: Daguna Consulting, LLC, Bristol, VA

The applicant requests amendment of their permit to add the States of Iowa, Illinois, Minnesota, and Wisconsin as locations where they may conduct take (capture, handle, tag, release) of 31 species of endangered and threatened freshwater mussels for presence/absence surveys and add authorization to take (capture, handle, tag, and release) of spectaclecase (*Cumberlandia monodonta*), Higgins eye (*Lampsilis higginsii*), scaleshell (*Leptodea leptodon*), and fat pocketbook (*Potamilus capax*) mussels for presence/absence surveys in Iowa, Illinois, Minnesota, Tennessee, and Wisconsin.

Authority: We provide this notice under section 10(c) of the Act.

Dated: November 23, 2016.

Aaron Valenta,

Acting Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2016–29063 Filed 12–2–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compacts Taking Effect in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The State of California entered into compacts governing Class III gaming with the Buena Vista Rancheria of Me-Wuk Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Jamul Indian Village of California, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, and the Yocha Dehe Wintun Nation. This notice announces that the compacts are taking effect.

DATES: The effective date of the compacts is December 5, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Section 11 of the Indian Gaming Regulatory Act (IGRA) requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts that are for the purpose of engaging in Class III gaming activities on Indian lands. *See* Public Law 100–497, 25 U.S.C. 2701 *et seq.* All Tribal-State Class III compacts, including amendments, are subject to review and approval by the Secretary under 25 CFR 293.4. The Secretary took no action on the compacts within 45 days of their submission. Therefore, the compacts are considered to have been approved, but only to the extent the compacts are consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: November 22, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–29076 Filed 12–2–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORR40000.L12320000.FV0000. LVRDOR130000.14XL5413AR.HAG 15–0234]

Notice of Intent To Collect Fees on Public Land in Douglas County, Oregon, Roseburg District, Scaredman Recreation Site

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM), Roseburg District Office, is proposing to begin collecting fees for overnight camping at Scaredman Recreation Site, located in Douglas County, Oregon.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the proposal to collect fees by February 3, 2017. Comments received in person or by electronic mail after this date may not be considered by the BLM. Effective no less than six months after publication of this notice, the BLM Roseburg District will initiate fee collection at Scaredman Recreation Site, unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: You may submit comments by mail, hand delivery, or electronic mail.

Mail or hand-delivery: BLM Roseburg District Office, 777 NW Garden Valley Boulevard, Roseburg, OR 97471.

Electronic mail: BLM_OR_RB_mail@blm.gov. If you submit comments by electronic mail, please indicate ''Attn: Scaredman Fee Proposal'' in your subject line, and include your name and return address.

Copies of the fee proposal are available at the BLM Roseburg District Office at the above address and online at *http://www.blm.gov/or/districts/roseburg/index.php.*

FOR FURTHER INFORMATION CONTACT: Erik Taylor, Supervisory Outdoor Recreation Planner, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR, 97471, by phone at (541) 440–4930, or by email at *BLM_OR_RB_mail@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1(800) 877–8339 to contact the above individual(s) during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Scaredman Recreation Site (T. 25S., R. 1W., Sec. 24) is located north of the Rogue-Umpqua Scenic Byway on Canton Creek Road (BLM Road 24–1–31). Under Section 3(g) of the Federal Lands Recreation Enhancement Act (FLREA), the Scaredman Recreation Site area will qualify, as is, as a site wherein visitors can be charged an ''Expanded Amenity Recreation Fee.'' Visitors wishing to use the expanded amenities that exist at the site would purchase a recreation use permit as described at 43 CFR part 2930. Pursuant to FLREA and implementing regulations at 43 CFR Subpart 2933, fees may be charged for overnight camping where specific amenities and services are provided. Specific visitor fees will be identified and posted at the site. Fees must be paid at the self-service pay station located at the camping areas. People holding the America the Beautiful—Senior Pass and/or Access Pass will be entitled to a 50 percent fee reduction on overnight fees.

The Scaredman Recreation site is a semi-primitive campground on Canton Creek in a semi-remote area. Canton Creek Road is 40 miles east of Roseburg off of the Rogue-Umpqua National Scenic Byway (Highway 138). Scaredman provides 10 individual tent campsites, drinking water, vault toilets, refuse containers, fire rings, a campground host and reasonable visitor protection. There are several undeveloped water play areas to enjoy along Canton Creek and Steamboat Creek. Fly fishing is available 3 miles south on the North Umpqua River. This recreation site is the only one in the Roseburg District that provides such amenities and recreation opportunities and that does not currently charge a fee. In the past years, prior to 2013, it has been used heavily because it is the only ''free'' campground in the area. The likely recreation season for Scaredman will be from mid-May through mid-October.

Camping fees will be $10.00/per site, per night, which would be consistent with other established fee sites in the area including other BLM-administered sites in the area and those overnight sites managed by the Umpqua National Forest and Douglas County Parks Department. Future adjustments in the fees charged could be made in accordance with the Roseburg District Business Plan for recreation sites and with concurrence from the Southwest Oregon Resource Advisory Council (SWOR RAC). The Bureau of Land Management, Roseburg District has notified and involved the public about the proposal to collect fees and the

SWOR RAC approved the fee proposal in March of 2016, following FLREA guidelines. Copies of the business plan are available at the BLM Roseburg Office and Oregon State Office.

The BLM has found that recreation fee proposals are of a procedural nature and are not identified as major Federal actions, and are therefore excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(C), pursuant to 43 CFR 46.210(i). In addition, the fee proposals do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

The Bureau of Land Management, Roseburg District welcomes public comments on this proposal. Before including your address, phone number, email address, or other personally identifiable information in your comment, be advised that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personally identifiable information, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b) and 43 CFR 2932.13.

Abbie Jossie,

BLM Roseburg District Manager.

[FR Doc. 2016–29103 Filed 12–2–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 15X L5017AR]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management, California State Office, Sacramento, California.

DATES: January 4, 2017.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way W–1623, Sacramento, California 95825, 1–916–978–4310. 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, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest a survey must file a notice that they wish to protest with the Chief, Branch of Geographic Services. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Chief, Branch of Geographic Services within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. 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.

Mount Diablo Meridian, California

T. 17 S., R. 38 E., the corrective dependent resurvey of a portion of the Fourth Standard Parallel South and a portion of the subdivisional lines, the dependent resurvey of a portion of the subdivisional lines and a portion of the 1856 meanders of Owens Lake and the subdivision of sections 4 and 9, accepted August 31, 2016.

T. 37 N., R. 4 E., the metes-and-bounds survey of a certain parcel in section 12, accepted August 31, 2016.

T. 30 S., R. 41 E., the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, a portion of the subdivision of section lines in sections 6 and 7, a portion of certain lot lines, and Mineral Survey No. 5813, and the metes-and-bounds survey of certain new lot lines, accepted September 20, 2016.

T. 21 N., R. 9 W., the metes-and-bounds survey of a portion of section 2 and Tract 37 in section 2, accepted September 23, 2016.

T. 1 S., R. 13 E., the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, accepted October 25, 2016.

San Bernardino Meridian, California

T. 1 N., R. 9 E., the metes-and-bounds survey of a certain parcel in section 33, accepted August 25, 2016.

Authority: Authority: 43 U.S.C., Chapter 3.

Dated: November 18, 2016.

Jon L. Kehler,

Chief Cadastral Surveyor, California.

[FR Doc. 2016–29065 Filed 12–2–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F 178S180110; S2D2D SS08011000 SX066A00 33F 17XS501520]

Notice of Proposed Information Collection; Request for Comments for 1029–0049

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing that the information collection request for 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned control number 1029–0049. This notice describes the nature of the information collection activity and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 4, 2017, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806, or via email to *OIRA_submission@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information

collection request, contact John Trelease Alsop at (202) 208–2783 or electronically to *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. OSMRE has submitted a request to OMB to renew its approval for the collection of information for part 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors. OSMRE is requesting a 3-year term of approval for this information collection.

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 OMB control number for part 822 is 1029–0049 and is referenced in § 822.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on July 6, 2016 (81 FR 44043). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection:

Title: 30 CFR 822—Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Summary: Sections 510(b)(5) and 515(b)(10)(F) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: 33 coal mining operators who operate on alluvial valley floors and the State regulatory authorities.

Total Annual Responses: 66.

Total Annual Burden Hours: 2,970.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the address listed above. Please refer to OMB control number 1029–0049 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 30, 2016.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2016–29054 Filed 12–2–16; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–825–826 (Third Review)]

Polyester Staple Fiber From Korea and Taiwan; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* November 4, 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 (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2016, the Commission determined that the domestic interested party group response to its notice of institution (81 FR 50544, August 1, 2016) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on November 30, 2016, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before December 5, 2016 and may not contain new factual information. Any person

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Auriga Polymers Inc., DAK Americas LLC, and Nan Ya Plastics Corporation America to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by December 5, 2016. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29030 Filed 12–2–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–042]

Sunshine Act Meeting; Change of Time to Government In the Sunshine Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

DATE: December 9, 2016.

ORIGINAL TIME: 11:00 a.m.

NEW TIME: 9:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(2)(i), the Commission hereby gives notice that the Commission has determined to change the time of the meeting of December 9, 2016, from 11:00 a.m. to 9:00 a.m.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 30, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–29170 Filed 12–1–16; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1031]

Certain UV Curable Coatings for Optical Fibers, Coated Optical Fibers, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 31, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of DSM Desotech, Inc. of Elgin, Illinois and DSM IP Assets B.V. of the Netherlands. 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 UV curable coatings for optical fibers, coated optical fibers, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,961,508 (''the '508 patent''), 7,171,103 (''the '103 patent''), 7,067,564 (''the '564 patent''), and 7,706,659 (''the '659 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request 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 *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 29, 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 UV curable coatings for optical fibers, coated optical fibers, and products containing same by reason of infringement of one or more of claims 1–8, 10–15, and 18–22 of the '508 patent; claims 1–10 and 13–15 of the '103 patent; claims 2–4, 9, 11–12, and 15 of the '564 patent; and claims 1–3, 9, 12, 16–18, 21, and 30 of the '659 patent; and whether an industry in the United States exists 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 complainants are:

DSM Desotech, Inc., 1122 Saint Charles Street, Elgin, IL 60120.

DSM IP Assets B.V., Het Overloon 1, 6411 TE Heerlen, Netherlands.

(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:

Momentive UV Coatings (Shanghai) Co., Ltd., No. 1 KangQiao High Tech Zone, 1–39# East KangQiao Road, Pudong, Shanghai 201315, China.

OFS Fitel, LLC, 2000 Northeast Expressway, Norcross, Georgia 30071.

(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: November 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29038 Filed 12–2–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Fourth Review)]

Glycine From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: Effective November 4, 2016.

FOR FURTHER INFORMATION CONTACT: Carolyn Carlson (202–205–3002), 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 (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2016, the Commission determined that the domestic interested party group response to its notice of institution (81 FR 50547, August 1, 2016) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on November 30, 2016, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 5, 2016 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 5, 2016. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by GEO Specialty Chemicals, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29032 Filed 12–2–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1315 (Final)]

Ferrovanadium From Korea; Scheduling of the Final Phase of an Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1315 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of ferrovanadium from Korea, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less than fair value.[1]

DATES: *Effective Date:* November 1, 2016.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that imports of ferrovanadium from Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 28, 2016, by the Vanadium Producers and Reclaimers Association and its members: AMG Vanadium, LLC, Cambridge, Ohio; Bear Metallurgical Company, Butler, Pennsylvania; Gulf Chemical & Metallurgical Corporation, Freeport, Texas; and Evraz Stratcor, Inc., Hot Springs, Arkansas.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 7, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on Tuesday, March 21, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 15, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on March 17, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 14, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 28, 2017. In addition, any person who has not entered an appearance as a party to

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as all ferrovanadium regardless of grade (*i.e.,* percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. See 81 FR 75806, November 1, 2016

the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before March 28, 2017. On April 12, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 14, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is 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: November 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29034 Filed 12–2–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–971]

Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued a recommended determination on remedy and bonding in the above-captioned investigation. The Commission is soliciting submissions from the public on any public interest issues raised by the recommended relief. The ALJ recommended that a limited exclusion order issue against certain air mattress systems, components thereof, and methods of using the same, imported by respondents Sizewise Rentals LLC of Kansas City, Missouri; American National Manufacturing Inc. of Corona, California; and Dires LLC and Dires LLC d/b/a Personal Comfort Beds of Orlando, Florida (collectively, ''Respondents''). The ALJ did not recommend that cease and desist orders issue as to the respondents found to infringe by the Commission. The ALJ found that Respondents did not show that the remedial orders to be issued by the Commission would have an adverse effect on public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive products in the United States, or United States consumers. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States: Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease-and-desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file, pursuant to 19 CFR 210.50(a)(4), submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's recommended determination on remedy and bonding issued in this investigation on October 27, 2016. Comments should address whether issuance of the limited exclusion order (''the recommended remedial order'') in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial order is used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended remedial order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended remedial order within a commercially reasonable time; and

(v) explain how the recommended remedial order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on December 19, 2016. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 971'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary ((202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–29031 Filed 12–2–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0097]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Supplemental Information on Water Quality Considerations (ATF F 5000.30)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 3, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Shawn Stevens, Federal Explosives Licensing Center either by mail at 244 Needy Road, Martinsburg, WV 25405, or by telephone at 304–616–4421.

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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

3. *The agency form number, if any, and the applicable component of the Departmentsponsoring the collection:*

Form number (if applicable): (ATF F 5000.30).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: The data provided by the applicant on ATF F 5000.30, Supplemental Information on Water Quality Considerations, allows the ATF to identify waste product(s) generated as a result of explosives operations, the disposal of these products into navigable waters, and if there is any adverse impact on the environment. The information may be disclosed to other Federal, State, and local law enforcement and regulatory personnel, in order to verify information on the form and aid in the enforcement of environmental laws.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: November 29, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–29027 Filed 12–2–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0330]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Law Enforcement Congressional Badge of Bravery

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office of Justice Programs 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. BJA's CBOB Office will use the CBOB application information to confirm the eligibility of applicants to be considered for the CBOB, and forward the application as appropriate to the Federal or the State and Local CBOB Board for their further consideration.

DATES: Comments are encouraged and will be accepted for 60 days until February 3, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michelle Martin, Administrative Services Director Bureau of Justice Assistance, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–514–9354).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Congressional Badge of Bravery

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Law Enforcement Agencies. Under Public Law No: 110–298 The US Department of Justice Attorney General may request voluntary nominations from an appointed Federal Board, for the names of law enforcement officers cited as performing an act of bravery while in the line of duty, for a Federal Law Enforcement Congressional Badge of Bravery award.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 184 applicants annually.

6. *An estimate of the total public burden (in hours) associated with the collection:*

The estimated public burden associated with this collection is 61 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: November 29, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–29024 Filed 12–2–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Charter Renewal

In accordance with section 512(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) and the provisions of the Federal Advisory Committee Act and its implementing regulations issued by the General Services Administration (GSA), the charter for the Advisory Council on Employee Welfare and Pension Benefit Plans is renewed.

The Advisory Council on Employee Welfare and Pension Benefit Plans shall advise the Secretary of Labor on technical aspects of the provisions of ERISA and shall provide reports and/or recommendations each year on its findings to the Secretary of Labor. The Council shall be composed of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be of the same political party. Three of the members shall be representatives of employee organizations (at least one of whom shall be a representative of any organization members of which are participants in a multiemployer plan); three of the members shall be representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); three members shall be representatives appointed from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

The Advisory Council will report to the Secretary of Labor. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act. For further information, contact Larry I. Good, Executive Secretary, Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–8668.

Signed at Washington, DC.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2016–29119 Filed 12–2–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health: Subcommittee on Evidentiary Requirements for Part B Lung Disease

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Announcement of meeting of the Subcommittee on Evidentiary Requirements for Part B Lung Disease of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The subcommittee will meet via teleconference on December 21, 2016, from 2:30 p.m. to 6:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: You may contact Antonio Rios, Designated Federal Officer, at *rios.antonio@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather and analyze data and continue working on advice under Area #3, Evidentiary Requirements for Part B lung conditions.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Subcommittee on Evidentiary Requirements for Part B Lung Disease meeting includes: Review possible draft presumption for sarcoidosis/chronic beryllium disease (CBD) cases; discuss summary of cases reviewed; discuss issues identified in Part B lung conditions cases; discuss original DOL request for clarification and draft responses to questions; determine if any additional data or information is needed; discuss other recommendations and next steps.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

Public Participation, Submissions, and Access to the Public Record

Subcommittee meeting: The subcommittee will meet via teleconference on Wednesday, December 21, 2016, from 2:30 p.m. until 6:00 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm*.

Requests for special accommodations: Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov*.

Submission of written comments for the record: You may submit written comments, identified by the subcommittee name and the meeting date of December 21, 2016, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, ''Subcommittee on Part B Lung Conditions'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by December 14, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm*.

Signed at Washington, DC.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–29114 Filed 12–2–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–084)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of Intent to Grant an Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The National Aeronautics and Space Administration (NASA) hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Number 8,111,943, titled ''Smart Image Enhancement Process,'' NASA Case Number LAR–17240–1; U.S. Patent Number 8,655,513, titled ''Methods of

Real Time Image Enhancement of Flash LIDAR Data and Navigating a Vehicle Using Flash LIDAR Data,'' NASA Case Number LAR–17799–1; U.S. Patent Number 9,007,569, titled ''Coherent Doppler Lidar for Measuring Altitude, Ground Velocity, and Air Velocity of Aircraft and Spaceborne Vehicles,'' NASA Case Number LAR–17801–1; and U.S. Patent Number 8,494,687, titled ''Method for Enhancing A Three Dimensional Image From A Plurality of Frames of Flash LIDAR Data,'' NASA Case Number LAR–17894–1, to light touch, LLC, having its principal place of business in Hampton, Virginia. Certain patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3221 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Andrea Z. Warmbier, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, Hampton, VA 23681; (757) 864–3221; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2016–29048 Filed 12–2–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 4, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0094.

Type of Review: Extension of a previously approved collection.

Title: Suspicious Activity Report by Depository Institutions.

Abstract: The Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA) (31 U.S.C. 5318(g)). Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's, BSA E-filing system by credit unions. A suspicious activity report (SAR) is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days.

FinCEN and law enforcement agencies use the information on BSA–SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 83,859.

OMB Number: 3133–0167.

Type of Review: Extension of a previously approved collection.

Title: Foreign Branching, 12 CFR 741.11.

Abstract: Pursuant to Part 741, Section 741.11 of the NCUA Rules and Regulations, an insured credit union that wishes to establish a branch office outside the United States (other than branches located on United States military installations or embassies) must apply for and receive approval from the NCUA regional director before establishing that branch. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, including conservatorship and liquidation actions.

This information is necessary to evaluate the safety and soundness of the decision to open the branch and to protect the interests of the National Credit Union Share Insurance Fund.

Estimated No. Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 32.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 29, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–29012 Filed 12–2–16; 8:45 am]

BILLING CODE 7535–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2016, to April 30, 2016.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services,

Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

Section 213.3137 General Services Administration

(a) Not to Exceed 203 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used nationwide to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–11 to 15 level. No new appointments may be made under this authority after September 30, 2017.

Schedule B

No Schedule B Authorities to report during April 2016.

Schedule C

The following Schedule C appointing authorities were approved during April 2016.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Senior Advisor	DA160094	4/1/2016
	Office of the Chief Information Officer	Senior Advisor	DA160092	4/14/2016
	Office of the Under Secretary for Rural Development.	Senior Advisor	DA160110	4/14/2016
	Rural Housing Service	Senior Advisor	DA160112	4/14/2016
	Farm Service Agency	State Executive Director—Wisconsin	DA160111	4/15/2016
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA160113	4/29/2016
APPALACHIAN REGIONAL COMMISSION	Appalachian Regional Commission	Special Assistant-Chair	AP160001	4/4/2016
DEPARTMENT OF COMMERCE	Office of White House Liaison	Special Assistant	DC160122	4/13/2016
	Office of the Under Secretary	Congressional Affairs Specialist	DC160124	4/15/2016
		Senior Advisor	DC160148	4/29/2016
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Senior Advisor and Chief of Staff for Administration.	DC160119	4/19/2016
	Office of the General Counsel	Senior Counsel	DC160143	4/25/2016
	Economics and Statistics Administration	Press Secretary	DC160146	4/25/2016
	Advocacy Center	Special Advisor	DC160149	4/29/2016
DEPARTMENT OF DEFENSE	Office of the Secretary	Special Assistant	DD160087	4/1/2016
		Advance Officer	DD160086	4/4/2016
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant for South and Southeast Asia.	DD160088	4/1/2016
	Office of the Under Secretary of Defense (Policy).	Special Assistant (Strategy, Plans, and Forces).	DD160092	4/8/2016
		Special Assistant for Afghanistan, Pakistan, and Central Asia.	DD160098	4/13/2016
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant (Middle East Policy)	DD160100	4/14/2016
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (Legislative Affairs)	DD160069	4/19/2016
DEPARTMENT OF THE AIR FORCE	Office of Assistant Secretary of Air Force, Installations, Environment and Logistics.	Special Assistant	DF160018	4/19/2016
DEPARTMENT OF EDUCATION	Office for Civil Rights	Special Projects Manager	DB160066	4/1/2016
	Office of Communications and Outreach	Managing Writer	DB160067	4/14/2016
	Office of the Under Secretary	Policy Advisor	DB160068	4/14/2016
		Deputy Director, White House Initiative on Educational Excellence for Hispanics.	DB160074	4/26/2016
		Special Assistant	DB160078	4/29/2016
	Office of the General Counsel	Senior Counsel	DB160069	4/19/2016
		Associate General Counsel	DB160080	4/28/2016
	Office of Elementary and Secondary Education.	Director of Strategic Initiatives	DB160070	4/19/2016
		Chief of Staff	DB160079	4/28/2016
	Office of Planning, Evaluation and Policy Development.	Senior Policy Advisor (2)	DB160071	4/19/2016
			DB160072	4/19/2016
		Chief of Staff	DB160073	4/19/2016
	Office of the Secretary	Director of Strategic Initiatives	DB160075	4/26/2016
	Office of Legislation and Congressional Affairs.	Deputy Assistant Secretary for Legislative Affairs.	DB160076	4/29/2016
		Principal Advisor for Legislative Affairs	DB160077	4/29/2016
	Office of Career Technical and Adult Education.	Special Assistant	DB160083	4/29/2016
DEPARTMENT OF ENERGY	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Advisor	DE160062	4/14/2016
	Office of Public Affairs	Deputy Press Secretary	DE160080	4/18/2016
GENERAL SERVICES ADMINISTRATION	Office of Communications and Marketing	Press Secretary	GS160021	4/22/2016
	Office of the Administrator	Special Assistant	GS160022	4/25/2016
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Director of Advance	DH160117	4/19/2016
		Confidential Assistant	DH160112	4/22/2016
	Office of Health Reform	Policy Advisor	DH160118	4/19/2016
	National Institutes of Health	Senior Director of External Partnerships	DH160115	4/25/2016
		Director for Patient Engagement	DH160116	4/25/2016

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HOMELAND SECURITY	Office of the Assistant Secretary for Intergovernmental Affairs.	Chief of Staff	DM160190	4/1/2016
		Senior Advisor	DM160227	4/19/2016
	United States Immigration and Customs Enforcement.	Special Assistant	DM160191	4/1/2016
	Office of Assistant Secretary for Legislative Affairs.	Director of Legislative and Congressional Affairs.	DM160176	4/8/2016
	United States Citizenship and Immigration Services.	Special Assistant	DM160197	4/13/2016
	Office of the Assistant Secretary for Policy.	Policy Advisor	DM160222	4/14/2016
	Office of the Chief of Staff	Senior Advance Officer	DM160223	4/14/2016
		Counselor	DM160235	4/22/2016
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM160224	4/14/2016
		Director of Strategic Engagement	DM160184	4/15/2016
	Transportation Security Administration	Senior Advisor	DM160228	4/26/2016
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Senior Advisor for Public Engagement	DU160026	4/14/2016
	Office of Policy Development and Research.	Special Advisor	DU160022	4/19/2016
	Office of the Secretary	Special Advisor	DU160023	4/29/2016
DEPARTMENT OF THE INTERIOR	Office of Congressional and Legislative Affairs.	Counsel	DI160052	4/6/2016
		Deputy Director Office of Congressional and Legislative Affairs.	DI160057	4/15/2016
DEPARTMENT OF JUSTICE	Office of Justice Programs	Senior Policy Advisor	DJ160070	4/1/2016
	Office of the Deputy Attorney General	Special Assistant	DJ160094	4/29/2016
DEPARTMENT OF LABOR	Office of the Secretary	Advisor for Worker Voice Engagement	DL160061	4/1/2016
		Senior Policy Advisor	DL160066	4/13/2016
		Deputy Chief of Staff	DL160070	4/18/2016
		Policy Advisor	DL160062	4/25/2016
		Deputy Director of Scheduling and Advance.	DL160081	4/25/2016
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer (2)	DL160064	4/8/2016
			DL160065	4/8/2016
	Employee Benefits Security Administration.	Chief of Staff	DL160080	4/25/2016
	Mine Safety and Health Administration	Senior Advisor	DL160082	4/25/2016
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Media Relations Specialist	NN160069	4/28/2016
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Confidential Assistant	TB160003	4/13/2016
OFFICE OF MANAGEMENT AND BUDGET	Office of Education, Income Maintenance and Labor.	Confidential Assistant	BO160035	4/14/2016
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Legislative Analyst	QQ160002	4/19/2016
OFFICE OF PERSONNEL MANAGEMENT	Office of the Director	Executive Assistant (2)	PM160021	4/15/2016
			PM160025	4/18/2016
SMALL BUSINESS ADMINISTRATION	Office of Field Operations	Senior Advisor	SB160021	4/1/2016
	Office of the Administrator	Special Assistant	SB160019	4/4/2016
	Office of Native American Affairs	Assistant Administrator for Native American Affairs.	SB160022	4/6/2016
	Office of the Administrator	Senior Advisor	SB160025	4/28/2016
DEPARTMENT OF STATE	Office of the Secretary	Special Assistant	DS160062	4/6/2016
	Foreign Policy Planning Staff	Senior Advisor	DS160081	4/14/2016
		Staff Assistant	DS160085	4/18/2016
	Office of the Global Women's Issues	Staff Assistant	DS160084	4/18/2016
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Senior Advisor	DS160082	4/21/2016
	Office of the Chief of Protocol	Public Affairs Specialist	DS160087	4/25/2016
	Bureau of Public Affairs	Public Affairs Specialist	DS160088	4/28/2016
DEPARTMENT OF TRANSPORTATION	Office of the Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT160042	4/1/2016
	Office of the Administrator	Special Advisor	DT160046	4/1/2016
	Office of Public Affairs	Deputy Director for Public Affairs	DT160049	4/12/2016
		Press Secretary	DT160062	4/28/2016
	Office of the Assistant Secretary for Aviation and International Affairs.	Policy Advisor	DT160050	4/15/2016
	Office of the Assistant Secretary for Transportation Policy.	Senior Policy Advisor	DT160060	4/15/2016
DEPARTMENT OF THE TREASURY	Office of the Secretary of the Treasury	Associate Director (2)	DY160079	4/21/2016
			DY160081	4/21/2016
		Deputy White House Liaison	DY160082	4/22/2016
	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant	DY160080	4/21/2016
	Office of the Assistant Secretary (Public Affairs).	Senior Advisor	DY160078	4/25/2016
	Office of the Under Secretary for International Affairs.	Senior Advisor	DY160085	4/26/2016
DEPARTMENT OF VETERANS AFFAIRS	Office of Public Affairs	Special Advisor	DV160033	4/6/2016
	Office of the Assistant Secretary for Government Relations.	Special Assistant	DV160039	4/22/2016

The following Schedule C appointing authorities were revoked during April 2016.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Food Safety.	Chief of Staff	DA150164	04/02/2016
	Office of Communications	Director of Risk Management	DA130069	04/16/2016
	Office of the Under Secretary for Rural Development.	Confidential Assistant	DA100122	04/16/2016
		Senior Advisor	DA150119	04/16/2016
DEPARTMENT OF COMMERCE	Economics and Statistics Administration	Press Secretary	DC150171	04/01/2016
	Office of Business Liaison	Special Advisor	DC150027	04/01/2016
	Economic Development Administration	Director of Outreach	DC100008	04/16/2016
	Office of White House Liaison	Special Assistant	DC150034	04/16/2016
	Office of the Under Secretary	Special Advisor	DC150095	04/22/2016
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Executive Assistant	PS090011	04/03/2016
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary	Special Assistant to the White House Liaison.	DD160004	04/09/2016
	Office of the Assistant Secretary of Defense (Special Operation/Low Intensity Conflict and Interdependent Capabilities).	Principal Director for Special Operations and Combating Terrorism.	DD140057	04/16/2016
	Washington Headquarters Services	Defense Fellow	DD140023	04/16/2016
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant to the ASD (Legislative Affairs) (Chief Policy).	DD150045	04/30/2016
DEPARTMENT OF EDUCATION	Office of Career Technical and Adult Education.	Special Assistant	DB150044	04/02/2016
	Office for Civil Rights	Confidential Assistant	DB150017	04/03/2016
	Office of Planning, Evaluation and Policy Development.	Policy Advisor	DB150104	04/16/2016
	Office of Elementary and Secondary Education.	Special Assistant	DB140059	04/18/2016
	Office of the Secretary	Special Advisor for Strategy and Planning	DB150010	04/20/2016
ENVIRONMENTAL PROTECTION AGENCY	Office of the Administrator	Deputy Press Secretary	EP140021	04/02/2016
EXPORT–IMPORT BANK	Office of the Chairman	Project Manager and Executive Assistant to the Chairman.	EB160001	04/12/2016
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Health Reform	Director of Outreach (Office of Health Reform).	DH150024	04/08/2016
DEPARTMENT OF HOMELAND SECURITY	Office of the Assistant Secretary for Intergovernmental Affairs.	Chief of Staff	DM150061	04/02/2016
	Office of the Assistant Secretary for Intergovernmental Affairs.	Intergovernmental Affairs Coordinator	DM150024	04/02/2016
	Office of the Executive Secretariat	Deputy Secretary Briefing Book Coordinator.	DM160101	04/02/2016
		Special Assistant to the Executive Secretary.	DM160108	04/02/2016
	United States Citizenship and Immigration Services.	Special Assistant	DM140148	04/02/2016
	United States Immigration and Customs Enforcement.	Special Assistant (2)	DM150034	04/02/2016
			DM150067	04/02/2016
	Office of the Assistant Secretary for Intergovernmental Affairs.	Senior Director	DM150026	04/16/2016
	Office of the Assistant Secretary for Policy.	Special Assistant	DM150053	04/16/2016
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM140235	04/16/2016
	Office of the Chief of Staff	Advance Officer	DM160033	04/16/2016
	Office of the Under Secretary for Management.	Senior Advisor	DM120034	04/16/2016
	Office of the General Counsel	Counselor to the General Counsel	DM140183	04/23/2016
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Fair Housing and Equal Opportunity.	Special Policy Advisor	DU150066	04/02/2016
	Office of Public Affairs	Deputy Press Secretary	DU150015	04/02/2016
DEPARTMENT OF JUSTICE	Executive Office for United States Attorneys.	Senior Counsel	DJ150097	04/02/2016
	Office of the Associate Attorney General	Senior Counsel	DJ130076	04/03/2016
	Office of the Attorney General	Deputy White House Liaison	DJ150090	04/15/2016
	Office of Legal Policy	Senior Counsel	DJ140115	04/19/2016
DEPARTMENT OF LABOR	Employee Benefits Security Administration.	Senior Advisor	DL120036	04/30/2016
	Office of Congressional and Intergovernmental Affairs.	Chief of Staff	DL160020	04/30/2016
	Office of the Secretary	Senior Advisor	DL140044	04/30/2016
		Special Advisor	DL150045	04/30/2016
		Special Assistant	DL150046	04/30/2016
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Board	Chief of Staff	CU100001	04/29/2016
OFFICE OF PERSONNEL MANAGEMENT	Office of the General Counsel	Senior Counsel	PM150020	04/02/2016
OVERSEAS PRIVATE INVESTMENT CORPORATION.	Office of the President and Chief Executive Officer.	Senior Advisor	PQ140010	04/02/2016
		Deputy Chief of Staff	PQ140009	04/16/2016
DEPARTMENT OF STATE	Office of the Chief of Protocol	Public Affairs Specialist	DS150004	04/30/2016

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF TRANSPORTATION	Assistant Secretary for Aviation and International Affairs.	Special Assistant	DT140061	04/16/2016
	Assistant Secretary for Transportation Policy.	Policy Advisor	DT150060	04/16/2016
	Public Affairs	Press Secretary	DT150076	04/16/2016

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–29129 Filed 12–2–16; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Review: OPM Form SF 15, Application for 10-Point Veteran Preference, OMB No. 3206–0001

AGENCY: U.S. Office of Personnel Management

ACTION: Emergency clearance notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for emergency clearance and review for OPM Form SF 15, *Application for 10-Point Veteran Preference.* Emergency clearance is required as the current form approval expired October 31, 2016. OPM will publish a 60-notice requesting comments on proposed revisions to the SF 15 at a later date.

The SF 15 is used by agencies, OPM examining offices, and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

Public burden reporting for this collection of information is estimated to take approximately 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are invited on:

- Whether this information is necessary for the proper performance of functions on the Office of Personnel Management, and whether it will have practical utility;
- whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and
- ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact *CIO PRA Officer* on (202) 606–0125 or via email to *formsmanager@opm.gov.* Please include your complete mailing address with your request.

DATES: Comments on this proposal for emergency review should be received within December 15, 2016. We are requesting OMB to take action within 10 calendar days from the close of this **Federal Register** Notice on the request for emergency review.

ADDRESSES: You may send or deliver comments to: Kimberly A. Holden, Deputy Associate Director for Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, Room 6351D, 1900 E Street NW., Washington, DC 20415–9700, or email at *employ@opm.gov*; or fax at (202) 606–2329 and *OMB Designee,* OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Roseanna Ciarlante by telephone at (267) 932–8640; by fax at (202) 606–4430; by TTY at (202) 418–3134; or by email at *Roseanna.Ciarlante@opm.gov.*

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–29127 Filed 12–2–16; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from June 1, 2016 to June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No schedule A authorities to report during June 2016.

Schedule B

No schedule B authorities to report during June 2016.

Schedule C

The following Schedule C appointing authorities were approved during June 2016.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Foreign Agricultural Service	Special Assistant	DA160119	6/1/2016
	Office of the Under Secretary Farm and Foreign Agricultural Service.	Senior Advisor	DA160137	6/10/2016

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Civil Rights.	Chief of Staff	DA160143	6/22/2016
	Office of Communications	Advance Associate	DA160144	6/23/2016
	Office of the Secretary	Confidential Assistant	DA160147	6/23/2016
		White House Liaison	DA160141	6/22/2016
	Office of the Assistant Secretary for Civil Rights.	Senior Advisor	DA160140	6/24/2016
	Office of the Under Secretary for Rural Development.	Special Advisor	DA160142	6/24/2016
	Office of the Assistant Secretary for Congressional Relations.	Deputy Director, Intergovernmental Affairs.	DA160136	6/10/2016
		Director of Oversight	DA160145	6/24/2016
		Legislative Analyst	DA160148	6/24/2016
		Confidential Assistant	DA160149	6/24/2016
Department of Commerce	Office of the Assistant Secretary for Economic Development.	Director of Public Affairs	DC160157	6/3/2016
	Office of Legislative and Intergovernmental Affairs.	Director of Intergovernmental Affairs.	DC160161	6/17/2016
	Advocacy Center	Policy Advisor	DC160162	6/17/2016
	Office of Business Liaison	Senior Advisor	DC160164	6/17/2016
	Economics and Statistics Administration.	Senior Advisor	DC160163	6/22/2016
	Office of Public Affairs	Press Assistant	DC160165	6/22/2016
Council on Environmental Quality	Council on Environmental Quality	Associate Director for Land and Water.	EQ160001	6/24/2016
Department of Defense	Office of the Under Secretary of Defense (Policy).	Chief of Staff for Special Operations and Combatting Terrorism.	DD160151	6/8/2016
Department of the Army	Office of the Secretary	Special Assistant	DW160048	6/17/2016
Department of Education	Office of Legislation and Congressional Affairs.	Deputy Chief of Staff	DB160095	6/7/2016
		Confidential Assistant	DB160103	6/27/2016
	Office of the Under Secretary	Special Assistant	DB160096	6/7/2016
		Confidential Assistant	DB160098	6/7/2016
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB160097	6/7/2016
		Senior Policy Advisor	DB160108	6/24/2016
		Policy Advisor	DB160100	6/10/2016
	Office of Career Technical and Adult Education.	Confidential Assistant	DB160099	6/16/2016
Department of Energy	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Advisor	DE160130	6/10/2016
		Special Advisor	DE160131	6/10/2016
	Office of Public Affairs	Deputy Director, Office of Public Affairs.	DE160132	6/17/2016
	Office of the Secretary	Special Assistant	DE160134	6/17/2016
		Special Advisor for Clean Energy and Risk Management.	DE160133	6/30/2016
	Office of Assistant Secretary for International Affairs.	Special Assistant	DE160135	6/29/2016
Department of Health and Human Services.	Office of the Secretary	Confidential Assistant (2)	DH160131	6/2/2016
			DH160145	6/24/2016
		Policy Advisor	DH160155	6/17/2016
	Office of the Assistant Secretary for Health.	Confidential Assistant	DH160143	6/7/2016
		Speechwriter	DH160139	6/2/2016
	Office of Refugee Resettlement/Office of the Director.	Chief of Staff	DH160147	6/13/2016
	Office of the Administrator, Health Resources and Services Administration.	Policy Advisor	DH160149	6/13/2016
	Office of the Assistant Secretary for Public Affairs.	Communications Advisor	DH160150	6/13/2016
	Administration for Children and Families.	Senior Advisor	DH160151	6/13/2016
	National Institutes of Health	Policy Analyst	DH160140	6/21/2016
Department of Homeland Security	Office of the General Counsel	Special Assistant	DM160261	6/8/2016
	Office of the Under Secretary for National Protection and Programs Directorate.	Senior Advisor	DM160252	6/16/2016
	Office for Civil Rights and Civil Liberties.	Advisor	DM160257	6/16/2016
	Federal Emergency Management Agency.	Press Secretary	DM160270	6/27/2016
Department of the Interior	Bureau of Land Management	Senior Advisor	DI160070	6/1/2016
	Bureau of Reclamation	Special Assistant	DI160073	6/9/2016

Agency name	Organization name	Position title	Authorization No.	Effective date
	Bureau of Ocean Energy Management.	Senior Advisor	DI160075	6/24/2016
Department of Justice	Civil Rights Division	Senior Counsel	DJ160112	6/3/2016
	Office of Public Affairs	Deputy Press Secretary	DJ160113	6/7/2016
	Antitrust Division	Chief of Staff	DJ160115	6/7/2016
	Office on Violence Against Women	Confidential Assistant	DJ160104	6/9/2016
Department of Labor	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Officer	DL160095	6/3/2016
		Legislative Officer	DL160101	6/29/2016
	Office of the Assistant Secretary for Policy.	Policy Advisor	DL160096	6/6/2016
National Endowment for the Arts	Office of the Chairman	White House Liaison/Senior Advisor.	NA160006	6/22/2016
Office of Management and Budget	Office of Communications	Assistant Press Secretary	BO160038	6/2/2016
	Office of the Director	Confidential Assistant	BO160040	6/10/2016
		Assistant to the Director	BO160041	6/10/2016
	Office of E-Government and Information Technology.	Confidential Assistant	BO160042	6/20/2016
Department of State	Office of the Counselor	Special Assistant	DS160107	6/3/2016
	Bureau of International Security and Nonproliferation.	Staff Assistant	DS160108	6/3/2016
	Bureau of Legislative Affairs	Deputy Assistant Secretary	DS160109	6/3/2016
	Office To Monitor and Combat Trafficking In Persons.	Staff Assistant	DS160106	6/8/2016
	Foreign Policy Planning Staff	Senior Advisor (2)	DS160112	6/15/2016
			DS160115	6/22/2016
	Bureau of Economic and Business Affairs.	Special Assistant	DS160117	6/30/2016
Department of Transportation	Office of the Administrator, Federal Transit Administration.	Associate Administrator for Communications and Legislative Affairs.	DT160065	6/10/2016
	Office of Assistant Secretary for Administration.	Deputy Assistant Secretary for Management and Administration.	DT160067	6/10/2016
	Office of the Secretary	White House Liaison	DT160068	6/10/2016
Department of the Treasury	Office of the Secretary of the Treasury.	Special Assistant	DY160096	6/17/2016
		Senior Advisor	DY160097	6/20/2016
	Office of the Assistant Secretary (Legislative Affairs).	Special Assistant	DY160099	6/30/2016

The following Schedule C appointing authorities were revoked during June 2016.

Agency name	Organization name	Position title	Request No.	Date vacated
Department of Agriculture	Farm Service Agency	Chief of Staff	DA150168	06/01/2016
	Natural Resources Conservation Service.	Special Assistant	DA090190	06/11/2016
	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst	DA150167	06/11/2016
		Senior Legislative Analyst	DA150196	06/25/2016
	Office of Communications	Advance Associate	DA150044	06/25/2016
	Office of the Assistant Secretary for Civil Rights.	Senior Advisor	DA150102	06/25/2016
	Office of the Secretary	Confidential Assistant	DA160019	06/25/2016
		Deputy White House Liaison	DA160073	06/25/2016
		White House Liaison	DA160007	06/25/2016
Department of Commerce	Office of Public Affairs	Deputy Press Secretary	DC150132	06/06/2016
	Office of the Under Secretary	Deputy Director, Office of Public Affairs.	DC140063	06/11/2016
		Special Assistant	DC150107	06/24/2016
	Bureau of Industry and Security	Special Advisor to the Under Secretary.	DC160150	06/24/2016
	Office of Legislative and Intergovernmental Affairs.	Director of Legislative Outreach	DC150091	06/24/2016
		Director of Intergovernmental Affairs.	DC090104	06/25/2016
	Office of Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Special Advisor	DC150102	06/25/2016
	Office of Executive Secretariat	Associate Director	DC150120	06/25/2016

Agency name	Organization name	Position title	Request No.	Date vacated
Office of the Secretary of Defense	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant to the Under Secretary of Defense (Personnel and Readiness).	DD160031	06/01/2016
	Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).	Special Assistant to the Under Secretary of Defense (Acquisition, Technology and Logistics).	DD140008	06/25/2016
Department of Education	Office of Elementary and Secondary Education.	Confidential Assistant, Special Projects.	DB160088	06/10/2016
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB150091	06/11/2016
	Office for Civil Rights	Special Projects Manager	DB160066	06/24/2016
	Office of the Under Secretary	Executive Director, White House Initiative on Historically Black Colleges and Universities.	DB150126	06/30/2016
Department of Energy	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist (2)	DE140085	06/11/2016
			DE140085	06/11/2016
	Office of Public Affairs	Deputy Director, Office of Public Affairs.	DE150077	06/11/2016
	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Director, Legislative Affairs	DE140113	06/25/2016
Department of Health and Human Services.	Office of Health Reform	Director of Delivery System Reform.	DH150129	06/10/2016
	Office of the Administrator, Health Resources and Services Administration.	Special Assistant	DH150143	06/12/2016
	Office of the Assistant Secretary for Public Affairs.	Communications Director for Human Services.	DH150040	06/12/2016
		Confidential Assistant	DH150127	06/12/2016
		National Press Secretary for Health Care	DH150171	06/12/2016
		Director of Speechwriting and Senior Advisor.	DH160078	06/24/2016
	Office of Communications	Senior Advisor to the Communications Director Outreach.	DH150002	06/25/2016
	Office of the Secretary	Confidential Assistant	DH150170	06/25/2016
Department of Homeland Security	Office of the Privacy Officer	Special Assistant to the Chief Privacy Officer.	DM150170	06/03/2016
	Office of the Assistant Secretary for Policy.	Special Assistant in Information Sharing Policy.	DM160149	06/10/2016
	Office of the General Counsel	Confidential Assistant	DM150212	06/11/2016
	Office of the Under Secretary for Science and Technology.	Advisor	DM150032	06/14/2016
	Office of the Assistant Secretary for Intergovernmental Affairs.	Special Advisor	DM140007	06/16/2016
	Office of the Under Secretary for National Protection and Programs Directorate.	Advisor	DM150068	06/25/2016
Department of Housing and Urban Development.	Office of Public Affairs	Director of Speechwriting	DU150019	06/09/2016
Department of the Interior	United States Geological Survey	Confidential Assistant	DI140051	06/11/2016
Department of Justice	Office of Legislative Affairs	Attorney Advisor and Intergovernmental Liaison.	DJ150011	06/10/2016
	Community Oriented Policing Services.	Chief of Staff	DJ140041	06/24/2016
Department of Labor	Employee Benefits Security Administration.	Special Assistant	DL150050	06/25/2016
	Mine Safety and Health Administration.	Special Assistant	DL150008	06/25/2016
	Office of Public Affairs	Speech Writer	DL130011	06/25/2016
National Endowment for the Arts	Office of the Chairman	Scheduler	NA140009	06/14/2016
		Director of Public Affairs	NA140002	06/25/2016
		White House Liaison/Advisor to the Chief of Staff.	NA150002	06/25/2016
Office of Management and Budget	Office of Legislative Affairs	Deputy to the Associate Director for Legislative Affairs (House).	BO110005	06/15/2016
Department of State	Foreign Policy Planning Staff	Senior Advisor	DS140112	06/11/2016
	Office of the Counselor	Special Assistant	DS150080	06/11/2016
	Bureau of International Security and Nonproliferation.	Staff Assistant	DS140076	06/25/2016
	Bureau of Legislative Affairs	Legislative Management Officer	DS150099	06/25/2016

Agency name	Organization name	Position title	Request No.	Date vacated
	Office of International Information Programs.	Staff Assistant	DS160058	06/26/2016
Department of Transportation	Office of the Secretary	Deputy White House Liaison	DT150081	06/11/2016
		White House Liaison	DT150054	06/11/2016
Department of the Treasury	Office of the Under Secretary for Terrorism and Financial Intelligence.	Senior Policy Advisor	DY140047	06/25/2016

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–29130 Filed 12–2–16; 8:45 am]

BILLING CODE 6325–39–P

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:

Regulation S, SEC File No. 270–315, OMB Control No. 3235–0357

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 23, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29087 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79424; File No. SR–FINRA–2016–042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6191 To Modify the Web Site Data Publication Requirements Relating to the Regulation NMS Plan To Implement a Tick Size Pilot Program

November 29, 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 November 15, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6191 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On August 25, 2014, FINRA, and several other self-regulatory organizations (the ''Participants'') filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan was published for comment in the **Federal Register** on November 7, 2014,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

and approved by the Commission, as modified, on May 6, 2015.[8] The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[9] On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.[10] Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

FINRA adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.[12] Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, FINRA Rule 6191(b)(2)(B) provides, among other things, that FINRA shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A) of Rule 6191, publicly available on the FINRA Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(3)(C), provides, among other things, that FINRA shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 6191, publicly available on the FINRA Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. FINRA Rule 6191(b)(4)(B) provides, among other things, that FINRA shall make aggregated data required by Appendix C to the Plan, and collected pursuant to paragraph (b)(4)(A) of Rule 6191, publicly available on the FINRA Web site on a monthly basis at no charge and shall not identify the Market Makers that generated the data or the individual securities. FINRA Rule 6191.12 provides, among other things, that the requirement that FINRA make certain data publicly available on the FINRA Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

FINRA is proposing amendments to Rule 6191(b)(2)(B) (regarding Appendix B.I and B.II data), Rule 6191(b)(3)(C) (regarding Appendix B.IV data), and Rule 6191(b)(4)(B) (regarding Appendix C data), to provide that data required to be made available on FINRA's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Rule 6191.12 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(4)(B), FINRA shall make data for the Pre-Pilot period publicly available on the FINRA Web site pursuant to Appendix B and C to the Plan by February 28, 2017.[13]

The proposed rule change also will provide that, with respect to Appendix C data, FINRA will aggregate and publish, categorized by Control Group and each Test Group: (1) Market Maker profitability statistics for Market Makers for which FINRA is the designated examining authority (''DEA''), (2) Market Maker profitability statistics collected from other Participants that are DEAs, and (3) Market Maker profitability statistics for Market Makers whose DEA is not a Participant.[14] FINRA will make this data publicly available on the FINRA Web site at no charge and will not identify the Market Makers that generated the data or the individual securities.

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.[15] Likewise, the publication by FINRA of Market Maker profitability data on the FINRA Web site, including Market Makers for which FINRA is not the DEA, is intended to address confidentiality concerns with respect to the Appendix C data required to be made publicly available by the Participants. Although the Participants that are DEAs also would not have identified the Market Makers when publishing required Appendix C data, some of the Participants are DEAs for a very small number of Market Makers, and the published data from these DEAs raised concerns regarding the potential for identifying the Market Makers that correspond to those statistics.[16]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of

[8] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[9] *See* Approval Order at 27533 and 27545.

[10] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

[11] *See* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; *see also* Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

[12] *See, e.g.,* Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR–FINRA–2015–048); *see also* Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR–FINRA–2015–048) (''Accelerated Approval Order''); *see also* Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

[13] With respect to data for the Pilot Period, the requirement that FINRA make data publicly available on the FINRA Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the FINRA Web site by February 28, 2017, which is 120 days following the end of October 2016.

[14] FINRA understands that some Market Makers may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. Prior to this proposal, the Participants implemented rules that required members that were Market Makers whose DEA is not a Participant to the Plan to transmit transaction data for Market Maker profitability calculations to FINRA. *See, e.g.,* Securities Exchange Act Release No. 77456 (March 28, 2016), 81 FR 18925 (April 1, 2016) (Notice of Filing of File No. SR–NASDAQ–2016–043).

[15] *See, e.g.,* Accelerated Approval Order at 9049.

[16] FINRA notes that FINRA is the DEA for the vast majority of Market Makers, and, therefore, FINRA already would have been responsible for publishing aggregated data covering the profitability of the vast majority of Market Makers. In fact, FINRA is the DEA for all but fifteen of 115 Market Makers; thus, the majority of the publicly available Appendix C data would already have been aggregated and provided on the FINRA Web site.

[17] 15 U.S.C. 78*o*–3(b)(6).

the Act,[18] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposal is consistent with the Act because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. FINRA believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting FINRA to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

In addition, in approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may have a relatively small number of designated Market Makers.[19] For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. Thus, FINRA believes that the instant proposal is consistent with the Act in that it is designed to further address confidentiality concerns by permitting FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting FINRA to (1) delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.[20] The proposal also does not alter the information required to be submitted to the SEC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.[21]

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)[22] of the Act and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting FINRA to (1) delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) aggregate and publish Market Maker profitability data for all Participant DEAs, including Market Makers for which FINRA is not the DEA. FINRA notes that the proposed change will not affect the data reporting requirements for members for which FINRA is the DEA.[26] The proposal also does not alter the information required to be submitted to the SEC.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow FINRA to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that the Pre-Pilot data is currently required to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of the date of this notice.[27]

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.[28] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–042 on the subject line.

[18] 15 U.S.C. 78*o*–3(b)(9).

[19] *See* Approval Order at 27543–27544.

[20] *See supra* note 16.

[21] Financial Information Forum (FIF) submitted a letter to the staff of the Commission, copying FINRA, raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. *See* Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at *https://www.fif.com/comment-letters*.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* note 14.

[27] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(3)(C).

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–FINRA–2016–042. 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 FINRA. 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–FINRA–2016–042, and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29045 Filed 12–2–16; 8:45 am]

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[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–4576; November 29, 2016; FILE NO.: 801–99358]

In the Matter of Ajenifuja Investments, LLC, 5226 Klingle Street NW., Washington, DC 20016; Investment Advisers Act of 1940; Notice of Intention to Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Ajenifuja Investments, LLC, hereinafter referred to as the registrant.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its initial and its most recent Form ADV filings that it is relying on rule 203A–2(e) to register with the Commission, which provides an exemption from the prohibition on registration for an adviser that provides investment advice to all of its clients exclusively through the adviser's interactive Web site, except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months.[1] The Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filings and thereafter, advise clients through an interactive Web site as defined under the rule [2], and that it is therefore prohibited from registering as an investment adviser under section 203A of the Act. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is not eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by December 27, 2016, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

At any time after December 27, 2016, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Emily Rowland, Attorney-Adviser at 202–551–6787 (Office of Investment Adviser Regulation).

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A–2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Rule 203A–2(e) exempts from the prohibition on Commission registration certain investment advisers that provide advisory services through the Internet, as described above. *See Exemption for Certain Investment Advisers Operating Through the Internet,* Investment Advisers Act Release No. 2091 (December 12, 2002), *available at https://www.sec.gov/rules/final/ia-2091.htm* (''Internet Adviser Exemption Adopting Release''). Effective September 19, 2011, rule 203A–2(f) was renumbered as rule 203A–2(e). *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011), *available at http://www.sec.gov/rules/final/2011/ia-3221.pdf.*

[2] Rule 203A–2(e) defines ''interactive Web site'' as a Web site in which computer software-based models or applications provide investment advice to clients based on personal information provided by each client through the Web site. An adviser relying on the exemption may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive Web site, or otherwise provide investment advice to its Internet clients, except as permitted by the rule's de minimis exception. Such exception permits an adviser relying on the rule to advise clients through means other than its interactive Web site, so long as the adviser had fewer than 15 of these non-Internet clients during the preceding 12 months. *See* Internet Adviser Exemption Adopting Release, *id.*

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[3]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29047 Filed 12–2–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79421; File No. SR–BOX–2016–48]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules for an Open-Outcry Trading Floor

November 29, 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 November 16, 2016, BOX Options Exchange LLC (the ''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules for an open-outcry trading floor. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt rules to allow for open-outcry trading on a physical trading floor (''Trading Floor''). The Exchange notes that this is not a novel proposal and that other exchanges currently offer open-outcry trading in addition to electronic trading.[3] The Exchange is proposing a hybrid model similar to these other exchanges.

General

The Exchange is proposing various changes to the definition section of the Rulebook to accommodate the proposed Trading Floor. First, the Exchange is proposing to define ''Floor Participant'' as Floor Brokers as defined in Rule 7540 and Floor Market Makers as defined in Rule 8510(b).[4] The Exchange is proposing to define ''Trading Floor'' or ''Options Floor'' as the physical trading floor of the Exchange located in Chicago. The Trading Floor shall consist of at least one ''Crowd Area'' or ''Pit''. A Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. All series for a particular option class will be allocated to the same Crowd Area. A Floor Broker must open outcry an order in the corresponding Crowd Area.

The Exchange is proposing to add the definition of ''Presiding Exchange Officials.'' [5] Specifically, the President of the Exchange and his or her designated staff shall be responsible for monitoring: (1) Dealings of Floor Participants and their associated persons on the Trading Floor, and of the premises of the Exchange immediately adjacent thereto; (2) the activities of Floor Participants and their associated persons, and shall establish standards and procedures for the training and qualification of Floor Participants and their associated persons active on the Trading Floor; (3) all Trading Floor employees of Floor Brokers and Floor Market Makers, and shall make and enforce such rules with respect to such employees as it may deem necessary; (4) all connections or means of communications with the Trading Floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the President or his or her designee, it is contrary to the welfare or interest of the Exchange; (5) the location of equipment and the assignment and use of space on the Trading Floor; and (6) relations with other options exchanges.

Next, the Exchange is proposing to add a definition for the ''BOX Order Gateway.'' The BOX Order Gateway (''BOG'') is a component of the Exchange that is designed to enable Floor Brokers to enter transactions on the Trading Floor.[6] The BOG is designed to establish an electronic audit trail for options orders represented and executed on the Trading Floor. The audit trail will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Trading Floor, beginning with the receipt of an order by the Exchange, and further documenting the life of the order. The various features of the BOG will be described in greater detail below. Additionally, the Exchange is proposing to clarify that all transactions executed on the Exchange shall be done either (1) automatically by the Exchange's trading system pursuant to Rule 7130, or (2) by and among Floor Participants in the Exchange's options trading crowd; provided that the order is processed through the BOG.[7] The Exchange is also proposing to clarify that bids and offers on the Trading Floor, to be effective, must be made by public outcry on the Trading Floor and that all bids and offers shall be general ones and shall not be specified for acceptance by particular Floor Participants.[8]

The Exchange is also proposing to provide details on how the public outcry on the Trading Floor will work. Specifically, the Exchange is proposing that bids and offers must be made in an

[3] 17 CFR 200.30–5(e)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca, Inc. (''NYSE Arca''), NASDAQ PHLX LLC (''PHLX''), Chicago Board Options Exchange, Incorporated (''CBOE''), and NYSE MKT LLC (''NYSE MKT'').

[4] *See* proposed Rule 100(a)(26).

[5] *See* proposed Rule 100(b)(1). Proposed Rule 100(b)(1) is based on PHLX Rule 1000(e).

[6] *See* proposed Rule 100(b)(2). Proposed Rule 100(b)(2) is based on PHLX Rule 1080.06.

[7] *See* proposed Rule 100(b)(3). Proposed Rule 100(b)(3) is based on PHLX Rule 1000(f). The Exchange notes that PHLX includes additional methods for executions on PHLX's Trading Floor that BOX is not including in proposed Rule 100(b)(3). The Exchange does not believe that these methods are necessary as the Exchange believes that all executions on the Trading Floor shall be processed through the BOG to ensure an accurate and complete audit trail.

[8] *See* proposed Rule 100(b)(4). Proposed Rule 100(b)(4) is based on PHLX Rule 1000(g). The Exchange notes that PHLX includes information about bidding and offering electronically as well as in public outcry; however, the Exchange is only proposing to include information about public outcry. BOX already has rules in place that govern electronic bidding and offering and therefore there is no need to mention it in proposed Rule 100(b)(4).

audible tone of voice and a Floor Market Maker shall be considered ''out'' on a bid or offer if he does not respond to the Floor Broker who is announcing the order.[9] A Floor Market Maker who is bidding and offering in immediate and rapid succession shall be deemed ''in'' until he says ''out'' on either bid or offer. Once the members of the trading crowd have provided a quote on the Trading Floor in response to a request, it will remain in effect until: (i) A reasonable amount of time has passed, or (ii) there is a significant change in the price of the underlying security, or (iii) the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of the recent trading in the option and, in the case of equity and index options, in the underlying security, and any other relevant factors.

The Exchange is proposing that all bids or offers made on the Trading Floor shall be deemed to be for one option contract unless a specific number of option contracts is expressed in the bid or offer and that bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of options contracts.[10] The Exchange is also proposing the following process for the solicitation of quotations on the Trading Floor.[11] Specifically, in response to a Floor Broker's solicitation of a single bid or offer, Floor Participants may discuss, negotiate, and agree upon the price or prices at which an order of a size greater than the Exchange's disseminated size can be executed at that time, or the number of contracts that could be executed at a given price or prices, subject to the provisions of the Options Order Protection and Locked/Crossed Market Plan [12] and the Exchange's Rules respecting Trade-Throughs. Notwithstanding the foregoing, a single Floor Participant may voice a bid or offer independently from, and differently from, the Participants of a trading crowd.

The Exchange is proposing to adopt Rule 7230(f) Limitation of Liability, which codifies that each Options Participant that physically conducts business on the Exchange's Trading Floor is required, at its sole cost, to procure and maintain liability insurance that provides defense and indemnity coverage for itself, any person associated with it, and the Exchange for any action or proceeding brought relating to the conduct of the Options Participant or associated person.[13] The insurance shall provide defense and indemnity coverage to the Exchange for the Exchange's sole, concurrent, or contributory negligence, or other wrongdoing, relating to or in connection with such claim and the Exchange shall be expressly named by endorsement as an Additional Insured under the Insurance. The Exchange's status and rights to coverage under the insurance shall be the same rights of the named insured of the insurance, including, without limitation, rights to the full policy limits; and the limits for the insurance shall be not less than $1,000,000 without erosion by defense costs, but under no circumstance shall the Exchange be entitled to less than the full policy limits of such insurance. The insurance shall state that it is primary to any insurance maintained by the Exchange. Each Options Participant annually shall cause a certificate of insurance to be issued directly to the Exchange demonstrating that insurance compliant with this proposed Rule has been procured and is maintained. Each Options Participant also shall furnish a copy of the insurance to the Exchange for review upon the Exchange's request at any time. This proposed section (f) is the only section of Rule 7230 specifically limited to Options Participants physically located on the Exchange's Trading Floor.

Registration

In order for a Participant to be admitted to the Trading Floor the Participant will be required to register with the Exchange. Additionally, all Floor Participants must be registered as a Participant [14] on BOX prior to registering as either a Floor Broker or Floor Market Maker.

The Exchange is proposing to adopt Rule 2020(h) Trading Floor Registration, which codifies that each Floor Broker, Floor Market Maker and registered representative on the Exchange Trading Floor must be registered as ''Member Exchange'' (''ME'') under ''BOX'' on Form U4. In addition, each Floor Broker, Floor Market Maker and registered representative on the Exchange Trading Floor must successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange Rules.[15] The Exchange is also proposing to adopt procedures and a timeframe for submitting changes of registration status to the Exchange. Specifically, following the termination of, or the initiation of a change in the trading status of any such Floor Participant who has been issued an Exchange access card and a Trading Floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 a.m. ET the next business day by the Options Participant employer. Additionally, the Exchange proposes to specify that every effort should be made to obtain the person's access card and Trading Floor badge and to submit these to the appropriate Exchange department.

The Exchange is also proposing to add Rule 2020(i), which details Non-Participant and Clerk Registration. Specifically, all Trading Floor personnel, including clerks, interns, stock execution clerks and any other associated persons, of a Floor Participant not required to register pursuant to this Rule 2020 must be registered as ''Floor Employee'' (''FE'') under BOX on Form U4. Further, the

[9] *See* proposed Rule 100(b)(5). Proposed Rule 100(b)(5) is based on PHLX Rule 1000(g). The Exchange notes that proposed Rule 100(b)(5) is slightly different to PHLX Rule 1000(g). Specifically, PHLX Rule 1000(g) considers a member to be ''in'' on a bid or offer while he remains at the post, unless he shall distinctly and audibly say ''out.'' The Exchange is requiring the Floor Market Maker to make an affirmative assertion that he is ''in''. The Exchange believes that this difference is reasonable and necessary. Requiring an affirmative response by a Floor Market Maker will allow for a more efficient process for executing orders on the Trading Floor. The Exchange is concerned that requiring every Floor Market Maker to affirmatively be ''out'' on every order before it is executed will lead to unnecessary delays on the Trading Floor and has the potential to cause disruptions. The Exchange notes that CBOE Rule 6.74(a) does not consider members of the trading crowd in on the order; they must respond to the Floor Broker. Additionally, the Exchange is not including part of PHLX Rule 1000(g) that requires a member to audibly say ''out'' before the Floor Broker submits the order for execution and, if the order is not executed, the member must audibly say ''out'' before each time the Floor Broker resubmits the order for execution. The Exchange is not including this provision of PHLX's Rule 1000(g) because, as previously stated, a Floor Market Maker must provide an affirmative response if they want to be in on the trade.

[10] *See* proposed Rule 7040(d). Proposed Rule 7040(d) is based on PHLX Rule 1033(a).

[11] *See* proposed Rule 7040(d)(2).

[12] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[13] Proposed Rule 7230(f) is based on PHLX Rule 652(c)(2).

[14] The term ''Participant'' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in options trading on BOX as an ''Order Flow Provider'' or ''Market Maker''. *See* Rule 100(a)(40).

[15] *See* proposed Rule 2020(h). Proposed Rule 2020(h) is based on PHLX Rule 620(a).

Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange Rules.[16] The Exchange is also proposing to adopt procedures and a timeframe for submitting changes of Trading Floor personnel registration status to the Exchange. Specifically, following the termination of, or the initiation of a change in the status of any such personnel of a Floor Participant who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a Floor Participant principal, officer, or member of the Floor Participant with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 a.m. ET the next business day by the Floor Participant employer. Additionally, the Exchange proposes to specify that every effort should be made to obtain the person's access card and Trading Floor badge and to submit these to the appropriate Exchange department.

The Exchange is proposing Rule 2110, which details the sanctions for breach of regulations on the Trading Floor. Specifically, the rule states that an Options Exchange Official or Exchange Staff may exclude a Floor Participant and any associated person from the Trading Floor and also impose on Floor Participants and their associated persons fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or an Options Exchange Official. Additionally, Exchange Staff may refer the matter for discipline in accordance with the Rule 12000 series.[17] Floor Participants and/or their associated persons may be excluded from the Trading Floor by the Exchange for a period of up to five (5) business days. Proposed Rule 2110(c) covers the situation when a Floor Participant is excluded from the Trading Floor for a period of time. Specifically, if a Floor Participant and/or its associated persons shall be excluded for a period exceeding forty-eight hours, an expedited hearing (''Expedited Hearing'') will be held before the Hearing Panel (''Panel''), as provided in Rule 12060, or a member of the Panel designated by the Chairman (''Expedited Hearing Officer'') within forty-eight (48) business hours after the Floor Participant and/or its associated persons' exclusion from the Trading Floor.[18] The Exchange is also proposing to provide clarity on the procedures dealing with an exclusion from the Trading Floor, including written notice, availability of counsel, and ruling.

Lastly, the Exchange sets forth the procedure to be followed in cases where a pre-set fine of up to $5,000.00 is summarily assessed for actions related to the Trading Floor and also the procedure to be followed when a Floor Participant and/or its associated persons are to be excluded from the Trading Floor.[19] The proposed procedures for when a pre-set fine of up to $5,000 is imposed includes the following information: (1) Notice of fine, (2) time and place of hearing, (3) record, (4) procedure, (5) finding, (6) forum fee, (7) no right of appeal, and (8) report to the SEC. The determination that a Floor Participant shall be excluded from the Trading Floor is final; there shall be no appeal from such determination. Additionally, a report to the SEC may be made when a Floor Participant is excluded from the Trading Floor.

The Exchange is proposing to add Rule 2120, which will allow the Exchange to enforce compliance with the Order and Decorum Code for the Trading Floor, as provided in the Exchange's Order and Decorum Policies which shall be distributed to Floor Participants periodically, pursuant to Rule 2110. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may refer the matter to the Panel where it shall proceed in accordance with the Rule 12000 Series as applicable.[20]

Broker's Blanket Bonds

Currently, Rule 4180 Brokers' Blanket Bond provides that every OFP [21] approved to transact business with the public and every Clearing Participant [22] shall carry Brokers' Blanket Bonds covering officers and employees of the OFP in such form and in such amounts as the Exchange may require. The Exchange is now proposing that any Options Participant that has registered solely to conduct business as a Floor Market Maker or Floor Broker and does not conduct business with the public shall be exempt from the provisions of Rule 4180.[23]

Doing Business on BOX

The majority of the proposed rules governing the activity on the Trading Floor will be contained in the 7000 series, Doing Business on BOX, of the Exchange's Rules.

Trading on the Exchange Floor

Dealings on the Trading Floor will be limited to the hours that the Exchange is open for transacting business.[24] Specifically, the Exchange's normal trading hours for equity options are 9:30 a.m. ET to 4:00 p.m. ET and for options on Exchange-Traded Fund Shares and broad-based indexes transactions may be effected until 4:15 p.m. ET Additionally, if a Floor Broker wishes for an order to be considered in the opening trade, the Floor Broker must submit the order into the BOX Book [25] electronically.[26] The Floor Broker may do so from the Trading Floor using their terminal; however, the order will not receive any special or different treatment from any other pre-opening order submitted from off the Trading Floor. Additionally, a Floor Participant who wishes to place a Limit Order on the BOX Book must submit such a Limit Order electronically.[27]

The Exchange is proposing certain restrictions for dealings on the Trading Floor. Specifically, that no Options Participant shall, while on the Trading Floor, make any transactions with any non-Options Participants in any security admitted to dealing on the Exchange.[28] Additionally, no employee of a Floor Participant shall be admitted to the Trading Floor unless that person is registered with and approved by the Exchange.[29] The Exchange may in its discretion require the payment of a fee with respect to each employee so approved, and may at any time in its

[16] *See* proposed Rule 2020(i). Proposed Rule 2020(i) is based on PHLX Rule 620(b).

[17] *See* proposed Rules 2110(a) and (b). Proposed Rule 2110 is based on PHLX Rule 60. The Exchange notes that PHLX makes reference to referring disciplinary matters to the Business Conduct Committee, which the Exchange is not including because BOX does not have a Business Conduct Committee. Instead, BOX is proposing to refer certain matters to the Hearing Panel, as provided in Rule 12060.

[18] *See* proposed Rule 2110(c).

[19] *See* proposed IM–2110–1 and IM–2110–2.

[20] *See* proposed Rule 2120(a).

[21] The terms ''Order Flow Provider'' or ''OFP'' mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading. *See* Rule 100(a)(45).

[22] The term ''Clearing Participant'' means an Options Participant that is self-clearing or an Options Participant that clears BOX Transactions for other Options Participants of BOX. *See* Rule 100(a)(13).

[23] *See* proposed Rule 4180(g). Proposed Rule 4180(g) is based on PHLX Rule 705(f)(1)(B).

[24] *See* proposed Rule 7500. Proposed Rule 7500 is based on PHLX Rule 102.

[25] The term ''Central Order Book'' or ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* Rule 100(a)(10).

[26] *See* proposed Rule 7070(d). Proposed Rule 7070(d) is based on PHLX Rule 1017(c).

[27] *See* proposed IM–8510–8. Proposed IM–8510–8 is based on PHLX Rule 1014.18.

[28] *See* proposed Rule 7510. Proposed Rule 7510 is based on PHLX Rule 104.

[29] *See* proposed rule 7520. Proposed Rule 7520 is based on PHLX Rule 443.

discretion withdraw any approval so given.

Floor Brokers

As previously mentioned, the Exchange is proposing two categories of Participants on the Trading Floor; Floor Brokers and Floor Market Makers. A Floor Broker is an individual who is registered with the Exchange for the purpose, wholly on the Trading Floor, of accepting and handling option orders.[30] A Floor Broker who wishes to conduct business on the Trading Floor must be registered as a Participant on BOX prior to registering as Floor Broker. A Floor Broker may take into his own account, and subsequently liquidate, any position that results from an error made while attempting to execute, as Floor Broker, an order.

Prior to being admitted to the Trading Floor, a Floor Broker shall file an application in writing with the Exchange staff on such form or forms as the Exchange may prescribe.[31] The applications received from potential Floor Brokers will be reviewed by the Exchange, which shall consider an applicant's ability as demonstrated by his passing a Floor Broker's examination, if prescribed by the Exchange, and such other factors as the Exchange deems appropriate. After reviewing the Floor Broker's application, the Exchange shall either approve or disapprove the applicant's registration as a Floor Broker.

Responsibilities of Floor Brokers

Floor Brokers will have certain responsibilities while conducting business on the Trading Floor. The proposed rules covering Floor Brokers' responsibilities are based on the rules of another exchange [32] with certain differences due to the design and functionality of the Exchange's Trading Floor. Specifically, a Floor Broker handling an order must use due diligence to cause the order to be executed at the best price or prices available to him in accordance with the Rules of the Exchange.[33]

Floor Brokers must make a reasonable effort to ascertain whether each order entrusted to them is for the account of a Public Customer or broker-dealer.[34] If it is determined the order is for the account of a broker-dealer, the Floor Broker must advise the trading crowd of that fact while announcing the order via public outcry and make the appropriate notation in the their order entry mechanism.

The Exchange is also proposing rules for how a Floor Broker must handle contingency orders that are dependent upon the price of the underlying security and for how a Floor Broker must handle orders he is representing when they are for the account of a Market Maker.[35] Specifically, for contingency orders, the Exchange is proposing that the Floor Broker shall be responsible for satisfying the dependency requirement on the basis of the last reported price of the underlying security in the primary market that is generally available on the Trading Floor at any given time. Unless mutually agreed by the Participants involved, an execution or non-execution that results shall not be altered by the fact that such reported price is subsequently found to have been erroneous. For orders from the account of a Market Maker, the Floor Broker must inform that crowd that he is handling an order for the account of a Market Maker and comply with proposed IM–8510–6 and IM–8510–9.[36] Lastly, the Exchange is proposing that a Floor Broker shall not be held responsible for the execution of a single order combining different series of options based on transaction prices that are established at the opening or close of trading or during any trading rotation.[37]

As previously mentioned, in order to create an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange's Trading Floor, the Exchange is proposing the BOG to aid Floor Brokers with the execution of orders.[38] As such, the Exchange is also proposing that a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders onto the Floor Broker's order entry mechanism. The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (*i.e.,* Public Customer, Professional Customer, broker-dealer, Market Maker) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (*i.e.,* spread, straddle), or contingency order; (v) number of contracts; (vi) limit price or market order or, in the case of a multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation (''OCC'') clearing number of the broker-dealer that submitted the order. Additionally, a Floor Broker must enter complete identification for all orders entered on behalf of Market Makers. Any additional information with respect to the order shall be inputted contemporaneously upon receipt, which may occur after the representation and execution of the order.

All orders entrusted to a Floor Broker will be considered Not Held Orders, unless otherwise specified by a Floor Broker's client.[39] A Not Held Order is an order marked ''not held'', ''take time'', or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed. An order entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor

[30] *See* propose Rule 7540. Proposed Rule 7540 is based on PHLX Rule 1060. In addition to the definition in the PHLX Rule, the Exchange is proposing that Floor Brokers must register as Options Participants on BOX prior to registering as a Floor Broker on the Trading Floor. The Exchange believes that this additional requirement is reasonable as it will allow the Exchange to adequately monitor Participants and have uniform registration requirements for all Participants.

[31] *See* proposed Rule 7550. Proposed Rule 7550 is based on PHLX Rule 1061.

[32] *See* PHLX Rule 1063. The Exchange notes that it is not including the PHLX requirement that at least one Floor Market Maker be present at the trading post prior to representing an order for execution. The Exchange notes that other options exchanges with floors do not have this requirement.

[33] *See* proposed Rule 7570. Proposed Rule 7570 is based on PHLX Rule 155.

[34] *See* proposed IM–7580–2. Proposed IM–7580–2 is based on PHLX Rule 1063.02.

[35] *See* proposed Rules 7580(b) and (d). Proposed Rule 7580(b) is based on CBOE Rule 6.73(b). The Exchange notes that CBOE's Rule provides for ''one-cancels-the-other orders,'' which BOX is not including because the Exchange does not offer these types of orders.

[36] *See* proposed Rule 7580(d). Proposed Rule 7580(d) is based on PHLX Rule 1063(d). PHLX's Rule provides for additional rules to which the Floor Broker must comply than what the Exchange is proposing. Specifically, PHLX Rule 1063(d) cites commentary .10, .11, .12, and .13 to PHLX Rule 1014; however, the Exchange is only proposing to copy commentary .11 and .12 to PHLX Rule 1014, see proposed IM–8510–6 and IM–8510–9. The Exchange is not copying PHLX 1014.10 because it deals with specialist, which the Exchange is not proposing to have on the Trading Floor. Next, the Exchange is not copying PHLX Rule 1014.13, which deals with minimum quantity that a Floor Market Maker must execute in person per quarter, because the Exchange believes that having an in person requirement is an unnecessary restriction and does not fit the Exchange's Trading Floor.

[37] *See* proposed Rule 7580(c).

[38] *See* proposed Rule 7580(e)(1). Proposed Rule 7580(e)(1) is based on PHLX Rule 1063(e)(i). PHLX's Rule provides for procedures for submitting orders on the Trading Floor in the event of a malfunction of PHLX's floor order system, which BOX is not including. The Exchange will not allow orders on the Trading Floor in the event that there is a malfunction with the BOG. The Exchange believes that providing a trade ticket backup would raise numerous issues with the audit trail. In the event that the BOG goes down, Participants will still be allowed to submit orders to the Exchange electronically.

[39] *See* proposed IM–7580–3. Proposed IM–7580–3 is based on CBOE Rule 6.73.06.

Broker's client.[40] Additionally, the Exchange is proposing that it shall be considered conduct inconsistent with just and equitable principles of trade for any Floor Broker or Floor Market Maker to intentionally disrupt the open outcry process.[41]

The Exchange is proposing that all transactions occurring on the Trading Floor must be processed through the BOG as provided in proposed Rule 7600 and must be two-sided orders, including multi-leg orders.[42] Once an order is received by the BOG it is immediately sent to the Trading Host for execution.[43] In the event of a malfunction in the BOG or any other related Trading Floor systems, orders will not be allowed to execute on the Trading Floor. When a Floor Broker submits an order for execution through the BOG, the order will be executed based on market conditions and in accordance with Exchange rules.[44] All orders executed on the Trading Floor must be represented to the trading crowd prior to the order being submitted to the BOG for execution. BOG execution functionality will assist the Floor Broker in clearing the BOX Book, consistent with Exchange priority rules, as described in proposed Rule 7600(c). Orders on the Trading Floor will not route to an away exchange. Floor Brokers are responsible for handling all orders in accordance with Exchange priority and Trade-Through rules.

The Exchange is proposing rules with respect to Floor Brokers and discretionary transactions.[45] Specifically, no Floor Broker shall execute or cause to be executed any order on the Exchange with respect to which such Floor Broker is vested with discretion as to: (i) The choice of the class of options to be bought or sold, (ii) the number of contracts to be bought or sold, or (iii) whether any such transaction shall be one of purchase or sale. However, these proposed rules shall not apply to any discretionary transactions executed by a Floor Market Maker for an account in which he has an interest. Additionally, no Floor Broker shall hold a Not Held Market Order to buy and a Not Held Market Order to sell the same series of options for the same account or for accounts of the same beneficial owner.[46] Also, no Floor Broker shall leg a combination order for a Market Maker or accept opening or discretionary orders for a Market Maker who is associated with the same Options Participant as such Floor Broker or who is associated with another Options Participant which is affiliated with the same Options Participant as such Floor Broker. A Floor Broker may not exercise any discretion with respect to the order of a Market Maker or the order of an options market marker registered on another exchange.[47]

Floor Brokers may use any communication device on the Trading Floor and in any Crowd Area to receive orders, provided that audit trail and record retention requirements of the Exchange are met.[48] However, no person in a Crowd Area or on the Trading Floor may use any communication device for the purpose of recording activities on the Trading Floor or maintaining an open line of continuous communication whereby a non-associated person not located in the Crowd Area may continuously monitor the activities in the Crowd Area. The ability for Floor Brokers to receive orders while in the Crowd Area is based on the rules of another exchange.[49]

The Exchange is not including certain PHLX rules related to Floor Broker duties to allocate, match and time stamp trades executed in open outcry and to submit the matched trade tickets to the exchange.[50] BOX does not believe that these rules are necessary because all orders on the Trading Floor are only executed when they are received by the BOG, which will allow the Exchange to capture the required audit trail information.

Qualified Open Outcry Orders—Floor Crossing

As previously mentioned, all orders on the Trading Floor must be two-sided and submitted for execution through the BOG. As such, BOX is proposing to introduce a new order type to facilitate transactions on the Trading Floor. Specifically, the Exchange is proposing to adopt a Qualified Open Outcry (''QOO'') Order type.[51] The proposed QOO Order will only be allowed on the Trading Floor and only Floor Brokers may use the QOO Order. QOO Orders may be multi-leg orders, including Complex Orders, as defined in Rule 7240(a)(5)[52] and tied to hedge orders as defined in proposed IM–7600–2. Such hedging position is comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index or Exchange-Traded Fund Shares (''ETF''), a related instrument. A ''related instrument'' means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' means, in reference to an ETF option, a futures contract on any economically equivalent index applicable to the ETF underlying the option order. Also, such hedging position is offered, at the execution price received by the Floor Broker introducing the option, to any in-crowd Floor Participant who has established parity or priority for the related options. The QOO Order must be entered as a two-sided order when it is submitted to the Exchange for execution through the BOG. There will be an initiating side and a contra-side to the QOO Order. The initiating side is the side of the QOO Order that must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the QOO Order and the Floor Broker may provide a book sweep size for the contra-side of the QOO Order as provided in proposed Rule 7600(h). Lastly, a QOO Order will be rejected if there is an ongoing auction on the option series when the QOO Order is received by the Exchange.[53] A complex QOO Order will not be rejected if there is an ongoing auction in the options series of some, but not all, of the components of the complex QOO Order.

The Exchange is proposing that the execution price of the QOO Order must be equal to or better than the NBBO.[54] Additionally, the QOO Order (1) may not trade through any equal or better priced Public Customer bids or offers on the BOX Book or any non-Public

[40] *See* proposed Rule 7600(g). Proposed Rule 7600(g) is based on CBOE Rule 6.53(g).

[41] *See* proposed IM–7580–4.

[42] *See* proposed Rule 7580(e)(2).

[43] The term ''Trading Host'' means the automated trading system used by BOX for the trading of options contracts. *See* Rule 100(a)66.

[44] *See* proposed Rule 7580(e)(2). Proposed Rule 7580(e)(2) is based on PHLX Rule 1063(e)(iv). The Exchange notes that the BOG does not include all the same functionality as PHLX; the BOG will not attempt to execute an order multiple times if at first it cannot be executed. The Exchange also notes that Complex Orders are limited to four (4) legs on BOX.

[45] *See* proposed Rule 7590. Proposed Rule 7590 is based on PHLX Rule 1065.

[46] *See* proposed IM–7590–1.

[47] *See* proposed IM–7590–2.

[48] *See* proposed Rule 7660(i).

[49] *See* CBOE Rule 6.23(c).

[50] *See* PHLX Rule 1014(g)(vi).

[51] *See* proposed Rule 7600.

[52] The term ''Complex Order'' means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[53] *See* proposed Rule 7600(a)(5).

[54] *See* proposed Rule 7600(c).

Customer bids or offers on the BOX Book that are ranked ahead of such equal or better priced Public Customer bids or offers, and (2) may not trade through any non-Public Customer bids or offers on the BOX Book that are priced better than the proposed execution price. The Exchange notes this proposed rule is based on the rules of NYSE Arca.[55]

The Floor Broker must submit the QOO Order through the BOG. The Exchange is proposing that the QOO Order is not deemed executed until the QOO Order is received and processed by the Trading Host. Once the Floor Broker submits the QOO Order to the BOG there will be no opportunity for the submitting Floor Broker to alter the terms of the QOO Order.[56]

The Exchange is additionally proposing that when a Floor Broker executes a Complex QOO Order, the priority and rules for Complex Orders contained in Rule 7240(b)(2) and (3) will continue to apply, except that the Floor Broker may disable the Complex Order Filter under Rule 7240(b)(3)(iii). For Complex QOO Orders, the Complex QOO Orders (1) may not trade through any equal or better priced Public Customer Complex Orders on the Complex Order Book [57] or any non-Public Customer Complex Orders on the Complex Order Book that are ranked ahead of such equal or better priced Public Customer Complex Orders, and (2) may not trade through any non-Public Customer Orders on the Complex Order Book that are priced better than the proposed execution price.

As mentioned above, the Exchange is also proposing to amend the current rules related to Complex Orders on the Exchange in order to incorporate the trading of Complex Orders on the Trading Floor. Currently, incoming Complex Orders to the Exchange are filtered to ensure that each leg of a Complex Order will be executed at a price that is equal to or better than the NBBO and BOX BBO.[58] The Exchange is now proposing that Floor Brokers may disable, on an order by order basis, the NBBO aspect of this protection for Complex Orders executed on the Trading Floor. The Exchange notes that other options exchanges do not require the legs of a Complex Order be executed at a price that is equal to or better than the NBBO and exchange BBO.[59]

All QOO Orders must be represented to the trading crowd prior to the QOO Order being submitted to the BOG for execution.[60] This negotiation and agreement that occurs in the trading crowd does not result in a final trade, but rather a ''meeting of the minds'' that is then submitted through the BOG for execution. The submitting Floor Broker must announce the order to the trading crowd and give Floor Participants a reasonable opportunity to respond to the QOO Order. An Options Exchange Official will certify that the Floor Broker adequately represented the QOO Order to the trading crowd.[61]

The Exchange believes that by having the QOO Order execute when it is received by the BOG, the Exchange is providing a system that will prevent executions that appear to be at prices that are worse than the NBBO due to the fact that on traditional open-outcry floors the time that the execution is printed may be substantially after the time an execution actually occurred on the trading floor. The Exchange believes that having the QOO Order execute when it is submitted to the BOG will minimize trade-through violations and provide an accurate and sequential audit trail. The Exchange notes that this is the same way executions on PHLX occur.[62]

The Exchange is proposing that the initiating side of the QOO Order will first execute against any bids or offers that have priority pursuant to proposed Rule 7600(c), provided that an adequate book sweep size pursuant to proposed Rule 7600(h) was provided by the Floor Broker, and then the remaining balance will be executed through the Trading Host against the contra-side of the QOO Order.[63] The executing Floor Broker will be responsible for ensuring that any Floor Participant that responded with interest during the Market Probe outlined in 7600(b) receives their allocation. The Exchange is also proposing that the QOO Order will not route to an away exchange, however, the QOO Order will not trade through any away exchange displaying a better price than the proposed execution price for the QOO Order on the Trading Floor.[64]

The Exchange is proposing to provide a book sweep size on the Trading Floor to help Floor Brokers execute orders when there are bids or offers on the BOX Book that have priority over the QOO Order.[65] Specifically, a Floor Broker may, but is not required to, provide a book sweep size for the contra-side of the QOO Order. The book sweep size is the number of contracts, if any, of the contra-side of the QOO Order that the Floor Broker is willing to relinquish to interest on the BOX Book that has priority pursuant to proposed Rule 7600(c). Specifically, any equal or better priced Public Customer bids or offers on the BOX Book or any non-Public Customer bids or offers on the BOX Book that are ranked ahead of such equal or better priced Public Customer bids or offers, and any non-Public Customer bids or offers on the BOX Book that are priced better than the proposed execution price. If the number of contracts on the BOX Book that have priority over the contra-side order is greater than the book sweep size, then the QOO Order will be rejected by the BOG. If the number of contracts on the BOX Book that have priority over the contra-side order is less than or equal to the book sweep size, then the QOO Order will be allowed to execute by the BOG. In such case, the initiating side will execute against interest on the BOX Book with priority and then the remaining quantity will execute against the contra-side order. The Exchange believes that this proposed feature will aid Floor Brokers in having more of their executions accepted by the system and will benefit the market as a whole by providing a tool to assist Floor Brokers in executing orders when there is priority interest on the BOX Book. Additionally, the book sweep size will provide increased opportunity for orders on the BOX Book to be executed. The Exchange notes, however, that it shall be considered conduct inconsistent with just and equitable principles of trade for any Floor Broker to use the book sweep size for the purpose of violating the Floor Broker's duties and obligations.[66]

The Exchange notes that another exchange provides functionality to help Floor Brokers clear the electronic book.[67] PHLX's system has functionality

[55] *See* NYSE Arca Rules 6.47 and 6.75. The Exchange notes that it is providing an additional provision that NYSE Arca does not have in its Rule. Specifically, the Exchange is providing for a book sweep size as provided in proposed Rule 7600(h).

[56] The Exchange notes that the processing of an incoming QOO Order by the Exchange is instantaneous.

[57] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* Rule 7240(a)(6).

[58] *See* Rule 7240(b)(3)(iii).

[59] *See* ISE Rule 722(b)(3).

[60] *See* proposed Rule 7600(b). Proposed Rule 7600(b) is based on NYSE Arca Rule 6.47(a)(1).

[61] The Options Exchange Official will have a terminal that will allow them to certify that the Floor Broker adequately represented the QOO Order to the trading crowd.

[62] *See* PHLX Rule 1063(e)(iv).

[63] *See* proposed Rule 7600(d).

[64] *See* proposed Rule 7600(e).

[65] *See* proposed Rule 7600(h).

[66] *See* proposed IM–7600–3.

[67] PHLX's Floor Broker Management System (''FBMS'') provides execution functionality that will assist the Floor Broker in clearing the exchange book, consistent with exchange priority rules. *See* PHLX Rule 1063(e)(iv). Additionally, if a Floor Broker on PHLX enters a two-sided order through the FBMS, and there is interest on the PHLX electronic book at a price that would prevent the

that will return the order to the Floor Broker if, after attempting to execute the order multiple times, the order cannot be executed. The Exchange believes this is similar to the proposed book sweep size that may result in a Floor Broker's order not executing once it is submitted.[68]

The following are examples of how the QOO Order will operate on the Trading Floor.

Example #1—Execution of a QOO Order

The following example is designed to illustrate a QOO Order executing.

- NBBO (excluding BOX) 3.00–3.13
- NBBO (including BOX) 3.09–3.13
- QOO Order for 100 at 3.10 (initiating side is sell)
- Book sweep size = 0.

BOX Book

Account	Quantity	Buy	Sell	Quantity	Account
MM1	150	3.09	3.15	10	MM2.
BD1	15	3.08	3.16	10	MM3.

Result: QOO Order is accepted because the price of the QOO Order ($3.10) is better than the NBBO (including BOX) on both the initiating side ($3.13) and the contra-side ($3.09).

Example #2—Capping of the Book Sweep Size

The following example illustrates how the Exchange will handle a QOO Order that is submitted with a book sweep size that is greater than the size of the QOO Order.

- NBBO (excluding BOX) 3.00–3.13
- NBBO (including BOX) 3.09–3.13
- QOO Order for 100 at 3.10 (initiating side is sell)
- Book sweep size = 200 (will be capped at the size of the QOO Order (100)).

BOX Book

Account	Quantity	Buy	Sell	Quantity	Account
MM1	150	3.09	3.15	10	MM2.
BD1	15	3.08	3.16	10	MM3.

Result: QOO Order is accepted because the price of the QOO Order ($3.10) is better than the NBBO (including BOX) on both the initiating side ($3.13) and the contra-side ($3.09).

Example #3—Rejecting a QOO Order Based on the NBBO

The following example illustrates how the Exchange will handle a QOO Order that is priced outside of the NBBO.

- NBBO (excluding BOX) 3.08–3.20
- NBBO (including BOX) 3.09–3.15
- QOO Order for 100 at 3.17 (initiating side is sell)
- Book sweep size = 100.

BOX Book

Account	Quantity	Buy	Sell	Quantity	Account
MM1	50	3.09	3.15	10	MM2.
BD1	20	3.08	3.16	10	MM3.

Result: QOO Order is rejected because the price of the QOO Order (3.17) is worse than the NBBO (including BOX) (3.15) on the initiating side of the QOO Order.

Example #4—Executing of a QOO Order Utilizing the Book Sweep Size

The following example illustrates a QOO Order that utilizes the book sweep size and therefore executes against interest on the BOX Book.

- NBBO (excluding BOX) 3.07–3.20
- NBBO (including BOX) 3.09–3.15
- QOO Order for 100 at 3.09 (initiating side is sell)
- Book sweep size = 100.

Floor Broker's order from executing, the FBMS will provide the Floor Broker with the quantity of contracts on the electronic book that have priority and need to be satisfied before the Floor Broker's order can execute at the agreed upon price. If the Floor Broker wishes to still execute his order, he can cause a portion of the floor based order to trade against this priority interest on the electronic book, thereby clearing the interest and permitting the remainder of the Floor Broker's order to trade at the desired price. The PHLX FBMS functionality is optional, and a Floor Broker can decide not to trade against the electronic book and therefore not execute his two-sided order at the particular price. *See* Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132 (February 26, 2013) (SR– Phlx–2013–09).

[68] The Exchange notes that the proposed functionality of the BOG on BOX will not attempt to execute an order multiple times. Instead, if, due to the book sweep size provided by the Floor Broker, the order cannot be executed by the BOG immediately, it will be rejected back to the Floor Broker. The similarity is in the fact that in both situations an order will not execute on the Trading Floor and will be rejected back to the Floor Broker. The Exchange believes that this difference between the Exchange and PHLX will incentivize Floor Brokers on BOX to provide an adequate book sweep size if they want the order to immediately execute.

BOX BOOK

Account	Quantity	Buy	Sell	Quantity	Account
PC1	50	3.09	3.15	10	MM2.
PC2	50	3.08	3.16	10	MM3.

Result: QOO Order is accepted, as the contra-side is willing to relinquish the full quantity of the initiating side. The initiating order will trade 50 contracts against PC1 at 3.09, and then the remaining 50 contracts will trade at 3.09 against the contra-side.

Example #5—Insufficient Book Sweep Quantity

The following example is designed to illustrate the situation where an executing Floor Broker did not provide an adequate book sweep size to have the QOO Order execute immediately when it was submitted to the BOG.

- NBBO 3.09–3.15
- QOO Order for 100 at 3.09 (initiating side is sell)
- Book sweep size = 40.

BOX BOOK

Account	Quantity	Buy	Sell	Quantity	Account
PC1	50	3.09	3.15	10	MM2.
PC2	50	3.08	3.16	10	MM3.

Result: QOO Order is rejected, as the contra-side is not willing to relinquish adequate quantity of the initiating side. Specifically, the book sweep size of 40 is not sufficient to satisfy PC1's 50 contracts which have priority. Upon rejection, the Floor Broker may: (i) Increase the book sweep size and resubmit the order; or (ii) not trade the order on BOX.

Example #6—Trading Through an Away Exchange

The following example is designed to illustrate how the BOG will handle a QOO Order that is submitted at a price that would trade-through an away exchange.

- NBBO 3.09–3.13
- QOO Order for 100 at 3.14 (initiating side is buy)
- Book sweep size = 100.

BOX BOOK

Account	Quantity	Buy	Sell	Quantity	Account
MM1	50	3.09	3.15	10	MM2.
BD1	20	3.08	3.16	10	MM3.

Result: QOO Order is rejected because the price of the QOO Order (3.14) is worse than the NBBO (3.13) on the contra-side of the QOO Order. The QOO Order is rejected even though the price of the QOO is better than the interest on the BOX Book on the initiating side (3.09) and the contra-side (3.15). A QOO Order will not route to an away exchange, however, the QOO will not trade through any away exchange displaying a better price.

Example #7—Complex QOO Order on the Trading Floor

The following is an example of an execution of a Complex QOO Order on the Trading Floor.

- Complex QOO Order for 100 of A+B at 2.01 (initiating side is buy)
- Floor Broker has disabled the away NBBO filter for the Complex QOO Order
- Book sweep size = 100
- NBBO for Complex Order [69] A+B is 3.06 − 3.20
- BOX BBO for Complex Order [70] A+B is 2.00 − 3.20.

BOX BOOK FOR COMPLEX ORDER A+B

Account	Quantity	Buy	Sell	Quantity	Account

[69] The NBBO for Complex Orders is based on the NBBO for the individual options components of such Complex Order.

[70] The BOX BBO for Complex Orders is the best net bid and offer price based on the best bid and offer on the BOX Book for the individual options components of the Complex Order.

BOX BOOK INSTRUMENT A

Account	Quantity	Buy	Sell	Quantity	Account
PC1	10	1.00	1.10	10	PC2.

BOX BOOK INSTRUMENT B

Account	Quantity	Buy	Sell	Quantity	Account
BD1	10	1.00	2.10	10	BD2.

Result: Complex QOO Order is accepted because the price of the Complex QOO Order (2.01) is better than the BOX BBO on the initiating side (2.00) and the contra-side (3.20). Additionally, since the NBBO filter has been disabled by the Floor Broker, the Complex QOO Order will ignore the NBBO for Complex Order A+B (3.06 − 3.20). Even when the Complex QOO Order ignores the away NBBO, it must still respect interest on BOX.

Example #8—Complex QOO Order Rejected Due to the Book Sweep Size

The following is an example of a Complex QOO Order that is rejected by the BOG because the Floor Broker did not provide an adequate book sweep size to satisfy the resting interest on the Complex Order Book.

- Complex QOO Order for 100 of A+B at 3.07 (initiating side is sell)
- Book sweep size = 25
- NBBO for Complex Order A+B is 3.06 − 3.20.

BOX BOOK FOR COMPLEX ORDER A+B

Account	Quantity	Buy	Sell	Quantity	Account
MM1	50	3.10			

BOX BOOK INSTRUMENT A

Account	Quantity	Buy	Sell	Quantity	Account
PC1	10	1.06	1.10	10	PC2.

BOX BOOK INSTRUMENT B

Account	Quantity	Buy	Sell	Quantity	Account
BD1	100	2.00	2.10	100	BD2.

Result: Complex QOO Order is rejected because the book sweep size is not adequate to satisfy the resting A+B Complex Orders on the Complex Order Book at 3.10 (50). If, however, the book sweep size was for at least 50 A+B, the Complex QOO Order would execute by having 50 A+B execute against the resting Complex Orders on the Complex Order Book at 3.10. The remaining 50 A+B would execute against the contra-side order at 3.07.

Example #9—Complex QOO Order Executing Against BOX Book Interest

The following example is designed to illustrate the situation where the Complex QOO Order executes against Implied Orders [71] and resting Complex Orders on the Complex Order Book.

- Complex QOO Order for 100 of A+B at 3.04 (initiating side is sell)
- Book sweep size = 100
- NBBO (with BOX) for Complex Order A+B is 3.06 − 3.20
- NBBO (without BOX) for Complex Order A+B is 3.04 − 3.20.

BOX BOOK FOR COMPLEX ORDER A+B

Account	Quantity	Buy	Sell	Quantity	Account
MM1	60	3.06			

[71] An ''Implied Order'' is a Complex Order at the cNBBO, derived from the orders at the BBO on the BOX Book for each component leg of a Strategy, provided each component leg is at a price equal to NBBO for that series. *See* Rule 7240(d)(1).

BOX BOOK INSTRUMENT A

Account	Quantity	Buy	Sell	Quantity	Account
PC1	10	1.06	1.10	10	PC2.
MM2	90	1.05			

BOX BOOK INSTRUMENT B

Account	Quantity	Buy	Sell	Quantity	Account
BD1	100	2.00	2.10	100	BD2.

Result: Complex QOO Order is accepted because the contra-side is willing to relinquish the full quantity of the initiating side. The initiating side will execute against resting orders of the individual legs and resting A+B Complex Orders. Specifically, 10 A+B of the initiating side will execute against an Implied Order at 3.06 (leg A at 1.06 and leg B at 2.00), 60 A+B will execute at 3.06 against resting A+B Complex Order and 30 A+B against an Implied Order at 3.05 (leg A at 1.05 and leg B at 2.00).

Example #10—Complex QOO Order Executing Against BOX Book Interest With Remaining Interest

The following example illustrates how the Exchange will handle a Complex QOO Order that executes against BOX Book interest first but leaves interest on the BOX Book.

- Complex QOO Order for 100 of A+B at 3.04 (initiating side is sell)
- Book sweep size = 100
- NBBO (with BOX) for Complex Order A+B is 3.06 − 3.20
- NBBO (without BOX) for Complex Order A+B is 3.04 − 3.20.

BOX BOOK FOR COMPLEX ORDER A+B

Account	Quantity	Buy	Sell	Quantity	Account

BOX BOOK INSTRUMENT A

Account	Quantity	Buy	Sell	Quantity	Account
PC1	10	1.06	1.10	10	PC2.

BOX BOOK INSTRUMENT B

Account	Quantity	Buy	Sell	Quantity	Account
PC3	20	2.00	2.10	100	BD2.

Result: Complex QOO Order is accepted. The initiating side will execute against resting orders of the individual legs and then against the contra-side. Specifically, 10 A+B of the initiating side will execute against an Implied Order at 3.06 (leg A at 1.06 and leg B at 2.00), and 90 will execute against the contra-side at 3.04. The unexecuted interest on the BOX Book remains after the executing of the Complex QOO Order.

Guarantee

The Exchange is proposing to allow for a participation guarantee for certain orders executed by Floor Brokers on the Trading Floor.[72] Specifically, when a Floor Broker holds an option order of the eligible order size or greater, the Floor Broker is entitled to cross a certain percentage of the original order with other orders that the Floor Broker is holding. The Exchange may determine, on an option by option basis, the eligible size for an order on the Trading Floor to be subject to this guarantee; however, the eligible order size may not be less than 500 contracts.[73] In determining whether an order satisfies the eligible order size requirement, any multi-part or spread order must contain one leg alone which is for the eligible order size or greater. The percentage of the order which a Floor Broker is entitled to cross, after all equal or better priced Public Customer bids or offers on the BOX Book and any non-Public Customer bids or offers that are ranked ahead of such Public Customer bids or offers are filled, is 40% of the remaining contracts in the order. However, nothing in this proposed Rule is intended to prohibit a Floor Broker from trading more than their percentage entitlement if the other Participants of the trading crowd do not choose to trade the remaining portion of the order.

Additional Requirements

The Exchange is proposing additional requirements for Floor Participants while present on the Trading Floor.[74]

[72] *See* proposed Rule 7600(f). Proposed Rule 7600(f) is based on PHLX Rule 1064.02. The Exchange notes that there are certain differences from the PHLX rule due to the fact that the Exchange will not have specialists on the Trading Floor and the Exchange has different rules than PHLX when it comes to orders on the Trading Floor executing against interest on the electronic book.

[73] Any changes to the eligible order size shall be communicated to Participants via circular.

[74] *See* proposed IM–7600–1. Proposed IM–7600–1 is based on PHLX Rule 1064.02. The Exchange

First, BOX is proposing that a Floor Broker must disclose all securities that are components of the Public Customer Order before requesting bids and offers for the execution of all components of the order. Next, the Exchange is proposing rules pertaining to treatment of quotes provided by Floor Participants. Specifically, a quote provided by a Floor Participant will remain in effect until: (1) A reasonable amount of time has passed; or (2) there is a significant change in the price of the underlying security;[75] or (3) the market given in response to the request has been improved.[76] BOX is proposing that the Floor Participant who established the market will, at the given price, have priority over all other orders that were not represented in the trading crowd at the time that the market was established. The Exchange is proposing that Floor Participants may not prevent a spread, straddle, stock-option, or combination cross from being completed by giving a competing bid or offer for one component of such order. Lastly, the Exchange is proposing that if a Floor Broker is crossing a Public Customer Order with an order that is not a Public Customer Order, when providing an opportunity for the trading crowd to participate in the transaction, shall disclose that Public Customer Order that is subject to crossing.

Tied Hedge

BOX is proposing the adoption of rules that will allow for tied hedge transactions. Tied hedge transactions are transactions that involve an option transaction and a hedging transaction occurring on a non-option market, as described in greater detail below.[77] Specifically, the Exchange is proposing that nothing prohibits a Floor Broker from buying or selling a stock, security futures, or futures position following receipt of an option order, including a Complex Order, provided that, prior to announcing such order to the trading crowd certain conditions are met. The option order must be in a class designated as eligible for tied hedge transactions as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order. Additionally, there shall be no aggregation of multiple orders to satisfy the size parameter, and for Complex Orders involved in a tied hedge transaction at least one leg must meet the minimum size requirement. The Floor Broker must create an electronic record that it is engaged in a tied hedge transaction in a form and manner prescribed by the Exchange. The hedging position is comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index or Exchange-Traded Fund Shares (''ETF''), a related instrument.[78] Additionally, the hedging position must be brought without undue delay to the trading crowd and announced concurrently with the option order; offered to the trading crowd in its entirety; and offered, at the execution price received by the Floor Broker introducing the option, to any in-crowd Floor Participant who has established parity or priority for the related options. The hedging position must not exceed the option order on a delta basis to be eligible for treatment as a tied hedge order.

The Exchange is further proposing that all tied hedge transactions (regardless of whether the option order is a simple or Complex Order) are treated the same as Complex Orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO Trade-Through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order, the execution of the option leg of a tied hedge transaction does not qualify for the NBBO Trade-Through exception for a Complex Trade (defined in proposed Rule 7610(e)). Floor Participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order. In the event the conditions in the non-options market prevent the execution of the non-option leg(s) at the agreed prices, the trade representing the options leg(s) may be cancelled. BOX is proposing that prior to entering tied hedge orders on behalf of Public Customers, the Floor Broker must deliver to the Public Customer a written notification informing the Public Customer that his order may be executed using the Exchange's tied hedge procedures. The proposed rule dealing with tied hedge orders is based on the rules of another options exchange.[79]

Priority in the Trading Crowd

The Exchange is proposing rules for determining priority of bids and offers on the Trading Floor.[80] Specifically, the highest (lowest) bid (offer) shall have priority, when two or more bids (offers) represent the highest (lowest) price, priority shall be afforded to such bids (offers) in the sequence in which they were made. If, however, the bids (offers) of two or more Floor Participants are made simultaneously, or if it is impossible to determine clearly the order of time in which they are made, such bids (offers) will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. BOX is proposing that the Floor Broker will be responsible for determining the sequence in which bids or offers are vocalized on the Trading Floor from Floor Participants in response to the Floor Broker's bid, offer, or call for a market. Any disputes

notes that there are certain differences from the PHLX rule in order to account for the fact that BOX will not have specialists on the Trading Floor.

[75] In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by an Options Exchange Official based upon the extent of the recent trading in the option and in the underlying security, and any other relevant factors.

[76] *See* proposed IM–7600–1(b).

[77] *See* proposed IM–7600–2. Proposed IM–7600–2 is based on NYSE Arca Rule 6.47.01.

[78] A ''related instrument'' means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' means, in reference to an ETF option, a futures contract on any economically equivalent index applicable to the ETF underlying the option order.

[79] *See* NYSE Arca Rule 6.47.01.

[80] *See* proposed Rule 7610. Proposed Rule 7610 is based on NYSE Arca Rule 6.75. The Exchange notes that it is not including certain sections of the NYSE Arca rule that apply to Lead Market Maker guarantee participation because the Exchange will not have Lead Market Makers on the Trading Floor. Specifically, a Lead Market Maker on NYSE Arca that establishes first priority during the vocalization process is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. Additionally, on NYSE Arca, if the Lead Market Maker establishes some other priority other than first, the Lead Market Maker is entitled to buy or sell the number of contracts equal to the Lead Market Maker's guaranteed participation level. The Exchange is also omitting sections of the NYSE Arca rule that cover manual executions on the trading floor because the Exchange is requiring that all orders on the Trading Floor will not execute until they are submitted to the BOG. Lastly, the Exchange is not including provisions of NYSE Arca's rule that apply to stock-option orders because the Exchange does not offer this type of order. Additionally, the Exchange is not including the same level of detail as NYSE Arca does when referring to the actions that an Options Exchange Official can take when there is a dispute regarding a Floor Broker's determination of time priority on the Trading Floor. The Exchange believes that by allowing an Options Exchange Official the ability to nullify a transaction or adjust its terms when the transaction violated the Exchange's Rules will provide the Exchange with the ability to better monitor and enforce the Exchange's Rules on the Trading Floor.

regarding a Floor Broker's determination of time priority sequence will be resolved by the Options Exchange Official. An Options Exchange Official may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of Exchange Rules.

The Exchange is proposing that the Floor Participant with first priority is entitled to buy or sell as many contracts as the Floor Broker may have available to trade. If there are any contracts remaining, the Floor Participant with second priority will be entitled to buy or sell as many contracts as there are remaining in the Floor Broker's order, and so on, until the Floor Broker's order has been filled entirely. An Options Exchange Official has the same responsibilities as a Floor Broker when the Options Exchange Official calls for a market.

The Exchange's proposed rules will also cover the situation where a Floor Broker requests a market in order to fill a large order and the Floor Participants provide a collective response.[81] In such situation, if the size of the response, in the aggregate, is less than or equal to the size of the order to be filled, the Floor Participants will each receive a share of the order that is equal to the size of their respective bids or offers. If, however, the size of the response exceeds the size of the order to be filled, that order will be allocated on a size pro rata basis. Specifically, in such circumstances, the size of the order to be allocated is multiplied by the size of an individual Floor Participant's quote divided by the aggregate size of all Floor Participants' quotes. For example, assume there are 200 contracts to be allocated, Floor Market Maker #1 is bidding for 100, Floor Market Maker #2 is bidding for 200 and Floor Market Maker #3 is bidding for 500. Under the ''size pro rata'' allocation formula, Floor Market Maker #1 will be allocated 25 contracts ($200 \times 100 \div 800$); Floor Market Maker #2 will be allocated 50 contracts ($200 \times 200 \div 800$); and Floor Market Maker #3 will be allocated 125 contracts ($200 \times 500 \div 800$).

Split Price Transactions

The Exchange is proposing rules for split price transactions occurring on the Trading Floor.[82] Specifically, if a Floor Participant purchases (sells) one or more option contracts of a particular series at a particular price or prices, the Floor Participant must, at the next lower (higher) price at which another Floor Participant bids (offers), have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that the Floor Participant purchased (sold) at the higher (lower) price or prices, provided that the Floor Participant's bid (offer) is made promptly and continuously and that the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange notes that this proposed Rule 7610(f) only applies to transactions effected on the Trading Floor. Further, the priority afforded by this proposed Rule 7610(f) is effective only insofar as it does not conflict with Public Customer Orders represented in the BOX Book. Such orders have precedence over Floor Participants' orders at a particular price; Public Customer Orders in the BOX Book also have precedence over Floor Participants' orders that are not superior in price by at least one minimum trading increment.

Additionally, if a Floor Participant purchases (sells) 50 or more option contracts of a particular series at a particular price or prices, the Floor Participant shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that the Floor Participant purchased (sold) at the higher (lower) price or prices, but only if the Floor Participant bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of the transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange may increase the minimum qualifying order size above 100 contracts for split price priority for all products. Announcements regarding changes to the minimum qualifying order size shall be made via Circular. If the bids or offers of two or more Floor Participants are both entitled to priority in accordance with paragraphs (1) and (2) of proposed Rule 7610(f), it shall be afforded them, insofar as practicable, on an equal basis.

The Exchange is also proposing to add clarifying language with respect to split price priority that provides that Floor Participants who bid (offer) on behalf of a non-Market Maker Participant must ensure that the non-Market Maker Participant qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the Floor Participant must yield priority to orders for the accounts of non-Participants. The Exchange notes that the proposed rule providing for split price priority is similar to the rule of another exchange.[83]

Orders Executed Manually

The Exchange is proposing Rule 7620 Orders Executed Manually to make clear how priority on the Trading Floor will be established based on account type.[84] As mentioned above, Public Customer Orders on the BOX Book, along with any bids and offers of non-Public Customers ranked ahead of such Public Customer Orders on the BOX Book, have first priority. Multiple Public Customer and non-Public Customer Orders at the same price are ranked based on time priority. Bids and offers of Floor Participants in the trading crowd have second priority. These bids and offers include those made by Floor Market Makers and Floor Brokers (on behalf of orders they are representing). Bids and offers of non-Public Customers on the BOX Book ranked behind any Public Customer Orders at the same price have third priority. Such bids and offers of non-Public Customers will be executed on time priority. The Exchange is also proposing language related to Section 11(a)(1)(G) of the Exchange Act. Specifically, Floor Brokers relying on Section 11(a)(1)(G) of the Exchange Act and Rule 11a1–1(T) thereunder (''G exemption rule'') as an exemption must also yield priority to any equal-priced non-member bids or offers on the BOX Book.

Clerks

The Exchange is proposing to adopt Rule 7630 Clerks, which provides requirements for Clerks on the Trading Floor.[85] The proposal defines ''Clerk'' as any registered on-floor person employed by or associated with a Floor Broker or Floor Market Maker and is not eligible to effect transactions on the Trading Floor as a Floor Market Maker or Floor Broker. The proposed rule codifies that Clerks must display the badge(s) supplied by the Exchange while on the Trading Floor. Further, Proposed Rule 7630(c) codifies that a Clerk shall be primarily located at a workstation assigned to their employer or assigned to their employer's clearing firm unless such Clerk is (1) entering or leaving the Trading Floor, (2) transmitting, correcting or checking the status of an order or reporting or correcting an executed trade or (3) supervising other Clerks if he is identified as a supervisor

[81] *See* proposed Rule 7610(d)(5).

[82] *See* proposed Rule 7610(f).

[83] *See* NYSE Arca Rule 6.75(h).

[84] Proposed Rule 7620 is based on NYSE Arca Rule 6.76(d).

[85] Proposed Rule 7630 is based on PHLX Rule 1090.

on the registration form submitted to the Exchange's Membership Department.

The Exchange is also proposing Rule 7630(d), which details the registration requirements for a Floor Broker who employs a Clerk that performs any function other than a solely clerical or ministerial function. On the Trading Floor, a Clerk may enter an order under the direction of a Floor Broker by way of any order handling entry device.[86] Proposed Rule 7630(f) defines a Floor Market Maker Clerk as any on-floor Clerk employed by or associated with a Floor Market Maker, and details the registration requirements and conduct on the Trading Floor for Floor Market Maker Clerks. A Floor Market Maker Clerk is permitted to communicate verbal market information (*i.e.,* bid, offer, and size) in response to requests for such information, provided that such information is communicated under the direct supervision of his or her Floor Market Maker employer. A Floor Market Maker Clerk may consummate electronic transactions under the express direction of his or her Floor Market Maker employer by matching bids and offers. Such bids and offers and transactions effected under the supervision of a Floor Market Maker are binding as if made by the Floor Market Maker employer.

Disputes on the Trading Floor

The Exchange is proposing to adopt Rule 7640 to codify the process for resolution of trading disputes on Trading Floor.[87] Specifically, disputes occurring on and relating to the Trading Floor, if not settled by agreement between the Floor Participants interested, shall be settled by an Options Exchange Official.

The Exchange is proposing that an Options Exchange Official shall institute the course of action deemed to be most fair to all parties under the circumstances at the time when issuing decisions for the resolution of trading disputes. An Options Official may direct the execution of an order on the Trading Floor or adjust the transaction terms or Participants to an executed order on the Trading Floor, and may also nullify a transaction if the transaction is determined to have been in violation of Exchange Rules. Options transactions that are the result of an Obvious Error or Catastrophic Error shall be subject to the provisions and procedures set forth in Rule 7170. The proposed rule also states that all rulings rendered by an Options Exchange Official are effective immediately and must be complied with promptly; failure to do so may result in an additional violation. Furthermore, failure to promptly comply with other Options Exchange Official rulings issued pursuant to the Exchange's Order and Decorum Policies (Rule 2120) or violation of any additional Trading Floor policies and not concerning a trading dispute may result in an additional violation.

Proposed Rule 7640(d) states that Options Exchange Official rulings issued pursuant to the Order and Decorum Code are reviewable pursuant to IM–2110–1. All other Options Exchange Official rulings are reviewable pursuant to paragraph (e) of proposed Rule 7640. Proposed Rule 7640(e) states that all Options Exchange Official rulings are reviewable by the CRO or his or her designee, and sets forth the process for such review. Regulatory staff must be advised within 15 minutes of an Options Exchange Official's ruling that a party to such ruling has determined to appeal from such ruling to the CRO or his or her designee. The Exchange may establish the procedures for the submission of a request for a review of an Options Exchange Official ruling. Options Exchange Official rulings (including those concerning the nullification or adjustment of transactions) may be sustained, overturned, or modified by the CRO or his or her designee. In making a determination, the CRO or his or her designee may consider facts and circumstances not available to the ruling Options Exchange Official, as well as action taken by the parties in reliance on the Options Exchange Official's ruling (*e.g.,* cover, hedge, and related trading activity). Further, all decisions made by the CRO or his or her designee in connection with initial rulings on requests for relief and with the review of an Options Exchange Official ruling pursuant to this proposed Rule 7640(e) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder. A Floor Participant seeking review of an Options Exchange Official ruling shall be assessed a fee of $250.00 for each Options Exchange Official ruling to be reviewed that is sustained and not overturned or modified by the CRO or his or her designee.[88] All decisions of the CRO or his or her designee shall be final and may not be appealed to the Exchange's Board of Directors. Additionally, all decisions of the CRO or his or her designee are effective immediately and must be complied with promptly. Failure to promptly comply with a decision of Exchange may result in an additional violation.

Lastly, as discussed in proposed IM–7640–1, the Exchange may determine that an Options Exchange Official is ineligible to participate in a particular ruling where it appears that such Options Exchange Official has a conflict of interest. The Exchange also sets forth when a conflict of interest exists, and allows that Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Options Exchange Official to participate in a particular ruling due to a conflict of interest.[89]

Trading for Joint Account

The Exchange is proposing Rule 7650, which will govern Trading for Joint Accounts.[90] Specifically, it stipulates that while on the Trading Floor, no Options Participant shall initiate the purchase or sale on the Exchange of any security for any account in which he, his Options Participant organization or a participant therein, is directly or indirectly interested with any person other than such Options Participant or participant therein. The Exchange further clarifies that these provisions shall not apply to any purchase or sale by any Options Participant for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions.

Communications and Equipment

The Exchange is proposing Rule 7660 Communications and Equipment, which deals with communication and equipment on the Trading Floor. Specifically, the proposed rule details which communication devices are prohibited; provides the Exchange with the ability to remove any communication device that is in violation; sets forth the registration requirement and process; specifies the capacity and functionality of communication devices; outlines the communication devices allowed to Floor Market Makers, Floor Brokers, and Clerks; requires the maintenance of telephone records, and excludes the

[86] *See* proposed Rule 7630(e).

[87] Proposed Rule 7640 is based on PHLX Rule 124. The Exchange notes that there are certain differences from the PHLX rule because the Exchange desires to have consistency with its existing rules related to reviewing an Exchange ruling.

[88] In addition, in instances where the Exchange, on behalf of an Options Participant, requests a review by another options exchange, the Exchange will pass any resulting charges through to the relevant Options Participant.

[89] *See* proposed IM–7640–1.

[90] Proposed Rule 7650 is based on PHLX Rule 772.

Exchange from liability due to conflicts between communication devices or due to electronic interference. Additionally, the Exchange will establish a communication device policy and violations of such policy may result in disciplinary action by the Exchange.[91] Proposed IM–7660–2 clarifies that proposed Rule 7660 and any relevant Exchange policy are intended to apply to all communication and other electronic devices on the Floor of the Exchange, including, but not limited to, wireless, wired, tethered, voice, and data. The Exchange notes that the proposed rules applicable to communication and equipment on the Trading Floor are based on the rules of another exchange.[92] Lastly, Proposed IM–7660–3 provides the Exchange with the ability to limit or revoke the use of any communication device on the Trading Floor whenever the Exchange determines that use of such communication device: (1) Interferes with the normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, (2) is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or (3) interferes with the obligations of a Floor Participant to fulfill its duties under, or is used to facilitate any violation of, the Act or rules thereunder, or Exchange rules. The Exchange notes that proposed IM–7660–3 is based on the rules of another exchange.[93]

Floor Market Makers

The Exchange is proposing Rule 8500 Floor Market Maker, which details the rules surrounding Floor Market Makers, including registration as a Market Maker and suspension and termination of a Floor Market Maker.[94] Specifically, with regard to suspension or termination, the registration of any Options Participant as a Floor Market Maker may be suspended or terminated by the Exchange upon a determination that such Options Participant has failed to properly perform as a Floor Market Maker.

Proposed Rule 8500 codifies that a Floor Market Maker shall only quote in classes on the Trading Floor for which the Market Maker is already quoting electronically. Therefore, a Floor Market Maker must already be registered as a Market Maker on BOX prior to becoming a Floor Market Maker. The Exchange proposes that a Floor Market Maker shall not effect on the Exchange purchases or sales of any option in which such Floor Market Maker is registered, for any account in which he or his Options Participant is directly or indirectly interested, unless such dealings are reasonably necessary to permit such Floor Market Maker to maintain a fair and orderly market.[95]

Also, the Exchange proposes certain expectations of Floor Market Makers. Specifically, proposed Rule 8500(d) details that it is ordinarily expected that a Floor Market Maker will engage, to a reasonable degree under the existing circumstances, in dealings for his own account in options when lack of price continuity or lack of depth in the options market or temporary disparity between supply and demand in the options market exists or is reasonably to be anticipated. The Exchange is proposing that transactions effected on the Exchange by a Floor Market Maker for his own account, and in the options in which he is registered, are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated. Transactions in such options not part of such a course of dealings are not to be effected by a Floor Market Maker for his own account.[96]

The Exchange is proposing Rule 8510 which will govern the obligations and restrictions applicable to Floor Market Makers.[97] Generally, transactions of a Floor Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and those Participants should not enter into transactions or make bids or offers that are inconsistent with such a course of dealings.[98] Additionally, the Exchange is proposing to define a Floor Market Maker as an Options Participant on the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account.[99]

More specifically, the Exchange is proposing two Floor Market Maker Obligations: (1) Continuous Electronic Quoting Obligation; and (2) Continuous Open Outcry Quoting Obligation.[100] With regard to Continuous Electronic Quoting, Floor Market Makers are obligated to quote electronically in all classes that the Floor Market Maker quotes on the Trading Floor.[101] The second Floor Market Maker Obligation, Continuous Open Outcry Quoting Obligation, requires Floor Market Makers to provide a two-sided market on the Trading Floor complying with the quote spread parameter requirements contained in proposed Rule 8510(d)(1).[102] As part of the Continuous Open Outcry Quoting Obligation, such Floor Market Makers shall provide such quotations with a size of not less than 10 contracts.

The Exchange also proposes affirmative obligations for Floor Market

[91] *See* proposed IM–7660–1.

[92] *See* PHLX Rule 606. The Exchange notes that it is not copying PHLX Rule 606(b)(2)(i), which prohibits any member from establishing communication devices on the floor. The Exchange believes that this provision is not necessary and would be contrary to the Exchange's proposed Trading Floor design. Specifically, the Exchange will not be providing communication devices for Floor Participants; Floor Participants will be responsible for providing their own communication devices. Therefore, the inclusion of this provision would directly conflict with the Exchange's plan. Additionally, proposed Rule 7660(g) contains a provision not included in PHLX's rule that requires wireless telephone and other communication devices on the Options Floor to comply with applicable floor policies. The Exchange believes this provision is important as to make clear the restrictions and requirements applicable to communication devices on the Trading Floor.

[93] *See* CBOE Rule 6.23(b). The Exchange notes that although other provisions of proposed Rule 7660 are based on PHLX, PHLX does not allow Floor Brokers to receive orders while in the trading crowd; therefore, the Exchange is proposing to follow CBOE, which allows Floor Brokers to receive orders in the trading crowd.

[94] *See* proposed Rules 8500(a) and (b). Proposed Rules 8500(a) and (b) are based on PHLX Rule 1020. There are certain differences with PHLX's rule due to the fact that PHLX has additional categories of Participants that the Exchange does not.

[95] *See* proposed Rule 8500(c).

[96] *See* proposed Rule 8500(d).

[97] Proposed Rule 8510 is based on PHLX Rule 1014. PHLX Rule 1014 includes numerous sections that the Exchange is not including in proposed Rule 8510. The majority of the sections that the Exchange is omitting are not relevant to BOX. Specifically, they involve rules related to Participant categories that the Exchange does not and will not have on BOX. These include Streaming Quote Trader, which is a Registered Option Trader who has received permission from PHLX to submit electronic quotes only while they are present on the floor, and specialists. Additionally, the Exchange is not copying PHLX Rule 1014.06, which covers information barriers, because the Exchange already has rules covering misuse of material information. *See* Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR–BOX–2015–31). The Exchange is not copying PHLX Rules 1014.13 and 1014.14 because the PHLX Rules deal with types of activities and members that will not be present on BOX's Trading Floor. As previously mentioned, PHLX Rule 1014.13 requires an in person minimum that the Exchange does not believe is necessary on the Trading Floor. Additionally, PHLX Rule 1014.14 does not apply to BOX because all Floor Market Makers are required to quote electronically in all classes they quote on the Trading Floor.

[98] *See* proposed Rule 8510(a).

[99] *See* proposed Rule 8510(b).

[100] *See* proposed Rule 8510(c).

[101] *See* proposed Rule 8510(c)(1). The Exchange notes that PHLX does not include the requirement that the a Floor Market Maker being quoting electronically in all classes that the Floor Market Maker quotes on the Trading Floor. The Exchange believes that this proposed difference will lead to more robust quoting that will benefit all market participants.

[102] *See* proposed Rule 8510(c)(2).

Makers in classes of option contracts to which they are assigned. Specifically, whenever a Floor Market Maker is called upon by an Options Exchange Official or a Floor Broker to make a market, the Floor Market Maker is expected to engage, to a reasonable degree under the existing circumstances, in dealing for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.[103] Additionally, the Exchange proposes the following obligations on Floor Market Makers while performing their market making activities on the Trading Floor: (1) Quote Spread Parameters (Bid/Ask Differentials) [104] and (2) Maximum Option Price Change.[105] Specifically, Floor Market Makers shall provide a bid/ask differential on the Trading Floor for options on equities and index options by bidding and/or offering so as to create differences of no more than $0.25 between the bid and the offer for each option contract for which the prevailing bid is less than $2; no more than $0.40 where the prevailing bid is $2 or more but less than $5; no more than $0.50 where the prevailing bid is $5 or more but less than $10; no more than $0.80 where the prevailing bid is $10 or more but less than $20; and no more than $1 where the prevailing bid is $20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.[106] Quotations provided in open outcry may not be made with $5 bid/ask differentials provided in Rule 8040(a)(7) and instead must comply with the legal bid/ask differential requirements described in this subparagraph. These proposed obligations for Floor Market Maker are based on the rules of another exchange.[107]

The Exchange is also proposing restrictions for Floor Market Makers in classes of option contracts other than those to which they are appointed. Specifically, with respect to classes in which Floor Marker Makers are not appointed, Floor Market Makers should not (1) individually or as a group, intentionally or unintentionally, dominate the market in option contracts of a particular class; or (2) effect purchases or sales on the Trading Floor of the Exchange except in a reasonable and orderly manner; (3) be conspicuous in the general market or in the market in a particular option.[108] Further, the Exchange proposes additional restrictions on Floor Market Makers.[109] Specifically, except as otherwise provided, no Floor Market Maker shall (1) initiate a transaction while on the Trading Floor for any account in which he has an interest and execute as Floor Broker an off-floor order in options on the same underlying interest during the same trading session, or (2) retain priority over an off-floor order while establishing or increasing a position for an account in which he has an interest while on the Trading Floor of the Exchange.[110]

Proposed Rule 8510(h) discusses option priority and parity on the Trading Floor. Specifically, it references proposed Rule 7610, which directs Floor Participants in the establishment of priority of orders on the Trading Floor. An account type is either a controlled account or a Public Customer account.[111] Option orders of controlled accounts are required to yield priority to Public Customer Orders when competing at the same price, as described below. Orders of controlled accounts are not required to yield priority to other controlled account orders. Additionally, the Exchange is clarifying that orders of controlled accounts, other than a Floor Market Maker market making in person, must be (1) verbally communicated as for a controlled account when placed on the Trading Floor and when represented to the trading crowd and (2) recorded as for a controlled account by making the appropriate notation on the Floor Broker's system. Further, the Exchange is proposing to clarify that in situations where the allocation of contracts result in fractional amounts of contracts to be allocated to Floor Participants, the number of contracts to be allocated shall be rounded in a fair and equitable manner.

The Exchange is also clarifying that Floor Participants must follow just and equitable principles of trade when dealing on the Trading Floor.[112] Specifically, it shall be considered conduct inconsistent with just and equitable principles of trade for a Floor Participant (1) to allocate orders other than in accordance with the Exchange's priority rules applicable to floor trades; (2) to enter into any agreement with another Floor Participant concerning allocation of trades; or (3) to harass, intimidate or coerce any Floor Participant, or to make or refrain from making any complaint or appeal.

The Exchange is proposing substantial Interpretive Material to supplement the Floor Market Maker Rules.[113] Specifically, the Exchange is proposing IM–8510–1, which provides that the obligations of a Floor Market Maker with respect to those classes of options to which he is assigned shall take precedence over his other activities. The Exchange is proposing IM–8510–2, which details non-electronic orders and states that Floor Market Makers participating in a trading crowd may, in response to a verbal request for a market by a Floor Broker, state a bid or offer

[103] *See* proposed Rule 8510(d).

[104] *See* proposed Rule 8510(d)(1).

[105] On the Trading Floor, a Floor Market Maker shall not be bidding more than $1 lower and/or offering no more than $1 higher than the last preceding transaction price for the particular option contract. However, this standard shall not ordinarily apply if the price per share of the underlying stock or Exchange-Traded Fund Share has changed by more than $1 since the last preceding transaction for the particular option contract. *See* proposed Rule 8510(d)(2).

[106] The Exchange notes that the ability to provide different quoting requirements is not novel and the Exchange already has this ability when it comes to electronic quoting requirements. *See* Rule 8040(a)(7). Additionally, another Exchange allows for the same on their floor. *See* PHLX Rule 1014(c)(i)(A)(1)(a).

[107] *See* PHLX Rule 1014(c)(i)(A). The Exchange is not including all of PHLX rules related to Floor Market Maker quoting obligations. Specifically, the Exchange is not including PHLX rules applicable to foreign currency options because BOX does not list for trading foreign currency options.

[108] *See* proposed Rule 8510(e).

[109] *See* proposed Rule 8510(f).

[110] This provision shall not apply to (1) any transaction by a registered Floor Market Maker in an option in which he is so registered; or (2) any transaction, other than a transaction for an account in which a Floor Market Maker has an interest, made with the prior approval of an Options Exchange Official to permit a member to contribute to the maintenance of a fair and orderly market in an option, or any purchase or sale to reverse any such transaction; or (3) any transaction to offset a transaction made in error. *See* proposed Rule 8510(g).

[111] A controlled account includes any account controlled by or under common control with a broker-dealer. Public Customer accounts are all other accounts.

[112] *See* proposed Rule 8510(h)(4).

[113] The proposed Interpretive Material to supplement the Floor Market Maker Rules is based mostly on commentary to PHLX Rule 1014. The Exchange notes that it is not copying all of the commentary to PHLX Rule 1014 as some of the commentary is not applicable because it involves specialists, which the Exchange does not have or the commentary is covered by different proposed rules.

that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer, except when such stated bid or offer is made in response to a Floor Broker's solicitation of a single bid or offer as set forth in proposed Rule 7040(d)(2).[114] A Floor Market Maker shall be deemed to be participating in the crowd if such Floor Market Maker is, at the time an order is represented in the crowd, physically located in the specific Crowd Area. A Floor Market Maker who is physically present in such Crowd Area may engage in options transactions in assigned issues as a crowd participant, provided that such Floor Market Maker fulfills the requirements set forth in proposed Rule 8510. A Floor Market Maker shall be deemed to be participating in a single Crowd Area. The Exchange is proposing to define the term ''on the floor'' as meaning the Trading Floor of the Exchange; the rooms, lobbies and other premises immediately adjacent thereto made available by the Exchange for use by Floor Participants generally; other rooms, lobbies and premises made available by the Exchange primarily for use by Floor Participants; and the telephone and other facilities in any such place.[115] The Exchange is also proposing that the provisions of this Proposed Rule 8510 do not apply to transactions initiated by a Floor Market Maker for an account in which he has an interest unless such transactions are either initiated by a Floor Market Maker while on the Floor or unless such transactions, although originated off the Floor, are deemed on-Floor transactions under the provisions of these Rules.[116]

Additionally, the Exchange proposes that an off-Floor order for an account in which a Participant has an interest is to be treated as an on-Floor order if it is executed by the Participant who initiated it.[117] Proposed IM–8510–4 also includes additional transactions that will be considered on-Floor transactions, including any transaction for an account in which a Floor Market Maker has an interest if such transaction is initiated off the Trading Floor by such Floor Market Maker after he has been on the Trading Floor during the same day. Additionally, any transactions for a Participant for an account in which it has an interest: (1) Which results for an order entered off the Floor following a conversation relating thereto with a Floor Participant on the Floor who is a partner of or stockholder in such Participant; or (2) which results from an order entered off the Floor following the unsolicited submission from the Floor to the office of a quotation in a stock or Exchange-Traded Fund Share and the size of the market by a Participant on the Floor who is a partner of or stockholder in such Participant; or (3) which results from an order entered off the Floor which is executed by a Participant on the Floor who is a partner of or stockholder in such Participant and who had handled the order on a ''not-held'' basis; [118] or (4) which results from an order entered off the Floor which is executed by a Participant on the Floor who is a partner of or stockholder in such Participant and who has changed the terms of the order.

The Exchange is proposing that an on-Floor order given by a Floor Market Maker to a commission broker, for an account in which the Floor Market Maker has an interest, is subject to all the rules restricting Floor Market Makers.[119]

The Exchange is proposing that the number of Floor Market Makers in the trading crowd who are establishing or increasing a position may temporarily be limited when, in the judgment of an Options Exchange Official, the interests of a fair and orderly market are served by such limitation.[120] Additionally, the Exchange is proposing that the Exchange may adopt policies affecting the location of Floor Participants on the Trading Floor in the interest of a fair and orderly market.[121] Lastly, the Exchange is proposing that a Floor Market Maker cannot acquire a ''long'' position by pairing off with a sell order before the opening, unless all off-Floor bids at that price are filled.[122]

The proposed rules applicable to Floor Market Makers are based predominately on the rules of PHLX. However, BOX omitted certain PHLX rules from the proposed rules due to certain differences with how the Exchange is designing the Trading Floor. The Exchange is not including any of PHLX's waiver provisions in the proposed rules.[123] The Exchange does not believe that waiver provisions are necessary because the Exchange is not having specialists who have entitlement guarantees that they could waive on the Trading Floor. Additionally, BOX is not including rules related to foreign currency options because the Exchange does not list for trading options on foreign currencies.

The Exchange is not including certain PHLX rules related to participation guarantees, allocation and priority. PHLX participant guarantee rules are designed to provide a guarantee entitlement to specialists on the trading floor. BOX is not proposing to have specialists on the Trading Floor and therefore there is no reason to include these PHLX rules. Additionally, BOX's proposed allocation and priority rules for orders executed on the Trading Floor are based on the rules of NYSE Arca [124] and not those of PHLX. The Exchange proposes Rule 8530 which details the resolution of an uncompared trade.[125] Specifically, when a disagreement between Floor Participants arising from an uncompared Exchange options transaction cannot be resolved by mutual agreement prior to 10:00 a.m. on the first business day following the trade date, the parties shall promptly, but not later than 3:30 p.m. on such day close out the transaction in the following manner. The Floor Participant representing the purchaser in the uncompared Exchange options transaction shall promptly enter into a new Exchange options transaction on the Floor of the Exchange to purchase the option contract that was the subject of the uncompared Exchange options

[114] Proposed IM–8510–2 is based on PHLX Rule 1014.05(c). The Exchange is not including all of PHLX Rue 1014.05(c). Specifically, the Exchange is not including provisions of the PHLX Rule related to specialist because the Exchange does not have specialists and is not proposing to have specialists. The Exchange is also not including PHLX provisions related to priority of orders represented on the floor because the Exchange is copying the floor priority provisions from NYSE Arca and they are covered by proposed Rule 7600(c)

[115] *See* proposed IM–8510–3(a). Proposed IM–8510–3(a) is based on PHLX Rule 1014.07.

[116] *See* proposed IM–8510–3(b). Proposed IM–8510–3(b) is based on PHLX Rule 1014.07.

[117] *See* proposed IM–8510–4. Proposed IM–8510–4 is based on PHLX Rule 1014.08.

[118] However, the following are not on-Floor orders and such restrictions shall not apply to an order: (1) To sell an option for an account in which the Participant is directly or indirectly interested if in facilitating the sale of a large block of stock or Exchange-Traded Fund Shares, the Participant acquired its position because the demand on the Floor was not sufficient to absorb the block at a particular price or prices; or (2) to purchase or sell an option for an account in which the Options Participant is directly or indirectly interested if the Options Participant was invited to participate on the opposite side of a block transaction by another Options Participant or a partner or stockholder therein because the market on the Floor could not readily absorb the block at a particular price or prices; or (3) to purchase or sell an option for an account in which the Participant is directly or indirectly interested if the transaction is on the opposite side of a block order being executed by the Participant for the account of its customer and the transaction is made to facilitate the execution of such order.

[119] *See* proposed IM–8510–5. Proposed IM–8510–5 is based on PHLX Rule 1014.09.

[120] *See* proposed IM–8510–6. Proposed IM–8510–6 is based on PHLX Rule 1014.12.

[121] *See* proposed IM–8510–7. Proposed IM–8510–7 is based on PHLX Rule 1014.17.

[122] *See* proposed IM–8510–9. Proposed IM–8510–9 is based on PHLX Rule 1014.11.

[123] *See* PHLX Rule 1014(g)(v)(D).

[124] *See* NYSE Arca Rules 6.47(a) and 6.75.

[125] Proposed Rule 8530 is based on PHLX Rule 1039.

transaction. The Floor Participant representing the writer in the uncompared Exchange options transaction shall promptly enter into a new Exchange options transaction on the Floor of the Exchange to sell (write) the option contract that was the subject of the uncompared Exchange options transaction. Any claims for damages resulting from such transactions must be made promptly for the accounts of the Floor Participants involved and not for the accounts of their respective customers. Notwithstanding the foregoing, if either Floor Participant is acting for a firm account in an uncompared Exchange options transaction and not for the account of a Public Customer, such Floor Participant need not enter into a new transaction, in which event money differences will be based solely on the closing transaction of the other party to the uncompared transaction. In the event an uncompared transaction involves an option contract of a series in which trading has been terminated or suspended before a new Exchange options transaction can be effected to establish the amount of any loss, the Floor Participant not at fault may claim damages against the other Floor Participant involved in the transaction based on the terms of such transaction. All such claims for damages shall be made promptly.

Fees

The Exchange has not yet determined the fees for transactions executed on the Trading Floor. Prior to commencing trading on the Trading Floor, the Exchange will file proposed fees with the Commission. However, the Exchange is currently proposing to amend Rule 7010 Fees and Charges. Specifically, the Exchange is proposing that the Board may, from time to time, fix and impose a charge upon Participants measured by their respective net commissions on transactions effected on the Trading Floor or the Exchange.[126]

Additional Changes

The Exchange is also proposing minor edits to other sections of the Exchange's Rulebook in order to accommodate the various changes. Specifically, the Exchange is proposing several new definitions which results in the renumbering of numerous other definitions. Therefore, the Exchange is amending various references to definitions in the Rulebook.[127]

Lastly, the Exchange notes that it will submit a separate filing to the SEC which will cover minor rule violations on the Trading Floor. Specifically, the Exchange will file with the SEC to amend the Exchange's Minor Rule Violation Plan in Rule 12140.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[128] in general, and furthers the objectives of Section 6(b)(5) of the Act[129] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

General

BOX believes that the proposal is consistent with the Act and furthers the foregoing objectives by increasing the opportunities for Participants to execute orders and provide an additional venue for seeking liquidity. The Exchange believes the adoption of the proposed rules allowing for an open-outcry floor is consistent with the goals of the Act to remove the impediments to and perfect the mechanism of a free and open market because it will benefit Participants by providing an additional mechanism for Participants to provide and seek liquidity for large and complex orders. The Exchange believes that the nature of open outcry transactions lends itself better to larger-sized transactions than the liquidity that is generally available electronically and the proposed rules would encourage greater participation in such large trades. Therefore, the proposed rule changes will benefit the market as a whole by providing an additional venue for market participants to seek liquidity for large-sized and complex orders. Providing an additional venue for these orders will benefit investors, the national market system, Participants, and the Exchange market by increasing competition for order flow and executions, and thereby spur product enhancements and lower prices. The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because all surveillance coverage currently performed by the Exchange will cover trading on the Trading Floor. Additionally, the Exchange will have surveillance coverage in place to monitor issues unique to the Trading Floor.

The Exchange believes the proposed changes to Rule 100(a) to include definitions of Floor Participant and Trading Floor are consistent with the goals of the Act. Specifically, the proposed changes are designed to protect investors and the public interest by providing background and clarity in the Rulebook. Additionally, proposed Rule 100(b) will provide additional clarity in the Rulebook. Specifically, the definition for Presiding Exchange Officials provides Floor Participants with notice of who is responsible for monitoring and regulating the Trading Floor. The other sections of proposed Rule 100(b) provide general background for Floor Participants in the beginning of the Rulebook that will aid in understanding the applicable rules throughout, which will protect investors and the public by making the Exchange's Rulebook simpler to understand. Additionally, the Exchange notes that the various sections of proposed Rule 100(b) are based on the rules of another exchange with an open-outcry floor.[130]

Participant Eligibility and Registration

The Exchange believes that the proposed registration requirements, including floor trading examinations, if required, for Floor Brokers, Floor Market Makers and registered representatives on the Trading Floor, are reasonable and further the objectives of the Act.[131] Specifically, these examinations address industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as Floor Brokers or Floor Market Makers and for such individuals to appropriately register under the Exchange's Rules. Requiring these examinations will help promote consistency in examination requirements and uniformity across the markets. Additionally, the registration requirements for Floor Participants are reasonable because they will help the Exchange to determine if a registrant is qualified to be a Floor Broker or Floor Market Maker and therefore will protect investors and the public interest.

Similarly, the Exchange believes that prescribing appropriate registration requirements including floor trading

[126] *See* proposed Rule 7010(d). Proposed Rule 7010(d) is based on PHLX Rule 714.

[127] *See* proposed changes to Rules 7130, 7150, and 7245.

[128] 15 U.S.C. 78f(b).

[129] 15 U.S.C. 78f(b)(5).

[130] *See* PHLX Rules 1000(e), 1000(f), 1000(g),1080.06 and CBOE Rule 6.74(a).

[131] *See* proposed Rules 2020(h) and (i).

examinations for all other Trading Floor personnel, including clerks, interns, stock execution clerks and other associated persons, are reasonable as well. Specifically, these examinations address industry topics that establish the foundation for the regulatory and procedural knowledge necessary to appropriately register under the Exchange rules. The proposed registration requirements for associated persons are reasonable because they will help the Exchange to determine if a registrant is qualified to be on the Trading Floor and therefore will protect investors and the public interest. Additionally, the proposed Rules covering eligibility and registration are based on the rules of another exchange that has an open-outcry floor.[132]

Sanctions for Breach of Regulations on the Trading Floor

The proposed rule dealing with breaches of regulations on the Trading Floor[133] is consistent with, and furthers the objectives of the Act, because the proposed Rule should facilitate prompt, appropriate, and effective discipline for violations of the Exchange's Rules and the regulations thereunder designed to maintain order on the Trading Floor. In addition, the proposed rule is consistent with Section 6(b)(6) of the Act[134] which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, by imposing increased fine amounts for breaches of order and decorum to better reflect the severity of the violation and provide an appropriate form of deterrence for violations of the Exchange's Rules and the regulations thereunder. The Exchange believes that the proposed Rule provides adequate notice and process for a Floor Participant that is subject to sanctions for breach of the Exchange's Rules and regulations. The Exchange believes that the proposal to exclude Floor Participants for up to five (5) days and conduct an expedited hearing will provide a fair process for Floor Participants to present their arguments surrounding a removal, while also allowing the Exchange to operate without disruption and threat of safety to Floor Participants on the Trading Floor. Additionally, the proposed Rules covering sanctions for breaches of regulations are based on the rules of another exchange with an open-outcry floor.[135]

In addition, the Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objective of Section 6(b)(4) of the Act[136] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable in that the forum fee would apply to all Participants equally. The addition of the forum fee will help the Exchange offset costs associated with reviewing contested citations.

Trading on the Exchange Floor

The Exchange believes that the proposed rules governing activity on the Trading Floor, including Trading Floor hours, opening the market, admittance, joint accounts, and dealings on the Trading Floor,[137] are reasonable restrictions that are designed to further the objectives of the Act. Specifically, the proposed rules are designed to maintain order and structure on the Trading Floor and apply to all Floor Participants. Additionally, these rules are based on those of competing options exchanges that also have open-outcry floors.[138]

The Exchange believes the proposal to require each Options Participant that physically conducts a business on the Trading Floor to procure and maintain liability insurance[139] should assist the Exchange in limiting its resources, which can be easily diverted to defending litigation claims and responding to non-Exchange related litigation matters on behalf of its Participants. The proposal is meant to prevent the Exchange from diverting valued resources away from its main regulatory responsibilities and being consumed in litigation designed to siphon Exchange monies and staff. The Exchange notes the proposal to require liability insurance is based on the rules of another exchange.[140]

The Exchange is proposing various rules related to Clerks on the Trading Floor[141] that the Exchange believes are reasonable and further the objectives of the Act. Specifically, the proposal relates to restrictions and conduct of Clerks on the Trading Floor that are designed to maintain order on the Trading Floor. Additionally, the proposal will make clear the rights and responsibilities of Clerks on the Trading Floor. The Exchange notes the proposed rule related to Clerks on the Trading Floor is based on the rule of another exchange.[142]

The Exchange believes the proposed rule relating to disputes on the Trading Floor will provide clarity and direction for the resolution of such disputes.[143] The proposed rule will contribute to the maintenance of a fair and orderly market by clearly laying out the dispute resolution process. Additionally, by first allowing the interested Floor Participants an opportunity to settle the disagreement, the Exchange is providing a reasonable opportunity for the interested parties to reach an equitable agreement. The Exchange believes that allowing an Options Exchange Official to settle disputes is reasonable and is designed to promote just and equitable principles of trade by having an independent third party settle the dispute. The Exchange believes that the dispute resolution process is further strengthened by allowing Floor Participants the ability to appeal an Options Exchange Official's ruling. In addition, the Exchange believes that its proposal is consistent with Section 6(b) of the Act[144] in general, and furthers the objective of Section 6(b)(4) of the Act[145] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable in that the appeal fee would apply to all Participants equally. The addition of the appeal fee will help the Exchange offset costs associated with reviewing contested rulings by an Options Exchange Official.

The Exchange believes it is reasonable to exclude Floor Market Makers and Floor Brokers from Rule 4180 when they do not conduct business with the public.[146] Rule 4180 deals with requirements for Participants that are approved to transact business with the public; therefore the proposed rule is simply clarifying that Rule 4180 will not apply to Floor Market Makers and Floor Brokers who do not conduct business with the Public. The Exchange notes the proposed rule is based on the rule of another exchange.[147]

The Exchange believes that the proposal to allow the Board the authority to fix and impose a charge upon Participants conducting business on the Trading Floor is consistent with the Act. Specifically, the Exchange will

[132] *See* PHLX Rule 620(a) and (b).

[133] *See* proposed Rule 2110.

[134] 15 U.S.C. 78f(b)(6).

[135] *See* PHLX Rule 60.

[136] 15 U.S.C. 78f(b)(4).

[137] *See* proposed Rules 7070(d), 7500, 7510, 7520, and 7650.

[138] *See* PHLX Rules 1017(c), 102, 104, 443, and 772.

[139] *See* proposed Rule 7230(f).

[140] *See* PHLX Rule 652(c)(2).

[141] *See* proposed Rule 7630.

[142] *See* PHLX Rule 1090.

[143] *See* proposed Rule 7640.

[144] 15 U.S.C. 78f(b).

[145] 15 U.S.C. 78f(b)(4).

[146] *See* proposed Rule 4180(g).

[147] *See* PHLX Rule 705(f)(1)(B).

file a separate proposal with the SEC prior to establishing separate fees for Trading Floor based transactions. The Exchange notes that the proposal is based on the rules of another exchange.[148]

The proposal outlining bids and offers made on the Trading Floor and the solicitation of quotations on the Trading Floor[149] provides clarifying information to Floor Participants on how bidding and offering on the Trading Floor will work; therefore, the proposal is designed to protect investors and the public interest by making the proposed operation of the Trading Floor clear in the Exchange's rules. The proposal is based on the rules of another exchange.[150]

Floor Brokers

The Exchange believes that the proposed rules applicable to Floor Brokers,[151] including responsibilities and restrictions, are designed to 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 to protect investors and the public interest. Specifically, the proposed rules will provide guidance and restrictions for Floor Brokers operating on the Trading Floor. The proposed registration requirements for Floor Brokers will protect investors and the public interest by ensuring that all Floor Brokers are registered with the Exchange and that the Exchange approved each Floor Broker before they were admitted to the Trading Floor.

The proposed responsibilities for Floor Brokers[152] are designed to further the goals of the Act. Specifically, the requirement that a Floor Broker use due diligence in handling an order and the requirement to ascertain that, if possible, at least one Floor Market Maker is present when the order is announced on the Trading Floor, are designed to promote just and equitable principles of trade, and, in general to protect investors and the public interest by providing the opportunity for additional interaction and price improvement from any Floor Market Makers. The Exchange believes the various restrictions on Floor Brokers are reasonable and are in line with those on another exchange with an open-outcry floor.[153]

Additionally, the Exchange believes that the proposal to not require a Floor Market Maker to be present in the Crowd Area[154] is consistent with Section 6(b)(5) of the Act, in particular, the requirement is designed to prevent fraudulent and manipulative acts and practices, to 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 to protect investors and the public interest. Specifically, the Exchange believes this proposal will benefit market participants and promote just and equitable principles of trade by allowing Floor Brokers to execute orders even if the Floor Market Maker in a class is absent, thereby increasing execution opportunities for Floor Brokers. Additionally, the Exchange believes the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system by giving Floor Brokers the ability to execute orders on the Trading Floor at all times, thereby benefiting all market participants by providing an additional venue for having their orders executed. Floor Brokers have no control over the schedule of Floor Market Makers, and the Exchange believes a Floor Brokers trading strategy should not be controlled by or dependent upon the presence of the Floor Market Maker. The Exchange notes that even if a Floor Market Maker is not present, any orders executed by Floor Brokers will still have to respect priority interest on the BOX Book, and that all classes listed on BOX must have at least one Market Maker quoting electronically; therefore there will still be electronic quotes in the particular class even if no Floor Market Maker is present. Additionally, the Exchange notes that all orders executed on the Trading Floor must, at the very least, trade at a price equal to or better than the NBBO regardless of whether a Floor Market Maker is present in the Crowd Area when the order is executed. The Exchange believes that the robust electronic quoting of options that will be traded on the Trading Floor eliminates any concerns of not having a Floor Market Maker present when the order is executed by the Floor Broker due to the fact that there are other Market Makers providing electronic quotations. The Exchange also believes that requiring an Options Exchange Official to certify that all orders on the Trading Floor are announced will ensure a Floor Broker is following all required rules related to open outcry even if the Floor Market Maker is not present. Additionally, the Exchange notes that IM–7580–4 will further strengthen the Exchange's ability to ensure that Floor Brokers and Floor Market Makers comply with all applicable rules on the Trading Floor. The Exchange notes that other options exchanges do not require the presence of a Floor Market Maker at the time the Floor Broker is executing the order.[155]

Executions and Priority

The proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder. The Commission has stated various times that it believes transactions executed against interest on the BOX Book are consistent with the requirements of Section 11(a) of the Act, including Section 11(a)(1)(G) thereof and the rules thereunder.[156] QOO Orders executing against interest on the BOX Book, as discussed above, present no novel issues under Section 11(a) and the rules thereunder from a compliance, surveillance or enforcement perspective. However, under the proposed rules, Floor Participants will be required to comply, and are subject to review for compliance, with Section 11(a) and the rules thereunder when executing QOO Orders against bids and offers in the trading crowd in accordance with the priority rules discussed above. For example, if a non-Market Maker Floor Participant is trading for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion and, consistent with the otherwise applicable priority rules, seeks to execute a transaction with the trading crowd at the same price, the Floor Participant must comply with Rule 11a1–1(T) under Section 11(a)(1)(G) of the Act by first announcing that a bid or offer is for its account and then yielding priority to all orders in the trading crowd for the account of non-Participants unless it can qualify for and rely upon another exception to Section 11(a)(1) of the Act. If the Floor Participant cannot rely upon another exception to Section 11(a)(1) of the Act and is unable to determine whether an executable order from the trading crowd at the same price is for the account of a Participant, the Floor Participant must also yield priority to that order. The proposed rule changes would not limit in any way the obligation of a BOX Participant, while acting as a Floor Broker or otherwise, to

[148] *See* PHLX Rule 714.

[149] *See* proposed Rule 7040(d).

[150] *See* PHLX Rule 1033(a).

[151] *See* proposed Rules 7540, 7550, 7570, 7580, and 7590.

[152] *See* proposed Rule 7580.

[153] *See* PHLX Rules 155, 1063 and 1065.

[154] *See* proposed Rule 7580(a).

[155] *See* NYSE Arca, NYSE MKT and CBOE.

[156] *See* Amendment 1 to SR–BOX–2013–43.

comply with Section 11(a) or the rules thereunder.

The Exchange believes that the proposed rules applicable to executions and priority on the Trading Floor [157] are designed to 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 to protect investors and the public interest. As explained above, executions on the Trading Floor will be consistent with options Trade-Through and priority rules and the Exchange's systems are designed to help ensure that an execution on the Trading Floor cannot occur in violation of those rules. Specifically, when a QOO Order is submitted to the BOG for execution, the Exchange's system will evaluate the current market conditions to ensure that the execution price is equal to or better than the NBBO. Additionally, by having the QOO Order execute when it is received by the Trading Host, the Exchange is providing a system that will prevent executions that appear to be at prices that are worse than the NBBO due to the time they are reported.

The Exchange further believes that protecting non-Public Customer interest on the BOX Book that is ranked ahead of Public Customer interest is consistent with just and equitable principles of trade because it maintains the Exchange's existing price/time priority rules by protecting interest that has time priority over Public Customer interest that has priority. The Exchange also notes that this proposed priority interaction with the BOX Book is the same as NYSE Arca.[158] Additionally, the Exchange's proposed interaction with orders on the BOX Book actually provides additional opportunities for orders on the BOX Book to interact with trades on the Trading Floor as compared to other exchanges with open-outcry floors. Specifically, other exchanges with open-outcry floors only require floor trades to yield priority to Public Customer Orders on the electronic book.[159]

The Exchange believes that the proposal to provide a Floor Broker with a guarantee for certain orders executed on the Trading Floor [160] is reasonable and is consistent with the Act. Specifically, the proposal will reward Floor Brokers who bring large orders to the Exchange by guaranteeing them the ability to cross a certain percentage. The Exchange notes that another options exchange provides a guarantee on their trading floor.[161] Additionally, the Exchange currently provides a guarantee with respect to auction transactions executed on the Exchange.[162]

The Exchange believes that the proposed priority provisions for Complex Orders executed on the Trading Floor are reasonable because it aligns the Exchange's Rules for Complex Orders executed on the Trading Floor with that of other exchanges with open-outcry floors.[163] Specifically, the Exchange will allow Complex Orders executed on the Trading Floor to execute without giving priority to equivalent bids (offers) in the individual series legs, provided at least one options leg betters the corresponding Public Customer bid (offer) in the BOX Book by at least $0.01.[164] BOX believes this is consistent with the Act because it is providing at least one leg with an improved price compared to Public Customer orders on the BOX Book. Additionally, the Exchange notes that these Complex Orders executed on trading floors can be large and complex and the proposed treatment of Complex Orders on the Trading Floor will increase the ability for Floor Brokers to execute these complex trades to the benefit of market participants. The Exchange believes that allowing Floor Brokers to disable the current Complex Order Filter on orders executed on the Trading Floor is reasonable because other exchanges do not have NBBO protection for complex orders.[165]

BOX believes the adoption of split price priority rules [166] is consistent with the Act. In particular, the proposed rules are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system because the purpose of split price priority is to induce Floor Participants to bid (offer) at better prices for an order that may require execution at multiple prices (such as large orders), which will result in a better average price for the originating Participant (or its customer).

The Exchange believes that the BOG [167] will further the objectives and goals of the Act. Specifically, the ability of the BOG to provide an electronic audit trail will help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanisms of a free and open market and a national market system. All transactions on the Trading Floor must be processed through the BOG, which will allow the Exchange to provide a complete and accurate audit trail and minimize the occurrences of disputes and regulatory violations. The BOG is designed to minimize Trade-Through violations by preventing an execution at a price worse than the NBBO.

The Exchange believes that requiring that all transactions on the Trading Floor must be executed through the BOG will increase the speed and efficiency in which Floor Brokers handle orders, thereby making the Exchange's market more efficient, to the benefit of the investing public and consistent with promoting just and equitable principles of trade.

The Exchange believes that the proposal to adopt a new order type [168] for all executions on the Trading Floor is consistent with the Act. Specifically, as mentioned above, the new order type will help Floor Brokers executing orders on the Trading Floor. The various elements of the QOO Order are designed to aid Floor Brokers in their duties on the Trading Floor. For example, by having the QOO Order execute when submitted to the BOG, the Exchange is providing an accurate timestamp of when the order was actually executed by the Floor Broker and not just when it is submitted. Additionally, the QOO Order and the BOG are designed to ensure that all orders executed on the Trading Floor by Floor Brokers are systematized before they are represented to the trading crowd.[169] The Exchange believes that the features of the QOO Order are designed to promote just and equitable principles of trade, to remove impediments to and protect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the book sweep size in proposed Rule 7600(h) is consistent with Section 6(b)(5) of the

[157] *See* proposed Rules 7600, 7610, and 7620.

[158] *See* NYSE Arca Rule 6.47 and 6.75.

[159] *See* PHLX Rule 1014.05(c), CBOE Rule 6.45(a) and NYSE MKT Rule 963NY(a).

[160] *See* proposed Rule 7600(f).

[161] *See* PHLX Rule 1064.02.

[162] *See* Rule 7150 Price Improvement Period.

[163] *See* NYSE Arca Rule 6.75(g).

[164] *See* proposed Rule 7610(e).

[165] *See* ISE Rule 722(b)(3).

[166] *See* proposed Rule 7610(f).

[167] *See* proposed Rule 100(b)(2).

[168] *See* proposed Rule 7600.

[169] In order to execute a QOO Order on the Trading Floor, it must be sent from a Floor Broker's system to the BOG. This requires that the Floor Broker adequately systemized the QOO Order. The Exchange also notes that Floor Brokers will be subject to regulatory oversight by the Exchange to review whether Floor Brokers are properly systematizing orders.

Act.[170] In particular, the book sweep size promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general protects investors and the public interest by increasing the interaction of the Trading Floor with the BOX Book, which will be beneficial to all market participants. Specifically, the Exchange believes that the book sweep functionality will enhance execution efficiency and regulatory oversight on the Trading Floor by making certain that a Floor Broker's order will first trade with all available Public Customer interest on the BOX Book. The Exchange believes that without the book sweep size, the Exchange Act's goal of creating an efficient market system will not be supported, as a Floor Broker may attempt to execute an order without first exhausting priority interest. Instead, the proposed book sweep size removes impediments to and perfects the mechanism of a free and open market and a national market system by providing an alternative that will increase the opportunity for orders on the Trading Floor to interact with interest on the BOX Book, which in turn has the potential to increase liquidity for all orders on the BOX Book. The Exchange notes that this approach is not entirely novel; as mentioned above, PHLX's FBMS contains a functionality that will help a Floor Broker clear PHLX's electronic book so a floor based order can execute.[171] Specifically, if a Floor Broker on PHLX enters a two-sided order through the FBMS, and there is interest on the PHLX electronic book at a price that would prevent the Floor Broker's order from executing, the FBMS will provide the Floor Broker with the quantity of contracts on the electronic book that have priority and need to be satisfied before the Floor Broker's order can execute at the agreed upon price.[172] If the Floor Broker wishes to still execute his order, he can cause a portion of the floor based order to trade against this priority interest on the electronic book, thereby clearing the interest and permitting the remainder of the Floor Broker's order to trade at the desired price. The PHLX FBMS functionality is optional, and a Floor Broker can decide not to trade against the electronic book and therefore not execute his two-sided order at the particular price. The Exchange believes that the Trading Floor book sweep size improves upon PHLX's FBMS functionality by either immediately executing or rejecting the order depending on the book sweep size provided and the level of priority interest on the BOX Book. The Exchange believes the immediate execute or reject feature will allow for more execution certainty and incentivize Floor Brokers on BOX to provide an adequate book sweep size if they want the order to be eligible for execution. The Exchange believes that the proposed book sweep size will protect investors and the public interest generally by establishing more execution oversight. Specifically, the Exchange believes that the book sweep size will allow BOX to electronically link in a single audit trail the Floor Broker execution and any execution with interest on the BOX Book.

Communications and Equipment

The Exchange believes the proposed rule involving communications and equipment on the Trading Floor[173] includes reasonable restrictions that are consistent with the requirements of the Act. Specifically, the proposed rule will provide the Exchange with the ability to monitor equipment on the Trading Floor and therefore provide adequate oversight of the Trading Floor. Additionally, the proposal will allow the Exchange to limit use of a communication device when such device interferes with normal operation of the Exchange's own systems or facilities or with the Exchange's regulatory duties, is inconsistent with the public interest, the protection of investors or just and equitable principles of trade, or interferes with the obligations of a Participant to fulfill its duties under, or is used to facilitate any violation of the Act or rules thereunder, or Exchange rules. Additionally, the Exchange notes that the proposal is consistent with rules of other exchanges.[174]

Market Makers

The Exchange believes that the proposed Rules applicable to Floor Market Makers[175] are reasonable and will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes the proposed changes enhance the Exchange's ability to fairly and efficiently regulate its Floor Market Makers by utilizing a consistent rule set of obligations and restrictions. The Exchange believes the proposed changes reflect similar Market Maker obligations and restrictions already in place on BOX's electronic exchange.[176] The proposed changes simply align the existent obligations and restrictions of Market Makers with the use of a trading floor with certain exceptions. Specifically, instead of providing $5 bid/ask differentials as provided in Rule 8040(a)(7), the Exchange is proposing stricter bid/ask differentials. The Exchange believes that the proposed bid/ask differentials for Floor Market Makers are reasonable and will protect investors and the public interest by providing the opportunity for better execution prices on the Trading Floor when a Floor Market Maker is involved. Additionally, the Exchange believes that the proposed changes fall in line with similar trading floor rules at other exchanges.[177]

The Exchange believes that the proposed electronic quoting requirements for Floor Market Makers in proposed Rule 8510(c)(1) are consistent with Section 6(b)(5) of the Act, in particular, the electronic quoting requirements are designed to 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 to protect investors and the public interest. Specifically, the Exchange believes that the electronic quoting requirements for Floor Maker Makers will benefit investors, the national market system, Participants, and the Exchange by ensuring the liquidity directed toward BOX's electronic marketplace does not decrease with the launch of BOX's Trading Floor. Instead, Options Participants wishing to register as Floor Market Makers will also be required to register as a Market Maker on BOX's electronic book, with the same electronic quoting obligations as Market Makers on BOX who only quote electronically. Further, the Exchange believes the electronic quoting requirements will protect investors and the public interests by ensuring that robust quoting on BOX electronic book continues, which may lead to increased liquidity, tighter spreads and better executions with lower execution costs, which will benefit all market participants. The Exchange also believes that the proposed electronic quoting requirements are reasonable as they are

[170] 15 U.S.C. 78(f)(b)(5).

[171] *See* PHLX Rule 1063(e)(iv).

[172] *See* Securities Exchange Act Release No. 68960 (February 20, 2013), 78 FR 13132 (February 26, 2013) (SR– Phlx–2013–09) at 13134.

[173] *See* proposed Rule 7660.

[174] *See* PHLX Rule 606 and CBOE Rule 6.23.

[175] *See* proposed Rules 8500 and 8510.

[176] *See* BOX Rules 8000, 8030, 8040, and 8050.

[177] *See* PHLX Rules 1020 and 1014.

already in place on BOX's electronic book, as well as non-discriminatory because they will uniformly apply to all BOX Market Makers, both floor and electronic.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other exchanges currently offer open-outcry floors. The Exchange believes that the proposed rules will allow the Exchange to compete with these other exchanges. Additionally, while the proposed rule changes would permit BOX to operate a Trading Floor, the Exchange is not requiring that Participants register and have a presence on the Trading Floor. Therefore, the proposed rule changes do not impose a burden on intra-market competition.

Overall, the proposal is pro-competitive for several reasons. In particular, by helping Floor Brokers at the Exchange compete for executions against floor brokers at other exchanges, it also helps them to be more efficient and provide a better audit trail of their executions on the Trading Floor. This, in turn, helps the Exchange compete against other exchanges in a deeply competitive landscape. The Exchange believes its proposed unique features for open-outcry trading will provide value to Floor Participants, which in turn, will help the Exchange compete.[178]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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–BOX–2016–48 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–BOX–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–48 and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[179]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29042 Filed 12–2–16; 8:45 am]

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[178] Unique features include proposed Rules 7600(h) and 8510(c)(1).

[179] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79428; File No. SR–NASDAQ–2016–161]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New Extended Life Priority Order Attribute Under Rule 4703, and To Make Related Changes to Rules 4702, 4752, 4753, 4754, and 4757

November 30, 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 November 17, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Extended Life Priority Order Attribute under Rule 4703, and to make related changes to Rules 4702, 4752, 4753, 4754, and 4757.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing a new Extended Life Priority Order Attribute, which will allow Displayed Orders that are committed to a one-second or longer resting period to receive higher priority than other Displayed Orders of the same price on the Nasdaq Book. From its inception, Nasdaq has been an innovator and change agent in the financial markets. Innovation is in Nasdaq's DNA, beginning with the development of electronic trading and continuing today as we seek to bring new ideas to the financial markets, such as streamlined proxy voting using blockchain technology,[3] strengthening investor protection through Limit Order Protection,[4] and enhancing investor confidence in the Opening Cross.[5] Nasdaq has not shied away from experimenting with new market structure in an effort to further refine our markets.[6] The change proposed herein is another step forward in a long line of innovations Nasdaq has brought to the U.S. financial markets.

Background

As the markets became more automated in the 1990s and 2000s, and in particular since the implementation of the Regulation NMS Order Protection Rule (Rule 611) and the Access Rule (Rule 610) beginning in 2006,[7] exchanges have generally based their execution algorithms on a price/display/time priority. Under this priority structure, the first displayed order at a price has priority over the next order and so on (this is also sometimes referred to as ''First In First Out'' or ''FIFO''). All displayed orders have priority over non-displayed orders at a price level. The price/display/time priority structure has brought with it many benefits:

- Competition has increased
- Bid/Offer spreads have decreased
- Trading costs have decreased
- Access to the markets has been democratized

Nonetheless, the price/display/time priority system may not serve the interests of all market participants. In particular, the price/display/time priority system provides incentives to set new prices and optimize trading strategies based on the time priority in an order book. Increasing competition in the price/time priority structure has led to market velocity and displayed order duration becoming widely discussed and debated topics in recent years. Over time, as order placement competition on Nasdaq has grown, the importance of an order's ranking in the order queue has increased. In addition, orders that access resting liquidity on exchanges have decreased in size due to the fragmented nature of the broader market and the adoption of algorithmic trading and routing strategies. As a result, when these smaller orders come to an exchange to access liquidity in the most liquid securities, there are orders deep in the queue that may not always have the opportunity to participate.

As an innovator, Nasdaq develops new functionality to promote the evolution of the markets. Nasdaq believes that it is imperative to address the needs of various market participants in new ways. Specifically, Nasdaq is proposing to supplement the ubiquitous price/display/time priority structure in the U.S. Equities markets to address the needs of market participants that focus their passive trading strategies on their ability to assume market risk by resting orders for an extended duration. Nasdaq believes that many of these participants have a longer investment horizon (*i.e.,* long term investors) and therefore are not necessarily monitoring minute changes in the best bid and offer over very short time periods and simply want opportunities to participate passively at the prevailing market when transactions occur. Nasdaq has consulted a wide swath of its market participants, including buy-side institutions, market makers, investment banks, and retail broker-dealers. In addition, Nasdaq has consulted with corporate issuers that list their securities on Nasdaq. Nasdaq has weighed various ideas on how to expand interaction on Nasdaq's order book to more participants (*e.g.,* long term investors) and believes that it is better to provide incentives to reduce the potential for order adjustment and cancellation, rather than apply artificial latency mechanisms that may distort or have unintended consequences on market quality. Specifically, Nasdaq is proposing to provide an incentive to market participants that enter orders that are required to remain unaltered on the Nasdaq Book for a minimum time.

Proposal

Nasdaq is proposing to offer a new Order Attribute[8] that will allow certain Displayed Orders[9] to have priority ahead of other resting Displayed Orders on the Nasdaq Book at the same price. To receive this priority, an Order must be designated with the Order Attribute ''Extended Life Priority'' (''ELO'') to indicate that the Order will not be altered or canceled by the member before the minimum resting time has elapsed.

Currently, Nasdaq's System[10] places a time-stamp on each Order entered by a member, which determines the time ranking of the Order for purposes of processing the Order.[11] The System presents resting Orders on the Nasdaq Book for execution against incoming Orders in accordance with a price/display/time algorithm.[12] Price means that better priced Orders will be presented for execution first. For example, an order to buy at $10.00 would be ranked before an order to buy at $9.99. Display and Time mean that equally priced Orders with a Display

[3] *See http://ir.nasdaq.com/releasedetail.cfm?releaseid=954654; see also http://www.pcworld.com/article/3033075/nasdaq-to-use-blockchain-to-record-shareholder-votes.html.*

[4] *See* Securities Exchange Act Release No. 78246 [sic] (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–NASDAQ–2016–067).

[5] *See* Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR–NASDAQ–2015–159).

[6] For example, in February 2015 Nasdaq implemented an access fee pilot to determine the effect of reduced access fees on market quality. *See* Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015) (SR–NASDAQ–2014–128).

[7] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006); *see also* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

[8] The term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. *See* Rule 4701(e). An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *Id.* An ''Order Attribute'' is a is a [sic] further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *Id.* The Exchange describes the Order Types available on Nasdaq under Rule 4702 and describes the Order Attributes available on Nasdaq under Rule 4703.

[9] Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as ''Non-Displayed Orders.'' An Order with a Display Order Attribute may be referred to as a ''Displayed Order.'' *See* Rule 4703(k).

[10] As defined by Rule 4701(a).

[11] *See* Rule 4756(a)(2).

[12] *See* Rule 4757. The Exchange is proposing to amend Rule 4757 to reflect the proposed exception to the price/display/time algorithm, as discussed below.

Attribute will be ranked in time priority. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, are ranked in time priority behind all Displayed Orders.[13] Processing Orders in this manner rewards market participants that take market risk by quickly and efficiently submitting Displayed Orders to the System to drive price formation on the Nasdaq Book. Price/display/time processing benefits the market by driving competition in Order flow, resulting in tighter bid/offer spreads and reducing overall costs to buy and sell securities. While this drive to reward setting new price levels (*i.e.,* being first at a given price) has led to highly efficient markets with significant volume on Nasdaq being attributed to firms that provide two-sided liquidity, pure price/display/time processing may limit certain customer segments from effectively participating, particularly in highly-liquid securities where the sequence of the arrival of Orders is important to participation in the ensuing transactions on the Nasdaq Book.

The Exchange has observed that many of the market participants that have not focused on efficient Order queue placement of Displayed Order entry often represent retail customer and institutional Order flow, which tend to have longer investment time horizons. Nasdaq believes that promoting Displayed Orders with longer time horizons will enhance the market so that it works for a wider array of market participants, and will benefit publicly traded companies by promoting long-term investment in corporate securities, whether listed on Nasdaq or other exchanges. To further this goal, the Exchange is proposing an exception to the general priority rules[14] to allow Displayed Orders with an Extended Life Priority Attribute to earn queue priority on the Nasdaq Book at any given price level ahead of all other Displayed Orders without the Extended Life Priority Attribute. As discussed below, when there are multiple Orders with Extended Life Priority resting on the Nasdaq Book at the same price they would be ranked by time, therefore making the priority price/display/*ELO*/time.

Another component to consider with regards to the optimal priority structure is the risk associated with submitting a Displayed Order into the market. There are various elements of risk that are considered when a market participant chooses a price and a time at which to post a Displayed Order on the Nasdaq Book. As noted earlier, price/display/time priority does not necessarily reward or recognize the various types of risks associated with an Order. Nasdaq believes that rewarding market participants that enter Displayed Orders and commit to a longer resting time on the Nasdaq Book, would enable it to broaden the types of behavior and incentives provided, in particular in securities in which the depth of the Nasdaq Book may inhibit these Orders from being placed on Nasdaq. As noted above, these market participants are typically considered long term investors, representing retail and institutional order flow.

In its initial implementation, Nasdaq plans to support the Extended Life Priority Attribute for Designated Retail Orders.[15] While the Extended Life Priority Attribute may ultimately prove to benefit a broader set of participants, Nasdaq recognizes that any change of this magnitude can be disruptive to its membership and, consequently, it is prudent to implement this concept in a phased and measured manner. Generally, retail investors are longer term investors who measure stock performance over hours, days, months, *etc.* rather than seconds or milliseconds. Nasdaq recognizes that there are other market participants that are also long term investors in the market, such as institutional investors. To ensure that these market participants' needs are addressed, Nasdaq anticipates that it will extend the program to all Orders that meet the requirements of the Extended Life Priority Attribute after its successful implementation with Designated Retail Orders. During the initial retail phase, to be eligible to use the Extended Life Priority Attribute, a member must complete an attestation provided by Nasdaq, stating that the Designated Retail Orders it assigns an Extended Life Priority Attribute will meet the minimum performance standards required by Nasdaq. Nasdaq will determine from time to time what the appropriate parameters are with regards to how firms may qualify for the Extended Life Attribute on Designated Retail Orders. Initially, Nasdaq will require that at least 99% of Designated Retail Orders with the Extended Life Priority Attribute exist unaltered on the Nasdaq Book for a minimum of one second.[16] Nasdaq will require any member that enters Designated Retail Order with an Extended Life Priority Attribute to attest that it will comply with the minimum performance standards required by Nasdaq under the proposed new Rule 4703(m) to be eligible to enter Designated Retail Orders with an Extended Life Priority Attribute.

Nasdaq will carefully monitor members' use of the Extended Life Priority Attribute on a quarter-by-quarter basis and will not rely solely on a member's attestation with regard to Extended Life Priority usage. Nasdaq will determine whether a member was in compliance with the eligibility requirements for a given quarter within five business days of the end of that quarter. Any member that has not met the requirements in a quarter will be ineligible to receive Extended Life Priority treatment for its Orders in the quarter immediately following the quarter in which it did not comply.[17] Following an ineligible quarter, a member may once again participate in the program if it completes a new attestation for the following quarter. If a member fails to meet the eligibility standards a second time, its Orders will not be eligible for Extended Life Priority for the two quarters immediately following the quarter in which it did not meet the eligibility requirements for the second time. If a member fails to meet the eligibility standards for a third time, it is no longer eligible to receive Extended Life Priority for its Orders.

To implement the retail phase of the Extended Life Priority Attribute, Nasdaq is developing a unique identifier that

[13] Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757. *See* Rule 4756(c)(3)(C).

[14] *Supra* note 12.

[15] A ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a ''natural person'' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as ''Designated Retail Orders'' comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. *See* Rule 7018. The proposed change will not affect how Orders entered by sponsored access are treated for purposes of determining whether they are Designated Retail Orders.

[16] Note that executions would not be counted as modifications.

[17] The System will prevent a member that is not eligible to participate in the program from entering Orders that are flagged with Extended Life Priority (including such designation on the port level).

will be appended to each Order entered by the member. Orders with the Extended Life Priority Attribute may be individually designated with the new identifier or entered through an Order port that has been set to designate, by default, all Orders with the new identifier. Orders marked with the new identifier—whether on an order-by-order basis or via a designated port—will be disseminated via Nasdaq's TotalView ITCH data feed.[18] Thus, market participants will be able to identify Designated Retail Orders that have the Extended Life Priority Attribute.

As noted above, if an Order with Extended Life Priority is not marketable upon entry, the Order will post and display at its limit price, and will be ranked under the price/display/ELO/time priority structure. In other words, an Order with the Extended Life Priority Attribute will be ranked ahead of other Displayed Orders that do not have the Extended Life Priority attribute and behind any other Displayed Orders with Extended Life Priority that were received previously. For example, if five members attest to enter Orders designated with the Extended Life Priority Attribute and each member enters a Displayed Order so designated at the same price, the Order entered first will receive the highest priority among the five, the second Order will be ranked second, and so on; all Displayed Orders entered at the same price and not designated with the Extended Life Priority Attribute will be ranked behind the five Orders designated with the Extended Life Priority Attribute.

There are three instances in which an Order entered with the Extended Life Priority Attribute will not gain ELO priority. First, an Order with the Extended Life Priority Attribute will only have Extended Life Priority ranking at its displayed price. If an Order with the Extended Life Priority Attribute is ranked at a Non-Displayed price, it will be ranked without Extended Life Priority among Non-Displayed Orders. For example, if a Price to Comply Order[19] with an Extended Life Priority Attribute to buy at $11 would lock a Protected Offer of $11, the Price to Comply Order will be displayed at $10.99, but ranked at a non-displayed price of $11 without Extended Life Priority. If the Best Offer changes to $11.01, the Price to Comply Order would be ranked and displayed at $11 with Extended Life Priority.

Second, a Designated Retail Order with a Non-Display Attribute that is also entered with Extended Life Priority will be added to the Nasdaq Book as a Non-Display Order without Extended Life Priority, following price/display/time processing among resting Orders without Extended Life Priority.

Third, while cross-specific Orders marked with Extended Life Priority will be eligible to participate in the Nasdaq Opening,[20] Closing[21] and Halt[22] Crosses, they will be ranked without Extended Life Priority.[23] Orders with the Extended Life Priority Attribute that are ranked on the Nasdaq Order Book (*i.e.,* orders that are in the continuous market) will retain Extended Life Priority if they are part of the Cross execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposed change is consistent with this provision of the Act because it is an attempt to improve the quality of the market by rewarding market participants for longer-life Order flow. Importantly, Nasdaq is not applying any programmatic or intentional delay to incoming Orders that are attempting to access the market. Instead, Nasdaq's proposal seeks to provide an incentive to market participants to improve the market on Nasdaq by recognizing the value of certain behaviors. Nasdaq currently provides incentives in the form of reduced fees and rebates in return for market-improving behavior. For example, Nasdaq's NBBO Program provides pricing incentives for participants that, among other things, establish the NBBO.[26] With Extended Life Priority, Nasdaq is providing members an opportunity to gain priority at any particular price level in return for providing market-improving behavior in the form of longer-lived displayed quote. As discussed above, a great deal of the liquidity that is provided on exchanges is from market makers and automated liquidity providers, who have invested in technology and efficiency, which has resulted in many positive developments such as deep and liquid markets. The proposed Extended Life Priority Attribute has the potential to attract a more diverse set of liquidity providers with a longer term focus on investing and trading.

Nasdaq believes that requiring Designated Retail Orders to exist on the Nasdaq Book unaltered for at least one second is a meaningful time, representing a significant level of risk taken by the market participant in return for the priority in the Nasdaq Book. In addition, Nasdaq is initially requiring members to attest that at least 99% of the Designated Retail Orders submitted with Extended Life Priority exist on the Nasdaq Book unaltered for at least one second.[27] As discussed above, Nasdaq will review Orders from members marked as Designated Retail Orders with the Extended Life Priority Attribute for compliance on a quarterly basis. Eligibility for a given quarter will be based on the previous quarter's analysis. Within five business days of the end of a given quarter, Nasdaq will determine whether a participant has met the eligibility requirements. If a member's Orders do not qualify, it will not be eligible for Extended Life Priority for the quarter immediately following the quarter in which it did not meet the eligibility requirements. Following an ineligible quarter a member may once again participate in the program if it completes a new attestation. If a member is determined to have not met the eligibility standards a second time, it will not be eligible for Extended Life Priority for the two quarters immediately following the quarter in which it did not meet the eligibility requirements for the second time. If a member is determined to have not met the eligibility standards for a third time, it is no longer eligible to participate in the program. Thus, Nasdaq believes that the attestation process coupled with rigorous quarterly monitoring and increasing periods of ineligibility for repeated non-compliance with the eligibility standards will serve to dissuade any member from abusing the attestation process, thereby protecting investors and the public interest.[28]

[18] *See http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2* for a description of TotalView ITCH.

[19] *See* Rule 4702(b)(1).

[20] *See* Rule 4752.

[21] *See* Rule 4754.

[22] *See* Rule 4753.

[23] These are Orders that are designated to participate in the Opening or Closing Cross, and are not available for execution in continuous trading.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Rule 7014(g).

[27] Nasdaq will periodically assess the effectiveness of the eligibility criteria, and make any changes to the criteria through rulemaking.

[28] Nasdaq notes that members entering Orders with Extended Life Priority are subject to regulatory

Continued

Nasdaq believes that, if successful, the proposed change may bring greater stability to the Displayed quote and increase Displayed size on Nasdaq. Thus, Nasdaq believes that the Extended Life Priority Attribute is good for market structure because it may provide incentive to market participants that are long-term investors and may diversify Order interaction on Nasdaq, thereby enhancing price discovery and market resiliency.

Although the proposed change is novel in U.S. equity markets, certain U.S. options markets currently grant preference in their order books for customer orders.[29] On the NASDAQ PHLX options market, priority in the order book is given to Orders entered for a customer account over a controlled account. A controlled account includes any account controlled by or under common control with a broker-dealer, and customer accounts are all other accounts.[30] Moreover, the concept of rewarding market participants that provide Orders that live for a certain minimum time is currently used in Canada by the Toronto Stock Exchange. Named the ''Long Life'' order type, it is designed to enhance the quality of execution for natural investors and their dealers by rewarding those willing to commit liquidity to the book for a minimum period of time and by enabling participants to gain priority in return for a longer resting time.[31] The Exchange is proposing to initially limit the proposed change to Designated Retail Orders. Nasdaq believes that the retail customers represented by such Orders have the potential to immediately and with minimal technological effort, benefit from the proposed change. Moreover, Nasdaq believes that implementing the change incrementally will reduce risk, ensure that market participants are allowed adequate time to adjust to the new Order Attribute, and provide Nasdaq with useful data with which it can further improve the proposed Order Attribute.

For these reasons Nasdaq believes that the proposed Extended Life Order further perfects the mechanism of a free and open market, promotes competition, broadens participation in the market, considers the cost/benefit of implementation and provides market participants with incentive to provide market-improving Order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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. Rather, Nasdaq believes that the proposed change increases competition among market participants because it allows certain market participants to compete based on elements other than the sequence of order arrival. Specifically, the proposed change will allow market participants that have not invested in limit order queue placement but rather take risk by allowing an Order to rest on the Nasdaq Book unchanged for a certain duration to gain priority in the Nasdaq Book. Although market participants that do not submit Orders that qualify as Extended Life Orders may lose priority to Extended Life Orders on the Nasdaq Book, any burden arising therefrom is necessary to further refine the market to serve a broader group of market participants. In particular, Nasdaq believes Extended Life Priority will incentivize behavior from participants that currently, may struggle to participate and are willing to provide market-improving Order flow, which benefits all market participants. Moreover, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if they deem participation in Nasdaq's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting retail Order flow, Nasdaq also believes that the proposed change will promote competition among trading venues by making Nasdaq a more attractive trading venue for long-term investors and therefore capital formation.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period 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 such 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–NASDAQ–2016–161 on the subject line.

Paper comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–161. 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

review and inspection, including a review of their procedures and processes for compliance with Extended Life Priority eligibility.

[29] *See, e.g.,* PHLX Rule 1014(g)(vii)(B) (providing that quotations entered electronically by the specialist, an RSQT or an SQT that do not cause an order resting on the limit order book to become due for execution may be matched at any time by quotations entered electronically by the specialist and/or other SQTs and RSQTs, and by ROT limit orders and shall be deemed to be on parity, subject to the requirement that orders of controlled accounts must yield priority to customer orders as set forth in Rule 1014(g)(i)(A)).

[30] *See* PHLX Rule 1014(g)(i)(A).

[31] *See https://www.tmx.com/newsroom/press-releases?id=352; see also http://www.osc.gov.on.ca/documents/en/Marketplaces/xxr-tsx_20150818_amd-rule-book-policies.pdf* (Notice of Approval).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–161 and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–29116 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

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:

Rule 12h–1(f); SEC File No. 270–570; OMB Control No. 3235–0632.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 12h–1(f) (17 CFR 240.12h–1(f)) under the Securities Exchange Act of 1934 (''Exchange Act'') provides an exemption from the Exchange Act Section 12(g) registration requirements for compensatory employee stock options of issuers that are not required to file periodic reports under the Exchange Act. The information required under Exchange Act Rule 12h–1 is not filed with the Commission. Exchange Act Rule 12h–1(f) permits issuers to provide the required information to the option holders either by: (i) Physical or electronic delivery of the information; or (ii) written notice to the option holders of the availability of the information on a password-protected Internet site. We estimate that it takes approximately 2 burden hours per response to prepare and provide the information required under Rule 12h–1(f) and it is prepared and provided by approximately 40 respondents. We estimate that 25% of the 2 hours per response (0.5 hours per response) is prepared by the company for a total annual reporting burden of 20 hours (0.5 hours per response × 40 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 23, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29088 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79425; File No. SR–Phlx–2016–115]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

November 29, 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 November 16, 2016, NASDAQ 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1034 (Minimum Increments),[3] to extend through June 30, 2017 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.[4]

Proposed new language is *italicized* and proposed deleted language is [bracketed].

* * * * *

NASDAQ PHLX Rules

Options Rules

* * * * *

Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire [December 31, 2016] *June 30, 2017* or the date of permanent approval, if earlier (the ''pilot''), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher, except that options overlying the PowerShares QQQ Trust (''QQQQ''), SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM'') shall be quoted and traded in minimum

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to rules refer to rules of Phlx, unless otherwise noted.

[4] The Penny Pilot was established in January 2007 and was last extended in 2016. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74); 75286 (June 24, 2015), 80 FR 37333 (June 30, 2015) (SR–Phlx–2015–54) (notice of filing and approval order establishing Penny Pilot); and 78060 (June 14, 2016), 81 FR 39979 (June 20, 2016) (SR–Phlx–2016–47) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following [July 1, 2016] *January 1, 2017.*

(C) No Change.

(ii)–(v) No Change.

* * * * *

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 this filing is to amend Phlx Rule 1034 to extend the Penny Pilot through June 30, 2017 or the date of permanent approval, if earlier,[5] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2016.

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2017 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2017. The replacement issues will be selected based on trading activity in the previous six months.[6]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2017 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following January 1, 2017, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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[9] and

[5] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[6] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site. Penny Pilot replacement issues will be selected based on trading activity in the previous six months, as is the case today. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the January replacement, trading volume from May 30, 2016 through November 30, 2016 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* December) would not be used for purposes of the six-month analysis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–115 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–2016–115. 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–2016–115 and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29046 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 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.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; 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 BD–N/Rule 15b11–1; SEC File No. 270–498, OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15b11–1 (17 CFR 240.15b11–1) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15b11–1 provides that a broker or dealer may register by notice pursuant to section 15(b)(11)(A) of the Exchange Act (15 U.S.C. 78*o*(b)(11)(A)) if it: (1) Is registered with the Commodity Futures Trading Commission as a futures commission merchant or an introducing broker, as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, *et seq.*); (2) is a member of the National Futures Association or another national securities association registered under section 15A(k) of the Exchange Act (15 U.S.C. 78*o*–3(k)); and (3) is not required to register as a broker or dealer in connection with transactions in securities other than security futures products. The rule also requires a broker or dealer registering by notice to do so by filing Form BD–N (17 CFR 249.501b) in accordance with the instructions to the form. In addition, the rule provides that if the information provided by filing the form is or becomes inaccurate for any reason, the broker or dealer shall promptly file an amendment on the form correcting such information.

The Commission staff estimates that the total annual reporting burden associated with Rule 15b11–1 and Form BD–N is approximately three hours, based on an average of two initial notice registrations per year that each take approximately 30 minutes to complete, for one hour, plus an average of nine amendments per year that each take approximately fifteen minutes to complete, for 2.25 hours, rounded down to two hours, for a total of three hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: 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.*

Dated: November 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29089 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17–1, SEC File No. 270–505, OMB Control No. 3235–0562

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the ''Act'') prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d–1 (17 CFR 270.17d–1) prohibits an affiliated person of or principal underwriter for any fund (a ''first-tier affiliate''), or any affiliated person of such person or underwriter (a ''second-tier affiliate''), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement ''an application regarding [the transaction] has been filed with the Commission and has been granted by an order.'' In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d–1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with ''portfolio affiliates'' (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (*e.g.,* the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a ''financial interest'' in a party to the transaction. The rule excludes from the definition of ''financial interest'' any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d–1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d–1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d–1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 18 funds file applications under section 17(d) and rule 17d–1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d–1's application process to be 2772 hours at a cost of $1,113,228.[1] The Commission, therefore, requests authorization to increase the inventory of total burden hours per year for all funds under rule 17d–1 from the current authorized burden of 2002 hours to 2772 hours. The increase is due to an increase in the number of funds that filed applications for exemptions under rule 17d–1.

As noted above, the Commission staff understands that funds that file an application under rule 17d–1 generally use outside counsel to assist in preparing the application. The staff estimates that, on average, funds spend an additional $93,131 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d–1 is $1,676,358.[2]

We estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d–1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 2772 hours and the total annual cost burden is estimated to be $1,676,358.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not

[1] The Commission staff estimates that a senior executive, such as the fund's chief compliance officer, will spend an average of 62 hours and a mid-level compliance attorney will spend an average of 92 hours to comply with this collection of information: 62 hours + 92 hours = 154 hours. 18 funds × 154 burden hours = 2772 burden hours. The Commission staff estimate that the chief compliance officer is paid $493 per hour and the compliance attorney is paid $340 per hour. ($493 per hour × 62 hours) + ($340 per hour × 92 hours) = $61,846 per fund. $61,846 × 18 funds = $1,113,228. The $493 and $340 per hour figures are based on salary information compiled by SIFMA's *Management & Professional Earnings in the Securities Industry, 2013.* The Commission staff has modified SIFMA's information to account for an 1800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[2] The estimate is based on the following calculation: $93,131 × 18 funds = $1,676,358.

required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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.*

Dated: November 22, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29090 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

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:

Regulation 12B, SEC File No. 270–70, OMB Control No. 3235–0062

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation 12B (17 CFR 240.12b–1 through 12b–37) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') includes rules governing the registration and periodic reporting under Sections 12(b), 12(g), 13, and 15(d) (15 U.S.C. 78l(b), 78l(g), 78m and 78o(d)) of the Exchange Act. The purpose of the regulation is set forth guidelines for the uniform preparation of Exchange Act registration statement and reports. All information is provided to the public for review. The information required is filed on occasion and it is mandatory. Regulation 12B is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 23, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29086 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

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 15F, SEC File No. 270–559, OMB Control No. 3235–0621

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 15F (17 CFR 249.324) is filed by a foreign private issuer when terminating its Exchange Act reporting obligations pursuant to Exchange Act Rule 12h–6 (17 CFR 240.12h–6). Form 15F requires a foreign private issuer to disclose information that helps investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assists the Commission staff in determining whether the filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h–6. Rule 12h–6 provides a process for a foreign private issuer to exit the Exchange Act registration and reporting regime when there is relatively little U.S. investor interest in its securities. Rule 12h–6 is intended to remove a disincentive for foreign private issuers to register their securities with the Commission by lessening concerns that the Exchange Act registration and reporting system would be difficult to exit once an issuer enters it. The information provided to the Commission is mandatory and all information is made available to the public upon request. We estimate that Form 15F takes approximately 30 hours to prepare and is filed by approximately 30 foreign private issuers. We estimate that 25% of the 30 hours per response (7.5 hours per response) is prepared by the filer for a total annual reporting burden of 225 hours (7.5 hours per response × 30 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 23, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29084 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17a–10, SEC File No. 270–507, OMB Control No. 3235–0563

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'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser [3] of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[4] Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers. Rule 17a–10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisers relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[5]

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a–10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[6] However, the staff assumes that all newly formed subadvised funds, and funds that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 319 funds enter into new subadvisory agreements each year.[7] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 12d3–1, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a–10 for this contract change would be 0.75 hours.[8] Assuming that all 319 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 239 burden hours annually, with an associated cost of approximately $90,820.[9]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. Responses will not be 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 control number.

Written comments are invited on: (a) Whether the proposed collection of

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

[3] As defined in rule 17a–10(b)(2). 17 CFR 270.17a–10(b)(2).

[4] 17 CFR 270.17a–10(a)(2).

[5] 44 U.S.C. 3501.

[6] Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153, (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[7] Based on data from Morningstar, as of June 2016, there are 12,485 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,629 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2016 ICI Factbook, 862 new funds were established in 2015 (594 open-end funds + 258 exchange-traded funds + 10 closed-end funds (from the ICI Research Perspective, April 2016)). 862 new funds × 37% = 319 funds.

[8] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[9] These estimates are based on the following calculations: (0.75 hours × 319 portfolios = 239 burden hours); ($380 per hour × 239 hours = $90,820 total cost). The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $380. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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.*

Dated: November 22, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29085 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79420; File No. SR–BX–2016–062]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VI, Section 5 To Extend the Penny Pilot Program

November 29, 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 November 16, 2016, NASDAQ BX, Inc. (''BX'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VI, Section 5 (Minimum Increments),[3] to extend through June 30, 2017 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.

The text of the proposed rule change is set forth below.

Proposed new language is *italicized* and deleted text is in brackets.

NASDAQ BX Rules

Options Rules

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Chapter VI Trading Systems

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Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [December 31, 2016] *June 30, 2017* or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following [July 1, 2016] *January 1, 2017.*

(4) No Change.

(b) No Change.

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The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5, to extend the Penny Pilot through June 30, 2017 or the date of permanent approval, if earlier,[4] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2016.

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2017 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Chapter and Series refer to rules of the BX Options Market (''BX Options''), unless otherwise noted.

[4] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

replaced on the second trading day following January 1, 2017. The replacement issues will be selected based on trading activity in the previous six months.[5]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

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 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, and 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.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2017 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following January 1, 2017, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–062 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–BX–2016–062. 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–BX–2016–062 and should be submitted on or before December 27, 2016.

[5] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site. Penny Pilot replacement issues will be selected based on trading activity in the previous six months, as is the case today. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the January replacement, trading volume from May 30, 2016 through November 30, 2016 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* December) would not be used for purposes of the six-month analysis.

[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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29041 Filed 12–2–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79423; File No. SR–CBOE–2016–078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Disaster Recovery

November 29, 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 November 16, 2016, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') 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. On November 28, 2016, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.18 relating to disaster recovery. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange adopted Rule 6.18 in 2006 for the limited purpose of providing alternative means of operation in the event of a physical disaster. In particular, Rule 6.18, as originally adopted, was intended to deal with trading floor closures, providing for the operation of a ''Disaster Recovery Facility'' (''DRF'') in the event that a disaster or other unusual circumstance rendered the trading floor inoperable.[4] Under original Rule 6.18, if the Exchange were forced to halt trading due to a disaster or other physical impairment of its trading floor, the Exchange and its members[5] could operate remotely in a screen-based only environment from the DRF while the trading floor was unavailable. While operating from the DRF, open outcry trading would be suspended.

In 2012, Rule 6.18 was amended in connection with the Exchange's relocation of its primary data center to the East Coast and the consequent conversion of its former primary data center to a back-up data center in Chicago.[6] Specifically, Rule 6.18 was amended to address other situations in which the primary data center could continue to operate despite the trading floor being rendered inoperable or in which the back-up data center might be used despite the trading floor being operational. Specifically, as amended, Rule 6.18 provided that in the event that the Exchange were forced to switch operations to the back-up data center, the Exchange's trading floor could still be used and that in the event that the trading floor were inoperable, the Exchange could still operate using a floorless configuration or screen-based only environment on the Exchange's primary data center. References to the DRF and other irrelevant portions of the original rule were eliminated or replaced with references to Exchange's primary and back-up data centers as appropriate.

In 2015, Rule 6.18 was again amended to add greater detail to the Exchange's disaster recovery rules and harmonize the disaster recovery rules with newly implemented disaster recovery-related regulatory imperatives of Regulation Systems Compliance and Integrity (''Regulation SCI''), which superseded and replaced the SEC's voluntary Automation Review Policy.[7] In doing so, the Exchange made certain changes to Rule 6.18 to provide additional details regarding the Exchange's back-up trading systems, business continuity and disaster recovery plans, and testing and update its disaster recovery rules to ensure consistency with Regulation SCI.

The Exchange now proposes to make additional changes to its disaster recovery rules to provide the Exchange authority to take additional steps necessary to preserve the Exchange's ability to conduct business in the event that the Exchange's data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster or other unusual circumstances and make clear in the Rules the intermediary steps that the Exchange may take to disable certain systems and users' connectivity while continuing to operate its primary data center. The Exchange believes this authority serves the interests of all investors and the general public, because it helps the Exchange ensure its continuous operation and ability to maintain fair and orderly markets in the event of a

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange provided in new footnote 11 additional explanation about how its business continuity and disaster recovery plans are reasonably designed to achieve two-hour resumption of trading systems essential to conducting business on the Exchange.

[4] *See* Securities Exchange Act Release No. 54171 (July 19, 2006), 71 FR 42427 (July 26, 2006) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility) (SR–CBOE–2006–001).

[5] Prior to its demutualization in 2010, the Exchange was a member-owned organization. *See* Securities Exchange Act Release No. 62382 (June 25, 2010), 75 FR 38164 (July 1, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Conforming Changes in Connection With Demutualization) (SR–CBOE–2010–058). Individuals and organizations that may trade on CBOE are now referred to as Trading Permit Holders (''TPHs'').

[6] *See* Securities Exchange Act Release No. 68301 (November 27, 2012), 77 FR 71650 (December 3, 2012) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 6.18 Concerning the Exchange's Disaster Recovery Facility) (SR–CBOE–2012–111).

[7] *See* Securities Exchange Act Release No. 76203 (October 20, 2015), 80 FR 65258 (October 26, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Disaster Recovery) (SR–CBOE–2015–088); *see also* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR at 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7–01–13); Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automated Systems of Self-Regulatory Organizations) (File No. S7–29–89); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Automated Systems of Self-Regulatory Organizations) (File No. S7–12–91).

significant systems failure or other unusual circumstance.

Proposal

The Exchange proposes to amend Rule 6.18 relating to disaster recovery. Specifically, the Exchange proposes to make changes to Rule 6.18 to: (1) Allow the Exchange to establish additional temporary requirements applicable to certain market participants to help ensure the operation of fair and orderly markets during use of the Exchange's back-up data center; (2) provide that the Exchange may determine to temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to conduct business in the event that the Exchange's data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster, or other unusual circumstances; (3) permit the Exchange to deactivate certain nonessential systems and systems functionalities in response to limited systems disruptions or malfunctions, security intrusions, systems compliance issues, or other unusual circumstances; and (4) permit the Exchange to restrict access of a TPH or associated person to the Hybrid Trading System [8] and other Exchange systems if such access poses a significant threat to the Exchange's ability to operate systems essential to maintain a fair and orderly market.

The Exchange proposes to add new Rule 6.18(b)(iv)(B) (Alternative BCP/DR Participant Obligations), which would provide that the Exchange may, if necessary for the maintenance of fair and orderly markets, establish additional temporary requirements applicable to Designated BCP/DR Participants [9] and/or other market participants during use of the back-up data center. Proposed Rule 6.18(b)(iv)(B) is intended as an extension of the Exchange's authority under current Rule 6.18(b)(iv) (Trading Permit Holder Participation), which requires TPHs to take appropriate actions as instructed by the Exchange to accommodate the Exchange's ability to conduct business via the back-up data center. The Exchange believes this extended authority would afford the Exchange with necessary flexibility to address any unexpected contingencies that may arise if a disaster or other unusual circumstances occur, causing the Exchange to use the back-up data center.

For example, if circumstances that led to use of the back-up data center also caused a decrease in liquidity on the Exchange, the Exchange might determine that it is necessary, in the interests of fair and orderly markets, to temporarily heighten the quoting obligations of Market-Makers or tighten bid/ask differentials during the use of the back-up data center to enhance liquidity and continue to provide a viable, competitive marketplace. Proposed Rule 6.18(b)(iv)(B) would give the Exchange authority to take these types of action to help ensure the maintenance of a fair and orderly market in the event the Exchange were to switch operations to the back-up data center. In such cases, the Exchange would notify market participants of any such additional temporary requirements prior to implementation in a reasonable manner as determined by the Exchange.[10] The Exchange also proposes non-substantive changes to the lettering in paragraph (b)(iv) to accommodate the addition of new Rule 6.18(b)(iv)(B). Accordingly, current Rule 6.18(b)(iv)(B) would become Rule 6.18(b)(iv)(C), and current Rule 6.18(b)(iv)(C) would become Rule 6.18(b)(iv)(D).

The Exchange proposes to add Rule 6.18(c) (Operation via Open Outcry), which would provide that if the Exchange's data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster or other unusual circumstances, the Exchange may temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to conduct business.[11] Similar to the Exchange's authority in current Rule 6.18(c) (proposed Rule 6.18(d)), which permits the Exchange to operate in a screen-based only environment if the trading floor facility is inoperable, proposed Rule 6.18(c) would afford the Exchange necessary flexibility to temporarily operate in open outcry in the event that the Exchange's data centers are inoperable due to a significant systems failure, disaster, or other unusual circumstances. The Exchange believes that the providing authority for it to temporarily operate in an exclusively floor-based environment in such a situation would help ensure the Exchange's ability to continue to conduct business and help preserve the Exchange's ability to continuously provide a fair and orderly market. The Exchange also proposes non-substantive changes to the lettering in Rule 6.18 to accommodate the addition of new Rule 6.18(c). Accordingly, current Rule 6.18(c) would become Rule 6.18(d).

The Exchange also proposes to add Rule 6.18(e) (Deactivation of Certain Systems), which would provide that in the event of a systems disruption or malfunction, security intrusion, systems compliance issue, or other unusual circumstances, the Exchange may, in accordance with the Rules or if necessary to maintain fair and orderly markets or to protect investors, temporarily deactivate certain systems or systems functionalities that are not essential to conducting business on the Exchange. Many of the systems and systems functionalities described in the Rules are provided optionally by the Exchange to enhance participants' trading experience, but are not required to be active under the Rules and are not

[8] Under Rule 1.1(aaa), the ''Hybrid Trading System'' refers to (i) the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes and (ii) any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub.

[9] Under Rule 6.18(b)(iv)(A), Designated BCP/DR Participants are defined as designated TPH that the Exchange determines are, as a whole, necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange's business continuity and disaster recovery plans. Rule 6.18(b)(iv)(A)(1) and (2) provide that Designated BCP/DR Participants will be identified based on criteria determined by the Exchange and announced via Regulatory Circular, which may include whether the TPH is an appointed Designated Primary Market-Maker (''DPM''), Lead Market-Maker (''LMM'') or Market-Maker in a class and the quality of markets provided by the DPM, LMM, or Market-Maker, the amount of volume transacted by the market participant in a class or on the Exchange in general, operational capacity, trading experience, and historical contribution to fair and orderly markets on the Exchange and shall include, at a minimum, all Market-Makers in option classes exclusively listed on the Exchange that stream quotes in such classes and all DPMs in multiply listed option classes.

[10] The Exchange would make these notifications on the Systems Notification page on the Exchange's Web site, via the Exchange's Order Management Terminals (''OMTs''), via an Exchange-used messaging service, and/or other reasonable notification mechanisms.

[11] In accordance with Rule 1001(a)(2)(v) of Regulation SCI, the Exchange maintains written policies and procedures reasonably designed to ensure that its trading systems (including with respect to both the Exchange's primary and back-up data center trading systems), have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets, including, but not limited to business continuity and disaster recovery plans that are reasonably designed to achieve next two-hour resumption of its critical SCI systems, as defined in Rule 1000 of Regulation SCI. *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7–01–13). Notably, the Exchange employs business continuity and disaster recovery standards reasonably designed to achieve two-hour resumption of all trading systems that are essential to conducting business on the Exchange and which the Exchange believes are reasonably designed to support resumption in a significantly shorter amount of time, including, but not limited to with respect to those systems that are essential to the trading of proprietary products and products exclusively licensed for trading on the Exchange.

necessary for the Exchange to conduct business.[12] As is described in the Rules, many of the Exchange's systems functionalities may be made available (or unavailable) by the Exchange on a class-by-class basis. Such systems and systems functionalities that are non-essential to conducting business on the Exchange include, but are not limited to, Public Automated Routing (''PAR'') [13] workstations, the Automated Improvement Mechanism (''AIM''),[14] and the Solicitation Auction Mechanism (''SAM'').[15]

In addition, the activation of other functionalities may not be described by rule, but could be suspended temporarily (*e.g.,* until the end of a trading session or until systems disruptions could be remedied) if disruption or malfunction of that functionality were to interfere with the Exchange's ability to conduct business in a fair and orderly manner. For example, if a certain order type were to cause a wider system malfunction or a certain complex order product could not be created without triggering widespread systems issues [16] the Exchange might announce, via its systems status page or otherwise, the suspension of the availability of that order type or complex product. If such an event impacts a non-essential system or system functionality, the Exchange may deem it necessary to maintain fair and orderly markets to deactivate that system or functionality until any issues or [sic] resolved to prevent any potential harm to investors. Proposed Rule 6.18(e) would also provide that the Exchange would notify market participants of any such deactivation, and subsequent reactivation, promptly and in a reasonable manner determined by the Exchange. The Exchange may make these notifications on the Systems Notification page on the Exchange's Web site, via OMT, via an Exchange-used messaging service such as SendWordNow [17] Regulatory Circular, and/or other reasonable notification mechanisms.

Finally, the Exchange proposes Rule 6.18(f) (Connectivity Restriction), which would permit the Exchange to temporarily restrict a TPH's or associated person's access to the Hybrid Trading System or other electronic trading systems if it is determined by the President (or designee) of the Exchange, that because of a systems issue, such access threatens the Exchange's ability to operate systems essential to the maintenance of fair and orderly markets. Such access would remain restricted until the end of the trading session or an earlier time if the President (or designee) of the Exchange, in consultation with the affected TPH(s), determines that lifting the restriction no longer poses a threat to the Exchange's ability to operate systems essential to conducting business or continuing to maintain a fair and orderly market on the Exchange or investors. In the current electronic trading environment, if a TPH's systems malfunctions or is compromised, it could disrupt the Exchange's systems or market or harm other investors. For example, software malfunctions may pose a risk to the Exchange's systems, investors, and the general public without proper risk controls. Proposed Rule 6.18(f) would simply give the Exchange the authority to activate additional risk controls to stem the access of a TPH that has experienced a systems disruption or malfunction, which poses undue risk to the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to promote the Exchange's ability to ensure the continued operation of a fair and orderly market in the event of a systems failure, disaster, or other unusual circumstances that might threaten the ability to conduct business on the Exchange. The Exchange recognizes that switching operations to the back-up data center may occur in times of uncertainty or great volatility in the markets. It is at these times that the investors may have the greatest need for viable, trustworthy marketplaces. The proposed rule change seeks to ensure that such a marketplace will exist when most needed and thus, the Exchange believes that the proposed rule protects investors in the most fundamental sense.

In particular, the Exchange believes that proposed Rule 6.18(b)(iv)(B) allowing it to establish additional temporary requirements applicable to Designated BCP/DR Participants and/or other market participants during use of the back-up data center is consistent with the Act in that additional temporary requirements such as heightened quoting obligations for Market-Makers or more constricted bid-ask differentials would help ensure the maintenance of a fair and orderly market in the event of a disaster, which is in the interests of all market participants, investors, and the general public. The Exchange believes that adopting rules that help ensure that markets are open and available during times of turmoil and emergency is an important goal consistent with the Act. In the same vein, the Exchange believes that proposed Rule 6.18(c) to temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to conduct business serves the interests of market participants, investors, and the general public by helping to ensure that the Exchange's market remains open and available for trading. The Exchange also believes that deactivation of certain systems in proposed Rule 6.18(e), whether by rule or otherwise, in order to ensure that the Exchange is able to provide a fair and orderly market in the face of systems disruptions and malfunction is in the best interests of market participants, investors, and the general public.

Similarly, the Exchange believes that the proposed connectivity restriction in proposed Rule 6.18(f) would help ensure that the Exchange remains open and available to all market participants. The Exchange notes that similar [sic]

[12] *See, e.g.,* Rules 6.2, 6.2A, 6.2B, 6.12, 6.13, 6.13A, 6.13B, 6.14A, 6.53, 6.53C, 6.74A, and 6.74B.

[13] *See generally* Rule 6.12, Rule 6.12A.

[14] *See generally* Rule 6.74A.

[15] *See generally* Rule 6.74B.

[16] For example, if the creation of a certain complex order product (*e.g.* the October/November calendar spread in class XYZ) were to cause significant trading disruptions in an entire class (*e.g.,* trading in all of XYZ) [sic]. Notably, under such circumstances, these products would still be available via other means such as legging.

[17] *See* CBOE Regulatory Circular RG14–030 (Send Word Now Smart Notification Services).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

connectivity restrictions are already in place on the Exchange.[21] Furthermore, the Exchange believes that proposed Rule 6.18(f) is consistent with Section 6(b)(7) [22] of the Act, which requires the Exchange to adopt rules that provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. The Exchange notes that proposed Rule 6.18(f) is not aimed at denying access to a particular TPH, but rather making sure that the Exchange remains accessible to all other TPHs that do not threaten the Exchange's ability to conduct normal business operations. The Exchange notes that as soon as the Exchange, working with the TPH organization that poses a threat to the Exchange, were able to confirm that the TPH organization no longer posed such a threat, access to the Exchange would be restored to that TPH. The Exchange believes that this is a fair result and is [sic] the best interests of all market participants, investors, and the general public.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade by adding detail and clarity to the Rules. The proposed rule change seeks to provide additional clarity to the Exchange's disaster recovery rules, putting all market participants on notice as to how the Exchange will function in case of significant systems disruption or other disaster situation. The Exchange is continuously updating the Rules to provide additional detail, clarity, and transparency regarding its operations and trading systems and regulatory authority. The Exchange believes that the adoption of detailed, clear, and transparent rules reduces burdens on competition and promotes just and equitable principles of trade. The Exchange also believes that adding greater detail to the Rules regarding the Exchange's ability to ensure the continuous operation of the market and preserve the ability to conduct business on the Exchange will increase confidence in the markets and encourage wider participation in the markets and greater investment.

[21] *See* Rules 6.23A(b); 6.23C(a).

[22] 15 U.S.C. 78f(b)(7).

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. Rather, the proposed rule change will help ensure that competitive markets remain operative in the event of a systems failure or other disaster event. The Exchange notes that the proposed rule change is designed to provide the Exchange with authority to require market participants to participate in, and provide necessary liquidity to, the market to ensure that the Exchange functions in a fair and orderly manner in the event of a significant systems failure, disaster, or other unusual circumstances. Accordingly, the Exchange believes that the proposed rule change is designed to ensure fair and competitive markets at time when they may be most needed.

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 written comments on 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 within such longer period 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 Exchange consents, the Commission will:

A. By order approve or disapprove such 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, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–078 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–CBOE–2016–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–078, and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29044 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Form N–CSR, SEC File No. 270–512, OMB Control No. 3235–0570

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form used by registered management investment companies (''funds'') to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (''Commission'') no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1). The information filed with the Commission permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

Form N–CSR is filed semi-annually, and the Commission estimates that there are 3,449 respondents with 11,642 portfolios. The Commission further estimates that the hour burden for preparing and filing a report on Form N–CSR is 7.21 hours per portfolio. The total annual hour burden for Form N–CSR, therefore, is estimated to be 167,878 hours. We estimate that the cost burden of preparing and filing a report on Form N–CSR is $132.35 and therefore estimate that the total annual cost burden associated with Form N–CSR is $3,081,637.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the information collection requirements of Form N–CSR is mandatory. Responses to the collection of information will not be 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, 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.*

All submissions should refer to File Number 270–512. This file number should be included on the subject line if email is used. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Dated: November 22, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29083 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79422; File No. 4–533]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols To Add Investors Exchange, LLC as a Party Thereto

November 29, 2016.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on November 4, 2016, Investors Exchange, LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the National Market System Plan for the Selection and Reservation of Securities Symbols (''Symbology Plan'' or ''Plan'').[3] The amendment proposes to add IEX as a party to the Symbology Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The current parties to the Symbology Plan are BATS Exchange, Inc. (''BATS''), NASDAQ OMX BX, Inc. (''BX''), BOX Options Exchange, LLC (''BOX''), Chicago Board Options Exchange, Incorporated (''CBOE''), CHX, EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), FINRA, the International Securities Exchange, LLC (''ISE''), Nasdaq, New York Stock Exchange, LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca''), NSX and Phlx.[4]

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On November 6, 2008, the Commission approved the Symbology Plan that was originally proposed by the Chicago Stock Exchange, Inc. (''CHX''), The Nasdaq Stock Market, Inc. (n/k/a The Nasdaq Stock Market LLC) (''Nasdaq''), National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')), National Stock Exchange, Inc. (''NSX''), and Philadelphia Stock Exchange, Inc. (''Phlx''), subject to certain changes. See Securities Exchange Act Release No. 58904, 73 FR 67218 (November 13, 2008) (File No. 4–533).

[4] On November 18, 2008, ISE filed with the Commission an amendment to the Plan to add ISE as a member to the Plan. *See* Securities and Exchange Act Release No. 59024 (November 26, 2008), 73 FR 74538 (December 8, 2008) (File No. 4–533). On December 22, 2008, NYSE, NYSE Arca, and NYSE Alternext (n/k/a NYSE MKT) (''NYSE Group Exchanges''), and CBOE filed with the Commission amendments to the Plan to add the NYSE Group Exchanges and CBOE as members to the Plan. *See* Securities Exchange Act Release No. 59162 (December 24, 2008), 74 FR 132 (January 2, 2009) (File No. 4–533). On December 24, 2008, BSE (n/k/a BX) filed with the Commission an amendment to the Plan to add BSE as a member to the Plan. *See* Securities Exchange Act Release No. 59187 (December 30, 2008), 74 FR 729 (January 7, 2009) (File No. 4–533). On September 30, 2009, BATS filed with the Commission an amendment to the Plan to add BATS as a member to the Plan. *See* Securities Exchange Act Release No. 60856 (October 21, 2009), 74 FR 55276 (October 27, 2009) (File No. 4–533). On July 7, 2010, EDGA and EDGX filed with the Commission an amendment to the Plan to add EDGA and EDGX, each as a party to the Symbology Plan. *See* Securities Exchange Act Release No. 62573 (July 26, 2010), 75 FR 45682 (August 3, 2010) (File No. 4–533). On May 7, 2012, BOX filed with the Commission an amendment to the Plan to add BOX as a member to the Plan. *See* Securities and

Continued

The proposed amendment to the Symbology Plan would add IEX as a party to the Symbology Plan. A self-regulatory organization (''SRO'') may become a party to the Symbology Plan if it satisfies the requirements of Section I(c) of the Plan. Specifically, an SRO may become a party to the Symbology Plan if: (i) It maintains a market for the listing or trading of Plan Securities [5] in accordance with rules approved by the Commission; (ii) it signs a current copy of the Plan; and (iii) it pays to the other parties a proportionate share of the aggregate development costs, based upon the number of symbols reserved by the new party during the first twelve (12) months of such party's membership.[6]

IEX has submitted a signed copy of the Symbology Plan to the Commission in accordance with the requirement set forth in the Symbology Plan regarding new parties to the plan. Additionally, IEX represented that it maintains a market for the listing or trading of Plan Securities. Finally, IEX has agreed to pay all costs required by IEX pursuant to the Symbology Plan, including its proportionate share of the aggregate development costs previously paid by the other parties to the Processor.

II. Effectiveness of the Proposed Symbology Plan Amendment

The foregoing proposed Symbology Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment 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 4–533 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 4–533. 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 Plan that are filed with the Commission, and all written communications relating to the Plan 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 Parties' principal offices. 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 4–533, and should be submitted on or before December 27, 2016.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–29043 Filed 12–2–16; 8:45 am]

BILLING CODE 8011–01–P

Exchange Act Release No. 34–66957 (May 10, 2012), 77 FR 28904 (May 16, 2012).

[5] ''Plan Securities'' are defined in the Symbology Plan as securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Act; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility.

[6] Sections I(c) and V(a) of the Plan.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(b)(1).

SMALL BUSINESS ADMINISTRATION

Delegation of Authority

AGENCY: U.S. Small Business Administration.

ACTION: Notice of delegation of authority.

SUMMARY: This document provides the public with notice of the delegation of authority for certain activities related to the licensing of small business investment companies by the Administrator of the Small Business Administration (SBA) to the Agency Licensing Committee.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; (202) 205–7559 or *carol.fendler@sba.gov.*

SUPPLEMENTARY INFORMATION: This document provides the public with notice of the Administrator's delegation of authority to the Agency Licensing Committee to review and recommend to the Administrator for approval applications for licenses to operate as a small business investment company under the Small Business Investment Act of 1958, as amended.

This delegation of authority reads as follows:

Pursuant to the authority vested in me pursuant to section 301 of the Small Business Investment Act of 1958, as amended, the authority to take any and all actions necessary to review applications for licensing under section 301 of the Small Business Investment Act of 1958, as amended, and to recommend to the Administrator which such applications should be approved is delegated to the Agency Licensing Committee.

The Agency Licensing Committee shall be composed of the following members:

Deputy Administrator, Chair
Associate Administrator for Capital Access
Associate Administrator for Investment and Innovation
Associate Administrator for Government Contracting and Business Development
Deputy General Counsel
Chief Financial Officer

This authority revokes all other authorities granted by the Administrator to recommend and approve applications for a license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. This authority may not be re-delegated; however, in the event that the person serving in one of the positions listed as a member of the Agency Licensing Committee is absent from the office, as defined in SBA Standard Operating Procedure 00 01 2, Chapter 3, paragraph 2, or is unable to perform the functions and duties of his or her position, the individual serving in an acting capacity, pursuant to a

written and established line of succession, may serve on the Committee during such absence or inability. In addition, if one of the positions listed as a member of the Agency Licensing Committee is vacant, the individual serving in that position in an acting capacity shall serve on the Agency Licensing Committee. This authority will remain in effect until revoked in writing by the Administrator or by operation of law.

Dated: November 16, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–29093 Filed 12–2–16; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 724; Docket No. EP 724 (Sub-No. 3)]

United States Rail Service Issues; United States Rail Service Issues—Data Collection

On April 1, 2014, and October 8, 2014, the Board issued two orders in response to service issues at the time across the U.S. rail network. The first order, in Docket No. EP 724, announced a public hearing in response to concerns about service problems that were occurring across significant portions of the nation's rail network. In response to the concerns raised at that hearing (as well as a second public hearing), the Board issued an order in Docket No. EP 724 (Sub-No. 3) requiring all Class I carriers and the Chicago Transportation Coordination Office (CTCO) (through its Class I members) to file weekly public performance data on an interim basis. For the reasons stated below, the proceedings in Docket No. EP 724 and Docket No. EP 724 (Sub-No. 3) will be discontinued. Concurrently with this decision, the Board is issuing a final rule in Docket No. EP 724 (Sub-No. 4) requiring all Class I railroads and the CTCO to file public performance data on a permanent basis.

Background

Docket No. EP 724. On April 10, 2014, the Board held a public hearing at its offices in Washington, DC, to get more information on service problems occurring at the time across the U.S. rail network, hear rail industry plans to address those service problems, and discuss options to improve service. *See U.S. Rail Serv. Issues,* EP 724, slip op. at 1 (STB served Apr. 1, 2014). On September 4, 2014, the Board held a field hearing in Fargo, ND, to provide another forum for interested parties to report on service disruptions and provide updates on plans to resolve those issues, and to discuss additional options to improve service. *U.S. Rail Serv. Issues,* EP 724 et al., slip op. at 1 (STB served Aug. 18, 2014). Following that hearing, the Board directed Canadian Pacific Railway Company (CP) to answer specific requests to supplement the information it had provided at the field hearing and in its annual peak season letter to the Chairman.[1] *U.S. Rail Serv. Issues,* EP 724, slip op. at 1 (STB served Oct. 14, 2014). On October 24, 2014, CP submitted its responses to the Board's questions. (CP Reply, Oct. 24, 2014, *U.S. Rail Serv. Issues,* EP 724.) Additionally, in response to a petition by the Western Coal Traffic League, the Board required BNSF Railway Company (BNSF) to submit ''its contingency plans for addressing any [critical shortfalls of coal], including a detailed description of the steps it takes to identify coal-fired plants at critical levels and to remedy acute shortages in a timely fashion.'' *U.S. Rail Serv. Issues,* EP 724, slip op. at 6 (STB served Dec. 30, 2014). BNSF filed its reply on January 29, 2015.

Docket No. EP 724 (Sub-No. 3). On October 8, 2014, the Board issued an order requiring regular reporting of standardized performance data by Class I railroads and the CTCO (through its Class I members). *See U.S. Rail Serv. Issues—Data Collection* (*Interim Data Order*), EP 724 (Sub-No. 3), slip op. at 2–5 (STB served Oct. 8, 2014).[2] Pursuant to the *Interim Data Order,* the Class I railroads and the Association of American Railroads (on behalf of its freight railroad member representatives in the CTCO) have been reporting data weekly since October 22, 2014.

Docket No. EP 724 (Sub-No. 4). On December 30, 2014, the Board issued a notice of proposed rulemaking proposing to establish regulations requiring all Class I railroads and the CTCO to permanently report certain service performance metrics on a weekly, quarterly, and occasional basis. *See U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4), slip op. at 1, 3–4 (STB served Dec. 30, 2014). After the close of the comment period, the Board issued an order announcing that it would waive its ex parte communications rules to allow Board staff to hold meetings with interested parties regarding technical issues in this proceeding. *See U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served Nov. 9, 2015). Those meetings were held between November 19, 2015 and December 7, 2015. A summary of each meeting was posted in that docket and parties provided additional comments on the summaries. The Board then issued a supplemental notice of proposed rulemaking. *See U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served April 29, 2016), *corrected,* (STB served May 13, 2016).

Discussion and Conclusions

Concurrently with this decision, the Board is issuing its final rule in Docket No. EP 724 (Sub-No. 4). The final rule requires Class I railroads to begin reporting the required data on February 8, 2017, at which point reporting under the *Interim Data Order* will no longer be necessary. Accordingly, the Board will discontinue reporting required by the *Interim Data Order* immediately following the reports due one week prior to the start of reporting under the final rule. The final date for reporting under the *Interim Data Order* will be February 1, 2017. The issuance of the final rule in Docket No. EP 724 (Sub-No. 4) also concludes the need for additional comment in Docket No. EP 724 on the service issues that occurred throughout the national rail network in 2013–2014. As explained in the final rule, those service issues prompted the Board to issue the *Interim Data Order* which, in turn, led to the issuance of the final rule. *U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4), slip op. at 1–4 (STB served Nov. 30, 2016). Because the Board is issuing new regulations in a separate sub-docket, Docket No. EP 724 and Docket No. EP 724 (Sub-No. 3) will be closed, effective the day after the final reporting date for the Interim Data Order, February 2, 2017.

It is ordered:

1. The final date for reporting under the *Interim Data Order* will be February 1, 2017.

[1] The annual ''Fall Peak letter'' has since been discontinued due to, among other things, the weekly collection of service performance reports that the Board began collecting pursuant to the *Interim Data Order.* Press Release, Surface Transportation Board, STB Chairman Daniel R. Elliott III Discontinues Annual Letter to Rail Industry Seeking End-of-Year Outlook (Aug. 22, 2016), *https://www.stb.gov/stb/news/news_releases.html* (follow ''date of issuance within the current year'' or ''prior to the current year'' hyperlink, as appropriate to access 2016 press releases; then follow ''8/22/2016'' hyperlink).

[2] In that decision, the Board also discontinued reporting ordered under *U.S. Rail Service Issues—Grain,* Docket No. EP 724 (Sub-No. 2), with two exceptions related to CP's supplying of locomotives and grain cars moving between CP and the Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E). *Interim Data Order,* slip op. at 2 n.7. On February 23, 2016, the Board discontinued all reporting by CP related to RCP&E. *U.S. Rail Serv. Issues—Data Collection,* EP 724 (Sub-No. 3) (STB served Feb. 23, 2016).

2. The proceedings in Docket No. EP 724 and Docket No. EP 724 (Sub-No. 3) will be discontinued as described above, effective February 2, 2017.

3. Notice of the Board's action will be published in the **Federal Register**.

Decided: November 29, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–29132 Filed 12–2–16; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Cumberland Fossil Plant Coal Combustion Residual Management

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an Environmental Impact Statement (EIS) to address the potential environmental effects associated with management of coal combustion residual (CCR) material produced at the Cumberland Fossil Plant (CUF) located near Cumberland City, Stewart County, Tennessee. The purpose of the proposed EIS is to address long-term management of CCR produced at CUF. The project will help TVA comply with state and federal regulatory requirements related to CCR production and management, including the requirements of U.S. Environmental Protection Agency (EPA's) CCR Rule and Effluent Limitations Guidelines.

TVA will evaluate the potential environmental impacts of construction and operation of a new bottom ash dewatering facility and options for management and disposal of dry CCR produced at CUF. TVA will also evaluate closure of the Bottom Ash and the Main Ash Impoundments. TVA will develop and evaluate various alternatives to these actions, including the No Action Alternative. Public comments are invited concerning both the scope of the review and environmental issues that should be addressed.

DATES: Comments on the scope of the EIS must be received on or before January 6, 2017.

ADDRESSES: Written comments should be sent to Ashley Pilakowski, NEPA Compliance Specialist, 400 West Summit Hill Dr., WT 11D, Knoxville, TN 37902–1499. Comments also may be submitted online at: *www.tva.gov/nepa.*

FOR FURTHER INFORMATION CONTACT: Other related questions should be sent to Ashley A. Pilakowski, NEPA Compliance Specialist, Tennessee Valley Authority, at 865–632–2256 or *aapilakowski@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act (*http://www.tva.com/environment/reports/pdf/tvanepa_procedures.pdf.*)

TVA Power System and CCR Management

TVA is a corporate agency and instrumentality of the United States created by and existing pursuant to the TVA Act of 1933 that provides electricity for business customers and local power distributors. TVA serves more than 9 million people in parts of seven southeastern states. TVA receives no taxpayer funding, deriving virtually all of its revenues from sales of electricity. In addition to operating and investing its revenues in its electric system, TVA provides flood control, navigation and land management for the Tennessee River system and assists local power companies and state and local governments with economic development and job creation.

Historically, TVA has managed its CCRs in wet impoundments or dry landfills. Currently, CUF consumes an average of 5.6 million tons of coal per year, generates approximately 16 billion kilowatt-hours of electricity a year (enough to supply 1.1 million homes), and produces approximately 1.3 million tons of CCR a year which are managed in an existing fly ash stack, gypsum ash stack, Bottom Ash Impoundment and Main Ash Impoundment. CUF sells approximately 75% of the CCRs produced (725,000 tons gypsum and 275,000 tons of fly ash) annually for beneficial reuse as raw manufacturing material.

In July 2009, the TVA Board of Directors passed a resolution for staff to review TVA practices for storing CCRs at its generating facilities, including CUF, which resulted in a recommendation to convert the wet ash management system at CUF to a dry storage system. On April 17, 2015, the EPA published the final Disposal of CCRs from Electric Utilities rule, also known as the CCR Rule.

In June 2016, TVA issued a Final Programmatic Environmental Impact Statement (PEIS) that analyzed methods for closing CCR impoundments TVA fossil plants and identified specific screening and evaluation factors to help frame its evaluation of closures at its other facilities. A Record of Decision was released in July 2016 that would allow future environmental reviews of qualifying CCR impoundment closures to tier from the PEIS.

This EIS is intended to tier from the 2016 PEIS to evaluate the closure alternatives for the existing CCR Bottom Ash Impoundment and Main Ash Impoundment. The EIS will also evaluate construction and operation of a new bottom ash dewatering facility and management of dry CCR in a new lined CCR landfill meeting Tennessee Department of Environment and Conservation criteria. This project supports TVA's Board of Directors July 2009 resolution and subsequent recommendation to convert the wet ash management system at CUF to dry storage.

Alternatives

In addition to a No Action Alternative, this EIS will address alternatives that have reasonable prospects of providing a solution to the management and disposal of CCRs generated at CUF. TVA has determined that either the construction of a new on-site landfill or hauling CCR to an existing offsite permitted landfill are the most reasonable alternatives to address the need for dry CCR disposal. A new dewatering facility would dry bottom ash prior to disposal. TVA will consider closure alternatives for the Bottom Ash Impoundment and the Main Ash Impoundment in accordance with and consistent with TVA's PEIS and EPA's CCR Rule.

No decision has been made about CCR management at CUF beyond the current operations. TVA is preparing this EIS to inform decision makers, other agencies and the public about the potential for environmental impacts associated with the long-term management of CCR generated at CUF.

Proposed Resources and Issues To Be Considered

This EIS will identify the purpose and need of the project and will contain descriptions of the existing environmental and socioeconomic resources within the area that could be affected by management of CCR at CUF. Evaluation of potential environmental impacts to these resources will include, but not be limited to, water quality, aquatic and terrestrial ecology, threatened and endangered species, wetlands, land use, historic and archaeological resources, as well as solid and hazardous waste, safety, socioeconomic and environmental

justice issues. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments received. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Public Participation

TVA is interested in an open process and wants to hear from the community, interested agencies and special interest groups about the scope of resources and issues they would like to be considered in this EIS.

The public is invited to submit comments on the scope of this EIS no later than the date identified in the **DATES** section of this notice. Federal, state and local agencies such as the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Tennessee Department of Environmental Conservation and the Tennessee State Historic Preservation Officer also are invited to provide comments.

After consideration of comments received during the scoping period, TVA will develop and distribute a document that will summarize public and agency comments that were received and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. In making its final decision, TVA will consider the analyses in this EIS and substantive comments that it receives. A final decision on proceeding with construction and operation of a bottom ash dewatering facility, management and final disposal of CCR and closure of the Bottom Ash Impoundment and Main Ash Impoundment will depend on a number of factors. These include results of the EIS, requirements of the CCR Rule, engineering and risk evaluations and financial considerations.

TVA anticipates holding a community meeting near the plant after releasing the Draft EIS. Meeting details will be posted on TVA's Web site. TVA expects to release the Draft EIS in summer of 2017.

Dated: November 28, 2016.

M. Susan Smelley,

Director, Environmental Permitting and Compliance.

[FR Doc. 2016–29082 Filed 12–2–16; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2016–03]

Mitigation and Investigation of Passenger Rail Human Factor Related Accidents and Operations in Terminals and Stations With Stub End Tracks

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2016–03 to stress to passenger and commuter railroads the importance of taking action to help mitigate human factor accidents, assist in the investigation of such accidents, and enhance the safety of operations in stations and terminals with stub end tracks. This safety advisory contains various recommendations to passenger and commuter railroads related to inward- and outward-facing cameras, sleep apnea, and operating practices to potentially mitigate the occurrence and assist in the investigation of human factor related accidents and to enhance the safety of operations in terminals and stations with stub end tracks.

FOR FURTHER INFORMATION CONTACT: Christian Holt, Operating Practices Specialist, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–0978.

SUPPLEMENTARY INFORMATION:

I. New Jersey Transit Incident

On September 29, 2016, at approximately 8:38 a.m., New Jersey Transit (NJT) Train 1614 travelling at 21 miles per hour (mph) impacted the bumping block at the end of the track No. 5 Depot, at Hoboken Terminal, in Hoboken, New Jersey. The cab car overrode the bumping block and struck the wall of the terminal building, near the ticket office in the corner of the building. NJT Train 1614 was occupied by three crew members and approximately 331 passengers. The accident resulted in the three crewmembers and 108 passengers being transported to four area hospitals. One individual who was standing on the pedestrian walkway between the tracks and the station was fatally injured from falling debris.

The National Transportation Safety Board (NTSB) has taken the lead role in conducting the investigation of this accident under its legal authority. *See* 49 U.S.C. 1101 *et seq.;* 49 CFR 831.2(b). As is customary, FRA is participating in the NTSB's investigation and also investigating the accident under its own authority. NTSB has not issued its formal findings. Although the NTSB has not concluded its investigation of this accident, FRA believes railroads should take more robust action to address human factors that may cause accidents and to enhance protection of railroad employees and the public.

II. Other Railroad Accidents

Amtrak Accident at Philadelphia, PA

On Tuesday, May 12, 2015, National Railroad Passenger Corporation (Amtrak) passenger train 188 (Train 188) was traveling from Washington, DC, to New York City. Aboard the train were five crew members and approximately 238 passengers. Shortly after 9:20 p.m., the train derailed while traveling through a curve in the track at Frankford Junction in Philadelphia, Pennsylvania. As a result of the accident, eight persons were killed and a significant number of persons were seriously injured.

NTSB conducted an investigation of this accident under its legal authority and issued its findings on May 17, 2016.[1] As Train 188 approached the curve from the west, it traveled over a straightaway with a maximum authorized passenger train speed of 80 mph. The maximum authorized passenger train speed for the curve was 50 mph. NTSB determined the train was traveling approximately 106 mph within the curve's 50-mph speed restriction, exceeding the maximum authorized speed on the straightaway by 26 mph, and 56 mph over railroad's maximum authorized speed for the curve.[2] NTSB concluded the locomotive engineer operating the train made an emergency application of Train 188's air brake system, and the train slowed to approximately 102 mph before derailing in the curve.[3] NTSB concluded that the probable cause of the engineer accelerating to this speed was due to his loss of situational awareness likely because his attention was diverted to an emergency situation with another train.[4]

On July 8, 2015, NTSB sent a letter to FRA reiterating NTSB recommendations

[1] 49 U.S.C. 1101 *et seq.;* 49 CFR 831.2(b); and NTSB, Railroad Accident Report, RAR–16/02, Derailment of Amtrak Passenger Train 188, Philadelphia, Pennsylvania, May 12, 2015, *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1602.pdf.*

[2] RAR–16/02 at 1. FRA regulations provide, in part, that it is unlawful to ''[o]perate a train or locomotive at a speed which exceeds the maximum authorized limit by at least 10 miles per hour.'' 49 CFR 240.305(a)(2).

[3] RAR–16/02 at 4–5.

[4] Id. at 44.

R–10–01 & –02.[5] The letter indicated NTSB believes inward-facing locomotive recorders could have provided valuable information to help determine the cause of the accident. After this accident occurred, Amtrak announced it would install inward-facing cameras on all of its ACS–64 locomotives on the Northeast Corridor.

Southern California Regional Rail Authority (Metrolink) Chatsworth, CA

On September 12, 2008, in Chatsworth, California, an accident occurred involving a collision between a Southern California Regional Rail Authority (Metrolink) passenger train and a Union Pacific Railroad Company (UP) freight train.[6] The accident occurred after the locomotive engineer operating the Metrolink passenger train failed to stop his train for a stop signal. As a result of the accident, 25 persons on the Metrolink train were killed and 102 injured passengers were transported to the hospital. The accident damage was estimated to be in excess of $12 million. The NTSB found the probable cause of that accident was the Metrolink locomotive engineer's distraction due to the use of a personal cell phone to send text messages resulting in a failure to comply with the signal indication.[7]

Shortly after the Metrolink accident, the Rail Safety Improvement Act of 2008 [8] (RSIA) was enacted. RSIA required, among other items, that railroads install Positive Train Control (PTC) systems. Also after the accident, FRA issued its Emergency Order No. 26 (EO 26). 73 FR 58702 (Oct. 7, 2008). EO 26 prohibited railroad operating employees (typically train crew members such as locomotive engineers and conductors) performing safety-related duties from using or turning on electronic devices such as personal cell phones. The requirements in EO 26 were codified in amended form at 49 CFR part 220, subpart C, in an FRA final rule published on September 27, 2010, which took effect on March 28, 2011. 75 FR 59580. Among other requirements in the final rule, railroad operating employees are required to receive training on the regulation's requirements governing the use of electronic devices while on-duty and are also required to be tested by railroad supervisors to determine employees' compliance with such requirements. 49 CFR 220.313–315.

The NTSB's report on the Chatsworth accident resulted in two new Safety Recommendations, R–10–01 and R–10–02.[9] Safety Recommendation R–10–01 superseded Safety Recommendation R–07–003, and recommended that FRA:

> Require the installation, in all controlling locomotive cabs and cab car operating compartments, of crash- and fire-protected inward- and outward-facing audio and image recorders capable of providing recordings to verify that train crew actions are in accordance with rules and procedures that are essential to safety as well as train operating conditions. The devices should have a minimum 12-hour continuous recording capability with recordings that are easily accessible for review, with appropriate limitations on public release, for the investigation of accidents or for use by management in carrying out efficiency testing and system wide performance monitoring programs.

In addition, Safety Recommendation R–10–02 recommended that FRA:

> Require that railroads regularly review and use in-cab audio and image recordings (with appropriate limitations on public release), in conjunction with other performance data, to verify that train crew actions are in accordance with rules and procedures that are essential to safety.

Metro-North Railroad Derailment, Bronx, NY

On December 1, 2013, at approximately 7:20 a.m. EST, southbound Metro-North Railroad (Metro-North) passenger train 8808 derailed as it approached the Spuyten Duyvil Station in New York City. All passenger cars and the locomotive derailed, and, as a result, four passengers died and at least 61 passengers were injured. The train was traveling at 82 mph when it derailed in a section of curved track where the maximum authorized speed was 30 mph. Following the accident, the engineer reported that: (1) He felt dazed just before the derailment; [10] and (2) his wife had complained about his snoring. The engineer then underwent a sleep evaluation that identified excessive daytime sleepiness and a sleep study that diagnosed severe obstructive sleep apnea (OSA). Based on its investigation of the derailment, the NTSB concluded that the engineer had multiple OSA risk factors, such as obesity, male gender, snoring, complaints of fatigue, and excessive daytime sleepiness. Even though the engineer had these OSA risk factors, neither his personal health care provider nor his Metro-North occupational health evaluations had screened the engineer for OSA.[11] NTSB determined that the probable cause of the accident was the ''engineer's noncompliance with the 30-mph speed restriction because he had fallen asleep due to undiagnosed severe obstructive sleep apnea exacerbated by a recent circadian rhythm shift required by his work schedule.'' [12]

Railroad safety is of the utmost importance to FRA, and, based on the above accidents, FRA recommends several measures discussed below, to address human factor-caused accidents

III. Inward- and Outward-Facing Cameras

On December 4, 2015, the President signed into law the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1686 (Dec. 4, 2015) (FAST Act). Section 11411 of the FAST Act, codified in the Federal railroad safety laws at 49 U.S.C. 20168 (the Statute), requires FRA (as the Secretary of Transportation's delegate) to promulgate regulations requiring each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains. 49 U.S.C. 20168(a). Although FRA is in the process of developing a regulatory proposal addressing this statutory mandate, FRA encourages railroads to accelerate the installation of the cameras. The Statute contains various design and operational requirements related to these cameras including:

- A minimum 12-hour continuous recording capability (49 U.S.C. 20168(b)(1));
- Crash and fire protections for any in-cab image recordings that are stored only within a controlling locomotive cab or cab car operating compartment (49 U.S.C. 20168(b)(2));
- Recordings must be accessible for review during an accident or incident investigation (49 U.S.C. 20168(b)(3));

[5] National Transportation Safety Board, *Safety Recommendation History for Safety Recommendation R–10–001:* available online at: *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-10-001.* NTSB's accident report also reiterated these recommendations. *See* RAR–16/02 at 46–47. NTSB also sent a letter regarding locomotive recorder recommendations to Amtrak.

[6] *See* National Transportation Safety Board, *Collision of Metrolink Train 111 with Union Pacific Train LOF65–12 Chatsworth, California September 12, 2008,* Accident Report NTSB/RAR–10/01 (Jan. 21, 2010); available online at: *http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1001.pdf.*

[7] *Id.* at 66.

[8] Rail Safety Improvement Act of 2008, Public Law 110–432, Division A, 122 Stat. 4848 (Oct. 16, 2008); available online at *https://www.fra.dot.gov/eLib/Details/* L03588.

[9] National Transportation Safety Board, *Safety Recommendations R–10–01 and R–10–02* (Feb. 23, 2010); available online at: *http://www.ntsb.gov/safety/safety-recs/recletters/R-10-001-002.pdf.*

[10] NTSB, Railroad Accident Brief RAB–14/12, Metro-North Railroad Derailment, October 24, 2014, p. 2.

[11] *Id.* at 3.

[12] *Id.* at 5.

- Railroads may use the recordings to:
  - Verify that train crew actions follow applicable safety laws and the railroad carrier's operating rules and procedures (49 U.S.C. 20168(d)(1));
  - Assist in an investigation into the causation of a reportable accident or incident (49 U.S.C. 20168(d)(2)); and
  - Document a criminal act or monitor unauthorized occupancy of the controlling locomotive cab or car operating compartment (49 U.S.C. 20168(d)(3)).

In addition to the design and operational requirements in the FAST Act, the Statute also contains various other requirements regarding the use and maintenance of inward- and outward-facing cameras as well as limitations and protections on how data from the cameras can be used. Importantly, the Statute prohibits railroads from using image recordings to retaliate against their employees. 49 U.S.C. 20168(i). In addition, to discourage tampering with the cameras, the Statute allows railroads to take enforcement actions against employees that tamper with or disable an inward- or outward-facing image recording device. 49 U.S.C. 20168(f). Furthermore, recording device data obtained from a locomotive involved in a FRA reportable accident or incident must be preserved by the railroad for one year after the accident or incident. 49 U.S.C. 20168(g).

Once FRA has acquired this data from the railroad, FRA is prohibited from publicly disclosing locomotive audio and image recordings or transcripts of oral communications between train, operating, and communication center employees related to the accident or incident FRA is investigating. However, FRA may publicly release a transcript of a written depiction of visual information that the agency deems is relevant to the accident at the time other factual reports on the accident are released to the public. 49 U.S.C. 20168(h). This restriction is similar to the prohibition on public disclosure of locomotive recordings that NTSB takes possession of during an investigation. 49 U.S.C. 1114(d).

FRA remains concerned with the ability to fully investigate accidents that appear to be human factor-caused where there is insufficient information from the controlling locomotive cab or cab operating compartment to conclusively determine what caused or contributed to an accident. Locomotive cab recording information could benefit investigations and help identify necessary corrective actions before similar train accidents occur. Inward- and outward-facing image recording devices would be valuable in revealing crew actions and interactions before, during, and after an accident. FRA also believes that inward- and outward-facing cameras will give railroads the ability to monitor crew behavior to ensure compliance with existing Federal regulations and railroad operating rules and deter noncompliance. Existing Federal regulations at 49 CFR part 217 require railroads to conduct operational tests to determine the extent of employees' compliance with railroad operating rules, and particularly those rules which are most likely to cause the most accidents or incidents.

IV. Railroad Employee Fatigue

Fatigue of railroad employees continues to be a concern of FRA, particularly for employees with sleep disorders who operate passenger trains. This Advisory contains suggested measures that railroads and employees should utilize to prevent work-related errors and on-the-job accidents as a result of sleep disorders.

Sleep disorders represent a serious health problem and left untreated can result in impaired work performance, including possible loss of alertness and situational awareness, which could in turn present an imminent threat to transportation safety.[13] In general terms, sleep disorders range from fairly common disorders, such as insomnia (the inability to initiate or maintain sleep) to relatively rare sleep disorders such as narcolepsy (inappropriate and uncontrollable sleep episodes). Railroad employees who typically work on-call are especially vulnerable to circadian rhythm disorders such as shift work sleep disorder (SWSD).[14] SWSD symptoms include excessive sleepiness when a worker needs to be awake, insomnia when the worker needs to obtain sleep, unrefreshing sleep, and difficulty concentrating.[15] One of the more common sleep disorders is obstructive sleep apnea (OSA). And, the lawyer representing the engineer of the NJT train stated the engineer had undiagnosed OSA.[16]

OSA is a respiratory disorder characterized by a reduction or cessation of breathing during sleep. OSA is characterized by repeated episodes of upper airway collapse in the region of the upper throat (pharynx) that results in intermittent periods of partial airflow obstruction (hypopneas), complete airflow obstruction (apneas), and respiratory effort-related arousals from sleep (RERAs) in which affected individuals awaken partially and may experience gasping and choking as they struggle to breathe. Risk factors for developing OSA include: Obesity, male gender, advancing age, family history of OSA, large neck size, and an anatomically small oropharynx (throat). Additionally, OSA is associated with increased risk for other adverse health conditions such as: Hypertension (high blood pressure), diabetes, cardiac dysrhythmias (irregular heartbeat), myocardial infarction (heart attack), stroke, and sudden cardiac death. Individuals who have undiagnosed OSA are often unaware they have experienced periods of sleep interrupted by breathing difficulties (apneas, hypopneas, or RERAs) when they awaken in the morning. As a result, the condition is often unrecognized by affected individuals and underdiagnosed by medical professionals.

For individuals with OSA, eight hours of sleep can be less restful or refreshing than four hours of ordinary, uninterrupted sleep. Undiagnosed or inadequately treated moderate to severe OSA can cause unintended sleep episodes and resulting deficits in attention, concentration, situational awareness, and memory, thus reducing the capacity to safely respond to hazards when performing safety sensitive duties. Thus, OSA is a critical safety issue that can affect operations in all modes of travel in the transportation industry.

On March 10, 2016, FRA published an advance notice of proposed rulemaking (ANPRM) requesting data and information concerning the prevalence of moderate-to-severe OSA of individuals occupying safety sensitive positions in rail transportation and the potential consequences for rail safety. *See* 81 FR 12642 (Mar. 10, 2016). The ANPRM also requested information on the potential costs and benefits from regulatory actions that would address the safety risks associated with rail transportation workers in safety sensitive positions who have OSA. The ANPRM was published jointly with the Federal Motor Carrier Safety Administration and requested similar information regarding highway transportation workers in safety sensitive positions and highway safety. This Advisory and accompanying recommended actions is not in response to the ANPRM; rather, it is an action concurrent with the ANPRM. FRA is currently reviewing the data and

[13] *See* 81 FR 12642, 12643–12644 (Mar. 10, 2016); Federal Railroad Administration Notice of Safety Advisory 2004–04 (Oct. 1, 2004).

[14] *Id.*

[15] *Id.*

[16] *See http://www.nbcphiladelphia.com/news/local/NJ-train-crash-undiagnosed-engineer-sleep-disorder-apnea-hoboken-401555955.html.*

information submitted in response to the ANPRM.

V. Passenger Terminals and Stations With Stub End Tracks

The Hoboken accident involved NJT Train 1614 that was traversing a stub end track entering a passenger station at 21 mph–11 mph over the 10 mph posted speed limit. FRA recommends identifying locations that have stub end tracks at passenger terminals and stations that are equipped with technology that can warn and enforce passenger trains to stop short of a stub end track and ensure they enforce applicable speed limits. If such locations are not equipped with technology that can warn and enforce passenger trains to stop short of a stub end track and ensure they enforce applicable speed limits, then FRA encourages railroads to take other operational actions to prevent trains from overrunning stub end tracks equipped with or without bumping posts. One such operational action would be to require communications between the engineer and other qualified employees that can take appropriate action, such as applying the emergency brakes, if necessary.

VI. Recommended Actions

In light of the recent accident discussed above, and in an effort to ensure the safety of the Nation's railroads, their employees, and the general public, FRA recommends that intercity passenger and commuter railroads do each of the following:

1. Instruct their employees during training classes and safety briefings on the importance of compliance with maximum authorized train speed limits and other speed restrictions when entering passenger stations and terminals;

2. Not less than once every six months evaluate operational testing data as required by 49 CFR 217.9. A railroad should consider increasing the frequency of operational testing where its reviews show any non-compliance with maximum authorized train speeds in passenger stations or terminals. Railroads should conduct a significant number of operational tests on trains required to operate into a station or terminal with stub end tracks;

3. Adopt procedures requiring communication between crew members and the locomotive engineer before and during operation into a station or terminal and/or implement technology to appropriately control and/or stop the train short of the stub end track. These actions could include:

a. Making modifications to automatic train control (ATC), cab signal, or other signal systems capable of providing warning and enforcement to ensure trains comply with applicable speed limits and stop short of stub end tracks;

b. If a railroad does not utilize an ATC, cab signal, or other signal system capable of providing warning and enforcement at applicable passenger terminals and stations with stub end tracks platforms (or if a signal system modification would interfere with the implementation of PTC or is otherwise not viable), making all passenger train movements at the identified locations while in communication with a second qualified crew member. This will provide constant communication with the locomotive engineer and allow the second crewmember to take immediate appropriate action if the locomotive engineer is not responding or is unable to stop short of stub end tracks. This could also include making a safety stop at predetermined location and if the locomotive engineer does not make an appropriate safety stop the second qualified crew member can take appropriate action to stop the train;

4. Review Safety Advisory 2004–04 (69 FR 58995, Oct. 1, 2004); Effect of Sleep Disorders on Safety of Railroad Operations, in its entirety with all operating crews. Recommended actions from Safety Advisory 2004–04 are listed below:

a. Establish training and educational programs to inform employees of the potential for performance impairment as a result of fatigue, sleep loss, sleep deprivation, inadequate sleep quality, and working at odd hours, and document when employees have received the training. Incorporate elements that encourage self-assessment, peer-to-peer communication, and co-worker identification accompanied by policies consistent with these recommendations. The Railroaders' Guide to Healthy Sleep Web site (*http://www.railroadersleep.org*) has several educational resources to assist railroaders in improving their sleep health including an anonymous tool for self-screening for sleep disorders including OSA. This Web site is set up to disseminate educational information to railroad employees and their families about sleep disorders, the relevance of healthy sleep to railroad safety, and provide information about improving the quality of the railroaders' sleep. The Web site was developed in conjunction with the Division of Sleep Medicine at Harvard Medical School, WGBH Educational Foundation, and Volpe—The National Transportation Systems Center;

b. Ensure that employees' medical examinations include assessment and screening for possible sleep disorders and other associated medical conditions (including use of appropriate checklists and records). Develop standardized screening tools, or a good practices guide, for the diagnosis, referral and treatment of sleep disorders (especially OSA) and other related medical conditions to be used by company paid or recommended physicians during routine medical examinations; and provide an appropriate list of certified sleep disorder centers and related specialists for referral when necessary;

c. Develop and implement rules that request employees in safety-sensitive positions to voluntarily report any sleep disorder that could incapacitate, or seriously impair, their performance;

d. Develop and implement policies such that, when a railroad becomes aware that an employee in a safety-sensitive position has an incapacitating or performance-impairing medical condition related to sleep, the railroad prohibits that employee from performing any safety-sensitive duties until that medical condition appropriately responds to treatment; and

e. Implement policies, procedures, and any necessary agreements to—

i. Promote self-reporting of sleep-related medical conditions by protecting the medical confidentiality of that information and protecting the employment relationship, provided that the employee complies with the recommended course of treatment;

ii. Encourage employees with diagnosed sleep disorders to participate in recommended evaluation and treatment; and

iii. Establish dispute resolution mechanisms that rapidly resolve any issues regarding the current fitness of employees who have reported sleep-related medical conditions and have cooperated in evaluation and prescribed treatment.

5. Accelerate the installation of inward- and outward-facing cameras in passenger trains in the cab of the controlling locomotive or cab car operating compartment per the FAST Act. FRA notes that the FAST Act includes provisions on standards for the cameras, use of the cameras, and preservation and protection of data from the cameras.

FRA encourages all intercity passenger and commuter railroads to take actions consistent with the preceding recommendations. FRA acknowledges that action on some of the

above recommendations may have already taken place by segments of the industry. If so, FRA recommends railroads review their current programs for relevancy and review the policies and procedures with all their operating employees.

FRA may modify this Safety Advisory 2016–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursing other corrective measures under its rail safety authority.

Robert Lauby,

Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2016–29013 Filed 12–2–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2016 Public Transportation on Indian Reservations Program Project Selections

AGENCY: Federal Transit Administration (FTA), (DOT).

ACTION: Tribal Transit Program Announcement of Project Selections.

SUMMARY: The Federal Transit Administration (FTA) announces the selection of 35 projects for funding with Fiscal Year (FY) 2016 appropriations for the Public Transportation on Indian Reservations Program Tribal Transit Program (TTP), as authorized by (49 U.S.C. 5311(c)(1)(a)(j)), as amended by the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (December 4, 2015). A total of $5 million is available under this program.

FOR FURTHER INFORMATION CONTACT: Successful applicants should contact the appropriate FTA Regional office for information regarding applying for the funds or program-specific information. A list of Regional offices, along with a list of tribal liaisons can be found at *www.transit.dot.gov.* Unsuccessful applicants may contact Élan Flippin, Office of Program Management at (202) 366–3800, email: *Elan.Flippin@dot.gov,* to arrange a proposal debriefing within 30 days of this announcement. In the event the contact information provided by your tribe in the application has changed, please contact your regional tribal liaison with the current information in order to expedite the grant award process. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: On March 14, 2016, FTA published a Notice of Funding Opportunity (NOFO) through a **Federal Register** Notice (81 FR 13444) announcing the availability of Federal funding for the TTP program. The FAST Act authorizes $5 million annually for federally recognized Indian Tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior for public transportation. The TTP supports many types of projects including: Operating costs to enable tribes to start or continue transit services; capital to enable tribal investment in new or replacement equipment; and funding for tribal transit planning activities for public transportation services in Indian Country. TTP services link tribal citizens to employment, food, healthcare, school, social services, recreation/leisure, and other key community connections. FTA funds may only be used for eligible purposes defined under 49 U.S.C. 5311 and described in the FTA Circular 9040.1G, and consistent with the specific eligibility and priorities established in the March 2016 NOFO.

A total of 44 applications were received from 39 tribes in 13 states requesting $8.3 million, indicated that there is significant demand for funds for public transportation projects. Project proposals were evaluated based on each applicant's responsiveness to the program evaluation criteria outlined in FTA's March 2016 NOFO. The FTA also took into consideration the current status of previously funded applicants. This included examining available prior year competitive and formula balances; and geographic balance and diversity, including regional balance based on tribal population. As a result, FTA is funding a total of 35 projects for 34 tribes in 12 states. The projects selected in Table 1 provide funding for transit planning studies, capital and operating requests for existing, start-up, expansion and replacement projects. Funds must be used only for the specific purposes identified in Table 1. Allocations may be less than what the applicant requested and were capped at $329,843 to provide funding to all highly recommended, recommended, and planning proposals that received a ''pass'' rating; planning projects were capped at $25,000. Tribes selected for competitive funding should work with their FTA regional office to finalize the grant application in FTA's Transit Award Management System (TrAMs) for the projects identified in the attached table, so that funds are expeditiously obligated. In cases where the allocation amount is less than the proposer's requested amount, tribes should work with the regional office to ensure the funds are obligated for eligible aspects of the projects, and for specific purpose intended as reflected in Table 1. A competitive project identification number has been assigned to each project for tracking purposes, and must be used in the TrAMs application. For more information about TrAMs, please visit: *http://www.transit.dot.gov/16260_15769.html.* The post award reporting requirements include submission of the Federal Financial Report (FFR), Milestone Report in TrAMs, and National Transit Database (NTD) reporting, as appropriate (see FTA Circular 9040.1G).

Tribes must continue to report to the NTD to be eligible for formula apportionment funds. To be considered in the FY 2017 formula apportionments, tribes should have submitted their reports to the NTD no later than June 30, 2016; voluntary reporting to the NTD is also encouraged. For tribes who have not reported before, please contact the NTD Operations Center in advance to get a reporting account for the NTD on-line data collection system. The Operation Center can be reached Monday–Friday, 8:00 a.m.–7:00 p.m. (ET), by email *NTDHelp@dot.gov* or by phone 1–888–252–0936.

TTP grantees must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. To assist tribes with understanding these requirements, FTA has conducted Tribal Transit Technical Assistance Workshops, and expects to offer additional workshops in FY2017. FTA has also expanded its technical assistance to tribes receiving funds under this program, with the Tribal Transit Technical Assistance Assessments initiative. Through these assessments, FTA collaborates with tribal transit leaders to review processes and identify areas in need of improvement and then assist with solutions to address these needs. These assessments include discussions of compliance areas pursuant to the Master Agreement, a site visit, promising practices reviews, and technical assistance from FTA and its contractors. These workshops and assessments have received exemplary feedback from Tribal Transit Leaders, and provide FTA with invaluable opportunities to learn more about tribal transit leaders' perspectives, and honor the sovereignty of tribal nations. FTA will post information about upcoming workshops to its Web site and disseminate information about the reviews through its Regional offices. A list of Tribal

Liaisons can be found on FTA's Web site at *http://www.transit.dot.gov/13094_15845.html.*

Funds allocated in this announcement must be obligated in a grant by September 30, 2018. Tribes selected for competitive funding should work with their FTA regional tribal liaison to finalize the grant application in TrAMs.

Carolyn Flowers,

Acting Administrator.

TABLE I—FY 2016 TRIBAL TRANSIT PROGRAM AWARDS

State	Recipient	Project ID	Project description	Allocation
AK	McGrath Native Village	D2016–TRTR–001	Start-up/Capital	$63,000
AK	Native Village of Fort Yukon	D2016–TRTR–002	Replacement/Capital	131,655
AK	Native Village of Unalakleet	D2016–TRTR–003	Replacement/Capital	28,340
AK	Nome Eskimo Community	D2016–TRTR–004	Existing/Operating	179,621
AK	Nulato Village	D2016–TRTR–005	Start-up/Planning	25,000
AK	Rampart Village	D2016–TRTR–006	Start-up/Planning	25,000
AZ	Hualapai Indian Tribe	D2016–TRTR–007	Start-up/Capital	140,962
CA	Blue Lake Rancheria, California	D2016–TRTR–008	Replacement/Capital	120,000
CA	North Fork Rancheria of Mono Indians of California.	D2016–TRTR–009	Expansion, Replacement/Capital	66,994
CA	Susanville Indian Rancheria	D2016–TRTR–010	Replacement/Capital	45,000
CA	Susanville Indian Rancheria	D2016–TRTR–011	Existing/Capital	1,980
CA	Yurok Tribe	D2016–TRTR–012	Expansion, Replacement/Capital	234,000
CT	Mashantucket Pequot Tribal Nation	D2016–TRTR–013	Start-up/Operating	133,705
ID	Shoshone-Bannock Tribes	D2016–TRTR–014	Expansion/Capital	85,400
KS	Prairie Band Potawatomi Nation	D2016–TRTR–015	Expansion, Replacement/Capital	287,500
MN	Bois Forte Band of Chippewa	D2016–TRTR–016	Expansion/Capital	329,843
MN	Fond du Lac Band of Lake Superior Chippewa.	D2016–TRTR–017	Existing/Capital	127,987
MN	White Earth Band of Chippewa Indians	D2016–TRTR–018	Replacement/Capital	116,352
MT	Chippewa Cree Tribe	D2016–TRTR–019	Replacement/Capital	77,875
MT	Confederated Salish and Kootenai Tribes.	D2016–TRTR–020	Expansion/Capital	329,843
MT	Northern Cheyenne Tribe of the Northern Cheyenne Indian Res.	D2016–TRTR–021	Replacement/Capital	119,340
NM	Jicarilla Apache Nation	D2016–TRTR–022	Start-up/Capital	211,197
OK	Cherokee Nation	D2016–TRTR–023	Replacement/Capital	321,561
OK	Choctaw Nation of Oklahoma	D2016–TRTR–024	Expansion, Replacement/Capital	329,843
OK	Miami Tribe of Oklahoma	D2016–TRTR–025	Expansion, Replacement/Capital	179,100
OK	Muscogee (Creek) Nation	D2016–TRTR–026	Existing/Capital	108,000
OK	Seminole Nation of Oklahoma	D2016–TRTR–027	Replacement/Capital	135,000
OK	Wichita and Affiliated Tribes	D2016–TRTR–028	Start-up/Planning	24,998
WA	Confederated Tribes and Bands of the Yakama Nation.	D2016–TRTR–029	Expansion/Capital	255,344
WA	Cowlitz Indian Tribe	D2016–TRTR–030	Existing, Replacement/Capital	58,056
WA	Kalispel Indian Community of the Kalispel Reservation.	D2016–TRTR–031	Replacement/Capital	51,021
WA	Muckleshoot Indian Tribe	D2016–TRTR–032	Existing/Operating	329,843
WA	Nooksack Indian Tribe	D2016–TRTR–033	Existing/Operating	188,000
WA	Snoqualmie Indian Tribe	D2016–TRTR–034	Existing/Operating	113,640
WI	Red Cliff Band of Lake Superior Chippewa Indians.	D2016–TRTR–035	Existing/Planning	25,000
Total Allocation				5,000,000

[FR Doc. 2016–29020 Filed 12–2–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0024; Notice 2]

Spartan Motors USA, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Spartan Motors USA, Inc. (Spartan), has determined that certain model year (MY) 2013–2015 Utilimaster Vans do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection.* Spartan Motors USA, Inc., filed a defect report dated January 15, 2016. Spartan then petitioned NHTSA on February 12, 2016, for a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision please contact James A. Jones, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5294, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Spartan Motors USA, Inc. (Spartan), has determined that certain model year (MY) 2013–2015 Utilimaster Vans do not fully comply with paragraph S4.5.1(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection.* Spartan Motors USA, Inc., filed a report dated January 15, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* for Spartan. Spartan also petitioned NHTSA on

February 12, 2016, under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Spartan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on July 21, 2016 in the **Federal Register** (81 FR 47493). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2016–0024.''

II. Vehicles Involved: Affected are approximately 910 MY 2013–2015 Utilimaster Vans that were manufactured between July 11, 2014 and December 8, 2015.

III. Noncompliance: Spartan explains that the noncompliance occurred during alterations to the subject vehicles. During alterations the sun visors were removed and then reinstalled. As a result of the reinstallation, the required sun visor air bag warning labels are not visible when the sun visors are in the stowed position. Since the sun visor air bag warning labels are not visible when in the stowed position, an air bag alert label is required and therefore does not meet the requirements as specified in paragraph S4.5.1(c) of FMVSS No. 208.

IV. Rule Text: Paragraph S4.5.1(c) of FMVSS No. 208 requires in pertinent part:

> S4.5.1(c) *Air bag alert label.* If the label required by S4.5.1(b) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6(c) of this standard, and shall comply with the requirements of S4.5.1(c)(1) through S4.5.1(c)(3) . . .

V. Summary of Spartan's Petition: Spartan described the subject noncompliance and stated its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(a) Spartan cited the definition of motor vehicle safety as stated in the Safety Act under 49 U.S.C. 30111(a). Spartan also cited 49 U.S.C. 30118(d) under the Safety Act where Congress acknowledges that there are cases where a manufacturer has failed to comply with a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified.

(b) Spartan stated that paragraph S4.5.1(b)(2) of FMVSS No. 208 requires an air bag warning label to be installed, at the manufacturer's option, on either side of the sun visor at each outboard seating position equipped with an inflatable restraint. Within that same section of FMVSS No. 208, it states that air bag warning labels are to be installed, at the manufacturer's option, in accordance with Figure 8 or 11 of the standard. Footnotes under Figures 8 and 11, among others, state ''Sun Visor Label Visible when Visor is in Down Position.''

Spartan submitted a photograph depicting that the air bag warning label on the subject vehicles is visible when the sun visor is in the down position, however, the content is inverted.

(c) Spartan specified that the content of the sun visor label identifies the risks associated with the placement of children, or child seats, encourages the use of seatbelts, and defers to the owner's manual for information pertaining to the air bags.

Spartan notes that they are a vehicle alterer in this case and are not responsible for the content of the air bag warning label and that they make no assertions relating to compliance of the label. However, during alterations to the vehicles they do remove and reinstall the sun visors.

(d) Spartan also stated that they alter a completed vehicle (in this case a van) to become a vocational vehicle intended to be used as a delivery service vehicle (*i.e.,* a vehicle used to carry parcel packages or other goods.) And although, the altered vehicle would be equipped with two outboard seating positions, delivery service vehicles are typically occupied by the driver who has a specific purpose of delivering goods. Given the nature of, or intended use of, the vehicle, it would be unlikely for children to be placed in the passenger seating area.

(e) Spartan clearly expressed that they do not alter information in the owner's manual although it may provide supplements related to the alterations being made. Spartan says that the content in the owner's manual states that the air bag system is supplemental to the seat belts and further describes risks associated with the air bag system. Furthermore, the information in the owner's manual discusses an air bag warning indicator (tell-tale) of which the vehicle is equipped and its function (this indicator would provide indication to the driver that the vehicle is equipped with an air bag system.)

(f) Spartan believes that while the content on the sun visor warning label (although not provided by Spartan) may not be in the upright position to be easily read by the occupants, it is visible with the sun visor in the down position. And even though the label is inverted, the coloring scheme would continue to signify risks associated with the air bag system.

Spartan elaborated by saying that the information within the owner's manual for the affected vehicles expands on potential risks related to the system but also encourages the use of seatbelts as the primary purpose of occupant protection.

Spartan additionally informed NHTSA that on December 8, 2015 containment actions were conducted and all units in control of Utilimaster were inspected and the noncompliance corrected. This included vehicles currently undergoing alterations.

In summation, Spartan believes that given the vocational use of the affected vehicles and information provided in the foregoing that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt Spartan from providing notification of the noncompliances as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA'S Decision:

Background: To reduce the adverse effects of air bags, especially for children, NHTSA required newly improved, attention getting labels in a final rule issued on November 27, 1996.[1] The new rule required vehicle manufacturers permanently affix an air bag alert label to the sides of sun visors. See paragraph S4.5.1(c) of FMVSS No. 208. A manufacturer did not have to provide the alert label if the sun visor air bag warning label (see paragraph S4.5.1(b)of FMVSS No. 208) was placed so that it is visible when the visor is in the stowed position. The air bag alert label includes instructions to ''flip the visor over'' and a pictogram of a rear facing child restraint being struck by an air bag. NHTSA believed that the alert label is more likely to attract the attention of vehicle occupants and induce them to look for the air bag

[1] The new labels would not be required on vehicles having a ''smart passenger-side air bag'' (*i.e.,* an air bag that would automatically shut-off or adjust its deployment so as not to adversely affect children).'' This provision, however, was removed from the current rule issued on May 12, 2000.

warning label on the other side of the sun visor. See 61 FR 60206.

On May 12, 2000, NHTSA refreshed the content requirements of the air bag warning labels consistent with its intent to require labels for vehicles with advanced air bags. Additionally, in order to provide consumers with adequate information about their occupant restraint system, NHTSA required manufacturers to provide a written explanation of the vehicle's advanced air bag system in owner's manuals. See 65 FR 30722.

NHTSA's Analysis: Acting as an alterer,[2] Spartan removed and re-installed sun visors as part of its modification of the subject vocational vehicles. The vocational vehicles are equipped with advanced air bags at the driver and front passenger seating positions and had compliant air bag warning labels pursuant to paragraph S4.5.1(b)(1) of FMVSS No. 208 permanently affixed to the sun visors, and visible to vehicle occupants when the sun visors were stowed prior to Spartan's modifications.

The left and right-side sun visors are nearly identical in size, have identical attachment points to the headliner and are interchangeable. Apparently, when re-installing the sun visors, Spartan incorrectly placed the left-side visor on the right-side of the vehicle and vice-versa. As a result, the air bag warning labels are no longer visible to vehicle occupants when the sun visors are stowed. Rather, the air bag warning labels are inverted and only visible to vehicle occupants when the sun visors are deployed.

In accordance with paragraph S4.5.1(c) of FMVSS No.208, if the air bag warning label is not visible when the sun visor is in the stowed position, an additional label (*i.e.,* air bag alert label) conforming to Figure 6(c) of FMVSS No. 208 shall be permanently affixed to the visor and visible when the visor is in the stowed position. Spartan failed to affix air bag alert labels to the sun visors as required.[3]

NHTSA's Decision: NHTSA has concluded that the absence of the air bag alert labels affixed to sun visors on subject Spartan vocational vehicles is inconsequential to motor vehicle safety. NHTSA agrees that given the nature and intended use of the subject vocational vehicles, it would be unlikely for children to be placed in the front passenger seating area. The subject vehicles are equipped with OEM installed advanced airbags that have the potential to substantially decrease the risk of injuries and deaths occurring from deployment. In addition, a written explanation of the advanced passenger air bag system is included in the owner's manuals.

This petition is granted solely on the agency's decision that the noncompliance in the subject vehicles is inconsequential as it relates to motor vehicle safety. It is important that all other vehicles subject to these requirements continue to meet them.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Spartan no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Spartan notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–29026 Filed 12–2–16; 8:45 am]

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[2] As defined by 49 CFR 567.3.

[3] In the petition, Spartan discussed noncompliance to paragraph S4.5.1(b)(2) of FMVSS No. 208 and in their safety recall report, incorrectly cited paragraph S4.5.1 5(c) of FMVSS No. 208. The noncompliance resulting from the absence of air bag alert labels pursuant to paragraph S4.5.1(c) of FMVSS No. 208 is under review in this petition.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0137]

Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed Federal guidelines.

SUMMARY: This notice details the proposed contents of the second phase of the National Highway Traffic Safety Administration's (NHTSA) Driver Distraction Guidelines (Phase 2 Guidelines). The purpose of the Phase 2 Guidelines is to provide a safety framework for developers of portable and aftermarket electronic devices to use when developing visual-manual user interfaces for their systems. The Guidelines encourage innovative solutions such as pairing and Driver Mode that, when implemented, will reduce the potential for unsafe driver distraction by limiting the time a driver's eyes are off the road, while at the same time preserving the full functionality of these devices when they are not used while driving. Currently no safety guidelines exist for portable device technologies when they are used during a driving task. NHTSA seeks comments and suggestions to improve this proposal.

DATES: You should submit your comments early enough to be received not later than February 3, 2017.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Dr. Chris Monk, phone: (202) 366–5195, or *chris.monk@dot.gov.* Dr. Monk's mailing address is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The final version of the Phase 2 Guidelines will not have the force and effect of law and will not be a regulation. Therefore, NHTSA is not required to provide notice and an opportunity for comment. NHTSA is doing so, however, to ensure that the final Phase 2 Guidelines benefit from the input of all knowledgeable and interested members of the public.

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I. Executive Summary

A. The Driver Distraction Safety Problem

In 2015,[1] 10 percent of the 35,092 traffic fatalities involved one or more distracted drivers, and these distraction-affected crashes resulted in 3,477 fatalities, an 8.8 percent increase from the 3,197 fatalities in 2014.[2] Of the 5.6 million non-fatal, police-reported crashes in 2014 (the most recent year for which detailed distraction-affected crash data is available), 16 percent were distraction-affected crashes, and resulted in 424,000 people injured.

The crash data indicate that visual-manual interaction (an action that requires a user to look away from the roadway and manipulate a button or interface) with portable devices, particularly cell phones, is often the main distraction for drivers involved in crashes. In 2014, there were 385 fatal crashes that involved the use[3] of a cell phone, resulting in 404 fatalities. These crashes represent 13 percent of the distraction-affected fatal crashes or 1.3 percent of all fatal crashes.[4] The data also indicate that there were a number of fatal crashes that involved the use of a device or object brought into the vehicle (some of which may also have been crashes that involved the use of a cell phone). This catch-all category includes crashes that involved the use of portable devices, such as navigation devices, in addition to other types of objects (*e.g.,* cigarette lighters). Of the 967,000 distraction-affected crashes in 2014, 7 percent (or 1.1 percent of all crashes) involved the use of cell phones and resulted in 33,000 people injured.[5]

B. What is driver distraction?

Driver distraction is a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity. This distraction can come from electronic devices, such as texting or emailing on cell phones or smartphones, and more traditional activities such as interacting with passengers, eating, or events external to the vehicle. Driver distraction can affect drivers in different ways, and can be broadly categorized into the following types:

- *Visual distraction:* Tasks that require the driver to look away from the roadway to visually obtain information;
- *Manual distraction:* Tasks that require the driver to take one or both hands off the steering wheel to manipulate a control, device, or other non-driving-related item;
- *Cognitive distraction:* Tasks that require the driver to avert their mental attention away from the driving task.

Tasks can involve one, two, or all three of these distraction types.

NHTSA is aware of the effect that these types of distraction can have on driving safety, particularly visual-manual distraction. At any given time, an estimated 542,073 drivers are using hand-held cell phones while driving.[6]

[1] NHTSA. (2016). *Traffic Safety Facts Research Note: 2015 Motor Vehicle Crashes: Overview* (DOT HS 812 318). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812318* (last accessed on 10/4/16).

[2] NHTSA. (2016). *Traffic Safety Facts Research Note: Distracted Driving 2014* (DOT HS 812 260) (hereinafter ''*Traffic Safety Facts Research Note: Distracted Driving 2014*''). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812260* (last accessed on 10/4/16). 2014 data are the most recent data available.

[3] Use of a cell phone includes talking on or listening to a cell phone, dialing or texting on a cell phone, and other cell-phone-related activities.

[4] Other types of distraction-affected crashes include those caused by daydreaming, eating or drinking, smoking, and conversing with a passenger. See NHTSA. (2016). *Traffic Safety Facts Research Note: Distracted Driving 2014.*

[5] *Id.*

[6] NHTSA. (2016). *Traffic Safety Facts Research Note: Driver Electronic Device Use in 2015.* (DOT HS 812 326). Available at *https://*

Continued

Moreover, when sending or receiving a text message with a hand-held phone, the total time that a driver's eyes are focused off the road is 23 seconds on average.[7] This means while traveling at 55 mph, a driver's eyes are off the road for more than a third of a mile for every text message sent or received.

C. NHTSA's Efforts To Reduce Driver Distraction

As an agency committed to reducing deaths, injuries, and economic losses resulting from motor vehicle crashes, NHTSA has initiated, and continues to work toward eliminating crashes attributable to driver distraction. Most prominently, NHTSA and the United States Department of Transportation (US DOT) have encouraged efforts by states and other local authorities to pass laws prohibiting hand-held use of portable devices while driving. NHTSA, in conjunction with industry, local governments, and various public interest groups, has also taken numerous steps to educate the public about the dangers of distracted driving.

However, until distracted driving is eliminated, the agency must work in the real-world where many drivers continue to use their portable devices and other in-vehicle systems in unsafe ways while driving. Thus, NHTSA has also worked on how to mitigate the distraction that may be caused by these new technologies. In April 2010, NHTSA called for the development of voluntary guidelines addressing driver distraction caused by in-vehicle systems and portable devices.[8] This sentiment was reinforced by the US DOT's and NHTSA's June 2012 ''Blueprint for Ending Distracted Driving.'' [9] The blueprint is a comprehensive approach to the distraction problem. The three steps outlined in the blueprint include: Enacting and enforcing tough state laws on distracted driving, addressing technology, and better educating young drivers. All three components are necessary to address the distraction issue. The Distraction Guidelines focus on step two by addressing technology.

The development of non-binding, voluntary guidelines for in-vehicle and portable devices is being implemented in three phases. The Phase 1 Driver Distraction Guidelines (Phase 1 Guidelines), released in 2013, cover visual-manual interfaces of electronic devices installed in vehicles as original equipment (OE).[10] The Phase 2 Driver Distraction Guidelines (Phase 2 Guidelines), which are the subject of this notice, would apply to visual-manual interfaces of portable and aftermarket devices.

While NHTSA is proposing the Phase 2 Guidelines, it is important to note that the agency continues to support state efforts to prohibit hand-held use of portable devices while driving. In proposing the Phase 2 Guidelines, NHTSA stresses that it does not encourage the hand-held use of portable devices while driving. While NHTSA acknowledges that there are many available technology solutions, state laws, and consumer information campaigns designed to help reduce distracted driving, the agency believes that an important way to help mitigate the real-world risk posed by driver distraction from portable devices is for these devices to have limited functionality and simplified interfaces when they are used by drivers while driving. This is especially true because some of these devices are intended to be used while driving and others have applications that are clearly meant to be used by drivers to complete the driving task. These Guidelines are, therefore, intended to reduce the potential distraction associated with hand-held portable and aftermarket device use while driving. The agency believes these Guidelines will provide a framework for portable device and application developers to take into account real-world device use by consumers when driving. In addition, the agency notes that applications that are meant to be used by drivers while driving are likely to continue to be developed and made available.

While these Guidelines help manufacturers develop portable and aftermarket devices while keeping safe driving in mind, it remains the driver's responsibility to ensure the safe operation of the vehicle and to comply with all state traffic laws. This includes, but is not limited to laws that ban texting and/or the use of hand-held devices while driving. NHTSA and the US DOT support and will continue to support State and Federal efforts to combat distracted driving.

D. The Proposed NHTSA Guidelines for Portable and Aftermarket Devices

This notice announces the proposed Phase 2 Guidelines for Portable and Aftermarket Devices. The Phase 1 Guidelines for OE in-vehicle interfaces, discussed in detail below, provide the foundation for the proposed Phase 2 Guidelines. Phase 1 provided specific recommendations for minimizing the distraction potential from OE in-vehicle interfaces that involve visual-manual interaction. Particularly, the Phase 1 Guidelines are focused on recommending acceptance criteria for driver glance behavior where single average glances away from the forward roadway are 2 seconds or less and where the sum of the durations of all individual glances away from the forward roadway are 12 seconds or less while performing a testable task, such as selecting a song from a satellite radio station.

To the extent practicable, the Phase 2 Guidelines apply the Phase 1 recommendations to the visual-manual interfaces of portable devices (*e.g.,* smartphones, tablets, and navigation devices) and aftermarket devices (*i.e.,* devices installed in the vehicle after manufacture). Because there are both similarities and differences between OE interfaces and portable devices, the Phase 2 Guidelines primarily focus on portable devices. Due to the functional similarities between aftermarket devices and OE systems, the Phase 2 Guidelines direct manufacturers to the Phase 1 Guidelines.

The proposed Phase 2 Guidelines present two concurrent approaches for mitigating distraction associated with the use of portable and aftermarket devices by drivers. First, the proposed Guidelines recommend that portable and OE in-vehicle systems be designed so that they can be easily paired to each other and operated through the OE in-vehicle interface. Assuming that the OE in-vehicle interface conforms to the Phase 1 Guidelines, pairing would ensure that the tasks performed by the driver while driving meet the time-based, eye-glance task acceptance criteria specified in the Phase 1 Guidelines. Pairing would also ensure that certain activities that would inherently interfere with the driver's ability to safely control the vehicle would be locked out while driving (*i.e.,* the ''per se lock outs'' referred to in the Phase 1 Guidelines). Those per se lock outs include:

crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812326 (last accessed on 10/4/16).

[7] Fitch, G., et al. (2013). *The Impact of Hand-Held and Hands-Free Cell Phone Use on Driving Performance and Safety-Critical Event Risk* (DOT HS 811 757). Washington, DC: National Highway Traffic Safety Administration.

[8] NHTSA. (2010). *Overview of the National Highway Traffic Safety Administration's Driver Distraction Program* (DOT HS 811 299). Available at *http://www.nhtsa.gov/staticfiles/nti/distracted_driving/pdf/811299.pdf* (last accessed on 10/4/16).

[9] NHTSA. (2012). *Blueprint for Ending Distracted Driving* (DOT HS 811 629). Available at: *http://www.distraction.gov/downloads/pdfs/blueprint-for-ending-distracted-driving.pdf* (last accessed on 10/4/16).

[10] 78 FR 24817 (Apr. 26, 2013). Available at *https://www.federalregister.gov/articles/2013/04/26/2013-09883/visual-manual-nhtsa-driver-distraction-guidelines-for-in-vehicle-electronic-devices* (last accessed on 10/4/16).

- Displaying video not related to driving;
- Displaying certain graphical or photographic images;
- Displaying automatically scrolling text;
- Manual text entry for the purpose of text-based messaging, other communication, or internet browsing; and
- Displaying text for reading from books, periodical publications, Web page content, social media content, text-based advertising and marketing, or text-based messages.

NHTSA encourages all entities involved with the engineering and design of pairing technologies to jointly develop compatible and efficient processes that focus on improving the usability and ease of connecting a driver's portable device with their in-vehicle system.

The second approach recommended by the proposed Phase 2 Guidelines is that portable devices that do not already meet the NHTSA glance and per se lock out criteria when being used by a driver should include a Driver Mode that is developed by industry stakeholders (*i.e.,* Operating System or handset makers).

The Driver Mode should present an interface to the driver that conforms with the Phase 1 Guidelines and, in particular, locks out tasks that do not meet Phase 1 task acceptance criteria or are among the per se lock outs listed above. The purpose of Driver Mode is to provide a simplified interface when the device is being used unpaired while driving, either because pairing is unavailable or the driver decides not to pair. The Guidelines recommend two methods of activating Driver Mode depending on available technology. The first option, and the one encouraged by the agency, is to automatically activate the portable device's Driver Mode when: (1) The device is not paired with the in-vehicle system, and (2) the device, by itself, or in conjunction with the vehicle in which it is being used, distinguishes that it is being used by a driver who is driving. The driver mode does not activate when the device is being used by a non-driver, *e.g.,* passenger.[11]

NHTSA has learned that technologies to detect whether a driver or passenger is using a device have been developed but are currently being refined such that they can reliably detect whether the device user is the driver or a passenger and are not overly annoying and impractical.[12] Accordingly, the agency is proposing a second means of activation—manual activation of Driver Mode—meaning that Driver Mode is activated manually by the user. The agency foresees this being a temporary option in the Phase 2 Guidelines until driver-passenger distinction technology is more mature, refined, and widely available. The agency is optimistic such technology can be implemented as soon as practicable.

Additionally, the Phase 2 Guidelines include recommendations for aftermarket devices—those devices that are intended to be permanently installed in the vehicle, which were not addressed in Phase 1. The proposed Phase 2 Guidelines suggest that aftermarket devices meet the same task acceptance criteria and other relevant recommendations as specified for OE interfaces in Phase 1.

Due to the close relationship between the Phase 1 and Phase 2 Guidelines, the agency is considering combining the two phases into a single document when the Phase 2 Guidelines are finalized. The agency requests comment on whether a single combined document would be easier for industry to use and the public at large to reference, or whether separate documents would be simpler.

Because these proposed Guidelines are voluntary and nonbinding, they will not require action of any kind, and for that reason they will not confer benefits or impose costs. Nonetheless, and as part of its continuing research efforts, NHTSA welcomes comments on the potential benefits and costs that would result from voluntary compliance with the Guidelines.

E. Major Differences Between the Proposed Phase 2 and Phase 1 NHTSA Guidelines

The Phase 1 Guidelines recommend that interfaces and tasks determined to be more distracting than a specified level should not be accessible to the user while the user is driving. Similarly, conformance with the proposed Phase 2 Guidelines would result in drivers interacting with their paired portable devices through Phase 1-conforming OE, built-in interfaces. In many cases, it is up to the driver to pair his or her device with the vehicle's interface or, as in the case with many older vehicles, the vehicle does not have the capability to pair with a portable device, so the Phase 2 Guidelines also recommend that the portable device be put in Driver Mode for use while driving instead of the portable device's default interface.

There are several distinctions between portable devices and in-vehicles systems that result in different considerations between the Phase 1 and Phase 2 Guidelines. The first distinction is that many portable devices are designed with the intent of being used in a variety of contexts that may or may not include driving, whereas OE in-vehicle interfaces are designed specifically for use while driving (unless specific functions are inaccessible when the vehicle is in motion). As a result, it is important that the Phase 2 Guidelines account for the need to reliably identify when a portable device is in fact being used by the driver of a moving vehicle.

A second distinction between portable devices and in-vehicle systems is that the portable devices may be used by other vehicle occupants in locations where the driver cannot see or access the device, *e.g.,* by a passenger in the back seat. In contrast, all of the interaction with the OE in-vehicle interface occurs in the vehicle, and the location of the interface (and whether the driver can access it) is known to the vehicle manufacturer when the interface is designed and installed.[13] These differences between the portable device and OE in-vehicle interface can be overcome with technological solutions, as described in greater detail below, potentially allowing for a Driver Mode that activates when the portable device is used by a driver while driving. This would allow for the device to be used in its full capacity in non-driving situations. Therefore, NHTSA encourages the development and implementation of technologies that can distinguish between drivers and passengers.

A third distinction between portable devices and in-vehicle systems is that, if not paired with the in-vehicle system, portable devices can be placed and/or mounted in a variety of different locations in the vehicle. There is also variability in the placement of an aftermarket device—although to a lesser extent than for portable devices, since aftermarket devices are confined to the available locations on the vehicle, such as inside the center stack or on top of the dashboard. NHTSA has elected not to include recommendations concerning whether or where a portable device should be mounted in this proposed set

[11] For purposes of this notice, ''passenger'' is a subset of ''non-driver.'' Non-drivers include not only personal vehicle passengers, but also people riding mass transit, bicycling, and the like. When referring to the specific type of vehicles this guidance is aimed at—light vehicles—the notice will often refer to those occupants as drivers and passengers and the technology that distinguishes between drivers and passengers in light vehicles as driver-passenger distinction technology.

[12] For further discussion of driver-passenger distinction technologies, see *infra* Section I.3.

[13] The Phase 1 Guidelines explicitly exclude OE in-vehicle devices that cannot reasonably be reached or seen by the driver.

of guidelines, but we seek comment on whether we should include them at a later date and whether there are already other entities/programs that provide advice on where to mount devices safely.

A fourth distinction is that the user-interface experience with portable devices can be different from built-in and installed aftermarket systems due to a wide range of device characteristics (*e.g.,* smaller screens on portable devices). In addition, users often use their thumbs to interact with touchscreens on hand-held portable devices, whereas the index finger is more commonly used with built-in and installed aftermarket systems. While these differences in device characteristics may affect a driver's interaction with the device, NHTSA believes it is unnecessary to address design issues at the characteristic level for the Phase 2 Guidelines, because, regardless of their specific features, portable devices will be used while within reach of the driver and viewed at a downward viewing angle. Rather, NHTSA maintains its focus on the Phase 1 test procedures and acceptance criteria in Phase 2 for paired and unpaired portable devices, as well as installed aftermarket devices.

The variability of potential locations for portable and aftermarket devices has implications for testing procedures to determine conformance with our recommendations concerning Driver Mode. Specifically, the proposed Phase 2 Guidelines' test procedure for when the device is in Driver Mode includes recommendations about the placement of the portable electronic devices during testing. In order to address the issues mentioned above regarding the variability of the portable device's location and driver's access to its screen, the proposed test procedure recommends that unpaired portable devices be tested in a mounted location that is easy for the driver to reach and is based on driver viewing angle specified in Phase 1. NHTSA has included a general recommended testing location for unpaired portable devices but seeks comment on whether a location could be specified that would not result in infinite possibilities or be too particular to any one device or vehicle.

For aftermarket devices that are intended to be permanently installed in the vehicle, the proposed test procedure recommends that they be tested in the installation location prescribed by the device manufacturer.

F. Phase 2 Outreach Efforts

NHTSA is committed to reducing deaths and injuries resulting from motor vehicle crashes from distraction by encouraging the development of devices that can be safer if used while driving. As part of the ongoing process of harmonizing with industry standards and practices, NHTSA hosted a public meeting on March 12, 2014, to bring together vehicle manufacturers and suppliers, portable and aftermarket device manufacturers, portable and aftermarket device operating system providers, cellular service providers, industry associations, application developers, researchers, and consumer groups to discuss technical issues regarding the agency's development of the Phase 2 Driver Distraction Guidelines for portable and aftermarket devices. NHTSA held the public meeting to ensure the stakeholders' interests were communicated and considered in the development of the Phase 2 Guidelines. NHTSA has met with portable and aftermarket device manufacturers through the Consumer Technology Association (CTA) [14] working group as well as individual meetings as part of an ongoing effort to enhance the cooperation and coordination of the Distraction Guidelines. Likewise, NHTSA participated in U.S. Senator John (Jay) D. Rockefeller's ''Over-Connected and Behind the Wheel: A Summit on Technological Solutions to Distracted Driving'' on February 6, 2014. Sen. Rockefeller, chair of the Senate Committee on Commerce, Science, and Transportation, hosted the summit to address potential technological solutions for minimizing driver distraction. NHTSA has also met with majority and minority staff members from several House and Senate Committees, including the House Energy and Commerce Committee, the House Transportation and Infrastructure Committee, the House Appropriations Committee, the Senate Commerce Committee, and the Senate Appropriations Committee, in July 2014 to provide background on the Phase 2 Guidelines and answer questions.

II. Background

A. Overview

Driver distraction is a safety problem in the United States. The latest crash and fatality data implicate driver distraction in 10 percent of fatal crashes, 18 percent of injury crashes, and 16 percent of all motor vehicle traffic crashes in 2014.[15] The 2014 data show that cell phones were directly linked to 385 fatal crashes (resulting in 404 fatalities), which is 13 percent of all distraction affected crashes and 1.3 percent of all fatal crashes.[16] The following sections outline the definition of driver distraction, the prevalence of portable device use in motor vehicles, and the crash and crash risk data associated with distraction from all devices in general and portable device use specifically. This section also outlines the various efforts from the US DOT, industry, and safety advocates to combat the distraction problem. These efforts include improving our understanding of the distraction problem, the implementation of legislation and enforcement approaches, driver education and public awareness campaigns, and guidelines for industry to develop less distracting devices and driver-vehicle interfaces.

B. Definition and Scope of Driver Distraction

Driver distraction is a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity. These distractions can come from electronic devices, such as navigation systems and cell/smartphones, and from more conventional activities, such as viewing sights or events external to the vehicle, interacting with passengers, and/or eating. These distracting tasks can affect drivers in different ways, and can be broadly categorized into the following types:

- *Visual distraction:* Tasks that require the driver to look away from the roadway to visually obtain information;
- *Manual distraction:* Tasks that require the driver to take one or both hands off the steering wheel to manipulate a control, device, or other non-driving-related item;
- *Cognitive distraction:* Tasks that require the driver to avert their mental attention away from the driving task.

Any given task can involve one, two, or all three of these types of distraction. NHTSA is aware of the effect that these types of distraction can have on driving

[14] Following NHTSA's Phase 2 Guidelines public meeting but before the issuance of this notice, the Consumer Electronics Association changed its name to the Consumer Technology Association. This notice will refer to that entity as the Consumer Technology Association or CTA unless the name is used in a publication title or citation.

[15] *Traffic Safety Facts Research Note: Distracted Driving 2014.*

[16] Because of the way crash data is reported and collected, there are limitations on how distraction-affected crashes, including those involving cell phone use, are represented. For an explanation of potential reasons for underreporting, please see *Traffic Safety Facts Research Note: Distracted Driving 2014* at 5–6.

safety, particularly visual-manual distraction.

The impact of distraction on driving is determined from multiple criteria, the type and level of distraction, and the frequency and duration of task performance. Even if performing a task results in a low level of distraction, a driver who engages in it frequently, or for long durations, may increase the crash risk to a level comparable to that of a more difficult task performed less often.

C. Prevalence of Portable Device Use While Driving

NHTSA is concerned about the role of portable electronic devices in distracted driving crashes. NHTSA has been monitoring drivers' use of portable devices through its National Occupant Protection Use Survey (NOPUS),[17] which involves the direct observation of driver electronic device use at probabilistically-sampled intersections. The most recent available NOPUS data from 2015 showed that 2.2 percent of drivers were observed manipulating hand-held devices, 3.8 percent of drivers were observed holding cell phones to their ears while driving, and 0.6 percent of drivers were observed speaking into visible headsets while driving. Notably, the percentage of drivers visibly manipulating hand-held devices has nearly quadrupled from 0.6 percent in 2009 to 2.2 percent in 2015, whereas the percentage of drivers holding cell phones decreased from 5 percent in 2009 to 3.8 percent in 2015. The percentage of drivers speaking into visible headsets has fluctuated from 0.6 percent in 2009, to as high as 0.9 percent in 2010, and as low as 0.4 percent in 2014.

Surveys of drivers indicate even higher rates of portable device use while driving. According to a 2012 survey published by NHTSA,[18] 14 percent of drivers reported reading text messages and email while driving at least some of the time, and 10 percent of drivers reported sending text or email messages while driving at least some of the time. In addition, almost half of drivers reported answering their cell phone when driving at least some of the time, and more than half of drivers who reported answering their phones while driving said they will continue to drive while talking on the phone. The survey further indicated that almost a quarter of drivers reported that they are at least sometimes willing to make a cell phone call while driving. As will be seen, these visual-manual distraction activities are associated with increased crash and near-crash risk.

NHTSA's 2013 Cell Phone Naturalistic Driving Study [19] found that 28 percent of the calls and 10 percent of the text messages in the participant cell phone records overlapped with periods of driving. In terms of visual-manual task duration while interacting with the cell phone, dialing on a hand-held cell phone lasted 12.4 seconds (s), on average, while pushing a button to begin a hands-free cell phone call (either with an aftermarket ''portable'' hands-free device or with a OE built-in, hands-free connection) took significantly less time (averages were 2.9 s and 4.6 s, respectively). Texting interactions lasted 36.4 s, on average (Min = 0.3 s, Max = 450.1 s), while driving at speeds above 8 km/h (approximately 5 mph). The study also assessed call duration as a function of hand-held, portable hands-free (*e.g.,* aftermarket headset), and integrated hands-free (*e.g.,* wireless connection to vehicle system). When driving at speeds above 8 km/h (approximately 5 mph), drivers talked longer on portable hands-free cell phones (4.96 min on average) than on integrated hands-free cell phones (3.78 minutes on average) or hand-held cell phones (3.00 min on average). However, the study found no differences in the number of text messages made per minute as a function of hand-held, portable hands-free, and integrated hands-free cell phones.

In a more recent survey by the AAA Foundation for Traffic Safety,[20] which focused on driving habits during the 30 days prior to the survey, 34.7 percent of drivers reported reading a text or email messages while driving, and 25.8 percent of drivers reported typing or sending text or email messages while driving. Additionally, 67.1 percent of drivers reported talking on a cell phone (of any kind, including while using a wireless connection and speaker phone) while driving during this period. These data show that many drivers continue to engage in visual- manual distraction activities with their portable devices while driving. This is concerning because research by NHTSA and others suggests that visual-manual manipulation of devices while driving dramatically increases crash risk.

The portable device market generally consists of portable devices including smartphones, tablets, navigation devices, and portable music players (*e.g.,* mp3 players). The aftermarket device market generally consists of products that are installed in a vehicle after its initial purchase, such as car stereos and navigation systems. Access to content (such as music and podcasts) has greatly increased over recent years, as have the capabilities of these devices and the public's desire to stay connected through them while driving. Accordingly, the scope of stakeholders has grown to include automotive OE manufacturers, handset (*e.g.,* smartphone) manufacturers, application (app) developers, wireless carriers, and software operating system providers. Through various meetings with these wide-ranging stakeholders, NHTSA recognizes the complexity of this stakeholder ''ecosystem'' and that distraction guidelines are currently not available for designing portable device user interfaces for safe use while driving. As a result, the Distraction Guidelines will provide a uniform safety framework for these stakeholders when integrating or developing their products for driving use.

D. Driver Distraction Safety Problem

The significant safety impact of distracted driving is evident from NHTSA's crash data, which comes from the Fatality Analysis Reporting System (FARS) [21] and the National Automotive Sampling System (NASS) General Estimates System (GES).[22] In 2014,[23] 10 percent of all fatal crashes involved one or more distracted drivers,[24] and these distraction-affected crashes [25] resulted

[17] NHTSA. (2016). *Traffic Safety Facts Research Note: Driver Electronic Device Use in 2015*(DOT HS 812 326). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812326* (last accessed on 10/4/16).

[18] Schroeder, P., Meyers, M., & Kostyniuk, L. (2013). *National Survey on Distracted Driving Attitudes and Behaviors—2012* (DOT HS 811 729). Washington, DC: National Highway Traffic Safety Administration.

[19] Fitch, G., et al. (2013). *The Impact of Hand-Held and Hands-Free Cell Phone Use on Driving Performance and Safety-Critical Event Risk* (DOT HS 811 757). Washington, DC: National Highway Traffic Safety Administration.

[20] Hamilton, B., Arnold, L., & Tefft, B. (2013). Distracted Driving and Perceptions of Hands-Free Technologies, AAA Foundation for Traffic Safety, Available at *https://www.aaafoundation.org/sites/default/files/2013%20TSCI%20Cognitive%20Distraction.pdf* (last accessed on 10/4/16).

[21] FARS is a census of all fatal crashes that occur on the roadways of the United States of America. It contains data on all fatal crashes occurring in all 50 states as well as the District of Columbia and Puerto Rico.

[22] NASS GES contains data from a nationally-representative sample of police-reported crashes. It contains data on police-reported crashes of all levels of severity, including those that result in fatalities, injuries, or only property damage. National numbers of crashes calculated from NASS GES are estimates.

[23] *Traffic Safety Facts Research Note: Distracted Driving 2014.*

[24] 3,000 distracted drivers were involved in these fatal crashes.

[25] A distraction-affected crash is any crash in which a driver was identified as distracted at the time of the crash.

in 3,197 fatalities.[26] This number increased 8.8 percent to 3,477 fatalities in 2015.[27] Of the 6 million non-fatal, police-reported crashes in 2014, 16 percent (967,000) were distraction-affected crashes and resulted in 431,000 people injured. Tables 1 and 2 quantify the effects of distraction on fatal crashes from 2010 to 2014 [28] and non-fatal crashes from 2007 through 2014.[29] These data show that distraction-affected fatalities and crashes continue to be a concern, and that NHTSA's ongoing efforts to address driver distraction from multiple approaches, including through its Guidelines, are warranted.

TABLE 1—FATAL CRASHES INVOLVING DISTRACTION, 2010–2014 [23]

[FARS]

Year	Fatal crashes		Fatalities		Drivers involved in distraction-affected crashes?	
	Overall	Distraction-affected (% of total crashes)	Overall	In distraction-affected crashes (% of total fatalities)	Overall	Distracted drivers (% of total drivers)
2010	30,296	2,993 (10%)	32,885	3,092 (9%)	44,440	2,912 (7%)
2011	29,867	3,047 (10%)	32,367	3,331 (10%)	43,668	3,085 (7%)
2012	31,006	3,098 (10%)	33,782	3,328 (10%)	45,337	3,119 (7%)
2013	30,203	2,910 (10%)	32,894	3,154 (10%)	44,574	2,959 (7%)
2014	29,989	2,955 (10%)	32,675	3,179 (10%)	44,583	3,000 (7%)

TABLE 2—NON-FATAL POLICE REPORTED CRASHES INVOLVING DISTRACTION, 2007–2014 [23]

[GES]

Year	Non-fatal crashes		People injured		
	Overall	Distraction-affected (% of total crashes)	Overall	In distraction-affected crashes (% of total injured)	Cell phone use (% of people injured in distraction-affected crashes)
2007	5,986,000	998,000 (17%)	2,491,000	448,000 (18%)	Unavailable
2008	5,776,000	964,000 (17%)	2,346,000	466,000 (20%)	Unavailable
2009	5,474,000	954,000 (17%)	2,217,000	448,000 (20%)	Unavailable
2010	5,389,000	897,000 (17%)	2,239,000	416,000 (19%)	24,000 (6%)
2011	5,308,000	823,000 (15%)	2,217,000	387,000 (17%)	21,000 (5%)
2012	5,584,000	905,000 (16%)	2,362,000	421,000 (18%)	28,000 (7%)
2013	5,657,000	901,000 (16%)	2,313,000	424,000 (18%)	34,000 (8%)
2014	6,035,000	964,000 (16%)	2,338,000	431,000 (18%)	33,000 (8%)

E. Driver Distraction and Portable Devices

1. Crash Data

The crash data indicate that the use of portable and aftermarket devices, particularly cell phones, is often a leading distraction for drivers involved in crashes (note that smartphones reached significant market presence beginning in 2007). In 2014, there were 385 fatal crashes that involved the use of a cell phone, though it is possible that this is an underestimate due to the difficult nature in relating cell phone use to crashes at the crash scene. These cell phone fatal crashes represented 13 percent of the total distraction-affected fatal crashes. The data also indicate that there were 75 distraction-affected fatal crashes in 2014 that involved the driver using or reaching for a device or object brought into the vehicle. This catch-all category of fatal distraction crashes includes crashes that involved the use of portable devices such as navigation devices in addition to other types of objects (*e.g.,* pocket cigarette lighters).

Of the 967,000 distraction-affected crashes in 2014, 8 percent (69,000 crashes) involved the use of cell phones, resulting in 33,000 people injured. The tables below quantify the effects of cell phone or other device use on fatal crashes from 2010 through 2014 and non-fatal crashes that involved the use of cell phones or other devices from 2007 through 2014.[30] As with Tables 1 and 2, these data show that cell phone-affected fatalities and crashes continue to pose a risk to motor vehicle safety.

[26] 10 percent of all crash fatalities (32,675 fatalities overall in 2014).

[27] NHTSA. (2016). *Traffic Safety Facts Research Note: 2015 Motor Vehicle Crashes: Overview* (DOT HS 812 318). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812318* (last accessed on 10/4/16).

[28] Because of changes made in 2010 to the coding of distracted driving in FARS, distraction-affected crash data from FARS for 2010 through 2014 cannot be compared to distracted-driving-related data from FARS from previous years.

[29] The coding of distracted driving in FARS and NASS GES was unified beginning in 2010. Although this resulted in a coding change for FARS, NASS GES coding did not change. Accordingly, NASS GES data from 2007 through 2014 can be compared.

[30] Identification of specific distractions has presented challenges, both within NHTSA's data collection and on police accident reports. Therefore, a large portion of the crashes that are reported to involve distraction do not have a specific behavior or activity listed; rather they specify ''distraction/inattention, details unknown.'' Some portion of these crashes could have involved a portable or aftermarket device.

TABLE 3—FATAL CRASHES INVOLVING THE USE OF CELL PHONES [31] [32] [33] [34] [35] 2010–2014

[FARS]

Year	Distraction-affected fatal crashes involving the use of a cell phone				Fatal crashes involving use of a device/ object brought into vehicle other than a cell phone
	Crashes	% of distraction-affected crashes	Fatalities	% of Fatalities in distraction-affected crashes	
2010	366	12	408	13	70
2011	354	12	385	12	53
2012	378	12	415	12	66
2013	411	14	455	14	70
2014	385	13	404	13	75

*The attributes ''Use of a Cell Phone'' and ''Use of or Reaching for Device/Object Brought into Vehicle'' are not mutually exclusive and crashes may involve one or both of these attributes.

TABLE 4—NON-FATAL POLICE REPORTED CRASHES INVOLVING DISTRACTION [31] [34] 2007–2014

[GES]

Year	Distraction-affected non-fatal crashes involving the use of a cell phone			% of People injured in distraction-affected crashes
	Crashes	% of Distraction-affected crashes	People injured	
2007	49,000	5	24,000	5
2008	49,000	5	29,000	6
2009	46,000	5	24,000	5
2010	47,000	5	24,000	6
2011	50,000	6	21,000	5
2012	60,000	7	28,000	7
2013	71,000	8	34,000	8
2014	[36] 69,000	7	33,000	8

2. Crash Risk Associated With Portable Device Use

The majority of crash risk data related to portable devices has focused on cell phones. However, it is important to note that cell phones have evolved from a portable hand-held phone designed specifically for voice calls to a device that can be used for various forms of communication, entertainment, and access to content. Examples include applications developed for messaging, photo-sharing, gaming, social networking, navigation, and other location-based services. While these features are not intended to be used while driving, they remain just as accessible to the driver in driving situations as any other feature on a smartphone. Whether on smartphones, tablet computers, or other portable electronic devices, access to more content can lead to more visual-manual distraction, which the studies summarized below consistently show is associated with higher levels of crash and near-crash risk, and decreased driving performance.

The agency's distraction focus has been on research and test procedures that measure aspects of driver performance having the strongest connection to crash risk. As described below, interactions with a distraction task that require visual attention (*i.e.,* eyes-off-road time) and manual operations (*e.g.,* button presses) consistently show association with increased crash and near-crash risk in naturalistic driving studies and decreased driving performance in simulator and test-track studies. The research summarized below provides a brief overview of the distraction safety problem as manifested in crashes and the relationship between visual-manual distraction and crash risk. There are also many simulator and test-track studies that show the negative effects of distracted driving have on driving performance that are not included in the summary below.[37]

A key component of the NHTSA distraction plan is to understand the crash risk of drivers using a cell phone while driving. Early epidemiological research reported that using a cell phone, hand-held or hands-free, was associated with a quadrupling of the risk of injury and property damage

[31] NHTSA. (2012). *Traffic Safety Facts Research Note: Distracted Driving 2010* (DOT HS 811 650). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811650* (last accessed on 10/4/16).

[32] NHTSA. (2013). *Traffic Safety Facts Research Note: Distracted Driving 2011* (DOT HS 811 737). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811737* (last accessed on 10/4/16).

[33] NHTSA. (2014). *Traffic Safety Facts Research Note: Distracted Driving 2012* (DOT HS 812 012). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812012* (last accessed on 10/4/16).

[34] NHTSA. (2015). *Traffic Safety Facts Research Note: Distracted Driving 2013* (DOT HS 812 132). Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812132* (last accessed on 10/4/16).

[35] *Traffic Safety Facts Research Note: Distracted Driving 2014.*

[36] Possible reasons for the uptick between 2010 and 2014 include the increasing volume of smartphones in the market and better distraction-related crash reporting.

[37] A sample of simulator and test-track study reports can be found at *www.distraction.gov.*

crashes.[38] [39] Subsequent naturalistic driving studies that investigated the risk of drivers performing specific cell phone subtasks all found that increased crash risk and safety critical event risk (SCE) were associated with visual-manual operations such as text messaging and dialing. An SCE was defined as a crash (where contact was made with another object), a near-crash (where a crash was avoided by a rapid evasive maneuver), or a crash-relevant conflict (where a crash avoidance response was performed that was less severe than a rapid evasive maneuver, but greater in severity than a ''normal maneuver''). However, in the naturalistic studies, non-visual-manual operations, such as conversing on a cell phone, were not found to be associated with an increase in crash risk.[40] [41] [42] These results were observed for both commercial motor vehicle and light-vehicle drivers, as well as across broad classifications of low, moderate, and high driving task demands.[43] In contrast, research conducted in simulators and on test tracks has found driving performance decrements when driving while talking on a cell phone.[44] [45] [46] [47] These experiments, however, cannot directly connect their results to SCE risk.

In April 2013, NHTSA published a study [48] on the impact of hand-held and hands-free cellular phone use on crash risk and driving performance. The study investigated the effects of distraction from the use of three types of cell phones while driving: (1) Hand-held (HH), (2) portable hands-free (PHF), and (3) integrated hands-free (IHF). Seventy-five percent of the phones used in the study could be classified as smartphones. Naturalistic driving data was collected from 204 drivers who each voluntarily took part in the study for an average of 31 days from February 2011 to November 2011. All participants reported talking on a cell phone while driving at least once per day prior to entering the study. With the participants' knowledge, data acquisition systems were installed in their personal vehicles and continuously recorded video of the driver's face, the roadway, and various kinematic data such as the vehicle speed, acceleration, headway information to lead vehicles, steering, and location. This was the first naturalistic driving study to date in which participants provided their cell phone records for analysis. The cell phone records allowed the determination of when drivers used their cell phone, while the video data allowed the determination of the type of cell phone used, how long it was used for, and what subtasks were executed. The result was a rich data set of driver behavior and performance when using a cell phone.

SCE risk was investigated using two approaches: (1) A risk rate approach, which assessed the SCE risk relative to general driving (where non-cell-phone secondary tasks could occur), and (2) a case-control approach, which assessed the SCE risk relative to ''just driving'' (where non-driving-related secondary tasks did not occur). The risk rate results are shown below (see the full report for the case-control results along with driver performance results). The odds ratio indicates the relative risk of an SCE during the listed activity. An odds ratio value of 1.0 is considered equivalent to driving while not distracted. Odds ratio values above 1.0 indicate elevated risk and values below 1.0 indicate decreased risk, though the difference must be statistically significant (*i.e.,* reliably different) for conclusions to be drawn about the associated risk of that activity.

TABLE 5—SCE RISK ASSOCIATED WITH CELL PHONE USE AS COMPUTED THROUGH RISK RATE APPROACH

Subtask	Odds ratio	Lower confidence limit (LCL)	Upper confidence limit (UCL)	p-value
Cell Phone Use—Collapsed across types	1.32	0.96	1.81	.0917
Visual-Manual	*2.93	1.90	4.51	<.0001
Call-related Visual-Manual	*3.34	1.76	6.35	.0003
Text-related Visual-Manual	*2.12	1.14	3.96	.0184
Talking/Listening	0.84	0.55	1.29	.4217
Talking/Listening Hand-held	0.84	0.47	1.53	.5764
Talking/Listening Portable Hands-free	1.19	0.55	2.57	.6581
Talking/Listening Integrated Hands-free	0.61	0.27	1.41	.2447
HH Cell Phone Use (Collapsed)	*1.73	1.20	2.49	.0034
PHF Cell Phone Use (Collapsed)	1.06	0.49	2.30	.8780
IHF Cell Phone Use (Collapsed)	0.57	0.25	1.31	.1859

* Indicates a difference at the .05 level of significance.

[38] McEvoy, S.P., Stevenson, M.R., McCartt, A.T., Woodward, M., Haworth, C., Palamara, P., et al. (2005). Role of portable phones in motor vehicle crashes resulting in hospital attendance: A case-crossover study. *British Journal of Medicine, 331,* 428–434.

[39] Redelmeier, D.A., & Tibshirani, R.J. (1997). Association between cellular-telephone calls and motor vehicle collisions. *The New England Journal of Medicine, 336,* 453–458.

[40] Hickman, J.S., Hanowski, R.J., & Bocanegra, J. (2010). *Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes* (FMCSA–RRR–10–049). Washington, DC: Federal Motor Carrier Safety Administration.

[41] Klauer, S.G., et al. (2006). *The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data* (DOT HS 810 594). Washington, DC: National Highway Traffic Safety Administration.

[42] Olson, R.L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009). Driver Distraction in Commercial Vehicle Operations: Final Report. Contract DTMC75–07–D–00006, Task Order 3. Washington, DC: Federal Motor Carrier Safety Administration.

[43] Fitch, G.M. & Hanowski, R. J. (2011). The risk of a safety-critical event associated with portable device use as a function of driving task demands. *Proceedings of the 2nd International Conference on Driver Distraction and Inattention.*

[44] Atchley, P. & Dressel, J. (2004). Conversation limits the functional field of view. *Human Factors: The Journal of the Human Factors and Ergonomics Society 46(4),* 664–673.

[45] Drews, F.A., Pasupathi, M., & Strayer, D.L. (2004). Passenger and cell-phone conversations in simulated driving. *Proceedings of the Human Factors and Ergonomics Society 48th Annual Meeting 48*, 2210–2212.

[46] Horrey, W.J., Lesch, M.F., & Garabet, A. (2008). Assessing the awareness of performance decrements in distracted drivers. *Accident Analysis & Prevention, 40(2)*, 675–682. doi: 10.1016/j.app.2007.09.004.

[47] Strayer, D.L., Drews, F.A., & Johnston, W.A. (2003). Cell phone-induced failures of visual attention during simulated driving. *Journal of Experimental Psychology: Applied, 9(1),* 23–32.

[48] Fitch, G., et al. (2013). *The Impact of Hand-Held and Hands-Free Cell Phone Use on Driving Performance and Safety-Critical Event Risk* (DOT HS 811 757). Washington, DC: National Highway Traffic Safety Administration.

The risk rate approach generates a powerful estimate of risk by using all accounts of when cell phones were used while driving. However, it cannot assess the SCE risk relative to ''just driving'' (defined as driving void of all non-driving-related secondary tasks) without the availability of estimates of the propensity for each potential secondary task that is performed while driving. The case-control approach was thus used to address this limitation. A total of 2,308 baseline periods were randomly sampled based on each driver's driving time in the study. This number was selected to be at least four times the 342 SCEs that were identified. The odds of an SCE occurring during specific cell phone subtasks were then compared to the odds of an SCE occurring when just driving. Note that ''just driving'' was only found in 46 percent of the baseline periods. Table 6 presents the odds ratios (ORs) and 95-percent confidence limits for various cell phone subtasks. As in the previous risk analysis, only VM subtasks performed on an HH cell phone were found to be associated with an increased SCE risk. Conversing on a cell phone (*i.e.,* any type of cell phone) was not found to increase SCE risk.

TABLE 6—SCE RISK ASSOCIATED WITH CELL PHONE USE AS COMPUTED THROUGH CASE-CONTROL APPROACH

Subtask	OR	LCL	UCL	#SCE	Number baseline periods (BL)	SCE total	BL total	Total
Cell Phone Use—Collapsed	1.1	0.8	1.53	57	358	211	1,426	1,637
Visual-Manual Subtasks	*1.73	1.12	2.69	29	116	183	1,184	1,367
Text messaging/Browsing	1.73	0.98	3.08	16	64	170	1,132	1,302
Locate/Answer	*3.65	1.67	8	10	19	164	1,087	1,251
Dial	0.99	0.12	8.11	1	7	155	1,075	1,230
Push to Begin/End Use	0.63	0.08	4.92	1	11	155	1,079	1,234
End HH Phone Use	1.26	0.43	3.71	4	22	158	1,090	1,248
Talking on Cell Phone	0.75	0.49	1.15	28	259	182	1,327	1,509
HH Talking	0.79	0.43	1.44	13	114	167	1,182	1,349
PHF Talking	0.73	0.36	1.47	9	86	163	1,154	1,317
IHF Talking	0.71	0.3	1.66	6	59	160	1,127	1,287
HH Cell Phone Use (Collapsed)	1.39	0.96	2.03	41	204	195	1,272	1,467
PHF Cell Phone Use (Collapsed)	0.79	0.4	1.55	10	88	164	1,156	1,320
IHF Cell Phone Use (Collapsed)	0.62	0.26	1.46	6	67	160	1,135	1,295

* Indicates a difference at the .05 level of significance.

The overall results from the study presented a clear finding: Visual-manual subtasks performed on hand-held cell phones degraded driver performance and increased SCE risk. Although current hands-free cell phone interfaces allow drivers to communicate with their voices, there is a concern that they still require visual-manual interactions. In fact, drivers in this study frequently initiated hands-free calls and performed other visual-manual operations (*e.g.,* texted) with a hand-held cell phone. A notable finding was that approximately half of the hands-free cell phone interactions in this study were found to involve visual-manual interactions with the hand-held phone. These findings that implicate visual-manual distraction as the primary distraction risk are consistent with previous naturalistic driving investigations of crash risk related to cell phone subtasks,[49] including the 100-Car Naturalistic Driving Study.[50 51 52 53]

F. Overview of Efforts To Combat Driver Distraction

Recognizing the distraction safety issue outlined above, NHTSA published the ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,'' [54] in April 2010. This plan consisted of four main initiatives:

1. Improve the understanding of the extent and nature of the distraction problem. This includes improving the quality of data NHTSA collects about distraction-related crashes and improving analysis techniques.

2. Reduce the driver workload associated with performing tasks using original equipment, aftermarket, and portable in-vehicle electronic devices by working to limit the visual, manual, and cognitive demand associated with secondary tasks performed using these devices. Better device interfaces will minimize the time and effort involved in a driver performing a task using the device. Minimizing the workload associated with performing secondary tasks with a device will permit drivers to maximize the attention they focus toward the primary task of driving. NHTSA's Driver Distraction Guidelines fall under this initiative.

3. Keep drivers safe through the introduction of crash avoidance technologies. These include the use of crash warning systems to re-focus the

[49] Hickman, J.S., Hanowski, R.J., & Bocanegra, J. (2010). *Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes* (FMCSA–RRR–10–049). Washington, DC: Federal Motor Carrier Safety Administration.

[50] Neale, V.L., et al. (2005). An Overview of the 100-Car Naturalistic Study and Findings, ESV Paper 05–0400.

[51] Dingus, T.A., et al. (2006). *The 100-Car Naturalistic Driving Study, Phase II—Results of the 100-Car Field Experiment* (DOT HS 810 593). Washington, DC: National Traffic Safety Administration.

[52] Klauer, S.G., et al. (2006). *The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data* (DOT HS 810 594). Washington, DC: National Traffic Safety Administration.

[53] Klauer, S.G., et al. (2010). *An Analysis of Driver Inattention Using a Case-Crossover Approach On 100-Car Data: Final Report* (DOT HS 811 334). Washington, DC: National Traffic Safety Administration.

[54] NHTSA. (2010). *Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,* (DOT HS 811 299). Available at *http://www.nhtsa.gov/staticfiles/nti/distracted_driving/pdf/811299.pdf* (last accessed on 10/4/16).

attention of distracted drivers as well as vehicle-initiated (*i.e.,* automatic) braking and steering to prevent or mitigate distraction-affected crashes. Research [55] [56] [57] [58] on how best to warn distracted drivers in crash imminent situations is also supporting this initiative. NHTSA is also performing a large amount of research on automatic emergency braking technologies (*e.g.,* crash warning systems or automatic braking systems) and dynamic brake support.

4. Educate drivers about the risks and consequences of distracted driving. This includes targeted media messages, drafting and publishing sample text-messaging laws for consideration and possible use by the states, testing high-visibility enforcement programs, and publishing guidance for a ban on text messaging by Federal government employees while driving.

In June 2012, the US DOT released a ''Blueprint for Ending Distracted Driving.'' [59] This was an update of the ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program.'' These two documents summarize NHTSA's planned steps to ''help in its long-term goal of eliminating a specific category of crashes—those attributable to driver distraction.''

Industry and safety advocacy groups have also been working to eliminate driver distraction using education and public awareness campaigns, as well as through design guidance for built-in systems and other aftermarket solutions. The following sections highlight the efforts by NHTSA and the US DOT in legislative and enforcement approaches, education and public awareness approaches, and device-based solutions (*e.g.,* guidelines or products), as well as similar efforts by industry and safety advocates

[55] Lerner, N., et al. (2011). *Crash Warning Interface Metrics: Final Report* (DOT HS 811 470a). Washington, DC: National Traffic Safety Administration.

[56] Robinson, E., et al. (2011). *Crash Warning Interface Metrics: Task 3 Final Report: Empirical Studies of Effects of DVI Variability* (DOT HS 811 470b). Washington, DC: National Traffic Safety Administration.

[57] Robinson, E., et al. (2011). *Crash Warning Interface Metrics: Task 3 Report Appendices* (DOT HS 811 470c). Washington, DC: National Traffic Safety Administration.

[58] Forkenbrock, G., et al. (2011). *A Test Track Protocol for Assessing Forward Collision Warning Driver-Vehicle Interface Effectiveness* (DOT HS 811 501). Washington, DC: National Traffic Safety Administration.

[59] NHTSA. (2012). *Blueprint for Ending Distracted Driving* (DOT HS 811 629). Available at: *http://www.distraction.gov/downloads/pdfs/blueprint-for-ending-distracted-driving.pdf.* (last accessed on 10/4/16).

G. Efforts by States To Address Distracted Driving Involving the Use of Portable Devices

Most states, with the support of NHTSA and the US DOT, have passed laws to limit the use of portable devices while driving. Currently, 46 states, DC, Puerto Rico, Guam, and the U.S. Virgin Islands ban texting while driving for drivers of all ages. Fourteen states, DC, Puerto Rico, Guam, and the U.S. Virgin Islands ban drivers of all ages from using hand-held cell phones while driving.

In 2012, NHTSA partnered with the State of California and the State of Delaware to initiate a high-visibility enforcement (increased police presence supported by paid and earned media) demonstration program in the Sacramento area of California and in the State of Delaware in support of laws banning the use of hand-held cell phones while driving. Three waves of enforcement were conducted between October 2012 and June 2013. The featured tagline for the public face of the program was ''*Phone in one Hand, Ticket in the Other.*'' During the study period, a small percentage of crashes were coded as distraction-related, but the crash data analyses did not reveal any apparent effect of the high-visibility enforcement on the incidence of distraction-related crashes. Driver surveys, however, showed an increase in awareness that cell phone laws were being enforced. Observed hand-held driver cell phone use dropped by one-third from 4.1 percent to 2.7 percent in California (a 34% reduction); and from 4.5 percent to 3.0 percent in Delaware (a 33% reduction). The study concluded that high-visibility enforcement can be implemented over wide-spread, multi-jurisdictional areas and reduce the number of people who use a hand-held cell phone while driving.[60]

H. Education and Public Awareness Efforts

1. Government Programs and Efforts

The US DOT and NHTSA have put considerable effort toward reaching out to the community and the various stakeholders since the emergence of distracted driving as a traffic safety concern. The US DOT and NHTSA conducted two national summits, one in 2009 and one in 2011, to bring attention to the issue.

[60] Chaudhary, N.K., Connolly, J., Tison, J., Solomon, M., & Elliott, K. (2015*). Evaluation of the NHTSA distracted driving high-visibility enforcement demonstration projects in California and Delaware.* (DOT HS 812 108). Washington, DC: National Highway Traffic Safety Administration.

Following these distraction summits, NHTSA has held several meetings with stakeholders such as representatives of the automotive and communications industries as well as researchers and other key leaders to continue the public policy discussion on the distracted driving issue. For the public, NHTSA has created a Web site, *www.distraction.gov,* to provide timely information on distracted driving and current information on related research and development activities.

NHTSA has had, and continues to use, public service messages to change the attitudes and behaviors of drivers through social norming and enforcement messages. Social norming messaging is designed to appeal to the individual to change their behavior because it is the socially acceptable thing to do without an underlying theme related to deterrence (*e.g.* ''One text or call could wreck it all''). The enforcement messages were designed to be used in conjunction with high visibility enforcement programs to promote compliance with distracted driving laws or face the possible of an enforcement encounter (*e.g.* ''U Drive U Text U Pay.'') Several messages in each category have been used since the inception of the distracted driving prevention effort.

NHTSA has also made efforts to reach out into the community on the issue of distracted driving through social media (*e.g.* ''Twitter parties'') and blogs. There have also been a number of webinars for stakeholders and the public to familiarize them with recent developments in the effort to understand and reduce distractive driving behavior.

On February 6, 2014, the Senate Committee on Commerce, Science, and Transportation, led by Senator Jay Rockefeller (West Virginia), held a summit that focused on addressing potential technological solutions for minimizing driver distraction. The summit consisted of three roundtable sessions: (1) The State of Distracted Driving, (2) The State of Technology, and (3) Where do we go from there? Participants in all three of these roundtables consisted of Federal agencies, safety advocacy groups, industry associations, and companies from the automobile, consumer electronics, technology, and communications industries. The summit facilitated a dialogue between the various organizations, encouraging all participants to continue working together technologically to reduce the negative impacts of driver distraction.

2. Industry Programs and Efforts

A range of industry stakeholders have also put forth an effort to educate drivers on the dangers of distracted driving. While there are too many education and public service announcement campaigns from industry and information outlets to list in this notice, two recent efforts by the wireless industry are included as examples (see *www.distraction.gov* for a larger set of examples). As early as 1999, the wireless industry expended considerable effort to promote driver education about distracted driving. Most recently, the wireless industry partnered with the National Safety Council for the ''On the Road, Off the Phone'' campaign, which was directed at parents and younger drivers and focused on the dangers of texting while driving. In another campaign, AT&T began the ''It Can Wait'' education and awareness initiative recently, and garnered partnerships with several wireless carriers including Verizon Wireless, Sprint, and T-Mobile, as well as an endorsement from the CTIA—The Wireless Association.

I. Design Guideline Efforts

1. NHTSA's Phase 1 Visual-Manual Driver Distraction Guidelines

As part of NHTSA's efforts to reduce driver workload associated with performing tasks using devices within the vehicle (original equipment, aftermarket, and portable in-vehicle electronic devices) the agency has been developing Driver Distraction Guidelines for these devices. NHTSA issued its first phase of driver distraction guidelines on April 26, 2013, after notice and comment.[61] NHTSA's Phase 1 Visual-Manual Driver Distraction Guidelines cover OE in-vehicle electronic devices that are operated by the driver through visual-manual means (*i.e.,* the driver looks at a device, manipulates a device-related control with his or her hand, and/or watches for visual feedback from the device). The Phase 1 Guidelines cover any OE electronic device that the driver can easily see and/or reach, even if intended for use solely by passengers. However, the Phase 1 Guidelines do not cover any device that is located fully behind the front seat of the vehicle or any front-seat device that cannot readily be reached or seen by the driver.

To facilitate the development of these guidelines, NHTSA studied existing guidelines relating to driver distraction prevention and reduction and found the ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems'' developed by the Alliance of Automobile Manufacturers (Alliance Guidelines) to be the most complete and up-to-date. The Alliance Guidelines provided valuable input in NHTSA's efforts to address driver distraction issues. Although NHTSA drew heavily on that input in developing the Phase 1 Guidelines, the agency identified a number of aspects that could be improved upon in order to further enhance driving safety, enhance guideline usability, improve implementation consistency, and incorporate the latest driver distraction research findings.

The Phase 1 Guidelines are based upon a number of fundamental principles. These principles include that:

- The driver's eyes should usually be looking at the road ahead;
- The driver should be able to keep at least one hand on the steering wheel while performing a secondary task (both driving-related and non-driving related);
- The distraction induced by any secondary task performed while driving should not exceed that associated with a baseline reference task (manual radio tuning);
- Any task performed by a driver should be interruptible at any time;
- The driver, not the system/device, should control the pace of task interactions; and
- Displays should be easy for the driver to see and content presented should be easily discernible.

The Phase 1 Guidelines list certain activities that inherently interfere with a driver's ability to safely control the vehicle, and the Guidelines recommend that in-vehicle devices be designed so that they cannot be used by the driver to perform these inherently distracting activities while driving (referred to as ''per se lock outs''). The basis for these lock outs includes activities that are discouraged by public policy and, in some instances, prohibited by Federal regulation and/or State law (*e.g.,* entering or displaying text messages). They also include activities identified in industry driver distraction guidelines, which NHTSA agrees are likely to distract drivers significantly (*e.g.,* displaying video or automatically scrolling text). Finally, the lock outs include activities that are extremely likely to be distracting due to their very purpose of attracting visual attention, but whose obvious potential for distraction cannot be measured using a task timing system because the activity could continue indefinitely (displaying video or certain images). The specific per se lock outs are as follows:

- Displaying video not related to driving;
- Displaying certain graphical or photographic images;
- Displaying automatically scrolling text;
- Manual text entry for the purpose of text-based messaging, other communication, or internet browsing; and
- Displaying text for reading from books, periodical publications, Web page content, social media content, text-based advertising and marketing, or text-based messages.

The per se lock out recommendations are not intended to prevent the display of images related to driving such as simple, two-dimensional map displays for the purpose of navigation, which would conform to these Guidelines, as long as they are displayed in a safe manner. These recommendations are also not intended to prevent the display of internationally standardized symbols and icons, Trademark™ and Registered® symbols (such as company logos), or images intended to aid a driver in making a selection in the context of a non-driving-related task, provided that the images extinguish automatically upon completion of the task.

For all other visual-manual secondary tasks, the Phase 1 Guidelines specify two alternative test methods for measuring the impact of performing a task on driving safety, as well as time-based acceptance criteria for assessing whether a task interferes too much with driver attention. It should be noted that *secondary task* is a broad term that captures any interaction the driver has with an in-vehicle device that is not directly related to the safe operation and control of a vehicle, and thus captures all non-driving-related tasks as well as driving-related tasks that aid the driving task but not the safe operation or control of the vehicle. If a visual-manual secondary task does not meet the acceptance criteria, the Phase 1 Guidelines recommend that OE in-vehicle devices be designed so that the task cannot be performed by the driver while driving. Both of these test methods focus on the amount of visual attention necessary to complete a task. Eye-glance-based criteria were selected because the research on visual-manual distraction establishes a link between visual attention (eyes off the road) and crash risk.

The first recommended test method measures the amount of time that the driver's eyes are drawn away from the forward roadway while performing a

[61] 78 FR 24817 (Apr. 26, 2013).

task. The Phase 1 Guidelines recommend that devices be designed so that tasks can be completed by the driver while driving with individual glances away from the roadway of 2 seconds or less and a cumulative time spent looking away from the roadway of 12 seconds or less. The second test method uses a visual occlusion technique and involves participants performing a task using occlusion goggles that alternatively open and shut every 1.5 seconds. The Phase 1 Guidelines recommend that devices be designed so that tasks can be completed with a cumulative shutter open time of 12 seconds or less.

In addition to identifying inherently distracting tasks and providing a means to measure and evaluate the level of distraction associated with other secondary tasks, the Phase 1 Guidelines contain other recommendations for in-vehicle devices designed to limit and reduce their potential for distraction. Examples include a recommendation that performance of visual-manual tasks should not require the use of more than one hand, a recommendation that each device's active display be located as close as practicable to the driver's forward line of sight, and a recommended maximum downward viewing angle to the geometric center of each display.

In the notice announcing the Phase 1 Guidelines, the agency clarified that because the Guidelines were voluntary and non-binding, NHTSA's normal enforcement procedures related to Federal Motor Vehicle Safety Standard (FMVSS) compliance were not applicable. However, NHTSA indicated that as part of its ongoing distraction research activities, the agency does intend to monitor manufacturers' voluntary adoption of the Phase 1 Guidelines.

2. Efforts by Industry To Address Driver Distraction From Portable Devices

Various efforts focused on portable and aftermarket devices have been initiated by industry to address driver distraction. In July 2013, the Consumer Technology Association (CTA), an association comprised of 2,000 companies within the consumer technology industry, initiated a Working Group focused on addressing portable and aftermarket electronic devices used by drivers in vehicles (formally named R6 WG18 Driver-Device Interface Working Group). Through mid-2014, the group had the goal of developing industry-based guidelines for portable device design that would address driver distraction. As indicated in a letter to the agency, the group had planned to use the NHTSA Phase 1 Guidelines as a starting point. The focus of this group had been to create a set of recommended practices by bringing together industry stakeholders and soliciting their technical input and expertise. These voluntary, industry-based recommended practices were intended to be used by portable electronic device manufacturers, software developers, and any other interested parties to improve the safety of driving and non-driving-related task performance. In mid-2014, the Working Group abandoned its work to develop industry-based guidelines due to liability concerns, instead modifying its overall objective to produce a technical report that categorizes ''products and services offered by the consumer electronics (CE) industry that help make the driving experience safer.'' [62] CTA's technical report surveying the existing driver mode technologies was released in January 2015.[63] NHTSA has been participating in CTA's working group as a non-voting liaison since its inception. NHTSA has provided explanations and rationale for aspects of NHTSA's Phase 1 Visual-Manual Driver Distraction Guidelines, and participated in discussions regarding the application of the guideline's basic principles to the complex, multipart ecosystem of portable and aftermarket electronic devices.

There have also been efforts within the standardization sector of the International Telecommunications Union (ITU–T) [64] to establish international consensus-based distraction standards for Information and Communications Technologies (ICTs). The ITU–T effort was intended to establish interoperability standards that enable the vehicle to safely manage driver interaction with ICT applications and services, regardless of if they are downloaded to a vehicle or reside in a roadside station, portable device, cloud-based server, etc. These interoperability standards define functional mechanisms, data formats, and communications protocols. The proposed ITU–T ''User Interface Requirements for Automotive Applications'' (P.UIA Recommendation) would provide design guidance for user interfaces, as well as recommended test procedures and performance thresholds. As it stands, the published P.UIA Recommendation only proposes a structure for the guidance. The ITU–T's efforts were concluded in 2013 with the publication of several reports.[65]

NHTSA is also participating as a liaison for a task group formed by the Car Connectivity Consortium (CCC), the developers of Mirror Link, to discuss the technical issues of device pairing, integration, testing, and certification. Mirror Link represents a major industry effort to enable and promote device pairing in vehicles. This effort began in November 2014.

In addition to these formal industry efforts to produce best practices, guidelines, and recommendations, several companies and groups have demonstrated various technical solutions for aspects of the distracted driving problem to NHTSA. These solutions include a driver mode for portable devices, anti-texting software applications that provide the capability to lock out the portable device screen, and driver distinction technologies that are both vehicle- and portable-device based. Each of these topics was included in NHTSA's Phase 2 Public Meeting in March 2014.

3. Public Meeting on the Phase 2 Distraction Guidelines

On March 12, 2014, NHTSA hosted a public meeting to bring together vehicle manufacturers and suppliers, portable and aftermarket device manufacturers, portable and aftermarket device operating system providers, cellular service providers, industry associations, application developers, researchers, and consumer groups to discuss technical issues regarding the agency's development of Phase 2 Driver Distraction Guidelines for portable and aftermarket devices. The transcript for the public meeting and webcast video can be found in the docket for today's proposed guidelines,[66] along with

[62] Consumer Electronics (2014) CEA Cataloguing Driver Safety Products and Services [Press release]. Retrieved from *http://www.ce.org/News/News-Releases/Press-Releases/2014/CEA-Cataloguing-Driver-Safety-Products-and-Service.aspx?feed=Technology-Standards-Press-Releases* (last accessed on 10/4/16).

[63] Consumer Electronics (2015). Keeping Your Eyes on the Road: What the CE Industry is Doing to Help You Drive Safely. CEA–TR–6. Avalaible for purchase at *http://www.techstreet.com/standards/cta-tr-6?product_id=1888242* (last accessed on 10/4/16).

[64] The International Telecommunication Union (ITU) is the United Nations specialized agency in the field of telecommunications, information and communication technologies (ICTs). The ITU Telecommunication Standardization Sector (ITU–T) is a permanent organ of ITU. ITU–T is responsible for studying technical, operating and tariff questions and issuing Recommendations on them with a view to standardizing telecommunications on a worldwide basis.

[65] See the ITU–T's Web site for the Focus Group on Distraction, which includes all reports that resulted from this effort. Available at *http://www.itu.int/en/ITU-T/focusgroups/distraction/Pages/default.aspx* (last accessed on 10/4/16).

[66] Docket No. NHTSA–2013–0137, ''Driver Distraction Guidelines (Phase 2) for Portable and After-Market Devices Public Meeting Agenda and

copies of all presentations and spoken remarks.

In the public meeting, NHTSA presented an overview of the Phase 1 Driver Distraction Guidelines and the key technical issues in Phase 2. CTA presented a summary of its efforts to develop industry-based best practices for portable and aftermarket devices that could be used by drivers inside the vehicle. Following these presentations, there were three panels of invited experts who addressed the following technical topics: (1) Vehicle and portable/aftermarket device pairing, (2) Driver Mode and advanced technologies, and (3) technologies that automatically distinguish between devices used by drivers and passengers.

In its presentation about the Distraction Guidelines, NHTSA highlighted the guiding principles for the guidelines along with the technical approaches to Phases 1 and 2. NHTSA emphasized pairing between the vehicle and portable devices as a means for incorporating portable and aftermarket devices under the Phase 1 Distraction Guidelines. NHTSA also discussed Driver Mode as an approach for unpaired portable devices. NHTSA encouraged the development of technology that can distinguish driver portable device use from passenger portable device use. NHTSA noted that similar test procedures and acceptance thresholds from Phase 1 would be applied to Phase 2. Other issues under consideration for the Phase 2 Distraction Guidelines included applicability to head-up displays and wearable devices, any additional per se lock outs that might be required for portable and aftermarket devices, placement of the portable device for testing, and continuous display information that does not meet the Phase 1 task definition. NHTSA concluded its presentation by highlighting the general process for publishing the Phase 2 Distraction Guidelines.

Following NHTSA's presentation, CTA gave a presentation on its Driver-Device Interface Working Group and activities for generating industry-based best practices. In its presentation at the public meeting, CTA noted that it believes best practices developed by industry collaboration have the greatest chance of success in the marketplace. Additionally, CTA recommended pairing. As of mid-2014, the Working Group modified its objective, choosing to develop a technology inventory instead of guidelines or recommendations.

The pairing panel consisted of presentations by General Motors, Toyota, Delphi, and the Car Connectivity Consortium. The Driver Mode and Advanced Technologies panel consisted of presentations by AT&T, Garmin, and Pioneer. The Driver-Passenger Distinction panel consisted of presentations by Cellcontrol, Cellepathy, and Lakeland Ventures Development-Takata. NHTSA conducted a period of questions and answers from the panelists after the presentations. NHTSA received additional comments from Consumers Union, Origo, and Vesstech that were read from the floor. Each of these presentations and spoken remarks can be found in the Phase 2 docket.[67]

Comments: In response to the public meeting, eight comments were posted to the docket by the Alliance of Automobile Manufacturers (Alliance), Blackberry Limited, CTIA—The Wireless Association, General Motors, Life Apps, the National Safety Council, Vesstech, and Consumers Union. Seven of the eight commenters supported NHTSA's Phase 2 Distraction Guidelines, with only CTIA recommending that solutions to portable device-based driver distraction be left solely to industry collaborations. CTIA also challenged NHTSA's authority to issue regulations, or even voluntary guidelines, for portable devices. The Alliance and General Motors urged NHTSA to complete Phase 2 as soon as possible, and the Alliance suggested NHTSA combine Phases 1 and 2 into a single set of NHTSA Distraction Guidelines. The National Safety Council requested NHTSA reconsider the three-phase approach to the distraction guidelines and to consider the full body of driver distraction literature rather than focusing solely on visual-manual distraction. Specifically, the National Safety Council urged NHTSA to include cognitive distraction issues in Phase 2 along with the visual-manual that were the focus of the Phase 1 Distraction Guidelines. CTIA commented that translating the Phase 1 Distraction Guidelines to portable devices is infeasible, partly due to the complex ecosystem surrounding portable devices, and that education and legislative approaches to the distraction problem should be the government's focus.

The Alliance, Blackberry Limited, General Motors, and Consumers Union all supported NHTSA's emphasis on paired solutions. The Alliance reiterated findings from research that quantified the extent to which consumers are ''connected'' in their daily lives, including while driving. The Alliance highlighted this research, which was posted to the Phase 1 Docket, as additional support for pairing or tethering solutions. The Alliance also highlighted that some of its members were already working towards pairing solutions, and that the Car Connectivity Consortium was a formal industry organization working towards that end. General Motors mentioned its own efforts towards paired solutions. Blackberry Limited urged NHTSA to consider the ITU–T draft set of industry-generated recommendations for information and communications technologies. Consumers Union described its findings on various existing pairing solutions, and specifically how easy or user-friendly the pairing process was for drivers. Blackberry Limited offered several specific suggestions for NHTSA to consider about pairing solutions and Driver Mode.

The response to Driver Mode solution was mixed, with the Alliance stating that the only acceptable Driver Mode was the portable device in the ''off'' setting, and that Driver Mode ''apps'' that drivers must choose to engage are not realistic solutions. Blackberry Limited, Consumers Union, and Life Apps provided specific recommendations or support for Driver Mode implementations. Blackberry Limited had specific suggestions regarding pairing and Driver Mode, and urged NHTSA to not recommend less stringent guidelines for Driver Mode, but also not to include specific technological approaches (*i.e.,* the specific wireless communication protocol between the portable device and the vehicle) in the Phase 2 Distraction Guidelines. CTIA also noted the fact that several driver mode ''apps,'' or applications that otherwise limit portable device functionality while driving, are currently available is evidence that industry is working towards solutions to the distraction problem with portable devices, and therefore NHTSA's guidelines are unnecessary.

The Alliance supported NHTSA's inclusion of driver-passenger distinction technology and urged NHTSA to establish a cooperative research program

Presentations '' ID: NHTSA–2013–0137–0004. Available at *http://www.regulations.gov/#!docketDetail;D=NHTSA-2013-0137* (last accessed on 10/4/16).

[67] Docket No. NHTSA–2013–0137, ''Driver Distraction Guidelines (Phase 2) for Portable and After-Market Devices Public Meeting Agenda and Presentations'' ID: NHTSA–2013–0137–0004. Available at *http://www.regulations.gov/#!docketDetail;D=NHTSA-2013-0137* (last accessed on 10/4/16).

with industry to foster technological development in this area.

Some commenters in the public meeting had specific implementation suggestions for portable device-use while driving. For example, the National Safety Council suggested NHTSA require portable devices have an option to quickly turn the portable device off while driving. Life Apps highlighted an approach that uses the portable device only, which does not require hardware components to detect that the driver is using the device when driving. Vesstech argued for a solution that included mandatory vocal warnings to be automatically spoken to drivers. It suggested that the emotional content relayed by the human voice would be an effective deterrent that would discourage portable device use while driving. CTIA argued that education, legislation, and technical innovation are the best ways to address distraction from portable devices, and listed the ways in which they have been active in each area.

Agency Response: NHTSA is considering combining Phase 1 and 2 Guidelines, to the extent practicable. As discussed previously, we seek comment on the combination of the Phase 1 and 2 Guidelines. A statement of NHTSA's authority to issue voluntary, non-binding guidance is included in Section V of this notice.

NHTSA provided a detailed explanation and rationale for the focus on visual-manual distraction in the Phase 1 Guidelines,[68] which addresses the National Safety Council's suggestion that NHTSA include the full-range of distraction and associated research literature, namely cognitive distraction. NHTSA recognizes the importance of experimental research findings, such as those using driving simulators, that show decreased driving performance for distractions of all types. Both naturalistic driving studies (such as NHTSA's 2013 cell phone naturalistic driving study [69]) and experimental studies consistently show that visual-manual distraction contributes to degraded driving performance and a significantly elevated crash risk. While the full body of research data is less conclusive with respect to cognitive distraction, the agency continues to be actively engaged in reviewing the latest research findings. In May 2015, NHTSA hosted an event called ''Cognitive Distraction: What Were You Thinking?'' [70] that brought members of the international research community and safety advocates together to discuss what cognitive distraction is, how to measure it, and what to do about it. NHTSA is also currently conducting a significant amount of research related to auditory-vocal (*i.e.,* voice-based) system interfaces, as well as a study to explore ways of measuring internal cognitive distraction (*e.g.,* mind wandering) while driving.

NHTSA has reviewed each of the detailed recommendations from the various commenters on both pairing and driver mode. Some of those recommendations are consistent with NHTSA's goal of remaining neutral regarding specific technological approaches to pairing and to Driver Mode activation, and therefore are reflected in these proposed Phase 2 Guidelines. At NHTSA's public meeting, participants on the Driver-Passenger Distinction panel presented different technological approaches to identifying which vehicle occupant is using a portable device. Most approaches use a combination of hardware and software installed in the vehicle and on the portable device to determine whether the device user is a driver or passenger.

One approach involved a piece of hardware that creates zones within a vehicle by emitting signals. The driver's seating position would have a different signal that could be identified by software and/or hardware on a portable device. Identifying the driver's position with this method would potentially allow the device to activate the driver mode only for the driver while he or she is driving. This signal could vary depending on the transmission state.

Another driver-passenger distinction technology uses capacitive sensors within the seats that allow the vehicle to detect where portable devices are being used within a vehicle. These sensors are able to determine if each occupant is holding and using a portable device by utilizing the conductivity of the human body. By detecting if a driver is using a portable device, the vehicle can tell the portable device to activate the driver mode. Driver Mode can be activated depending on the state of the vehicle's transmission (*i.e.,* park vs. drive).

Finally, a device-only solution uses an authentication task approach where a device automatically goes into a limited use state (*e.g.,* Driver Mode) at a speed threshold, and a quick, but challenging task is required to re-enable full functionality on the device. These authentication tasks are designed to be quick and easy for non-drivers, but nearly impossible to complete successfully within the short time limit for drivers.

NHTSA recognizes that there may be other concepts to achieve driver-passenger distinction that were not presented in the Public Meeting, but those presented provide an example of how this capability can be achieved technologically. Accordingly, NHTSA continues to monitor the development and progress of driver-passenger distinction technologies, and seeks input on how to foster the refinement of that technology to enhance reliable and automatic Driver Mode solutions for unpaired portable devices. For example, the Alliance recommended establishing a cooperative research program. The agency seeks comments from all stakeholders on what specific research needs remain to progress driver-passenger distinction technology to full maturity.

All presentations and comments from the NHTSA Phase 2 Public Meeting are available for download in the Phase 2 docket,[71] along with the transcript of the meeting and a link to the recorded webcast of the meeting.

III. Distraction Guidelines for Portable and Aftermarket Devices

A. Scope

1. Devices/Device Interfaces

The proposed Phase 2 Guidelines would apply to the visual-manual interfaces of portable and aftermarket devices that may be used by a driver. A ''portable device'' is defined as a device that can reasonably be expected to be brought into a vehicle on a trip-by-trip basis and used in the vehicle by a driver while driving, that is electrically powered, and that has one or more of the following capabilities:

- Allows user interaction.
- Enters, sends, and/or receives information.
- Displays information in a visual and/or auditory manner, or
- Displays graphical, photographic, and/or video images.

The agency has tentatively concluded that this definition sets out the appropriate scope for the types of device

[68] 78 FR 24817 (Apr. 26, 2013), pp. 24836–24838.

[69] Fitch, G., et al. (2013). *The Impact of Hand-Held and Hands-Free Cell Phone Use on Driving Performance and Safety-Critical Event Risk* (DOT HS 811 757). Washington, DC: National Highway Traffic Safety Administration.

[70] Presentations and video recording of the event can be found at the NHTSA Web site: *http://www.nhtsa.gov/nhtsa/symposiums/may2015/index.html* (last accessed on 10/4/16).

[71] Docket No. NHTSA–2013–0137, ''Driver Distraction Guidelines (Phase 2) for Portable and After-Market Devices Public Meeting Agenda and Presentations '' ID: NHTSA–2013–0137–0004. Available at *http://www.regulations.gov/#!docketDetail;D=NHTSA-2013-0137* (last accessed on 10/4/16).

interfaces that should be covered by the Phase 2 Guidelines, *i.e.,* the interfaces of portable electronic devices that are likely to be used by drivers when driving. Examples of portable devices covered by the proposed Phase 2 Guidelines are smartphones, tablets, and navigation devices. The recommendations to manufacturers in these guidelines are intended to focus on devices used by drivers while driving. NHTSA seeks comment on whether clarification/revisions to the provisions in this guidance document are necessary to ensure that passengers/non-drivers are not inadvertently impacted by this guidance document. In other words, NHTSA seeks to ensure that passengers (including front passengers) are able to use their devices and applications without disruption.

Additionally, this definition would include some of the new portable technology that is beginning to appear, such as wearable technology (electronic devices with interfaces that are worn on and move with the body) and certain non-OE, head-up displays (HUDs).[72] Wearable technology includes wristwatch computers and optical head-mounted displays (OHMD). Although OHMD and HUD interfaces are classified as portable or aftermarket devices and would therefore be covered by the Phase 2 Guidelines, the agency notes that there are issues with applying the Phase 1 glance-based metrics to measure the level of visual distraction associated with the use of these devices. The most significant issue with applying Phase 1 acceptance tests to OHMD and HUD is that the performance criteria for measuring distraction is eyes-off-road time and the information from these technologies is displayed either directly in front of the driver's eyes (OHMD) or on the windshield in front of the driver (HUD). While the driver may appear to be looking toward the forward roadway, the driver's eyes would actually be focused at a different focal distance that corresponds to the displayed OHMD/HUD information. This means that in testing it may not be possible to reliably discern whether the driver's eyes are focused on the roadway or the information displayed on the OHMD/HUD, which confounds the ability to evaluate eye glance behavior to the task acceptance criteria. The agency is concerned that although these devices might tend to keep the eyes oriented toward the forward roadway, the presentation of information in front of the driver may still result in visual distraction causing the eyes to be focused on the displayed information rather than on the road (*e.g.,* visual accommodation changes to view the presented information could result in the driver's view of the forward roadway being out of focus). Accordingly, the agency has begun research on these devices to determine whether their use impacts vehicle safety and, if so, what visual attention metrics might be used to explain the effects.

Finally, NHTSA recognizes that many of these new portable devices are released as pre-production versions, thereby allowing the market to update, refine, and shape the maturation of the technology. NHTSA seeks comment on portable device product cycles along with software updating processes to better understand the evolving stakeholder landscape.

For the purposes of this Phase 2 proposal, an ''aftermarket device'' is defined as a device designed to be or reasonably expected to be installed or integrated into a vehicle after the vehicle is manufactured, is electrically powered, and has one or more of the following capabilities:

- Allows user interaction.
- Enters, sends, and/or receives information.
- Displays information in a visual and/or auditory manner, or
- Displays graphical images, photographic images, and/or video.

An example of an aftermarket device would be a non-OE head unit, such as in-dash car audio/video systems or in-dash navigation systems.

NHTSA requests comments on its proposed definitions in the proposed Phase 2 Guidelines.

The proposed Phase 2 Guidelines exclude several devices/device interfaces, including the auditory-vocal portions of a portable or aftermarket device interface,[73] device or device functions specified by law or government regulation, or devices manufactured primarily for emergency response vehicles. These exclusions mirror those listed in the Phase 1 Guidelines for OE in-vehicle interfaces. However, in contrast to the Phase 1 Guidelines, NHTSA believes that the proposed Phase 2 Guidelines do not necessarily need to be restricted by vehicle weight and would apply to the interfaces of portable and aftermarket devices used in medium and heavy vehicles (*i.e.,* those with a gross vehicle weight rating (GVWR) over 10,000 pounds). The Phase 1 Guidelines excluded OE in-vehicle interfaces in these vehicles because they are different than the interfaces in light vehicles (GVWR of 10,000 pounds or less) and additional research would be needed to develop guidelines for medium and heavy vehicles. In contrast, NHTSA does not believe that the same types of differences, if any, exist between portable and aftermarket devices used in light vehicles versus those used in heavy vehicles, and, therefore such an exclusion is not warranted for the Phase 2 Guidelines.

The agency also seeks comment on device interfaces that should or should not be covered by the proposed Phase 2 Guidelines.

2. Tasks

The proposed Phase 2 Guidelines would be applicable to the same types of visual-manual secondary tasks covered by the Phase 1 Guidelines, including all non-driving-related tasks and some driving-related tasks (as noted earlier), specifically those that are neither related to the safe operation and control of the vehicle nor involve the use of a system required by law. Table 1 of the updated Phase 1 Guidelines[74] published on September 14, 2014, contains a non-exhaustive list of the types of non-driving-related tasks to which the Guidelines would be applicable, including various communications, entertainment, and information tasks. This table is repeated in Table 7 below.

[72] HUDs for motor vehicles project information onto the windshield in front of the driver.

[73] NHTSA recognizes that current auditory-vocal interfaces are multi-modal and include a combination of auditory-vocal and visual-manual interactions. All visual-manual interactions are subject to Phases 1 and 2 of the Distraction Guidelines.

[74] Docket No. NHTSA–2014–0088. ''Guidelines for Reducing Visual-Manual Driver Distraction during Interactions with Integrated, In-Vehicle, Electronic Devices Version 1.01'' ID: NHTSA–2014–0088–0002. Available at *https://www.regulations.gov/document?D=NHTSA-2014-0088-0002* (last accessed on 10/4/16).

TABLE 7—NON-DRIVING-RELATED TASKS/DEVICES TO WHICH THESE GUIDELINES APPLY

Type of task	Task/device
Communications	Caller Identification, Incoming Call Management, Initiating and Terminating Phone Calls, Conference Phoning, Two-Way Radio Communications, Paging, Address Book, Reminders, Text-Based Communications, Social Media Messaging or Posting.
Entertainment	Radio (including but not limited to AM, FM, and Satellite), Pre-recorded Music Players, All Formats, Television, Video Displays, Advertising, Internet Browsing, News, Directory Services.
Information	Clock, Temperature.

Like the Phase 1 Guidelines, the Phase 2 Guidelines would not apply to tasks performed by the driver as part of the safe operation and control of the vehicle, including any task related to the proper use of a driver safety warning system. Although the agency did not define the term driver safety warning system in the Phase 1 Guidelines, the agency is including a definition in the proposed Phase 2 Guidelines (that also shall apply to Phase 1) because of the wide variety of portable and aftermarket device applications that exist and the agency's concern that applications with a questionable link to safety might be labeled as driver safety warning systems. Accordingly, the proposed Phase 2 Guidelines define ''driver safety warning system'' as ''a system or application that is intended to assist the driver in the avoidance or mitigation of crashes.'' An example of a system that would fall within this definition is a portable device application that uses the device's features (*e.g.,* GPS, accelerometer, or camera) to alert drivers of lane departures or potential collisions.

Finally, the Phase 2 Guidelines apply to tasks that are clearly bounded by start and end states as is discussed in the Phase 1 Guidelines (see section IV.B.9 on p. 24884). Displays that continuously report a system state like speed or fuel economy status are unbounded and are therefore not subject to the Phase 1 or 2 Guidelines.

B. Overview of the Phase 2 Guidelines

In order to address the vehicle safety problem posed by driver distraction due to aftermarket and portable device usage, NHTSA tentatively recommends the following in its Phase 2 Guidelines:

- Portable device manufacturers incorporate pairing capabilities and Driver Mode functions into their devices to reduce driver distraction.
- OEMs incorporate pairing capabilities into the design of their vehicles
- Manufacturers of aftermarket devices meet the requirements as specified for OE interfaces in Phase 1.[75]

Figure 1 depicts how the Phase 2 Guidelines apply to both portable and aftermarket devices, including pairing and Driver Mode configurations.

[75] While the recommendation is that aftermarket devices meet the Phase 1 Guidelines, this recommendation will be made in the Phase 2 document. Therefore, aftermarket manufacturers would look to the Phase 2 guidelines for recommendations.

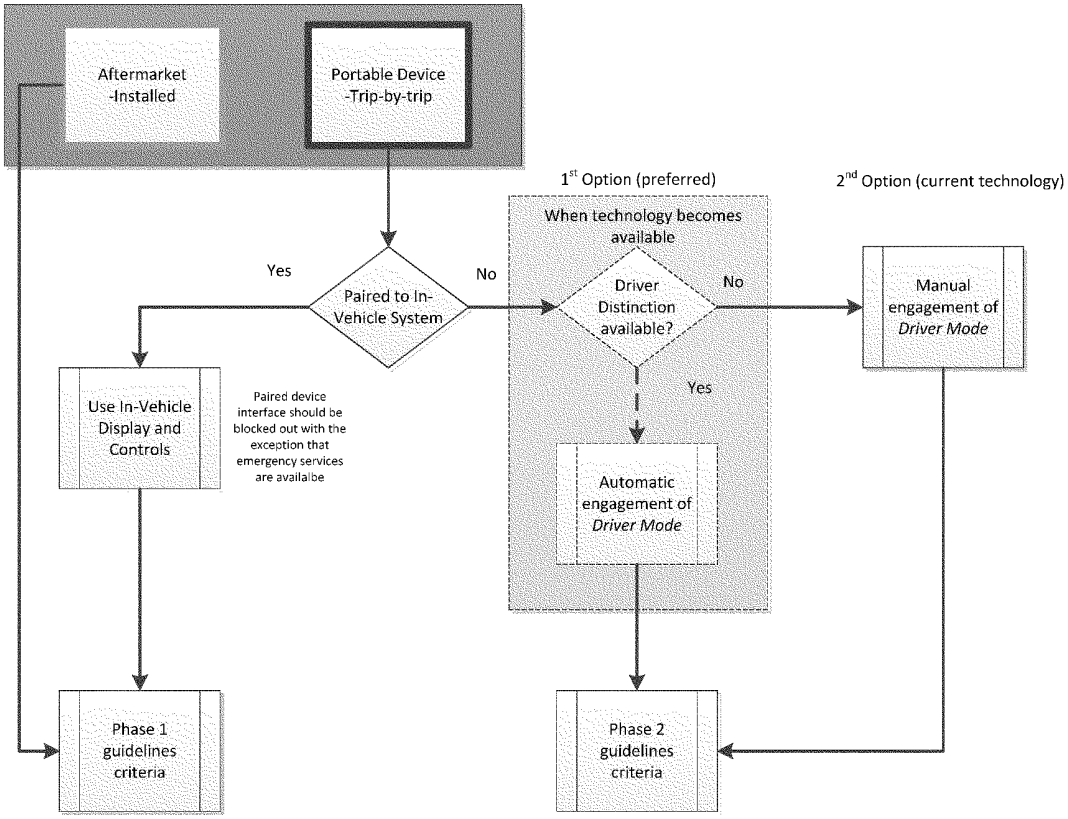

Figure 1. Flow diagram summarizing the overall recommendations for both portable and aftermarket devices.

NHTSA recommends pairing a portable device with the in-vehicle system (*i.e.,* OE or installed aftermarket systems) to minimize the potential distraction associated with operating a visual-manual interface on a portable device. Vehicle manufacturers and the portable device industry are already working together to incorporate pairing between devices and vehicles, and the agency hopes that the Phase 2 Guidelines will accelerate those efforts.[76] Pairing the device to the vehicle would allow the driver to use the built-in displays and controls. Assuming that the vehicle conforms to the Phase 1 Guidelines, pairing would ensure that the visual-manual secondary tasks performed by the driver while driving meet the time-based, eye-glance task acceptance criteria specified in the Phase 1 Guidelines that is intended to mitigate the risk of distracted driving. Pairing would also ensure that certain activities that would inherently interfere with the driver's ability to safely control the vehicle would be locked out while driving (*i.e.,* the ''per se lock outs'' referred to in the Phase 1 Guidelines and the proposed Phase 2 Guidelines).

Although NHTSA recommends that pairing a portable device with the in-vehicle interface is the best way to mitigate the distraction associated with operating a visual-manual portable device interface, the agency acknowledges that there will be situations when pairing does not occur, either because the in-vehicle system and/or portable device does not possess the capability for pairing or because the driver chooses not to pair with the in-vehicle system. In order to mitigate the additional distraction associated with the use of an unpaired portable device, the agency recommends that portable devices include a Driver Mode that, when activated, will present an interface that conforms with the Phase 1 Guidelines recommendations for electronic devices used by the driver while driving. In particular, when a portable device is in Driver Mode, the device should lock out tasks that are among the Phase 1 Guidelines per se lock outs or do not meet Phase 1 task acceptance criteria.

NHTSA seeks comment on this approach and whether additional per se lock outs are appropriate for portable and aftermarket devices, whether paired with the in-vehicle system or in Driver Mode.

NHTSA acknowledges that some devices, such as standalone portable navigation devices, are designed for, and exist primarily for use in a single context (*e.g.* navigation in a motor vehicle). These devices are useful because they package both the hardware and a user interface in one compact portable unit. For such a device designed primarily for use while driving, pairing the device with the vehicle would not provide any benefit since its native interface should meet the Driver Mode recommendations and pairing is not required. For this reason, portable navigation devices that do not have pairing capability would not be expected to have a separate Driver Mode. NHTSA requests comments on whether the assumptions for this recommendation are reasonable and appropriate.

C. Pairing

1. Pairing Recommendations

The proposed Phase 2 Guidelines recommend that vehicle manufacturers and portable device manufacturers should provide the necessary mechanisms to easily enable pairing

[76] *http://www.engadget.com/2014/10/02/apple-carplay-comes-to-pioneer-stereos-as-spotify-adds-support/* (last accessed on 10/4/16). *http://www.engadget.com/2014/10/03/hondas-in-car-connect-system-does-android-its-own-way-hands-on/* (last accessed on 10/4/16).

between the portable device and the vehicle/in-vehicle system.[77] In order to reduce the potential for distraction associated with pairing while also encouraging drivers to pair their devices, pairing should be an easy-to-understand task that allows the driver to set up the portable device to communicate with the in-vehicle system in the fewest number of steps possible, even automatically if feasible. If a portable device and vehicle pair easily, it is less likely that a user will become discouraged and not attempt to pair a device with a vehicle. NHTSA encourages all entities involved with the engineering and design of pairing technologies to jointly develop compatible and efficient processes that focus on improving the usability of connecting a portable device with the in-vehicle system. The proposed Guidelines further recommend that any required visual-manual interactions necessary to pair the device should be disabled while driving in order to avoid potential driver distraction. The agency encourages automatic pairing between the portable device and in-vehicle system during and after the initial setup.

In order to ensure that a paired portable device's functions are operated through the in-vehicle interface, which is intended and designed specifically for the driving environment, the proposed Phase 2 Guidelines recommend that the visual interface of the portable device be locked out when the portable device is paired to the in-vehicle system, with the exception of access to emergency services and emergency notifications. All non-emergency functions and applications of the portable device should be operable exclusively through the in-vehicle system's interface. A paired system with a compelling user experience and features should discourage the need for the driver to access or interact with the portable device while driving. NHTSA seeks comment on displaying and operating all non-emergency paired device functions through the in-vehicle interface and whether doing so creates unintended consequences. NHTSA also seeks comment on how best to accommodate passenger use of a paired portable device.

2. Privacy and Data Sharing for Paired Devices

The primary purpose of this document is to address driver distraction and vehicle safety. However, NHTSA acknowledges that the pairing recommendations may touch on potential privacy concerns regarding the possibility of data transfer, sharing, and storage between the vehicle, device, and off-board systems. The proposed Guidelines do not recommend any particular method of pairing or specify how automakers and the portable and aftermarket device industries should address how information is shared and used. The agency encourages industry to consider how privacy risks can be minimized as part of the development and improvement of pairing systems.

Industry groups have begun to address the issue of privacy as the Alliance of Automobile Manufacturers and Global Automakers published a set of principles on November 12, 2014.[78]

In light of these potential issues, NHTSA seeks comment on how information is shared between the vehicle, device, and off-board systems when devices are paired with the vehicle, how the type of information that is shared may change in the future, how this information sharing effects privacy, and what role the Guidelines can and should play in addressing these privacy issues.

3. Cybersecurity for Paired Devices

Designing portable devices so that they can be paired with motor vehicles must be accompanied by appropriate cybersecurity measures. Unless such care is taken, adding another Internet-connected device to a vehicle's electronics system can introduce additional cybersecurity vulnerabilities into a vehicle's computer systems.

Safeguarding the traveling public through a combination of measures requiring and/or encouraging the incorporation of safety features and systems in motor vehicles and motor vehicle equipment as well as measures to protect the performance of those features and systems is part of NHTSA's core mission. Equally important is identifying motor vehicles or items of motor vehicle equipment that create an unreasonable risk of accidents occurring or unreasonable risk of death or injury occurring in an accident because of deficiencies in design, construction, or performance and requiring their recall and remedy.

These Guidelines do not suggest or recommend particular methods for creating and maintaining an effective level of cybersecurity in motor vehicles or in portable or aftermarket devices. NHTSA expects that OEMs, portable device manufacturers, and aftermarket manufacturers to be proactive and take the steps necessary to protect against present and future motor vehicle cybersecurity threats. We seek comment on the continuing steps that must be taken to ensure that pairing does not adversely affect vehicle cybersecurity.

D. Driver Mode

Ideally, a Driver Mode would not be necessary since NHTSA believes those functions related to the driving task should occur when the device is paired with an in-vehicle system that conforms with the Phase 1 Guidelines. However, our data confirms what everyday observation indicates: Many drivers routinely use their portable device(s) while driving. The agency believes that over time as pairing becomes easier, increased device pairing may help reduce this behavior, but is unlikely to eliminate it, because not all vehicles will have been designed to allow pairing and drivers may not choose to pair their devices. The agency, therefore, believes it is necessary to propose guidelines that attempt to reduce the risk associated with using an unpaired portable device while driving. The agency believes that the proposed Driver Mode outlined below, which suggests that the device's interface follow the Phase 1 principles to the extent possible, is the best way to minimize the distraction posed by these devices.

1. Driver Mode Recommendations

Driver Mode is a simplified interface for unpaired devices that conforms to the Phase 1 Guidelines when being used by a person who is driving. When in Driver Mode, the portable device should lock out any visual-manual secondary tasks that do not meet the Phase 1 Guidelines, either because they are per se lockouts or because they do not meet the eye-glance-based task acceptance criteria using a modified version of the Phase 1 task acceptance testing procedures described in Section V of the Phase 2 Guidelines.

The Phase 1 Guidelines specify two different test options for measuring the impact of performing a task on driving safety and acceptance criteria for assessing whether a task interferes enough with driver attention to be unsuitable for performance while driving. Either test may be run to assess conformance with the guidelines. Both of these test methods focus on the amount of visual attention necessary to complete a task because existing research on visual-manual distraction establishes a link between visual

[77] For purposes of this discussion, ''in-vehicle system'' includes both OE and aftermarket headunits installed in a motor vehicle.

[78] Alliance of Automobile Manufacturers and Association of Global Automakers (2014). Consumer Privacy Protection Principles: Privacy Principles for Vehicle Technologies and Services. Retrieved from *http://www.autoalliance.org/index.cfm?objectid=CC629950-6A96-11E4-866D000C296BA163* (last accessed on 10/4/16).

attention (eyes off the road) and crash risk.

The first recommended test method measures the amount of time that the driver's eyes are drawn away from the roadway during the performance of the task. The proposed Phase 2 Guidelines, like the Phase 1 Guidelines, recommend that devices be designed so that tasks can be completed by the driver while driving with glances away from the roadway of 2 seconds or less and a cumulative time spent glancing away from the roadway of 12 seconds or less. NHTSA anticipates that stakeholders (*e.g.,* OS developers, portable device developers, and application developers) will work together to ensure that applications and features on portable devices intended for use while driving meet the Phase 2 Guidelines. NHTSA requests comments on how this industry process will develop and function.

The second test method uses a visual occlusion technique, and both the Phase 1 and proposed Phase 2 Guidelines recommend that, when tested with this method, devices be designed so that tasks can be completed in a series of 1.5-second glances with a cumulative time of not more than 12 seconds.[79] Both of these tests are part of the Phase 1 NHTSA Guidelines and the Alliance of Automobile Manufacturers (Alliance) guidelines.

Detailed discussions of how these thresholds were developed are contained in the proposed Phase 1 Guidelines notice [80] and the final Phase 1 Guidelines notice.[81] In summary, glances away from the forward road scene greater than 2 seconds at a time are associated with an increased risk of a crash or near crash. The total eyes off road time criterion is based on the principle that a visual-manual secondary task performed while driving should not exceed that associated with a baseline reference task (in this case, the manual tuning of a radio). NHTSA selected radio tuning as the reference task [82] and determined that the 85th percentile total eyes off road time (TEORT) associated with radio tuning is 12 seconds. Recent testing conducted by the agency to assess the proposed acceptance criteria for both the simulator and occlusion procedures supports the use of 2-second individual glance duration criterion and a12-second TEORT criterion (*i.e.,* a ''2/12 Rule'').[83]

NHTSA has tentatively concluded that because the crash risk associated with distraction caused by vehicle OE interfaces and portable devices is borne out of similar visual-manual interaction between the driver and the device, the Phase 2 Guidelines should apply the Phase 1 Guidelines to the proposed Driver Mode. In other words, because a driver would be diverting his or her attention away from the road to an area within reach and view of the driver compartment, a recommendation for a portable device in Driver Mode should be similar to that of in-vehicle systems.

In addition to the recommendations regarding per se lock outs and the task acceptance criteria, the proposed Phase 2 Guidelines recommend that when in Driver Mode, portable device interfaces conform to the following Phase 1 Guidelines recommendations:

- No Obstruction of View
- Easy to See and Reach
- Sound Level
- Single-Handed Operation
- Interruptibility
- Device Response Time
- Disablement
- Distinguish Tasks of Functions not intended for use while driving
- Device Status

Due to the differences between integrated OE interfaces and portable devices, the proposed Phase 2 Guidelines do not include the Phase 1 recommendations related to maximum downward viewing angle, lateral position of visual displays, and minimum size of displayed text information. These recommendations relate to the placement of the interface or the size of the interface text given that placement. Because the placement of a portable device in a vehicle is determined by the owner or driver of the vehicle rather than the device manufacturer or software designer, the agency has tentatively concluded that, as it cannot know for certain where, how, or if the device will be mounted, these recommendations are not appropriate for portable devices.

Despite this fact, the agency still believes it is necessary to propose a repeatable test that would allow the agency to determine what devices conform with the proposed Driver Mode. Such a test, even if it does not reflect how all drivers use portable devices in all circumstances, would, nevertheless, provide the agency with a benchmark to measure conformance across a wide variety of different devices. The agency proposes that manufacturers test unpaired portable devices, including those in Driver Mode, in a location within a vehicle that, to the greatest extent possible, conforms to the recommendations enumerated in Phase 1 (*i.e.* no obstruction of view, easy to see and reach) and do not result in the portable device interfering with airbag deployment zones or safe operation of the vehicle controls. The agency believes that this is a repeatable means to address Driver Mode conformance, which may be representative of how the device may be mounted in the vehicle by a driver. The agency acknowledges that some drivers may not mount their portable device and, instead use it while holding it in their hand. However, the agency does not believe it is possible or desirable to create a repeatable test based on in-hand use.

The agency requests comments on differences between vehicle OE interfaces and portable devices. Specifically, NHTSA would like to know what, if any testing methods, stakeholders currently use (or suggest using) to address the varying placements of a portable device inside an automobile.

The Phase 1 Guidelines per se lock outs include activities that are discouraged by public policy and, in some instances, prohibited by Federal regulation or State law (*e.g.,* entering or displaying text messages), and activities identified in industry driver distraction guidelines that NHTSA agrees are likely to distract drivers significantly (*e.g.,* automatically scrolling text). The per se lock outs also address activities that are extremely likely to be distracting due to their very purpose of attracting visual attention, but whose obvious potential for distraction cannot be measured using a task timing system because the activity could continue indefinitely (*e.g.,* displaying video or certain images). Below is a detailed description of the per se lock outs taken from the Phase 1 Guidelines: [84]

[79] As explained in detail in the Phase 1 Guidelines notices, the 1.5-shutter open time periods used in the occlusion method correspond to 2 second off-road glances.

[80] 77 FR 11199 (Feb. 24, 2012).

[81] 78 FR 24817 (Apr. 26, 2013).

[82] The concept of a reference task and the use of radio tuning originated with the Alliance Guidelines, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[83] Ranney, T., Baldwin, S., Smith, L., Martin, J., & Mazzae, E. (2013). *Driver Behavior During Visual-Manual Secondary Task Performance: Occlusion Method Versus Simulated Driving* (DOT HS 811 726). Washington, DC: National Highway Traffic Safety Administration.

[84] 78 FR 24817 (Apr. 26, 2013), available at *https://www.federalregister.gov/articles/2013/04/26/2013-09883/visual-manual-nhtsa-driver-distraction-guidelines-for-in-vehicle-electronic-devices* (last accessed on 10/4/16).

• Device functions and tasks not intended to be used by a driver while driving.

• Manual Text Entry. Manual text entry by the driver for the purpose of text-based messaging, other communication, or internet browsing.

• Displaying Video. Displaying (or permitting the display of) video including, but not limited to, video-based entertainment and video-based communications including video phoning and videoconferencing.

• Exceptions: [85]

• Map displays. The visual presentation of dynamic map and/or location information in a two-dimensional format, with or without perspective, for the purpose of providing navigational information or driving directions when requested by the driver (assuming the presentation of this information conforms to all other recommendations of these Guidelines). However, the display of informational detail not critical to navigation, such as photorealistic images, satellite images, or three-dimensional images is not recommended.

• Displaying Images. Displaying (or permitting the display of) non-video graphical or photographic images.

• *Exceptions:*

• Displaying driving-related images including maps (assuming the presentation of this information conforms to all other recommendations of these Guidelines). However, the display of map informational detail not critical to navigation, such as photorealistic images, satellite images, or three-dimensional images is not recommended.

• Static graphical and photographic images displayed for the purpose of aiding a driver to efficiently make a selection in the context of a non-driving-related task (*e.g.,* music) is acceptable if the image automatically extinguishes from the display upon completion of the task. If appropriate, these images may be presented along with short text descriptions that conform to these Guidelines.

• Internationally standardized symbols and icons, as well as Trademark™ and Registered® symbols, are not considered static graphical or photographic images.

• Automatically Scrolling Text. The display of scrolling (either horizontally or vertically) text that is moving at a pace not controlled by the driver.

• Displaying Text to Be Read. The visual presentation of the following types of non-driving-related task textual information:

• Books
• Periodical publications (including newspapers, magazines, articles)
• Web page content
• Social media content
• Text-based advertising and marketing
• Text-based messages (see definition) and correspondence

• *Exception:*

• The visual presentation of limited amounts of other types of text during a testable task is acceptable. The maximum amount of text that should be visually presented during a single testable task is determined by the eye-glance-based acceptance tests.

The agency requests comment on the applicability of the Phase 1 per se lock outs to portable devices. Are additional exceptions needed for certain portable device tasks? Are there additional portable device tasks that should be included in the per se lock outs if the device has a Phase 1 Guidelines-conforming Driver Mode interface?

2. Driver Mode Activation

The Phase 2 Guidelines' proposed recommendations regarding the activation of the Driver Mode would differ significantly from the Phase 1 Guideline's recommendations in terms of when OE in-vehicle devices should lock out certain tasks and meet certain other device recommendations.

In particular, the Phase 1 Guidelines recommend that OE in-vehicle devices should lock out certain tasks from performance by the driver while ''driving.'' ''Driving'' is defined as whenever a vehicle's means of propulsion is activated unless the vehicle's transmission is in the ''Park'' position or, for manual transmission vehicles, the vehicle's transmission is in the ''neutral'' position, the parking brake is engaged, and the vehicle's speed is less than 5 mph.

This definition was based on definitions used in various statutes, regulations, and Executive Orders related to distracted driving,[86] which defined driving as operating a vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, traffic control devices, etc. The agency was also concerned that limiting ''driving'' to when a vehicle is traveling above a certain speed could result in drivers performing distracting tasks at low speeds, creating an increased risk of a crash at signal- or sign-controlled intersections and in traffic. Accordingly, by using existing definitions as a foundation, the agency developed a definition that is based on information known to, or able to be detected by vehicle systems: Transmission position, vehicle speed, and the status of the parking brake.

In analyzing how to apply the Phase 1 Guidelines to portable and aftermarket devices, the agency has determined activation of Driver Mode is dependent upon the technologies and features present, as well as the level of communication between a portable/aftermarket device and a vehicle. Based on these considerations, the agency has developed two alternative methods for activating Driver Mode.

The first option, and the one encouraged by the agency, is automatic activation, meaning that Driver Mode automatically engages within a reasonable period of time when the portable device by itself or in conjunction with the vehicle distinguishes that it is being used by a driver while driving. If desired, the user would have the ability to deactivate or opt-out of automatic engagement of Driver Mode. Like the ''driving'' condition described in the Phase 1 Guidelines, this definition is based on information (*e.g.,* vehicle speed) that can be determined by the portable device if it has the appropriate sensors like GPS to measure the speed of the motor vehicle, or if the information is transmitted from the vehicle to the portable device. The Phase 1 definition of driving may be suitable if the automatic distinction technology can also access speed or transmission state information directly from the vehicle. Examples of automatic distinction technologies that had direct connection to the vehicle, and therefore could have access to vehicle speed or transmission state, were presented at NHTSA's Phase 2 Public Meeting.[87] The agency requests comment on whether the final guidelines should include specific triggering factors or a specific timeframe for Driver Mode to automatically

[85] Certain exceptions to the video per se lock out are not listed here because it is unlikely that a portable or aftermarket device's interface would include that type of functionality (*e.g.,* rearview images used to aid the driver performing a maneuver in which the vehicle's transmission is in reverse gear). However, all of the display of video per se lock out exceptions listed in the Phase 1 Guidelines would also be applicable to portable and aftermarket devices.

[86] 23 U.S.C. 405(e)(9)(A); 49 CFR 392.80, Executive Order 13513, ''Federal Leadership on Reducing Text Messaging While Driving,'' October 1, 2009; MAP–21 Public Law 112–114, 126 Stat. 405 (July 6, 2012).

[87] Docket No. NHTSA–2013–0137, ''Driver Distraction Guidelines (Phase 2) for Portable and After-Market Devices Public Meeting Agenda and Presentations'' ID: NHTSA–2013–0137–0004. Available at *http://www.regulations.gov/#!docketDetail;D=NHTSA-2013-0137* (last accessed on 10/4/16).

activate, such as the vehicle speed (*e.g.,* a speed that can reasonably be attributed to a motor vehicle as opposed to non-motorized transportation) at which an automatic activation would engage, as well as other potential triggering factors. Additionally, NHTSA requests comment on the 5 mph speed threshold applicable to the definition of ''driving'' for vehicles without a ''Park'' position (*e.g.* manual transmission vehicles).

The agency recognizes that automatic activation technologies are still in the process of being refined, and, without the ability to reliably detect whether the device user is the driver or a passenger, may be overly annoying to device users. Accordingly, the agency is proposing a second option, voluntary activation, meaning that the Driver Mode is activated in a simple manner by the user. In other words, under this option, Driver Mode is manually activated by the driver rather than automatically. The agency expects technologies that support automatic Driver Mode activation to be implemented as soon as practicable. In order to provide flexibility, NHTSA has not included any additional specific recommendations on how activation of Driver Mode should be designed. The agency requests comment on whether additional specification should be included in the final guidelines.

Recognizing that some drivers may choose not to activate Driver Mode, and accordingly, not reduce the distraction potential of the portable device, the agency foresees driver-initiated activation being a temporary option in the Phase 2 Guidelines until driver-passenger distinction technology is more developed and widely available. The agency expects such technology to be implemented as soon as practicable. The agency recognizes the inherent limitations of a driver-activated Driver Mode and seeks comment on alternative approaches to Driver Mode activation as a temporary option until driver-passenger distinction technology is implemented.

E. Aftermarket Devices

The US DOT's Blueprint for ending Distracted Driving specified that aftermarket electronic devices would be addressed in NHTSA's Phase 2 Guidelines. In line with the Blueprint, the Phase 2 Guidelines propose to make recommendations for aftermarket devices. Tentatively, the agency concludes that recommendations applicable to OE manufacturers in the Phase 1 Guidelines shall be recommendations to aftermarket electronic device manufacturers.

Aftermarket devices include communication, entertainment, or navigation devices that are designed to be or would be reasonably expected to be installed or integrated after the vehicle is manufactured, are often incorporated into existing OE slots in the dashboard or are permanently affixed to the top surface of the dashboard. Examples of aftermarket devices include in-dash car stereos/receivers and in-dash navigation devices. While aftermarket devices are addressed in the same guideline document as portable devices, there are notable differences between portable and aftermarket devices. As aftermarket devices are typically hardwired into a vehicle, they are not likely to be moved in and out of a vehicle like portable devices. Additionally, because there is a physical link between an aftermarket device and the vehicle, there is no need for any pairing recommendation, as the vehicle and aftermarket device are linked by virtue of installation.

With regard to placement within the vehicle, the installation location of an aftermarket device is likely to be either on the dashboard or in a vacated spot in the dash previously occupied by an OE interface. NHTSA has tentatively concluded that because the crash risk associated with distraction caused by OE interfaces and aftermarket devices is borne out of similar visual-manual interaction from the same location in a vehicle, the Phase 2 Guidelines should apply the Phase 1 guidelines to aftermarket devices. In many cases, aftermarket devices serve as replacement devices for vehicle OE systems, replacing the function of OE units while occupying the same location within a vehicle. NHTSA is seeking comment on this approach.

IV. Expected Effects of the Phase 2 Guidelines

NHTSA's overall expectation for the Phase 2 Distraction Guidelines is to provide a safety framework for developers of portable and aftermarket electronic devices and applications to use when developing their systems that will reduce driver distraction through two specific technological means. First, NHTSA envisions easy pairing solutions for users of portable devices in their vehicles that will result in accelerated growth and acceptance of pairing, leading to pairing implementations throughout entire vehicle lineups and trim levels. Pairing solutions should become seamless, thereby fostering highly efficient interactions between the drivers, portable devices, and in-vehicle electronics systems. Second, NHTSA expects these guidelines will encourage the further growth and innovation of automatic driver distinction technologies that will enable more practical and pervasive Driver Mode implementations for portable devices in unpaired scenarios. The development of automatic driver distinction technologies and consequently Driver Mode interfaces should result in reduced distraction when used by drivers while driving. Again, the agency's goal is that information available to the driver inside the vehicle will not cause an unsafe level of distraction to the driver (either by functions being locked out or conforming to the applicable Phase 1 Guidelines' 2/12 performance criteria).

In addition, NHTSA expects that through these guidelines, automotive OEMs, application developers, portable and aftermarket device manufacturers, operating system providers, wireless carriers, and all involved stakeholders will jointly work together with the primary goal of reducing fatalities, injuries, and crashes attributable to the use of portable and aftermarket devices by drivers. NHTSA expects that the proposed guidelines will serve as a framework for stakeholders to continue developing a variety of technologies and designs that reduce visual-manual distraction while driving. Ultimately, these proposed Guidelines will raise awareness of driver distraction and elevate vehicle safety to a top priority within the product development processes for these wide-ranging organizations.

A. Estimated Time for Conformance

NHTSA wants to make it absolutely clear that since its Driver Distraction Guidelines are voluntary and non-binding, they do not have a ''lead time'' in the same way that a FMVSS or other regulation has a lead time. Portable and aftermarket device manufacturers, application developers, and vehicle manufacturers are not required to meet the NHTSA Guidelines.

NHTSA stated that it anticipated vehicle manufacturers would incorporate Phase 1 conformance into their normally scheduled production cycles, and therefore NHTSA anticipates seeing production vehicles that conform to Phase 1 Guidelines no sooner than three years from the publication of Phase 1. NHTSA recognizes that the production cycles for portable devices are dramatically shorter than for vehicles; therefore NHTSA seeks comment on reasonable conformance testing timing for Phase 2. We believe 16 months is appropriate given the speed at which technology changes and the time needed to benchmark product against

the final guidelines. We understand that a portable device's ability to pair with a vehicle inherently requires some coordination with vehicle OEMs. We request comment on the appropriateness of this timeframe.

The agency also notes that the Guidelines are just one of many efforts by both government and industry to address the distracted driving problem. The NHTSA Distraction Plan [88] describes the Agency's comprehensive approach to the distraction problem. NHTSA has approached the driver distraction problem from multiple fronts, from a better understanding of the issue of distraction by improving the quality of data on the incidence, prevalence, and crash risk from distraction, to public service messages (*e.g.,* ''One text or call could wreck it all''), to working with states on enforcement programs and improving laws, to producing the Distraction Guidelines. Industry has also worked hard to promote anti-driver-distraction awareness and message campaigns, as well as working toward guidance and tools for less distracting devices and built-in user interfaces. NHTSA's Guidelines are an important complementary effort against driver distraction.

B. NHTSA Monitoring of Portable and Aftermarket Device Conformance With the Guidelines

NHTSA's Office of Vehicle Safety Research intends to perform future monitoring to assess conformance to our Driver Distraction Guidelines. Whereas the details of this monitoring have yet to be determined, we plan to test actual production vehicles, and production portable and aftermarket devices. Vehicles, portable and aftermarket devices, and applications will be selected for such monitoring so that they represent a representative portion of makes and models available for public consumption. NHTSA envisions that these test results would be made available to the public.

V. Authority To Issue the Phase 2 Guidelines

The agency's authority to issue the voluntary, non-binding [89] Phase 2 Guidelines is clear under both the Highway Safety Act and the Vehicle Safety Act.[90] NHTSA's statutory mandate is to reduce traffic accidents and deaths and injuries resulting from traffic accidents.[91] To carry out this mandate, NHTSA is authorized to conduct and act on both behavioral safety and vehicle safety research. Congress directed the Secretary of Transportation, through amendments to the Highway Safety Act, to *assist and cooperate with private industry* (among others) to increase highway safety.[92] Additionally, the Vehicle Safety Act states NHTSA ''shall conduct research, development, and testing on any area or aspect of motor vehicle safety necessary to carry out this chapter.'' [93] More specifically, NHTSA ''shall . . . conduct motor vehicle safety research, development, and testing programs and activities, including activities related to new and emerging technologies that impact or may impact motor vehicle safety.'' [94]

By issuing these Guidelines, NHTSA seeks to fulfill its duties under both the Highway Safety Act and the Vehicle Safety Act. The foundation for these Guidelines is the agency research on distraction caused by portable and aftermarket devices, and our evaluation of research from other experts. The agency believes that today's guidelines are an effective way of expressing NHTSA's research conclusions. Encapsulating and publishing research results in the form of recommendations, best practices, or guidelines is not novel for this agency.[95] Further, these Guidelines are a way for NHTSA to provide private industry with assistance on practical ways of applying the existing research to their portable application/device designs so as to encourage their customers to use these devices and applications appropriately when in the motor vehicle. Moreover, by releasing these guidelines for public comment, we are cooperating with private industry and other members of the public toward increasing highway safety in this important area.

Additionally, we note that in recently enacting the Fixing America's Surface Transportation Act,[96] Congress included a provision regarding the agency's ability to issue non-binding guidance. While the provision provides that ''[n]othing in the subsection shall be construed to confer any authority upon or negate any authority of the Secretary to issue guidelines under this chapter,'' we note that the only such guidelines that the agency has issued or announced plans to issue in recent years are those relating to distraction.

As NHTSA has stated in various agency documents, the guidelines for portable devices are a crucial part of a *comprehensive, multi-pronged effort* to address driver distraction. Taking a comprehensive approach that addresses behavioral, technological, and environmental risk factors is standard practice in the injury prevention field.[97] While the states' achievements in addressing the behavioral aspects of distracted driving are commendable, we believe more needs to be done to address the other two types of risk factors. As we mentioned earlier, the 2014 statistics show that, taking account of all different types of distractions, a substantial portion (10%) of all fatal crashes still involves at least one distracted driver. Further, a substantial portion of distraction-affected fatal crashes (13%) involve cell phone use. NHTSA estimates that 404 lives were lost in cell phone-involved fatal crashes in that year. This represents 1.2 percent of traffic fatalities for that year.

Accordingly, we believe that private industry could effectively complement the state efforts by addressing the technological risk factors related to portable application/device use and

[88] NHTSA. (2010). *Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,* (DOT HS 811 299). Available at *http://www.nhtsa.gov/staticfiles/nti/distracted_driving/pdf/811299.pdf* (last accessed on 10/4/16).

[89] *See* Fixing America's Surface Transportation Act, Public Law 114–94, 24406 (2015) (''No guidelines issued by the Secretary with respect to motor vehicle safety shall confer any rights on any person, State, or locality, nor shall operate to bind the Secretary or any person to the approach recommended in such guidelines'').

[90] We note that questions have been raised by, among others, CTA and CTIA concerning NHTSA's authority to *regulate* portable devices and applications. Although not at issue in these voluntary guidelines, the agency points out that it has such authority to the extent these technologies function as ''motor vehicle equipment'' as defined by the Vehicle Safety Act. That said, NHTSA does not have any current plans to develop such regulations and, as we explain throughout, the guidelines proposed today are not regulations, but are rather voluntary and non-binding.

[91] 49 U.S.C. 30101 (''The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out needed safety research and development.''). Delegated to NHTSA at 49 CFR 1.95.

[92] 23 U.S.C. 401. Delegated to NHTSA at 49 CFR 1.95.

[93] 49 U.S.C. 30181. Delegated to NHTSA at 49 CFR 1.95.

[94] 49 U.S.C. 30182 (''Powers and duties''). Sections 30181–30182 were added to the Safety Act by the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, 31204 (2012). Prior to this, the Safety Act provisions authorizing NHTSA's motor vehicle safety research and development were contained in § 30168. MAP–21 deleted § 30168 as redundant material. *See* MAP–21 § 31204. Delegated to NHTSA at 49 CFR 1.95.

[95] *See, e.g.,* Effectiveness and Acceptance of Enhanced Seat Belt Reminder Systems: Characteristics of Optimal Reminder Systems Final Report, DOT HS 811 097, § 5.4 (''Recommended System Characteristics'') (2009).

[96] Public Law 114–94, 24406 (2015).

[97] The interrelationship of the elements of this practice is graphically depicted in the well-known analytical and planning tool known as the Haddon Matrix.

driving. Furthermore, the relationship between portable devices/applications and driver distraction makes it incumbent upon the US DOT to utilize NHTSA's safety expertise to assist private industry in understanding and addressing issues related to the effects of portable application/device design on driver behavior. The contribution of these devices to driver distraction is an important and growing motor vehicle safety challenge. However, manufacturers of these products generally do not have motor vehicle safety expertise, or do not design their products with full knowledge of the potential effects on driving, especially those devices designed for general use, rather than specifically for use while driving. In developing these guidelines in consultation with industry and the public, NHTSA is using its expertise regarding the variety of factors [98] that adversely affect driver performance to assist private industry in improving portable devices/applications in ways that increase highway safety by making it easier for the driver to avoid engaging in distracting behaviors.

VI. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments should not be more than 15 pages long. (See 49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and US DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* The US DOT's guidelines may be accessed at *https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_quality_guidelines/html/guidelines.html.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If a comment is received too late for us to consider in developing the final guidelines, we will consider that comment as an informal suggestion for future guidelines.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

VII. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments must use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE International (SAE). The NTTAA directs agencies to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

As part of the Phase 1 Guidelines, NHTSA identified a number of voluntary consensus standards related to distracted driving. After careful consideration, the agency incorporated several of these standards into the test methods in the Phase 1 Guidelines: ISO International Standard 15008:2003, ''Road vehicles—Ergonomic aspects of transport information and control systems—Specifications and compliance procedures for in-vehicle visual presentation''; ISO International Standard 16673:2007(E), ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems''; and multiple versions of SAE Recommended Practice J941, ''Motor Vehicle Drivers' Eye Locations,'' including SAE J941 (June 1992), SAE J941 (June 1997), SAE J941 (September 2002), SAE J941 (October 2008), and SAE J941 (March 2010). Because the proposed Phase 2 Guidelines involve the use of the Phase 1 Guidelines test procedure, with several modifications, as described in

[98] In addition to distraction, these factors include problems like fatigue, sleepiness, and intoxication.

detail above, these standards are, by extension, included by reference in the Phase 2 Guidelines.

The agency requests comment on any other voluntary consensus standards appropriate for use in these Guidelines.

Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices (Phase 2 Guidelines)

I. Purpose

The purpose of the NHTSA driver distraction guidelines is to reduce the number of motor vehicle crashes and the resulting deaths and injuries that occur due to a driver being distracted from the primary driving task while performing secondary activities with a portable or aftermarket device within the vehicle.

Phase 2 extends and tailors the recommendations specified in the Phase 1 Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices (henceforth referred to as ''Phase 1 Guidelines'') to cover portable and aftermarket devices. These Guidelines are presented as an aid to vehicle manufacturers, portable and aftermarket device manufacturers, developers, carriers, and application developers in designing products that discourage unsafe driver distraction resulting from use of the devices. Adherence to these guidelines is voluntary and conformance with them is not required.

A. Driver Responsibilities

These Guidelines are meant to reduce the potential distraction associated with portable and aftermarket device interfaces. A portable or aftermarket device's conformance with these Guidelines does not mean that the device is safe to use while driving. It remains the driver's responsibility to ensure the safe operation of the vehicle under all operating conditions and to comply with all traffic laws, including those that ban texting and/or the use of hand-held devices while driving.

II. Scope

A. Devices and Interfaces

1. *General Device and Interface Applicability.* These Guidelines are applicable to the visual-manual portions of a portable or aftermarket device's human-machine interface. These Guidelines are applicable to device interfaces regardless of the class or size of the vehicles in which the portable or aftermarket devices may be used.

2. *Exclusions.*

These Guidelines are not applicable to:

a. The auditory-vocal portions of a portable or aftermarket device's human-machine interface.

b. A device manufactured primarily for use in one of the following:

1. Ambulances
2. Firefighting vehicles
3. Military vehicles
4. Vehicles manufactured for use by the United States Government or a State or local government for law enforcement, or
5. Vehicles manufactured for other emergency uses as prescribed by regulation by the Secretary of Transportation.

c. A device or device function, control, and/or display specified by Federal, State, or local law or regulation.

B. Tasks

1. *General Task Applicability.* These Guidelines are applicable to the same types of tasks covered by the Phase 1 Guidelines, including all *non-driving-related tasks* and some *driving-related tasks.* Table 1 contains a non-exhaustive list of the types of *non-driving-related tasks* to which these Guidelines are applicable.

TABLE 1—NON-DRIVING-RELATED TASKS/DEVICES TO WHICH THESE GUIDELINES APPLY

Type of task	Task/device
Communications	Caller Identification, Incoming Call Management, Initiating and Terminating Phone Calls, Conference Phoning, Two-Way Radio Communications, Paging, Address Book, Reminders, Text-Based Communications, Social Media Messaging or Posting.
Entertainment	Radio (including but not limited to AM, FM, Internet, and Satellite), Pre-recorded Music Players, All Formats, Television, Video Displays, Advertising, Internet Browsing, News, Directory Services.
Information	Display and other information settings and preferences.

These Guidelines are also applicable to *driving-related tasks* that are neither related to the safe operation and control of the vehicle nor involve the use of a system required by law. Examples of *driving-related tasks* to which these Guidelines are applicable include:

1. Driver Information functions
2. Route navigation functions.

2. *Exclusions.* These Guidelines are not applicable to the *driving-related tasks* that are performed by the driver as part of the safe operation and control of the vehicle, including any task relating to the proper use of a driver safety warning system (*e.g.,* lane departure warning and forward collision warning systems). These include applications for portable and aftermarket devices that assist the driver in the mitigation and avoidance of crashes.

III. Definitions

A. Definitions From the Phase 1 Guidelines

The following terms are defined in the Phase 1 Guidelines, and have the same meaning in these Guidelines:

1. *Device* means all components that a driver uses to perform secondary tasks (*i.e.,* tasks other than the primary task of safe operation and control of the vehicle); whether stand-alone or integrated into another device.

2. *Distraction* means the diversion of a driver's attention from activities critical for safe operation and control of a vehicle to a competing activity.

3. *Driving* means whenever the vehicle's means of propulsion (engine and/or motor) is activated unless one of the following conditions is met:

a. For a vehicle equipped with a transmission with a ''Park'' position—The vehicle's transmission is in the ''Park'' position.

b. For a vehicle equipped with a transmission without a ''Park'' position—All three of the following conditions are met:

i. The vehicle's parking brake is engaged, and

ii. The vehicle's transmission is known (via direct measurement with a sensor) or inferred (by calculating that the rotational speed of the engine divided by the rotational speed of the driven wheels does not equal, allowing for production and measurement tolerances, one of the overall gear ratios of the transmission/vehicle) to be in the neutral position, and

iii. The vehicle's speed is less than 5 mph.

4. *Function* means an individual purpose which the device is designed to fulfill. A device may have one or more functions.

5. *Interaction* means an input by a driver to a device, either at the driver's initiative or as a response to displayed information. Interactions include control inputs and data inputs (information that a driver sends or receives from the device that is not intended to control the device). Depending on the type of task and the goal, interactions may be elementary or more complex. For the visual-manual interfaces covered by this version of these Guidelines, interactions are restricted to physical (manual or visual) actions.

6. *Lock Out* means the disabling of one or more functions or features of a device so that the related task cannot be performed by the driver while driving.

7. *Manual Text Entry* means manually inputting individual alphanumeric characters into an electronic device. For the purposes of these Guidelines, digit-based phone dialing is not considered manual text entry.

B. Additional Definitions

1. *Aftermarket Device* means a Device that is designed to be or can reasonably be expected to be installed or integrated into a vehicle after the vehicle is manufactured, is electrically powered, and has one or more of the following capabilities:

a. Allows user interaction;

b. Enters, sends, and/or receives information;

c. Enables communication with other people, devices, or machines;

d. Displays information in a visual and/or auditory manner; or

e. Displays graphical images, photographic images, and/or video.

2. *Application,* or *App,* means a specialized software program that is installed on an OEM, portable or aftermarket device.

3. *Driver Mode* means a simplified user interface for an unpaired portable device that is designed for operation by a driver while driving.

4. *Driver safety warning system* means a system or application that is intended to assist the driver in the avoidance or mitigation of crashes.

5. *Human-Machine Interface (HMI)* means the input and output mechanisms that mediate the interactivity between an electronic system and human operator. User Interface (UI) is another commonly used term for HMI.

6. *In-Vehicle System* means an OEM or aftermarket system that is permanently installed.

7. *PAD* means a portable or aftermarket device.

8. *Paired* means integrated, connected, or coupled to an in-vehicle system's visual display, audio system, and/or controls through either wired or wireless connection methods so that the in-vehicle system has control over the portable device's prioritization, manipulation, and the presentation of information that originates from both local and/or off-board sources.

9. *Portable Device* means a device that can reasonably be expected to be brought into a vehicle on a trip-by-trip basis and to be used by a driver while driving, that is electrically powered, and that has one or more of the following capabilities:

a. Allows user interaction
b. Enters, sends, and/or receives information
c. Displays information in a visual and/or auditory manner, or
d. Displays graphical images, photographic images, and/or video

IV. Device Interface Recommendations

A. Overview of Device Interface Recommendations

Figure 2 below is a flow diagram that summarizes the overall recommendations for both portable and aftermarket devices. For the Driver Mode recommendation, the diagram depicts the preferred automatic activation with the recognition that driver distinction technology is not currently available in a product-level state. When the distinction technology matures to an implementable state, NHTSA strongly recommends that it be applied to managing the interaction of unpaired portable devices. Manual activation of Driver Mode by the driver, also depicted in Figure 2, is NHTSA's temporary recommendation until the preferred automatic activation configuration is available. For the remainder of this section, the recommendations for aftermarket and portable devices are presented separately.

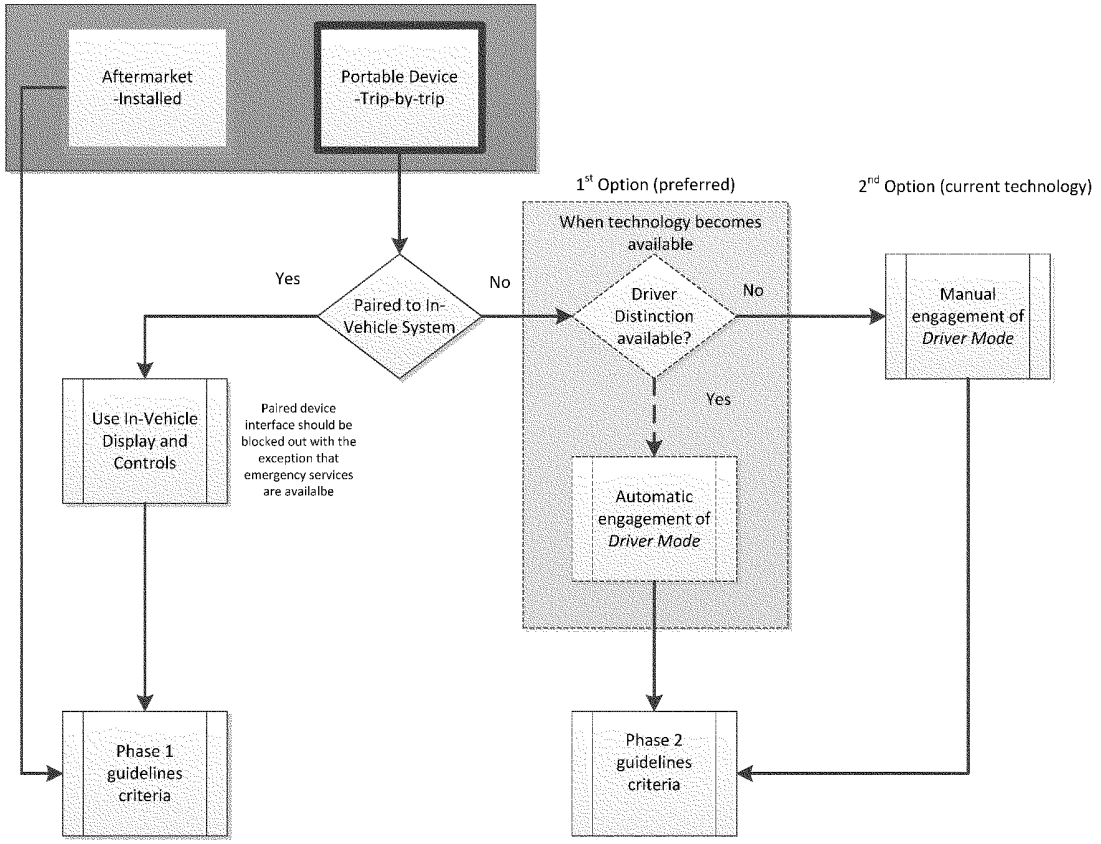

Figure 2. Flow diagram that summarizes the overall recommendations for both portable and aftermarket devices.

B. Aftermarket Devices

Installed aftermarket devices should meet the requirements as specified for OE interfaces in the Phase 1 Guidelines.

C. Portable Devices Should Be Paired

1. Ease of Pairing

Vehicle manufacturers and portable device manufacturers should provide the necessary mechanisms to enable pairing between the portable device and in-vehicle system. Pairing should be an easy-to-understand task that allows the driver to set up their portable device with their in-vehicle system with the fewest number of steps possible.

2. Disablement of Pairing Process

If the initial or subsequent pairing process between the portable device and in-vehicle system requires visual-manual interaction by the driver, the initial process of pairing should be disabled while driving.

3. Portable Device Interface Lock Outs While Paired

Portable device control input means should be locked out when the portable device is paired to the in-vehicle system and Driver mode on the device is activated. The functions and applications on the portable device should be operable exclusively through the in-vehicle system's interface with the exception of accessing emergency services and messages.

4. Emergency Services, Alerts, and Notifications

In the event that emergency services are required, access through the locked out paired portable device interface should be quick and easily accessible for the driver. Along with access to emergency services, the receiving of emergency notifications and alerts as text messages should be allowable for display on the paired portable device interface. All emergency messaging and alert services should follow the standard protocol as specified by the Wireless Emergency Alerts (WEA) system which is managed by the Federal Communications Commission (FCC) and the Federal Emergency Management Agency (FEMA).

D. Portable Devices Should Incorporate Driver Mode for Unpaired Use

1. Driver Mode

Portable devices should have a Driver Mode that consists of a simplified interface that is available to the driver when the device is unpaired, either because the in-vehicle system and/or portable device does not possess the capability for pairing or because the driver chooses not to pair with the in-vehicle system. However, a portable device designed primarily for use while driving and whose native interface design conforms to the Phase 1 Guidelines recommendations can be considered to essentially always be in driver mode and therefore would not warrant a separate mode for use while driving.

The Driver Mode interface should conform to the Phase 1 Guidelines for electronic devices used by the driver while driving. Specifically, while in Driver Mode, the portable device should adhere to the per se lock out tasks listed in sections V.F.1 through V.F.6 of the Phase 1 Guidelines.

1. Device functions and tasks not intended to be used by a driver while driving
2. Manual text entry
3. Displaying video
4. Displaying images
5. Automatically scrolling text
6. Displaying text to be read

Driver Mode should also lock out any *non-driving-related task* or *driving-related task* that does not conform to one of the task acceptance methods in Section VI of these Guidelines. The portable device should also conform to the following subsections of the Phase 1 Guidelines Section V:

A. No Obstruction of View
B. Easy to See and Reach
F. Per Se Lock Outs (listed in previous paragraph)
G. Acceptance Test-Based Lock Out of Tasks
H. Sound Level
I. Single-Handed Operation
J. Interruptibility
K. Device Response Time
L. Disablement
M. Distinguish Tasks or Functions not intended for use while driving
N. Device Status

2. Emergency Services, Alerts, and Notifications

In the event that emergency services are required, access through the portable device Driver Mode interface should be quick and easily accessible for the user. Along with access to emergency services, the receiving of emergency notifications and alerts as text messages should be allowable for display on the Driver Mode interface. All emergency messaging and alert services shall follow the standard protocol as specified by the WEA system which is managed by the FCC and the FEMA.

3. Driver Mode Activation

a. Option 1—Automatic Activation. Driver mode automatically activates within a reasonable period of time when the portable device: (1) Is not paired with the in-vehicle system, and (2) by itself, or in conjunction with the vehicle in which it is being used, distinguishes that it is being used by a driver who is driving. The driver mode does not activate when the device is being used by a non-driver.

i. Development of technologies that can distinguish between a device being used by a driver and a device being used by a passenger and appropriately alter, limit, or eliminate their visual-manual interfaces when used by a driver is encouraged. In the case in which Driver Mode is automatically activated in a moving vehicle, the technology should be able to distinguish the driver-operated devices from the passenger-operated devices to a high-degree of accuracy and reliability; and be executed in a prompt manner relative to the starting motion of the driver's vehicle.

b. Option 2—Driver Activation. Driver Mode is activated by the driver before driving. If this option is used, Driver Mode should be easily accessible via the portable device's software or hardware user interface, enabling the driver to engage Driver Mode quickly and with the fewest number of steps possible.

4. Unpaired Portable Device Location

A specific location for an unpaired portable device (*e.g.,* mounting location) is not specified in these guidelines. The test location described in the Task Acceptance Testing section is for testing purposes only and not considered a recommendation for device placement.

V. Task Acceptance Testing

Task acceptance testing for portable devices should use the same test methods as those described in the Phase 1 Guidelines Section VI. The specific procedures for Eye Glance Measurement Using Driving Simulator Testing and Occlusion Testing are incorporated by reference, as detailed in the following subsections of the Phase 1 Guidelines Section VI:

A. Test Participant Recommendations.
B. Test Participant Training Recommendations.
C. Driving Simulator Recommendations.
D. Recommended Driving Simulator Scenario.
E. Eye Glance Measurement Using Driving Simulator Test Procedure.
F. Eye Glance Characterization.
G. Occlusion Testing.
H. Text Performance Errors During Testing.

The Acceptance Criteria detailed in the Phase 1 Guidelines for both the Simulator (Section VI.E.14) and Occlusion (Section VI.G.17) test methods are also applicable for testing portable devices.

A. Additional Test Procedures for Portable and Aftermarket Devices

1. Permanently Installed Aftermarket Devices. Devices that are intended to be permanently installed in the vehicle should be tested in the location prescribed by the device manufacturer, and according to the test procedures noted above. Such prescribed installation locations should conform to the guidelines specified in the following subsections from Phase 1 Guidelines Section V:

A. No Obstruction of View.
B. Easy to See and Reach.
C. Maximum Display Downward Angle.
D. Lateral Position of Visual Displays.

2. Paired Devices: Testing procedures assume the portable device is already paired to the vehicle system, as defined in Section III. Because the testing of the paired portable device will use the built-in display and controls system, the location of the paired portable device itself is not specified.

3. Unpaired Devices: Unpaired portable devices should only be tested in a mounted location using tasks that are accessed through the Driver Mode interface. NHTSA recognizes that there are substantial variations in portable device mounting hardware options and vehicle interior designs that are available to drivers. As such, unpaired portable devices should be mounted within a vehicle to the greatest extent possible to the following recommendations:

a. The mount location should conform to the recommendations specified in the Phase 1 Guidelines Section V.A through Section V.D noted above.

b. The mounting location should not result in the portable device interfering with airbag deployment zones or safe operation of the vehicle controls (*e.g.,* steering wheel, gear shifter, etc.).

VI. Driver Distraction Guidelines Interpretation Letters

NHTSA intends to clarify the meaning of its Driver Distraction Guidelines in response to questions posed through the issuance of interpretation letters.

A. Guideline Interpretation Letter Procedure

1. Guidelines interpretation letters will only be issued in response to specific written requests for interpretation of the NHTSA Guidelines.

2. Requests for Guidelines interpretation letters may be submitted to the National Highway Traffic Safety Administration. The mailing address is: Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

3. Responses will be mailed to requestors, published in the docket, and posted in a designated area on the NHTSA Web site.

Issued in Washington, DC, on November 21, 2016 under authority delegated by 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–29051 Filed 12–2–16; 8:45 am]

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Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383, 384, et al.
Commercial Driver's License Drug and Alcohol Clearinghouse; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383, 384 and 391

[Docket No. FMCSA–2011–0031]

RIN 2126–AB18

Commercial Driver's License Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database under the Agency's administration that will contain information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs). This rule is mandated by the Moving Ahead for Progress in the 21st Century Act (MAP–21). It will improve roadway safety by identifying commercial motor vehicle (CMV) drivers who have committed drug and alcohol violations that render them ineligible to operate a CMV.

DATES: *Effective Date:* January 4, 2017. *Compliance Date:* January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Juan Jose Moya, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–4844 or via email at *fmcsadrugandalcohol@dot.gov*. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose and Summary of the Major Provisions of the Clearinghouse

The purpose of the Clearinghouse, as mandated by section 32402 of MAP–21, is to maintain records of all drug and alcohol program violations in a central repository and require that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by the FMCSA and U.S. Department of Transportation (DOT) drug and alcohol testing regulations. This will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV and ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions. Specifically, information maintained in the Clearinghouse will ensure that drivers who commit a drug or alcohol violation while working for another employer, or who attempt to find work with another employer, do not perform safety-sensitive functions until completing the return-to-duty process. The Clearinghouse thus addresses the situation in which drivers can conceal their drug and alcohol violations merely by moving on to the next job or the next jurisdiction. As explained below, drug and alcohol violation records maintained in the Clearinghouse will ''follow'' the driver regardless of how many times he or she changes employers, seeks employment or applies for a CDL in a different State. The Clearinghouse will be administered and maintained in strict compliance with applicable Federal security standards. The Agency will comply with the consent requirements of the Privacy Act prior to releasing any driver's Clearinghouse record to an employer.

Employers and medical review officers (MROs), or their designated representatives, are required to report information about positive drug test results, alcohol test results greater than 0.04 blood alcohol content, refusals to test and other non-test violations of FMCSA's drug and alcohol regulations. In addition, Substance Abuse Professionals (SAPs) are required to report information about drivers undergoing the return-to-duty drug and alcohol rehabilitation process. Employers must search the Clearinghouse for information during the pre-employment process for prospective employees and at least once a year for current employees to determine whether anyone has incurred a drug or alcohol violation with a different employer that would prohibit him or her from performing safety-sensitive functions.

B. Benefits and Costs

In the Initial Regulatory Analysis, the Agency estimated the annual benefit of the proposed rule at $187 million and the annual cost at $186 million. The present value of the proposed rule was $8 million at a 7 percent discount rate. The Final Regulatory Impact Analysis estimates the annual benefit of the final rule at $196 million and the annual cost at $154 million. Net present value benefit is estimated at $316 million at a 7 percent discount rate.

The principal factor causing the reduction in costs is the analytical change necessary to account for the program change concerning the testing rate for annual random drug tests. Effective January 1, 2016, the random drug testing rate is now 25 percent of drivers employed by a carrier, as opposed to 50 percent. This change was made pursuant to 49 CFR 382.305, and is unrelated to the Clearinghouse or the final rule. The industry has only been in operation for less than a year at the lower testing rate. Therefore, no drug survey data available that indicates that the random positive drug test rate has, or will, materially diverge from the three-year average of positive test rates used to estimate the number of positive random drug tests for the forecast period. This change reduces the estimate of the number of annual random positive drug tests from 28,000 in the Initial Regulatory Impact Analysis to 10,000 in the Final Regulatory Impact Analysis. The principal effect of this change is a reduction in return-to-duty costs from the $101 million estimated in the Initial Regulatory Impact Analysis to $56 million in the Final Regulatory Impact Analysis. In addition, FMCSA estimated drivers' opportunity cost for the personal income they would forgo for the hours in which they are in substance abuse education or treatment programs. This opportunity cost is included in the estimate of total return-to-duty costs. In the Final RIA, FMCSA estimated employers' opportunity cost as the monetized value of on-duty time lost for the entire period of time drivers, with drug and alcohol violations are detected as a result of the final rule, are prohibited from performing safety-sensitive functions.

The Agency estimates about $196 million in annual benefits from crash

reductions resulting from the rule. The benefits consist of $55 million in safety benefits from the annual queries and $141 million in safety benefits from the pre-employment queries. FMCSA estimates that the rule would result in $154 million in total annual costs, which include:

- $29 million that is the estimated monetized value of employees' time to prepare annual employer queries;
- $11 million that is the estimated monetized value of employees' time to prepare pre-employment queries;
- $3 million for employers to designate service agents, and $1 million for SAPs to report initiation of the return-to-duty Initial Assessment;
- $5 million incurred by various reporting entities to register with the Clearinghouse, verify authorization, and become familiar with the rule, plus an additional $700,000 for these entities to report positive tests;
- $35 million of fees and consent and verification costs consisting of $24 million in Clearinghouse access fees incurred by employers for pre-employment queries, limited annual queries and full annual queries, plus $11 million of the monetized value of drivers' time to provide consents to employers and verification to FMCSA to allow employers access to drivers' records;
- $2.2 million for development of the Clearinghouse and management of records;
- $56 million incurred by drivers to go through the return-to-duty process, including $7 million of opportunity costs in the form of income forgone for those hours spent in substance abuse education and treatment programs in lieu of hours that could be spent in non-safety-sensitive in positions; and
- $11.5 million of opportunity costs incurred by employers due to lost on-duty hours and profits associated with drivers suspended from safety-sensitive functions until successful completion of the return-duty-process.

Total net benefits of the rule are $42 million annually ($196 million–$154 million). The 10-year projection of net benefits is $316 million when discounted at 7 percent and $369 million when discounted at 3 percent. The annualized net benefit of the final rule is $42 million at the 7 percent and 3 percent discount rates. The estimated benefits include only those associated with reductions in CMV crashes.

TOTAL NET BENEFIT PROJECTION OVER A 10-YEAR PERIOD

Total	Annual	10-year	10-year
Discount rate		7%	3%
Total Benefits	$196,000,000	$1,472,985,521	$1,722,077,349
Total Costs	154,000,000	1,157,345,766	1,353,060,774
Total Net Benefits	42,000,000	315,639,754	369,016,575

II. Abbreviations

AAMVA American Association of Motor Vehicle Administrators
ABA American Bus Association
AMRO American Medical Review Officers, LLC
ATA American Trucking Associations
ATF Alcohol Testing Form
BLS Bureau of Labor Statistics
Boeing The Boeing Company
CAA Clean Air Act
Cahill-Swift Cahill Swift LLC
CCF Federal Drug Testing Custody and Control Form
CCTA California Construction Trucking Association
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
Clearinghouse FMCSA's Commercial Driver's License Drug and Alcohol Clearinghouse
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle
C/TPA Consortia/Third Party Administrator
CVTA Commercial Vehicle Training Association
DOT U.S. Department of Transportation
Driver Check Driver Check Medical Testing and Assessment
DrugPak DrugPak LLC
DUI Driving a Commercial Motor Vehicle While Under the Influence of Alcohol or Drugs
eCCF Electronic Custody and Control Form
EIN Employer Identification Number
E-MAIL Electronic Mail
FCRA Fair Credit Reporting Act
FE FirstEnergy Corporation
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
Foley Foley Carrier Services
GAO Government Accountability Office
Greyhound Greyhound Lines, Inc.
HHS Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996
IBT International Brotherhood of Teamsters
IT Information Technology
J.B. Hunt J.B. Hunt Transport, Inc.
MAP–21 Moving Ahead for Progress in the 21st Century Act
MRO Medical Review Officer
MROCC Medical Review Officer Certification Council
NCSL National Conference of State Legislators
NGA National Governors Association
NPRM Notice of Proposed Rulemaking
NPTC National Private Truck Council
NTSB National Transportation Safety Board
NYAPT New York Association for Pupil Transportation
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association, Inc.
OTETA Omnibus Transportation Employee Testing Act of 1991
PII Personally Identifiable Information
PSP Pre-Employment Screening Program
PTC Pipeline Testing Consortium, Inc.
Quest Diagnostics Quest Diagnostics Incorporated
RIA Regulatory Impact Analysis
SAMHSA Substance Abuse and Mental Health Services Administration
SAP Substance Abuse Professional
SAPAA Substance Abuse Program Administrators Association
Schneider Schneider National, Inc.
SDLA State Driver Licensing Agency
TTD Transportation Trades Department, AFL–CIO
UMRA Unfunded Mandates Reform Act of 1995
WPCI Western Pathology Consultants, Inc.

III. Legal Basis for the Rulemaking

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405), codified at 49 U.S.C. 31306a, directs the Secretary of Transportation (Secretary) to establish a national Clearinghouse containing CMV operators' violations of FMCSA's drug and alcohol testing program. This rule implements that mandate.

In addition, FMCSA has general authority to promulgate safety standards, including those governing drivers' use of drugs or alcohol while operating a CMV. The Motor Carrier Safety Act of 1984 (the 1984 Act), codified at 49 U.S.C. 31136(a), provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. The 1984 Act requires the Secretary to prescribe safety standards for CMVs which, at a minimum, shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on CMV operators do not impair their ability to

operate the vehicles safely; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely; (4) CMV operation does not have a deleterious effect on the physical condition of the operators; and (5) CMV drivers are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of regulations promulgated under 49 U.S.C. 31136 or 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)).

The FMCSA Administrator has been delegated authority under 49 CFR 1.87(e) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation. This rule will implement, in part, the Agency's delegated authority under 49 U.S.C. 31136(a)(1) to ensure that CMVs are ''operated safely,'' and, under section 31136(a)(3), to ensure that ''the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' The final rule does not directly address the operational responsibilities imposed on CMV drivers (section 31136(a)(2)) or possible physical effects caused by driving a CMV (section 31136(a)(4)). FMCSA prohibits employers from submitting false reports of drug or alcohol violations to the Clearinghouse, which could be used to exercise coercive influence over drivers (49 U.S.C. 31136(a)(5)). FMCSA also exercises the broad recordkeeping and implementation authority under 49 U.S.C. 31133(a)(8) and (10).

The Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, October 28, 1991, codified at 49 U.S.C. 31306), mandated the alcohol and controlled substances (drug) testing program for DOT. OTETA affirmed the existing regulations for drug testing and required the Secretary to promulgate regulations for alcohol testing for persons in safety-sensitive positions in four modes of transportation—motor carrier, airline, railroad, and mass transit. Those regulations, including subsequent amendments, are codified at 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs.'' Part 40 establishes requirements for all DOT-regulated parties, including employers of drivers with CDLs subject to FMCSA testing requirements, for conducting drug and alcohol tests. Part 40 also defines the roles and responsibilities of service agents, including MROs, SAPs, and consortia/third party administrators (C/TPAs), who perform critical functions under DOT-wide drug and alcohol testing program requirements.

In 1994, FMCSA's predecessor agency, the Federal Highway Administration (FHWA), published a final rule addressing the OTETA and amending regulations, including penalties, codified in 49 CFR part 382, ''Controlled Substances and Alcohol Use and Testing.'' In 2001, FMCSA revised its regulations in 49 CFR part 382 to make FMCSA's drug and alcohol testing procedures consistent with and non-duplicative of the revised regulations at 49 CFR part 40.

This rule incorporates many of the findings and recommendations contained in FMCSA's March 2004 report to Congress, which was required under section 226 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, 1771, December 9, 1999).[1]

IV. Background on FMCSA's Drug and Alcohol Testing Program

Agency regulations at 49 CFR part 382 apply to persons and employers of such persons who operate CMVs in commerce in the United States and who are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers (49 CFR 382.103(a)). Part 382 requires that employers conduct pre-employment drug testing, post-accident testing, random drug and alcohol testing, and reasonable suspicion testing, as well as return-to-duty testing and follow-up testing for those drivers who test positive or otherwise violate DOT drug and alcohol program requirements.

Motor carrier employers are prohibited from allowing an employee to perform safety-sensitive functions, which include operating a CMV, if the employee tests positive on a DOT drug or alcohol test, refuses to take a required test, or otherwise violates the DOT or FMCSA drug and alcohol testing regulations. The prohibition on performing safety-sensitive functions continues until the employee satisfies all of the requirements of the return-to-duty process prescribed in 49 CFR part 40, subpart O. Additionally, part 382 provides that an employer may not allow a covered employee to perform safety-sensitive functions when the employer has actual knowledge that a driver has engaged in on-duty or pre-duty alcohol use, used alcohol prior to post-accident testing, or used a controlled substance. An employer has ''actual knowledge'' of a driver's drug or alcohol use while performing safety-sensitive functions based upon the employer's direct observation of employee drug or alcohol use, an admission by the employee of drug or alcohol use, information provided by a previous employer, or if the employee receives a traffic citation for driving a CMV while under the influence of drugs or alcohol. An employer may not use a driver under these circumstances until the driver has completed the return-to-duty process prescribed in 49 CFR part 40, subpart O. Although not required to do so, the employer may, at its discretion, fire the employee without giving the opportunity to complete the return-to-duty process. FMCSA does not regulate an employer's decision to terminate or the conditions under which an employer chooses to keep a driver on after a drug or alcohol violation.

The Federal Motor Carrier Safety Regulations (FMCSRs) require that a motor carrier employer obtain information from a job applicant that includes the names and addresses of the applicant's employers for the past 3 years, and whether or not the applicant was subject to the FMCSRs and to the drug and alcohol testing requirements under 49 CFR part 40 (49 CFR 391.21(b)). Interstate motor carrier employers are then required to investigate the applicant's history under the DOT drug and alcohol testing program by contacting any named DOT-regulated employers to determine whether the applicant has, within the past 3 years, violated the drug and alcohol prohibitions under part 382 or the testing requirements under part 40 (49 CFR 391.23(e)). A similar background check requirement exists in part 40. *See* 49 CFR 40.25 (DOT-regulated employers must contact all of the applicant's employers for the 2 years prior to the employee application date and obtain drug and alcohol test information, including information that these employers obtained from previous employers).

Part 40 defines an ''employee'' as ''any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing'' including ''applicants for employment subject to

[1] ''A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results to the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder,'' Federal Motor Carrier Safety Administration, March 2004, Pg. 2.

pre-employment testing'' (49 CFR 40.3). Pursuant to this definition, an individual is an employee of any DOT-regulated employer for whom the individual takes a pre-employment drug test, regardless of whether the individual is subsequently hired by the employer. As a result, an individual must list that prospective employer, when applying for a new covered position (*see* 49 CFR 40.25).

FMCSA published the Notice of Proposed Rulemaking (NPRM) for the Drug and Alcohol Clearinghouse on April 22, 2014 (79 FR 9703). Changes to the published proposal are discussed in detail below.

V. Discussion of Comments Received on the Proposed Rule

The Agency received 165 comments. FMCSA's responses to those comments follow.

General Support/Opposition to the Clearinghouse

Comment. Ninety-seven commenters expressed general support for the proposal to establish the Clearinghouse. These commenters included 26 trade associations, 23 service agents, 13 employers, 3 safety advocacy organizations, 2 trade unions, the NTSB, a U.S. Congressman, a transportation consultant, and 27 individuals. Common reasons cited for general support of the proposal include that it will improve safety, deter drivers from job-hopping to evade the drug and alcohol violations, and provide employers with easy access to the information they need to hire safe, qualified drivers. Ten commenters expressed opposition to establishing the Clearinghouse. The majority of the commenters registering opposition were drivers who were concerned with overlapping reporting responsibilities and the lack of sufficient time for reporting information.

Compliance Date

Comment. SAPAA, NYAPT, First Advantage, WPCI and Quest Diagnostics requested that FMCSA give stakeholders enough time to restructure processes and systems before compliance is required. SAPAA requested at least a 1-year delay from the date of publication. First Advantage suggested that the compliance date coincide with the release of the HHS eCCF. National Ready Mixed Concrete Association and FE suggested a 2-year compliance period, while another commenter suggested a 3-year period.

Response. FMCSA notes that we did not propose a compliance date in the NPRM. This final rule includes a 3-year compliance period. FMCSA believes 3 years is necessary to provide the Agency time to design and implement the information technology (IT) systems needed to facilitate the reporting of results and violations of the drug and alcohol testing rules and the responses to queries from employers and prospective employers. Also, this period of time will ensure that stakeholders have sufficient time to prepare for this rule.

Applicability—Canadian and Mexican Employees, Employers, and Service Agents

Comment. Driver Check, Schneider, OOIDA and other commenters requested that the Agency clarify whether the proposed requirements apply to Canadian and Mexican commercial drivers, employers, C/TPAs, MROs, SAPs, and certified laboratories that are subject to the FMCSA testing regulations. Some of these commenters expressed concern that the proposal does not explain how the rule will be implemented and enforced against regulated entities in Canada and Mexico. One expressed concern that some of the proposed provisions would present privacy issues for Canadians because of a recent case involving an employer in the Province of Alberta. Driver Check asked whether the Clearinghouse data entry fields would be able to accommodate Canadian addresses and CDL numbers. The same commenter asked if the Clearinghouse would accommodate French, which is one of Canada's official languages.

Response. The Clearinghouse is designed to create an overlay onto FMCSA's drug and alcohol testing program to enhance compliance. As a result, all Clearinghouse requirements in this rule apply to employees, employers, and service agents that are otherwise subject to DOT and FMCSA drug and alcohol testing requirements as codified in 49 CFR parts 40 and 382. Therefore, all Mexican or Canadian employees, employers, or service agents that are currently required to comply with DOT and FMCSA drug and alcohol testing requirements must comply with this rule.

Canadian and Mexican motor carriers will follow the same procedures as U.S.-based motor carriers to query and report to the Clearinghouse. All Canadian and Mexican motor carriers engaged in cross-border trucking are required to obtain a USDOT number and maintain active registration. They will use those credentials to register with the Clearinghouse just as any U.S.-based carrier would. Similarly, FMCSA will enforce Clearinghouse requirements using the same tools it currently uses to enforce DOT and FMCSA drug and alcohol testing requirements against Canadian and Mexican motor carriers: Investigations, roadside inspections, and other enforcement mechanisms.

Currently, FMCSA is able to access information about Canadian CDL holders through the CDLIS pointer system. As a result, FMCSA does not anticipate having trouble accessing or accommodating Canadian information as a part of the Clearinghouse design. To the extent that issues arise that may affect the ability of Canadian carriers to comply with the requirements of this rule due to differences between Canadian and U.S. privacy laws and regulations, the Agency will work with Canadian authorities to resolve those issues. FMCSA intends to provide access to the Clearinghouse only in English, although parties will be able to enter French or Spanish words and names in the various data entry fields. Users with limited English proficiency may seek assistance with the Clearinghouse by contacting FMCSA's Office of Civil Rights at (202) 366–8810 to request a language accommodation.

Comment. Several commenters expressed concern that FMCSA's requirement that motor carriers implement a random drug testing program violates Canadian law. Specifically, they cite to *Communications, Energy and Paperworkers Union of Canada, Local 30* v. *Irving Paper & Pulp, Ltd.,* [2013] 2 S.C.R. 458, and a grievance arbitration between Uniform Local 707A and Suncor Energy, Inc. that set limitations on an employer's ability to require random alcohol testing for employees working under a collective bargaining agreement.

Response. The decisions in the referenced proceedings do not address the issue of Canadian motor carriers' compliance with FMCSA's random drug and alcohol testing requirements. Although this rule would require employers to report the results of positive or refused random tests to the Clearinghouse, it does not in and of itself establish the requirement that foreign motor carriers implement random testing programs. To the contrary, 20 years ago, FMCSA's predecessor made clear that the Agency's drug and alcohol requirements apply equally to foreign drivers. *See* ''Controlled Substances and Alcohol Use and Testing; Foreign-based Motor Carriers and Drivers,'' 60 FR 49322, Sept. 22, 1995. Moreover, in accordance with bilateral agreements between the United States and Canada, Canadian drivers are—and have been—subject to

all U.S. regulations when operating CMVs in the United States. Canadian motor carriers concerned about the effect of these recent cases on their cross-border transportation operations should consult with local legal counsel.

Applicability—Motor Carriers Operating Non-CDL CMVs

Comment. A number of commenters including J. B. Hunt Transport, Inc. and several trade associations requested that FMCSA also require motor carriers that operate non-CDL CMVs to query the Clearinghouse. Several commented that if this rule is implemented as proposed, CDL drivers with a drug or alcohol violation would seek employment with non-CDL motor carriers because the proposed rule does not require them to query the Clearinghouse. J.B. Hunt posited that ''many drivers who fail a test and can't 'job-hop' due to the Clearinghouse will downgrade to an operator's license and migrate to carriers not required to conduct testing or check for past test failures.'' Other commenters were also concerned that the rule, as proposed, would push unsafe drivers into the non-CDL segment of the motor carrier industry. Another commenter observed that 49 CFR 382.501(c) prohibits a driver with a drug or alcohol violation from operating CMVs that do not require a CDL, but under the proposed rule, non-CDL CMV employers would not know whether a driver is subject to this prohibition.

Response. The MAP–21 mandate underlying this rule applies only to individuals who hold a valid CDL and who are subject to drug and alcohol testing under Title 49 of the Code of Federal Regulations (including part 382) and to those who employ such individuals (49 U.S.C. 31306a(m)(4)(A)). The drug and alcohol testing and reporting requirements of part 382 apply to CDL holders who operate CMVs with GVWRs of 26,001 pounds or more, a vehicle that is designed to transport 16 or more passengers, including the driver, or a vehicle of any size used in the transport of hazardous materials, and to employers of such persons (§§ 382.103(a) and 383.5). The NPRM did not propose to change any underlying requirement of part 382.

FMCSA acknowledges, as one commenter noted, that § 382.501prohibits any driver from performing safety-sensitive functions, including operating CMVs that do not require a CDL, if the driver has violated part 382. We note, however, that the provision applies only to CDL holders. FHWA, in adopting § 382.501(c) in 1994, explained its intent: ''. . . a driver removed from performing safety-sensitive functions because of a rule violation occurring in a 26,001 pound or greater vehicle in inter- or intrastate commerce, also is prohibited from driving a 10,001 pound or greater vehicle in interstate commerce, until complying [with return-to-duty requirements].'' (59 FR 7484, 7501, February 15, 1994). Further, § 382.501(c) does not subject CDL holders operating CMVs with GVWRs between 10,001 and 26,000 pounds, or their employers, to the requirements of part 382.

FMCSA therefore concludes that, at this time, it would not be appropriate to require that motor carriers who employ individuals (either non-CDL holders or CDL holders) to operate CMVs with GVWRs between 10,001 and 26,000 pounds, to query the Clearinghouse. Such a requirement would expand the reach of this rulemaking to employers and drivers who are not required to participate in FMCSA's drug and alcohol testing program. Because those parties are not subject to part 382 requirements, they did not have sufficient notice that Clearinghouse requirements could become applicable to them and, accordingly, have not had a fair opportunity to participate in this proceeding. Should FMCSA, on the basis of demonstrable need, subsequently exercise its discretion under the 1984 Act (49 U.S.C. 31136(1) and (3)) to require that these employers query the Clearinghouse, we will provide notice and an opportunity for comment.

The Agency notes, however, that. ''non-CDL'' employers operating in interstate commerce remain subject to the investigation and inquiry requirements of § 391.23. Employers obtaining records related to an applicant's driving and safety performance history under § 391.23(a) would, for example, be able to discern whether the applicant had voluntarily downgraded a CDL to a motor vehicle operator's license and thus have a basis on which to question the applicant concerning the reason for the downgrade. ''Non-CDL'' employers must also request drug and alcohol testing information from ''all previous DOT regulated employers that employed the driver within the previous three years . . . in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40'' (§ 391.23(e)). Section 391.23(f) requires that prospective employers provide previous employers with the driver's written consent, as required by § 40.321(b), to allow for the release of this privacy-protected information. Use of FMCSA's Pre-employment Screening Program (PSP) will also assist motor carrier employers in finding disqualifying drug and alcohol offenses and identifying prior DOT-regulated employers. The availability of this information will enable prospective employers to determine whether applicants who are CDL holders are subject to § 382.501.

Additionally, subject to applicable State requirements, ''non-CDL'' employers may conduct pre-employment and/or random non-DOT drug and alcohol testing (though the results of such tests would not be reportable to the Clearinghouse, as explained below).

Applicability—Non-DOT Tests

Comment. Cahill-Swift, Driver IQ/CARCO, J.B. Hunt, Schneider, C.R. England and the ATA requested that FMCSA permit employers to report non-DOT tests to the Clearinghouse. OOIDA opposed including non-DOT tests in the Clearinghouse.

Response. Congress did not grant FMCSA the authority to require employers to report non-DOT tests to the Clearinghouse. Congress directed the Agency to establish the Clearinghouse as a repository of DOT drug and alcohol testing program violations. *See* 49 U.S.C. 31306a(a). This is consistent with the rules applicable to FMCSA's drug and alcohol testing program: All FMCSA-required tests must be conducted in accordance with DOT rules. *See* 49 U.S.C. 31306(c); 49 CFR 382.105. Although employers may conduct testing beyond that required by FMCSA and DOT rules, positive results for these non-DOT tests must be kept completely separate from DOT test results and do not constitute violations of FMCSA or DOT rules. *See* 49 CFR 382.105; 49 CFR 40.13. Accordingly, FMCSA will not expand the scope of the Clearinghouse to include non-DOT tests.

Applicability—Municipalities

Comment. A commenter asked whether this final rule would apply to municipalities.

Response. Generally speaking, municipalities are subject to FMCSA's drug and alcohol testing program to the extent they employ drivers who are required to hold a CDL to operate a CMV. *See* 49 U.S.C. 31301, 31306; 49 CFR 382.103. Because this rule applies to all employers and employees subject to FMCSA's drug and alcohol testing rules, it would also apply to any municipality subject to those rules.

Applicability—Fair Credit Reporting Act (FCRA)

Comment. Foley and C.R. England asked whether the information in the

Clearinghouse would be subject to the FCRA when it is used for pre-employment background checks. C.R. England asked that FMCSA issue guidance stating whether a prospective employer would be required to submit an adverse employment action letter to a prospective employee if he or she were not hired as a result of information disseminated from the Clearinghouse. OOIDA stated that FMCSA must comply with the FCRA.

Response. FMCSA will comply with applicable FCRA requirements; however, not all provisions in the FCRA apply to the Agency's administration of the Clearinghouse. Information that a prospective employer receives from the Clearinghouse during a pre-employment check is not subject to requirements on the use of ''consumer reports'' under the FCRA. While still subject to some FCRA requirements, as noted below, this type of ''pre-employment'' information on a prospective employee, solely considered for employment purposes and required by Federal regulation and law, qualifies as an ''excluded communication'' under 15 U.S.C. 1681a(d)(2)(D), 1681a(o), and 1681a(y) of the FCRA.

FMCSA, as the government agency communicating this information, is subject to disclosure requirements under section 1681a(o)(5)(C). FMCSA meets these disclosure requirements through the provisions of this final rule on driver notification and access to the Clearinghouse in 49 CFR 382.707 and 382.709. Under § 382.707, FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse. When information concerning that driver has been released from the Clearinghouse to an employer, the Agency must specify the reason for the release. Such notice will inform the driver how to access his or her information in the Clearinghouse and will comply with the disclosure requirements in section 1681a(o)(5)(C).

An employer that takes adverse action based in whole or in part on a communication from the Clearinghouse, whether that information indicates a current disqualification or a resolved violation, would be subject to the FCRA's ''subsequent disclosure'' requirement. This requirement provides that the employer shall disclose ''a summary containing the nature and substance of the communication upon which the adverse action is based.'' 15 U.S.C. 1681a(y)(2). Employers should consult with their own experts for more information on how to comply with the FCRA.

Federalism

Comment. Several commenters said that the Clearinghouse rule would have implications for Federalism under Executive Order (E.O.) 13132. A rule has implications for Federalism if it has a substantial direct effect on State or local governments. NPTC, Cahill-Swift and First Advantage observed that some States have their own reporting requirements for drug and alcohol violations and requested guidance on how those reporting requirements would be affected. First Advantage asked if the Clearinghouse could send notice directly to the SDLA, to eliminate double reporting. NYAPT said that pending legislation in New York would require an MRO or C/TPA to report positive results of a school bus driver's random drug or alcohol test to the New York Department of Motor Vehicles.

Response. Nothing in this final rule will change or otherwise affect State or local drug and alcohol violation reporting requirements so long as they are compatible with this final rule. *See* 49 U.S.C. 31306a(l). Incompatible State or local requirements are subject to preemption. Each State will have to evaluate its own requirements to determine whether they are compatible with this final rule.

With respect to the Clearinghouse reporting to States, at this time FMCSA is considering the most efficient way to share information with the SDLAs. There is a more complete discussion below of Agency efforts to coordinate information sharing with SDLAs.

Privacy Considerations

Comment. A commenter stated that the Clearinghouse would violate the requirements of HIPAA.

Response. The Drug and Alcohol Clearinghouse established in this final rule is not subject to HIPPA requirements. HIPAA, which governs the dissemination of protected health information, applies to all records generated or received by ''covered entities.'' 45 CFR 160.103; 45 CFR 164.104(a). HIPAA defines a covered entity as: ''(1) A health plan; (2) A health care clearinghouse; or (3) A health care provider that transmits any health information in electronic form.'' *Id.* The Drug and Alcohol Clearinghouse does not fall into any of these categories. Even if drug and alcohol testing is viewed as protected under HIPAA, where DOT requires the use or disclosure of such information, its release is mandated by Federal law, and would not violate the requirements of HIPAA. Further information on this topic is available at *www.transportation.gov/odapc/hipaa-statement.*

Comment. The Association of American Railroads and the American Short Line and Regional Railroad Association asked whether releasing information to the Clearinghouse would violate the Federal Railroad Administration's (FRA) drug and alcohol regulations.

Response. FMCSA consulted with FRA's drug and alcohol testing program, which concluded that the Clearinghouse would not create a conflict with FRA's regulations. Any CDL driver who is subject to and violates part 382, even if that driver is working in a different DOT agency's industry, would be reported to the Clearinghouse.

Motor Carrier Registration

Comment. OOIDA suggested that FMCSA query the Clearinghouse as a part of the motor carrier registration process to determine whether any company principals have unresolved drug or alcohol violations.

Response. Company principals who do not currently serve in a safety-sensitive function (*e.g.,* they do not operate CMVs), or have never served in a safety-sensitive function are not a focus of this rulemaking. OOIDA's comment relates to registration requirements and is beyond the scope of this rulemaking. FMCSA will, however, take this comment under advisement as it moves forward with implementation of the Unified Registration System, *see* ''Unified Registration System,'' 78 FR 52608, August 23, 2013, and, as appropriate, when further developing the registration processes in an NPRM concerning ''MAP–21 Enhancements and Other Updates to the Unified Registration System''. That said, nothing in this rule would prohibit FMCSA from querying the Clearinghouse during the registration process, as a part of its audit and enforcement functions.

Definition of Positive Alcohol Test (§ 382.107)

Comment. The American College of Occupational and Environmental Medicine, Cahill-Swift, and C.R. England suggested that FMCSA remove the proposed definition of ''positive alcohol test.'' Some of these commenters stated that the definition is confusing because it has not been used previously and does not appear in 49 CFR part 40. Others said it would create confusion between the different prohibitions that apply when a driver has a blood alcohol level of between 0.02–0.039 or 0.04 and higher. Conversely, SAPAA and NYAPT supported the proposed definition of ''positive alcohol test.''

Response. The FMCSRs prohibit a driver with a blood alcohol level of 0.02–0.039 from driving a CMV. But being on duty with this blood alcohol level does not constitute a violation and does not require a driver to complete the return-to-duty process before resuming safety-sensitive functions. 49 CFR 382.505(a). A driver who is on duty with a blood alcohol level of 0.04 or higher, however, is in violation of FMCSA's rules and must complete the return-to-duty process. 49 CFR 382.201.

FMCSA proposed to define a positive alcohol test to make it easier to differentiate between the consequences of results showing a blood alcohol level of 0.02–0.039 and 0.04 or higher. We understand, however, that this definition could be confusing given that it would be a violation of FMCSA's rules for a driver to operate a CMV with a blood alcohol level of either 0.02 or 0.04, but that different consequences would apply. As a result, we have removed the definition of positive alcohol test from the rule along with all references to it in the regulatory text. The final rule uses the term ''an alcohol confirmation test with a concentration of 0.04 or higher'' in all places where ''positive alcohol test result'' appeared in the proposal.

Definition of Owner-Operator

Comment. Foley suggested that FMCSA define the term ''owner-operator'' because it was not clear whether the term refers to one-person companies or includes companies owned by a driver.

Response. It is not necessary to define ''owner-operator'' because that term does not appear anywhere in the regulatory text of this final rule. That said, § 382.103(b) explains that part 382, which includes this final rule, is applicable to all driver-owned firms without differentiating between one-person companies and companies owned by drivers. The only differences are that § 382.103(b) also requires that one-person company owner-operators join a testing pool with at least one other person and new § 382.705(b)(6) requires that an employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer reporting requirements in this rule.

Definition of Service Agent

Comment. A commenter requested that FMCSA define the term ''service agent.''

Response. Prior to the enactment of MAP–21, part 382 incorporated the definition of ''service agent'' set forth in 49 CFR 40.3, which applied to service agents providing services only in connection with the DOT-wide drug and alcohol testing requirements in part 40. MAP–21 included an expanded definition of ''service agent'' which, while functionally equivalent to the definition of ''service agent'' in § 40.3, applied the term to the Clearinghouse requirements. Accordingly, the NPRM proposed a definition of ''service agent'' consistent with that change. However, following publication of the NPRM, DOT amended its definition of ''service agent'' in § 40.3 to conform to MAP–21 so that it is clear the definition is not limited to those persons providing services only in connection with part 40 requirements (81 FR 52364, August 8, 2016). The revised definition in § 40.3 now encompasses service agents who provide services in connection with drug and alcohol testing requirements, including the Clearinghouse requirements. Consequently, no new definition of ''service agent'' is necessary in the final rule.

Driver Identification (§ 382.123)

Social Security Numbers

Comment. FMCSA proposed that drivers be identified by their CDL number and State of licensure rather than Social Security Number or other Employee ID Number on the alcohol testing form (ATF) and Federal Drug Testing Custody and Control Form (CCF). A number of commenters opposed this change. Driver Check, Driver IQ/CARCO, Schneider and an individual commenter objected to using CDL numbers in lieu of Social Security Numbers because they believed that when a driver moves to a new State his or her license number would change, complicating the Clearinghouse's ability to track the driver. NYAPT, MROCC, CVTA and an individual commenter supported using CDL numbers. Driver IQ/CARCO and CCTA suggested that FMCSA should use CDLIS to track a driver's previous CDLs in other States. First Advantage and another commenter interpreted FMCSA's proposal to require a change to the ATF and CCF. These commenters stated that FMCSA did not have the authority to propose a change to these forms, which come under the authority of HHS. The IBT stated that use of the CDL number and State of issuance in lieu of a Social Security Number would reduce the risk of identity theft in the event the Clearinghouse suffered a security breach. SAPAA, Foley and Quest Diagnostics asked what would happen if a collection site mistakenly used a Social Security Number or EIN on the ATF or CCF. First Advantage also asked how the system would track foreign CDL numbers.

Response. After careful consideration of the comments and evaluation of FMCSA's information technology systems, the Agency concluded that the most accurate and secure method to identify a driver in the Clearinghouse is by using his or her CDL number and State of issuance. This is consistent with Federal and DOT policies which strongly encourage agencies to avoid using Social Security Numbers as an identifier whenever possible. Moreover, by interfacing with the CDLIS driver record system, the Clearinghouse will be able to identify drivers quickly and easily using the driver's CDL number and State of issuance, including foreign drivers. Contrary to the concerns some commenters raised, the Clearinghouse will be able to identify both domestic and foreign drivers and track their drug and alcohol violation records regardless of the number of times the driver moves to a new State and obtains a new CDL.

Using a driver's CDL number and State of issuance to track drug and alcohol violations does not require a change to the CCF or ATF. These forms specifically permit the use of either the Social Security number or an employee identification number. Under this final rule, the person completing the form is required to use the driver's CDL number and State of issuance as the employee identification number.

Once laboratories are approved to use HHS's eCCF, the likelihood of a collection site mistakenly using an identification number other than the CDL number and State of issuance will drop significantly. But in those cases in which the CDL number and State of issuance is not entered, the parties will have an opportunity to input the correct number later in the process.

Driving Schools

Comment. C.R. England and CVTA wanted to know how this rule would be applied to driving school students and prospective employees taking pre-employment drug tests prior to obtaining a CDL. CVTA asked FMCSA to clarify that the rule would not require the reporting of non-CDL holder testing results.

Response. MAP–21 requires that certain records related to drug and alcohol testing of ''commercial motor vehicle operators'' be reported to the Clearinghouse. MAP–21 defines ''commercial motor vehicle operator'' as ''an individual who (A) possesses a valid commercial driver's license issued in accordance with section 31308; and (B) is subject to controlled substances and alcohol testing under [49 CFR part

382]'' (49 U.S.C. 31306a(m)(4)). The Agency believes that, in accordance with that definition, the drug and alcohol records for CLP holders are required to be reported to the Clearinghouse because the CLP is a valid commercial driver's license and CLP holders are subject to drug and alcohol testing. Non-CDL holders—that is, persons who hold neither a CLP nor a CDL—are not subject to the Clearinghouse reporting requirements. While employers may conduct non-DOT drug and alcohol tests on employees who do not hold CDLs or CLPs, those tests are not considered DOT tests under parts 40 and 382 and cannot be reported to the Clearinghouse.

USDOT Numbers

Comment. FMCSA proposed to require employers to provide their USDOT number or their Internal Revenue Service-issued EIN on the CCF. First Advantage and Quest Diagnostics said that laboratories currently use account numbers to identify clients and that they would have to create new data fields to record USDOT numbers or EINs. MROCC, AMRO and PTC stated that, in many States, intrastate employers do not need to have USDOT numbers and that obtaining EINs would be burdensome. Two commenters also observed that the CCF does not include information to remind the collection site to record the USDOT number.

Response. As discussed below, FMCSA decided to eliminate the requirement that laboratories submit annual summaries of employer testing data. As a result, there is no longer a need to include USDOT numbers or EINs on the CCF. Accordingly, FMCSA removed this requirement from § 382.123(b)(1).

Definition of ''Reasonable Time'' and ''Refuse to Submit''

Comment. OOIDA requested that FMCSA clarify that a driver has not refused to submit to a drug or alcohol test under § 40.191 or § 40.261 when certain circumstances cause a driver to be delayed in reaching a testing facility. OOIDA requested that FMCSA make this clarification through guidance or by creating definitions of the terms ''reasonable time'' and ''refuse to submit.''

Response. FMCSA cannot make this change as a part of this final rule. The comments are related to DOT-wide drug and alcohol testing program requirements that are beyond both the scope of the Agency's authority and the scope of the final rule.

Electronic Forms

Comment. One commenter wanted to know whether entities involved in drug testing could continue to use paper forms. The commenter stated that in some circumstances computer facilities are unavailable to complete electronic forms. SAPAA, Driver IQ/CARCO, National Association of Professional Background Screeners and ATA supported the use of electronic forms and stated that FMCSA should allow parties to use electronic signatures for required authorizations and consents.

Response. It is beyond the scope of this rulemaking to change how entities involved in drug testing exchange information that is not submitted to FMCSA. The SAMHSA, which administers the CCF, has issued guidance on the use of paper and electronic CCFs. You can access that guidance at *www.samhsa.gov/sites/default/files/guidance-2014-ccf.pdf.* Changes to the electronic CCF are beyond the scope of FMCSA's authority—and this rulemaking. Questions on that issue should be directed to SAMHSA. You may access more information on SAMHSA at *www.samhsa.gov.*

Under certain circumstances, electronic documents and signatures can be used to satisfy part 382 requirements. We note, as discussed below, that this rule permits drivers to provide electronic consent for limited queries. Consent related to full queries must be provided electronically through the Clearinghouse. The Agency's previously published guidance on electronic signatures and documents can be found at *https://www.gpo.gov/fdsys/pkg/FR-2011-01-04/pdf/2010-33238.pdf* (''Regulatory Guidance Concerning Electronic Signatures and Documents,'' 76 FR 411 (Jan. 4, 2011)).

It is important to be aware, however, that FMCSA's guidance applies only to those requirements that appear in 49 CFR parts 300–399. Except for use in the eCCF, the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) has not approved the use of electronic signatures or documents to satisfy the requirements of the DOT-wide drug and alcohol regulations, which are found at 49 CFR part 40.[2] Any questions about part 40 regulations should be directed to ODAPC. You can find ODAPC contact information at *https://www.transportation.gov/odapc.*

Further, we note that electronic documents and signatures fall within the scope of a separate NPRM that FMCSA published on April 28, 2014 (79 FR 23306), in which the Agency proposes to amend its regulations to allow the use of electronic records and signatures to satisfy its regulatory requirements. In addition, under section 5203 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015), FMCSA is required to take certain steps in addressing the Agency's Regulatory Guidance Program. Therefore, changes to regulatory guidance regarding electronic documents and signatures may also occur under this initiative.

Employer Responsibilities (§ 382.217)

Comment. FMCSA proposed a new section that would prohibit employers from allowing a driver to operate a CMV if the driver does not comply with the return-to-duty process after a refusal, a positive drug test, an alcohol confirmation test with a concentration of 0.04 or higher, or if the employer has actual knowledge that the driver has used alcohol or controlled substances as defined in § 382.107. NYAPT expressed support for this provision. FE suggested that a driver should be able to resume operating a CMV after being cleared by the SAP and passing a return-to-duty drug test regardless of whether the appropriate documentation had been updated in the Clearinghouse.

SAPAA and FE wanted to know whether § 382.217(d) requires employers to report actual knowledge of drug or alcohol use to the Clearinghouse when a driver voluntarily self-reports such use under § 382.121. SAPAA suggested that § 382.217 should include each violation under which a driver is not allowed to engage in a safety-sensitive function prior to complying with the return-to-duty process.

Response. The purpose of § 382.217 is to prohibit employers from allowing a driver to operate a CMV if that driver is subject to the prohibitions in 49 CFR part 382, subpart B, and has not completed the return-to-duty process as required by 49 CFR part 382. This section does not impose reporting obligations; those obligations are in part 382, subpart G. Nor does this section limit the types of actual knowledge violations that give rise to employer prohibitions.

After consideration of the above comments and further review of the proposed regulatory text, we conclude that, although this purpose was expressed in the preamble, the regulatory text does not clearly convey the intended result. Accordingly, this final rule revises the regulatory text to clarify that no employer may allow a driver to operate a CMV if he or she is

[2] See ''Use of Electronic Chain of Custody and Control Form in DOT-Regulated Drug Testing Programs,'' 80 FR 19551 (April 13, 2015).

subject to *any* of the prohibitions in 49 CFR part 382, subpart B. Among other things, these prohibitions specifically include drivers for whom the employer has actual knowledge (as defined in § 382.107) that the driver used controlled substances, engaged in on-duty or pre-duty alcohol use, or used alcohol prior to taking a post-accident test. *See* §§ 382.205, 382.207, 382.209, and 382.213.

Retention of Records (Section 382.401)

Comment. This section requires that employers retain documents related to the administration of employers' drug and alcohol testing programs for a minimum of 5 years. FMCSA proposed changes to clarify that this requirement includes records establishing that an employer has actual knowledge of a driver's traffic citation for driving a CMV while under the influence of alcohol or drugs. NYAPT stated that it was unnecessary to retain records of traffic citations. Towing and Recovery Association of America and Conference of Northeastern Towing Association stated that an employer's C/TPA should be able to maintain these records. SAPAA stated that employers keep records of citations in their safety department, not with their drug and alcohol program records. Similarly, FE said that records of citations are not maintained in drug and alcohol program records and it should not be the responsibility of employers to keep records of those citations.

Response. We believe that the commenters may have misunderstood the effect of the proposed change. Existing FMCSA regulations already require that employers maintain all records related to their drug and alcohol testing programs for at least 5 years. The purpose of the proposed change was to clarify that an employer must retain a DUI traffic citation only when it uses that citation as the basis for establishing that it had actual knowledge of a driver's use of drugs or alcohol in violation of FMCSA's drug and alcohol testing program. The proposed change was not intended to require employers to maintain copies of all traffic citations. In addition, it is left to the employer's discretion whether to use a C/TPA to administer and maintain records related to the employer's drug and alcohol program. Nothing in this proposed change would have affected that.

Regardless, it appears that the proposed change created more confusion than clarity. As a result, the final rule clarifies that employers must maintain drug and alcohol program records, including records of all part 382 drug and alcohol violations, for a minimum of 5 years.

Laboratories' Duty To Report Controlled Substances Test Results (§ 382.404)

Comment. FMCSA proposed to require each laboratory to report a summary of test results for each motor carrier using the laboratory to conduct controlled substances testing under FMCSA's requirements. A C/TPA commented that many owner-operators do not have independent accounts at laboratories; instead, their C/TPAs are the contact point with the laboratory. SAPAA and Quest Diagnostics said that the semi-annual statistical summary information laboratories provide to ODAPC is not required to be electronic and that creating an electronic format would be burdensome. First Advantage said that laboratories do not currently collect USDOT numbers and would have to create a new field in their IT systems to collect this information. Cahill-Swift commented that laboratories often indicate that a test is an FMCSA test when an employer has testing responsibilities for more than one mode and that it would be difficult for laboratories to separate them out. Several commenters said that the reporting requirement was duplicative and that FMCSA should use the information that is reported to ODAPC and Drug and Alcohol Management Information System (DAMIS). Along the same lines, a commenter suggested that if the laboratories are reporting this information, carriers should not have to submit summaries. On the other hand, commenters such as Schneider, IBT and an individual supported the proposed requirement.

Response. After considering the comments on this proposal, FMCSA decided to eliminate proposed § 382.404. The overwhelming majority of commenters indicated that the proposed laboratory reporting requirement would require changes to existing laboratory IT systems' information collection procedures and that the summaries would result in redundant reporting. In light of the burden on the industry and the fact that other less burdensome means of obtaining this information exist, FMCSA will not require laboratories to submit annual summary reports.

Access to Facilities and Records (§ 382.405)

Comment. FMCSA previously required employers to make records of their DOT drug and alcohol testing programs available to certain officials with regulatory authority over the employers. FMCSA proposed to extend that requirement to service agents as well. FMCSA also proposed to provide the NTSB access to a driver's record in the Clearinghouse when that driver is involved in a crash under investigation. One commenter misinterpreted this section to mean that FMCSA would disclose Clearinghouse information to officials with regulatory authority over employers and requested that FMCSA narrow the purposes for which these officials could request information. SAPAA said that C/TPAs were better able to comply with record requests than employers, as long as the employers provide C/TPAs with all of the relevant information. The NTSB requested that it be granted access to all information in the Clearinghouse that ''may be pertinent to its investigative mission.''

Response. Under 49 CFR 40.331(c), service agents are obligated to make drug and alcohol testing program records available to certain DOT officials as well as other officials with regulatory authority over employers. This final rule extends a requirement in § 382.405 that was previously limited to employers and now will include service agents as well. This change applies to records under the service agents' control and does not apply to information in the Clearinghouse. This change makes § 382.405 consistent with part 40.

Congress authorized FMCSA to grant the NTSB access to an individual's Clearinghouse record ''if the individual is involved in an accident that is under investigation by the National Transportation Safety Board.'' 49 U.S.C. 31306a(i). Based on this statutory language, FMCSA believes that Congress intended to limit the NTSB's access to individual records to instances when that particular individual is involved in an accident under NTSB investigation. Accordingly, § 382.405 remains as proposed.

Medical Review Officer or C/TPA Record Retention for Controlled Substances (§ 382.409)

Comment. FMCSA proposed to amend § 382.409(c) to add the Clearinghouse to the list of entities to which an MRO or C/TPA may release a driver's drug test results. SAPAA and NYAPT stated their support for this change. SAPAA also suggested that the MRO be required to tell the driver that the MRO must report violations to the Clearinghouse and that the MRO be required to notify the driver's employer when a verified result is entered into the Clearinghouse. Driver IQ/CARCO and DOT Right Hunters suggested adding SAPs, the NTSB, and consumer reporting agencies to the list of entities

to which MROs are permitted to release drug tests. One commenter stated that § 382.409(c) is confusing and could be in conflict with §§ 40.163(g) and 40.293(g), which permit the release of test information to SAPs.

Response. In this final rule, in accordance with § 382.601, employers must notify drivers that drug and alcohol testing program violations will be reported to the Clearinghouse. As a result, it is not necessary for MROs also to provide this notification. In addition, MROs have been and will continue to be required to notify employers of violations, in accordance with § 382.407. Since the employer will be made aware of the violation directly by the MRO, there is no reason for the MRO to provide additional notification when the result is entered in the Clearinghouse.

The purpose of the changes to § 382.409(c) in this final rule is to include the Clearinghouse in the category of entities to which MROs and C/TPAs may report test results. FMCSA did not intend, and did not propose, to expand the list of entities that are entitled to obtain drug test results beyond the Clearinghouse. Moreover, § 382.409(c), as proposed, is consistent with the parallel provisions authorizing the release of drug and alcohol information under the DOT-wide drug and alcohol testing program. *See* 49 CFR 40.331. FMCSA is not aware that the substantive language of § 382.409 has caused any confusion over an MRO's authorization to provide drug and alcohol test information to SAPs.

Further, it is unnecessary to add any language to allow for release of information to SAPs. The DOT-wide program expressly authorizes MROs to release drug-related violation information about a driver to the driver's SAP without additional consent. 49 CFR 40.163(g); 40.327(b); 40.293(g).

Finally, no statutory or regulatory authority permits the release of information to a consumer reporting agency without the driver's consent. To the contrary, such a release would be inconsistent with the fundamental privacy protections that parts 40 and 382 afford.

Notification to Employers of a Controlled Substances or Alcohol Testing Program Violation (§ 382.415)

Comment. FMCSA proposed to require drivers to notify all employers if they violate FMCSA's drug and alcohol testing regulations in 49 CFR part 40 or 382. Several commenters expressed general support for this provision. The Florida Trucking Association, SAPAA, MROCC, AMRO and PTC asked how FMCSA would enforce this requirement. Commenters also asked about the time frame in which the driver would have to report this information to employers. A commenter requested additional information about how notification would be delivered and what would happen if an employer claimed not to have received notification. IBT said that a driver with only one employer should not have to report the violation to that employer.

Response. The purpose of this provision is to require a driver to notify his or her employers if he or she has a drug or alcohol violation while working for a different employer or in connection with pre-employment testing with a new prospective employer. The text of the regulation specifically states that this notification must be made in writing before the end of the business day following the day the employee received notice of the violation or prior to performing any safety-sensitive function, whichever comes first. FMCSA recognizes that there is some confusion about whether drivers with only one employer must provide this notification and whether drivers with multiple employers must notify the employer that administered the test. To clarify this requirement, FMCSA has amended this provision to state expressly that drivers are not required to notify the employer who administered the test. Drivers who violate this provision are subject to the civil penalties authorized by 49 U.S.C. 521(b)(2)(C), and criminal penalties authorized by section 521(b)(6), with civil penalties adjusted for inflation as provided in § 382.507. FMCSA may enforce this provision against drivers in connection with any type of enforcement activity that it is currently authorized to conduct, including roadside inspections and compliance reviews.

Comment. SAPAA stated that it is possible for a C/TPA to represent several employers all of which employ the same driver. The commenter asked whether, when the driver has a violation with one employer, a C/TPA could notify the other employers it also represents.

Response. A service agent is prohibited from releasing information about a driver's violations to other employers that the C/TPA represents without the driver's specific consent. *See* 49 CFR 40.351(c). For purposes of FMCSA's drug and alcohol program, specific consent means a statement signed by the employee that he or she agrees to the release of a particular piece of information to an explicitly identified person or organization at a particular time. *Id.* The employee may not grant a ''blanket release,'' in which he or she agrees to a release of a category of information (*e.g.,* all test results) or to release information to a category of parties (*e.g.,* other employers who are members of a C/TPA or companies to which the employee may apply for employment).

Comment. One commenter observed that the NPRM stated that each employer must separately follow the return-to-duty requirements and asked whether a driver with multiple employers is required to have multiple SAP evaluations and follow-up testing plans.

Response. FMCSA apologizes for any confusion it may have caused in the NPRM. A driver with a drug or alcohol violation must complete the return-to-duty process. Each employer must be sure that the driver has completed those requirements before it allows the driver to resume safety-sensitive functions. But the driver need not complete multiple evaluations and testing plans simply because he or she has multiple employers.

Employer Obligation To Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substance (§ 382.601)

Comment. Existing regulations require employers to provide employees with educational materials about the FMCSA's drug and alcohol testing program requirements and the employer's policies for implementing those requirements. *See* § 382.601. FMCSA proposed to require that employers include notice in the educational materials that violations of FMCSA's drug and alcohol testing program would be reported to the Clearinghouse. A commenter suggested requiring employers to reference § 382.405, which governs access to driver records, in the employer's educational materials. The American Bus Association (ABA) objected to the burden it places on small and large passenger carriers to provide additional educational materials. The IBT suggested that employers be required to provide information to employees about virtually all aspects of how employers and employees can use the Clearinghouse. The commenter also suggested that employers make clear that a driver's self-report of the need for assistance with substance abuse in accordance with § 382.121 would not be reported to the Clearinghouse.

Response. The purpose of this change is to require employers, as a part of their educational materials, to notify drivers that drug and alcohol test information

will be reported to the Clearinghouse. As a part of implementing this rule, FMCSA will conduct driver outreach to help drivers understand their rights and responsibilities. Because FMCSA is cognizant of the burdens changes to mandated materials place on employers, the changes to § 382.601 in this final rule are limited to updating the requirements in that section to include the Clearinghouse. Sections 382.121 and 382.405 have been in existence for a number of years; we are unaware of any problem associated with employer-provided educational materials that requires additional regulatory intervention at this time.

Drug and Alcohol Clearinghouse (§ 382.701)

FMCSA proposed to require employers to conduct pre-employment and annual queries of the Clearinghouse.

Pre-Employment Investigations Under §§ 40.25, 382.413, and 391.23

Comment. ATA, Cahill-Swift, Driver IQ/CARCO, C.R. England, Boeing, NPTC, MROCC, AMRO, PTC, J.B. Hunt, and an individual commenter asked whether employers would have to do a background investigation on prospective employees' drug and alcohol testing history in accordance with §§ 40.25, 382.413, and 391.23 if the employer conducted a pre-employment query of the Clearinghouse. Many of these commenters observed that it would be redundant to complete a background investigation and *also* query the Clearinghouse. Accordingly, they suggested that FMCSA either eliminate the background investigation requirement or, alternatively, provide an exemption.

Response. FMCSA agrees that it would be redundant for employers to request information on an employee's drug and alcohol testing history *and* query the Clearinghouse. Under current regulations, employers are required to determine whether a prospective employee violated FMCSA's drug and alcohol testing program during the preceding 3 years and, if so, whether he or she has completed the return-to-duty process. In this final rule, FMCSA eliminates the requirement that employers both query the Clearinghouse and conduct a drug and alcohol history background investigation, with limited exceptions as discussed below.

Employers will be required to query the Clearinghouse and request drug and alcohol testing histories from previous employers until the Clearinghouse has been in operation for at least 3 years. After 3 years, employers subject to part 382 will no longer be required to request drug and alcohol testing histories from previous employers, except in the following situations. When an employer relies on the § 382.301(b) exception to the pre-employment testing requirement, the employer must meet all of the requirements, including verifying that the driver participated in the controlled substances testing specified in § 382.301(b)(2)(i) and (ii) and had no recorded violations of another DOT agency's controlled substances use rule within the previous 6 months.

In addition, for drivers subject to follow-up testing, an employer must request the follow-up testing plan from the previous employer if the driver's Clearinghouse record does not indicate that he/she successfully completed follow-up testing. Employers are required to obtain an employee's ongoing follow-up testing plan pursuant to § 40.25(b)(5). As discussed below, the duration of the follow-up testing and the number and type of follow-up tests prescribed by the SAP will not be reported to the Clearinghouse. Therefore employers will continue to be required to request this information directly from the previous employer. The need to request the follow-up testing plan will be apparent when the driver's Clearinghouse record indicates that he/she successfully completed the return-to-duty process, but there is no report, required under § 382.705(b)(1)(v), that the driver completed all follow-up tests as prescribed by the SAP. In cases where a driver who is subject to follow-up testing is not currently employed, the gaining employer may obtain the driver's follow-up testing plan from the SAP, whose contact information will be available in the Clearinghouse.

Finally, if a prospective employee was subject to drug and alcohol testing with a DOT mode other than FMCSA, employers must continue to request background information from those DOT-regulated employers, who are not subject to the Clearinghouse reporting requirements. The Clearinghouse therefore will not contain any non-FMCSA drug and alcohol information. FMCSA revised §§ 382.413 and 391.23 to implement these changes. These revisions will make clear that an employer that queries the Clearinghouse has satisfied the background investigation requirements of § 40.25(b), subject to the exceptions described above.

Frequency of Queries Permitted

Comment. ATA, FE, Cahill-Swift, J.B. Hunt, and Driver IQ/CARCO asked whether employers would be limited to just one query per employee per year and suggested that they should be able to query the database more frequently.

Response. Nothing in the rule prohibits employers from conducting queries on drivers more than once per year. The annual query requirement, which can be met by conducting either a full or limited query, merely sets the minimum frequency for conducting queries. FMCSA made minor changes to § 382.701(b) to make this clear.

Employers may conduct more frequent queries so long as they obtain employee consent in accordance with § 382.703. FMCSA envisions that employers would obtain one general consent to conduct a limited query (or queries) from drivers at the time they are hired. Employers should ensure that the general consent to query does not restrict them to one query per year if they intend to conduct limited queries on a more frequent basis.

Burden of Annual Queries

Comment. Boeing, ABA, and a number of other commenters said that the annual query requirement is unnecessary and burdensome. Boeing added that the time and resources associated with the annual query would be burdensome, especially for large employers.

Response. FMCSA disagrees that the annual query requirement is unnecessary or overly burdensome. The number of commenters interested in conducting queries more often than once a year points to the opposite conclusion: That employers believe Clearinghouse queries will be a useful tool for identifying problem employees. The purpose of this requirement is to ensure that drivers who commit a drug or alcohol violation while working for another employer or attempting to find work with another employer do not continue performing safety-sensitive functions without complying with the return-to-duty process. Without the annual query, employers have no way of knowing about violations with other employers that render a driver ineligible to drive. FMCSA envisions that employers would obtain one general consent to query from drivers at the time they are hired in order to conduct these annual or more frequent limited queries, reducing the burden on employers to obtain such consent on a yearly basis. As noted above, employers also have the option of conducting a full query in order to satisfy the annual query requirement; in such cases, specific consent must first be obtained from the driver.

Employer Alert of Positive Test Result

Comment. FMCSA proposed that an employer would be notified if new information about a driver is entered into the Clearinghouse within 7 days of an employer conducting a query. One commenter stated that the 7-day time period is too short. SAPAA, MROCC, AMRO and PTC, and several trucking associations requested that FMCSA extend the time from 7 days to 30 days to take into account hiring delays and the time it takes to process pre-employment drug tests.

Response. FMCSA believes that these comments have merit and, as a result, includes a 30-day notification period in this final rule. FMCSA interprets the statutory mandate that the Agency provide notification to an employer within 7 days as a minimum, not a maximum time period. This interpretation is consistent with the purposes of the Clearinghouse: To improve compliance and enhance safety. *See* 49 U.S.C. 31306a(a)(2). As the commenters observe, it could take more than 7 days after a drug test for a violation to be processed, verified, and entered into the Clearinghouse. This means that a driver submitting applications to more than one employer could have a positive pre-employment drug test without other employers' knowledge. By extending the notification period, employers are more likely to get the necessary information to determine whether a driver is in compliance with FMCSA's drug and alcohol testing program. Accordingly, FMCSA extends the notification period for employers to 30 days.

Full Query in Lieu of Limited Query

Comment. FMCSA proposed that the annual query requirement would be satisfied by conducting a limited query to determine whether any information about a particular driver existed in the Clearinghouse. If the limited query shows that information exists, the employer would be required to obtain consent to conduct a full query to gain access to the information. Schneider, the CCTA, and another commenter objected to conducting a limited query in advance of a full query and requested that the regulation provide for only full queries.

Response. An employer that conducts a limited query will receive a response that says that information either exists or does not exist in the Clearinghouse. If the response indicates that there is information, the employer must obtain specific consent from the driver to conduct a full query that releases the content of that information. Nothing prevents an employer from obtaining specific consent to conduct a full query each year. But to ease the burden associated with obtaining annual consent, FMCSA offers employers the option of doing a limited query, which may be conducted with a multi-year consent to query.

Comment. A commenter asked what kind of information would trigger a full query.

Response. If a limited query returns a response indicating that any information about that driver exists in the Clearinghouse, the employer must conduct a full query to find out whether the information shows that the driver is eligible to perform safety-sensitive functions.

Annual Queries—Miscellaneous

Comment. One commenter expressed support for the annual query requirement. Two commenters asked whether they would be able to conduct annual queries of all employees in a batch.

Response. Nothing in this rule would foreclose the possibility of batch-processing annual queries. Details on Clearinghouse functionality will be addressed during the design and development process. FMCSA will provide information to stakeholders on that functionality closer to the Clearinghouse compliance date.

Comment. A commenter asked whether the annual query could be conducted at the same time as other required annual checks.

Response. Nothing in the rule mandates when the annual checks be conducted except that they occur at least once per year. Employers are free to choose the time of year that best suits their operational needs. FMCSA anticipates that many employers will choose to conduct Clearinghouse queries at the same time they conduct other required annual verifications, but that decision is left entirely to the employer.

Comment. An individual wanted to know, in the event of multiple employers, which employer would be responsible for querying the Clearinghouse. CCTA asked if owner-operators are required to query themselves.

Response. Anyone who employs a driver, regardless of whether that driver has other employers, must query the Clearinghouse in accordance with § 382.701. This includes owner-operators who, as both employers and employees, are subject to *all* provisions of FMCSA's drug and alcohol regulations. *See* 49 CFR 382.103(b). A driver who owns a company, regardless of whether it has one or many drivers, must comply with all employer and employee Clearinghouse requirements.

Comment. Another commenter asked what FMCSA hopes to achieve through the annual query. The same commenter wanted to know what an employer is supposed to do if an annual query returns results showing that a driver violated FMCSA's drug and alcohol testing program with another employer.

Response. The goal of the annual query, which is mandated by Congress (*see* 49 U.S.C. 31306a(f)(4)), is to make employers aware of drug and alcohol violations a driver may have incurred while working for another employer or in connection with pre-employment testing with a prospective employer. If the annual search shows a drug or alcohol violation, the employer would be prohibited from allowing a driver to perform safety-sensitive functions until the driver complied with the return-to-duty requirements.

Comment. MROCC, AMRO and PTC asked about the time frame for an employer to conduct a full query after a limited query indicates that there is information about a particular driver in the Clearinghouse.

Response. When a limited query shows that there is information in the Clearinghouse about a particular driver, the employer making the query (or service agent making it on the employer's behalf) must conduct a full query within 24 hours. If the full query is not conducted within 24 hours, the driver in question is prohibited from performing safety-sensitive functions. The driver may resume safety-sensitive functions once a full query is conducted so long as it shows that the driver is not prohibited from performing those functions. FMCSA amended § 382.701(b) to make this requirement clear.

Driver Consent To Permit Access to Information in the Clearinghouse (§ 382.703)

FMCSA proposed that employers may not query the Clearinghouse without the affected driver's consent.

Consent Required

Comment. Several commenters suggested that FMCSA allow employers to query the Clearinghouse at will without driver consent.

Response. In authorizing FMCSA to establish the Clearinghouse, Congress specifically required that a driver grant consent before the Clearinghouse releases information in a driver's Clearinghouse record. 49 U.S.C. 31306a(h)(1). The Agency therefore has no discretion to permit employers to

query the Clearinghouse without the driver's consent and accordingly, § 382.703, prohibits employers from conducting either limited or full queries without obtaining the driver's consent. The issue of driver consent is addressed more fully below.

Electronic Consent

Comment. Schneider, WPCI, C.R. England, ATA and DrugPak, LLC (DrugPak) recommended that FMCSA allow the use of electronic signatures for driver consent.

Response. FMCSA anticipates that, for the full query, drivers will provide electronic consent through the Clearinghouse, as noted below. The Agency intends to include this functionality in the design of the Clearinghouse system. For limited queries, drivers and employers will have the option of using either paper or electronic methods to create and maintain documentation of driver consent. You may access FMCSA's guidance on how to create and maintain electronic signatures at ''Regulatory Guidance Concerning Electronic Signatures and Documents,'' 76 FR 411 (Jan. 4, 2011).

''Blanket'' Consent Forms

Comment. Several commenters suggested that employers should obtain driver consent to query the Clearinghouse as a part of the driver's employment application. Cahill-Swift, Driver IQ/CARCO, J.B. Hunt, ABA and Schneider recommended blanket consents for both full and limited queries for as long as the driver is employed with that employer. Foley, C.R. England, MRROC, AMRO and PTC also expressed support for blanket consents for limited queries. Commenters suggested that limited consent be combined with the driver employment application or pre-employment screening program (PSP) consent, while another suggested that it should be solicited during the driver's annual review. SAPAA suggested that consent forms be valid for 3 years.

Response. Under existing regulations, employees may not grant blanket consent to release drug and alcohol testing program information. 49 CFR 40.321. Accordingly, FMCSA does not permit employees to grant blanket consent to conduct annual Clearinghouse queries. But nothing in this final rule prevents an employer from obtaining general consent for limited queries because limited queries do not release driver information. Employers and employees are free to work out the details for obtaining general consent for limited queries, such as when the consent is originally obtained, for how long it is effective, and whether is it is combined with other consent forms.

Standard Consent Form

Comment. One commenter suggested that FMCSA establish a standard consent form so that employees know what information they are consenting to release with each type of query. OOIDA suggested that FMCSA prescribe the exact language for the consent form, including details about the type of consent given and the driver's rights under Clearinghouse rules. OOIDA also suggested that consent forms have time limits, the full and limited query consent forms should be separate, and drivers should receive a copy of each form he or she signs.

Response. To preserve the maximum flexibility for employers and employees, FMCSA does not provide a standard consent form in this final rule. However, we will provide a sample consent form on the Clearinghouse Web site that employers may use or adapt. With respect to limited queries, employers and employees are free to structure the consent in the way that permits the most efficient use of their resources. For example, it may be combined with other documents and consents or it could be a stand-alone document. It could be subject to renewal each year, or be effective for the duration of employment. It could be limited to one query per year, or permit an unlimited number of queries. Employers are required to keep records of this consent for a minimum of 3 years after the last query and compliance with this requirement is subject to audit. Nothing prohibits employers from providing employees a copy of their consent.

FMCSA will not, however, compel employers to include detailed information about the Clearinghouse or an individual's rights on the consent form.

The Agency intends that consent for full queries will be managed electronically through the Clearinghouse. FMCSA envisions that an employer will make an electronic request for records through the Clearinghouse and, once FMCSA receives electronic confirmation of consent from the driver, records, if they exist, would be released to the requesting employer. Employers would not be required to obtain or keep any other written forms of consent for full queries. The Clearinghouse will provide notice to the driver each time his or her information is released in connection with a full query. In addition, a driver will be given the option to receive electronic notification each time someone conducts a limited query on that driver. The driver will be given the opportunity to provide electronic contact information when he or she registers with the Clearinghouse.

Consent for Service Agents To Query the Clearinghouse

Comment. First Advantage and CCTA suggested that service agents should be able to query the Clearinghouse on behalf of an employer.

Response. Employers may designate service agents to query the Clearinghouse on their behalf. Service agents accessing the Clearinghouse must be authorized by the employer and registered in accordance with § 382.711.

FMCSA Verification of Employee Consent

Comment. Two commenters wanted to know how FMCSA would verify driver consent for a full query.

Response. The driver would log into the Clearinghouse and authorize the release of his or her records to a particular employer. The driver would have to establish log-in credentials when registering with the Clearinghouse in order to verify his or her identity.

Reporting to the Clearinghouse (§ 382.705)

FMCSA proposed to require employers, MROs, and SAPs to report information about violations of FMCSA's drug and alcohol testing program to the Clearinghouse. Section 382.705 identified and assigned responsibility for these reporting requirements.

Harassment or Coercion

Comment. OOIDA stated that it was concerned that a motor carrier could misuse its role in the reporting process to coerce, harass, or retaliate against drivers.

Response. In response to concerns about employers submitting false allegations to the Clearinghouse in order to coerce, harass, or retaliate against drivers, FMCSA has established new requirements for reports of violations based on an employer's actual knowledge or on a driver's failure to appear for a test. These new requirements, codified in new § 382.705(b)(3) and (5), call for the employer to document the violation contemporaneously and/or to submit supporting information, under penalty of perjury, about the violation to the Clearinghouse. For more information on these procedures and the consequences for false reporting, see the discussion of § 382.705(b)(3) and (5) below. In

addition, drivers who believe that inaccurate information about them has been entered into the Clearinghouse may request correction of their record in accordance with § 382.717 or DOT's Privacy Act procedures (49 CFR part 10, subpart E) (*See also* discussion of the Privacy Act elsewhere in this preamble.)

Inaccurate Reporting

Comment. A number of commenters were concerned about how the reporting of inaccurate information to the Clearinghouse would affect drivers. OOIDA urged that every requirement be carefully considered to maximize accuracy and eliminate room for error. Another commenter recommended that no SAP reports or return-to-duty information should be reported to the Clearinghouse because there is a risk of inaccurate reporting.

Response. Minimizing the risk for error was an important consideration for the Agency while developing this rule. Entries to the Clearinghouse will be made electronically using pre-defined data fields to minimize incorrect entries. Anyone reporting information will not be able to make an entry without including all required information. In addition, each time an entry is made to a driver's record, that driver will be notified in accordance with § 382.707. In the event of an incorrect entry, drivers will be able to request corrections in accordance with the procedures in § 382.717.

Cancelled or Changed Tests

Comment. SAPAA asked what happens when a test is cancelled. Two commenters recommended that cancelled tests should be deleted and not kept for any purposes. Cahill-Swift asked whether a record is immediately expunged from the Clearinghouse when an MRO changes a reported positive or refusal.

Response. In accordance with part 40, a cancelled test may not be considered positive or used as a basis for prohibiting a driver from performing safety-sensitive functions or requiring the driver to complete the return-to-duty process. 49 CFR 40.207, 40.267. Accordingly, no cancelled test should be reported to the Clearinghouse. In the event an MRO cancels a test that he or she previously reported to the Clearinghouse, that MRO must report that change to the Clearinghouse within 1 business day (§ 382.705(a)(3)). FMCSA would then remove that test from the Clearinghouse. FMCSA would not, however, remove the information from its archives. Although this information would not be accessible to employers, it is important that FMCSA retain a record of all cancelled tests for auditing and enforcement purposes. If an MRO fails to report the cancelled test within the required time frame, the employee can submit a request for removal through the Clearinghouse data correction procedures in § 382.717.

Redundant Reporting Responsibilities

Comment. C.R. England, Greyhound Lines Inc. (Greyhound), OOIDA, CCTA and other commenters said that the proposed reporting requirements were redundant because different entities—for example, employers and MROs—were responsible for reporting the same information. These commenters requested less duplicative and burdensome requirements. One of the commenters suggested using chain of custody or other numbers to track specimens and prevent duplicate reporting of positive test results from different sources.

Response. FMCSA did not intend to include any redundant reporting requirements in the proposed rule. We believe that several commenters were confused because § 382.705 requires both employers and MROs to report refusals. FMCSA intended, however, for MROs to report only those refusals related to the portion of the testing process in which they are involved, as identified in § 40.191. Similarly, FMCSA intended for employers to report all other refusals identified in § 40.191. In other words, § 382.705 requires employers and MROs to report different kinds of refusals with no overlapping responsibilities.

To clarify that MROs and employers have mutually exclusive reporting requirements, this final rule distinguishes between those paragraphs of 49 CFR 40.191 that implicate MRO reporting and those that implicate employer reporting. The final rule now states that employers are required to report refusals to take drug tests pursuant to § 40.191(a)(1)–(4), (a)(6), (a)(8)–(10), or (d)(1) and to report situations in which the employee admits to the collector that he or she adulterated or substituted the specimen in accordance with § 40.191(a)(11). MROs, on the other hand, are required to report refusals that are determined pursuant to § 40.191(a)(5), (a)(7), (b), and (d)(2). MROs are also required to report refusals when the employee admits to the MRO that he or she adulterated or substituted the specimen in accordance with § 40.191(a)(11).

Additionally, we note that MROs and employers do not have overlapping reporting responsibilities related to positive test results. Consequently, duplicate reporting, in which the same test result is reported to the Clearinghouse by different sources, will not occur. However, to the extent that duplicate test results are inadvertently reported to the Clearinghouse by the same source as a result of administrative error, drivers may request that duplicate reports be removed through the data correction procedures established under § 382.717.

Who Should Report Information

Comment. Several commenters said that only employers should enter information to alleviate burdens on service agents and to promote accuracy. OOIDA suggested alternative regulatory text that would make employers responsible for reporting all refusals to test. Several commenters supported having MROs, not employers, report positive test information to eliminate opportunities for employers to report inaccurate information, both inadvertently and intentionally. One commenter supported having SAPs enter SAP information to ensure accurate data is entered. Commenters also suggested having blood alcohol technicians or screening test technicians instead of employers enter alcohol test results, also to improve accuracy. Other commenters stated that employers, MROs, and SAPs should be able to allow third parties or assistants to enter information into the Clearinghouse to alleviate their reporting burdens. Greyhound and another commenter supported having each party enter information related to their immediate firsthand knowledge as a way of ensuring checks and balances in the reporting process. Two commenters supported having MROs report positive test results because they believe some employers would choose not to report the positive tests so that their employees could continue driving. A number of commenters suggested that SDLAs report information on citations for DUI while driving a CMV. Other commenters expressed concern about the conflict of interest owner-operators have in self-reporting their own drug and alcohol violations.

Response. FMCSA considered permitting only employers to input information into the Clearinghouse and determined that the better option is to have service agents enter their own information. This minimizes the risk of error by preventing the information from passing through multiple hands before reporting and holds each actor responsible for the integrity of his or her own reportable information. Furthermore, consolidating reporting authority into the hands of employers could make it easier for unscrupulous

employers to misuse their reporting role either to coerce drivers or help them evade the consequences of receiving a positive test.

Nothing in the final rule prohibits an MRO or SAP from allowing authorized staff to enter information into the Clearinghouse. The MRO or SAP remains responsible, however, for the accuracy of any information entered by staff on their behalf.

The rule does not require SDLAs to report DUI citations to the Clearinghouse. FMCSA believes that some of the commenters misunderstood the requirement to report that an individual was cited for a DUI while driving a CMV. The rule proposed that it would be the employer's responsibility to report a violation of §§ 382.205, 382.207, or 382.213 that is based on the employer's actual knowledge of a citation for DUI while driving a CMV. The Clearinghouse was never intended to be a repository for all citations for DUI while driving a CMV. In accordance with § 382.107, it will only contain those citations that an employer uses to substantiate actual knowledge that an employee violated FMCSA's drug and alcohol program.

In this final rule, FMCSA will require employers to report and substantiate all violations of § 382.205, § 382.207, or § 382.213 based on the employer's actual knowledge of the circumstances. We discuss these provisions in more detail below.

In addition, this final rule mandates that any owner-operator, regardless of whether he or she operates solo or has other driver-employees, must use a C/TPA to comply with the employer reporting requirements established in this rule. FMCSA implements this requirement in response to commenters' concerns about the conflict of interest owner-operators have in self-reporting their own drug and alcohol violations. The Agency does not believe that this will cause any increased costs or burdens on owner-operators. In the case of owner-operators who employ only themselves, they are already required to participate in a testing pool managed by a C/TPA. *See* § 382.103(b). Similarly, FMCSA's experience has shown that most owner-operators with other employees tend to be very small motor carriers that find it more convenient to use C/TPAs to manage their drug and alcohol programs. Accordingly, adding the reporting function to the C/TPA's duties should not create new burdens; to the contrary, consolidating all reporting into the C/TPA's hands should achieve efficiencies.

Employers and Drivers Regulated by More Than One Mode

Comment. Two commenters stated that some drivers work for companies that are regulated by more than one mode and suggested that results of a test conducted under the authority of another mode be reported to the Clearinghouse.

Response. In accordance with Congress's mandate in MAP–21, this final rule applies to part 382 drug and alcohol violations only. *See* 49 U.S.C. 31306a(a)(3). FMCSA does not have the authority to require employers to report other modes' drug and alcohol violations to the Clearinghouse.

Reporting Truthfully and Accurately

Comment. FMCSA proposed that every person or entity with access to the Clearinghouse be required to report truthfully and accurately, and expressly prohibited them from knowingly reporting false or inaccurate information. OOIDA suggested that FMCSA remove the term ''knowingly'' from this requirement.

Response. FMCSA proposed using the term ''knowingly'' because the Agency does not intend to impose sanctions on inadvertent errors. That said, the Agency recognizes the serious consequences drivers could face as a result of parties who report inaccurate information. Accordingly, the Agency expanded the prohibition to provide sanctions when a person reports information he or she knows *or should know* is false or inaccurate. This holds those reporting information to the Clearinghouse to a higher standard of accountability.

Reporting Follow-Up Tests

Comment. Driver Check asked whether employers are required to report negative as well as positive follow-up tests. OOIDA suggested that the number of follow-up tests be reported to the Clearinghouse. SAPAA suggested that employers report aftercare information during the follow-up period.

Response. Although employers must report negative return-to-duty tests, they are not required to report negative follow-up tests. The reason for the distinction between the two is because reporting a negative return-to-duty test changes a driver's status from prohibited to eligible to perform safety-sensitive functions. A negative follow-up test does not cause a change in the driver's status until the employer reports successful completion of all follow-up tests. Employers and MROs must, however, report positive return-to-duty and follow-up tests just as they would for any other positive test. In addition, employers will report to the Clearinghouse that a driver has completed the return-to-duty process when he or she has successfully completed all required follow-up tests.

FMCSA does not believe that reporting aftercare information is appropriate at this time. The purpose of the Clearinghouse is to be a tool for employers to use to determine whether an employee or prospective employee is prohibited from performing a safety-sensitive function. While the details of aftercare are relevant to the driver's return-to-duty process, they do not, in and of themselves, indicate whether a driver is prohibited from driving.

Time Allowed for Reporting

Comment. FMCSA proposed to require MROs, employers, C/TPAs, and SAPs to report to the Clearinghouse within 1 day of the event triggering a reporting requirement. Many commenters said that this did not allow enough time. DrugPak said that this requirement was not consistent with FMCSA's statutory authority, which simply required ''timely'' reporting. WPCI said that the rule should have a more specific time frame such as 24 hours. Yet another commenter requested that the reporting period be extended to 2 days. A commenter said that there are no time limits applicable to C/TPAs and requested that FMCSA change the rule to include them. Several commenters suggested that SAPs have up to 72 hours to report information. A different commenter suggested that SAPs have 5 days to report information.

Response. After consideration of these comments, FMCSA changed the proposed provisions so that this final rule requires MROs to report within 2 days of verifying a drug test. FMCSA makes this change to allow MROs a little more time to comply with their reporting requirements. The 2-day time frame is consistent with current MRO requirements for transmitting a report of a verified test to the employer within 2 days of verification. *See* 49 CFR 40.167(c).

There is no comparable reporting period in part 40 for employers or SAPs, however. FMCSA appreciates the commenters' concerns about the short period of time required for reporting, but must also balance this requirement against the public safety interest in timely reporting and the driver's interest in returning to work as soon as he or she is eligible. Accordingly, this final rule requires SAPs to complete their reporting requirements by the close of

the business day after the event that triggered their reporting responsibility.

For employers, the reporting period has been extended to the end of the third business day following the event triggering the violation. This change was made to reflect the fact that, in the case of a violation substantiated by an employer's actual knowledge of drug or alcohol use, or in the case of an employer's report of a driver's failure to appear for a test, new reporting requirements apply. The final rule affords more time for employers to report violations because employers are now required to generate or gather documents in order to substantiate these types of reports. These reporting requirements are discussed in further detail below. In order to maintain a uniform reporting period applicable to employer reports, the reporting period in this rule applies to all reports made by employers, not just those requiring additional documentation.

We also note these reporting periods establish the maximum amount of time in which MROs, SAPs and employers can submit their reports to the Clearinghouse. Nothing in this rule prohibits the submission of reports at an earlier point within the reporting window.

C/TPAs who report information to the Clearinghouse stand in the shoes of the employer, when they are designated to take on that responsibility. Accordingly, any time frame applicable to an employer is equally applicable to the C/TPA acting on the employer's behalf.

Reporting Actual Knowledge of Drug or Alcohol Use

Comment. FMCSA's proposal to require employers to report violations based on their actual knowledge of an employee's drug or alcohol use *only* when substantiated by a citation for DUI in a CMV is narrower than the scope of actual knowledge violations defined in § 382.107. Twenty-three commenters objected to this limitation and recommended that FMCSA require employers to report all violations based on actual knowledge, as defined in § 382.107. They stated that limited reporting would leave the Clearinghouse incomplete and would be inconsistent with Congress's mandate in MAP–21 that *all* violations of the Agency's drug and alcohol program be reported to the Clearinghouse. Commenters also said that FMCSA's concerns about inadequate documentation for violations based on actual knowledge were inconsistent with existing regulations that require employers to report these types of violations in accordance with pre-employment background investigations.

Several commenters supported the proposal and said that reports to the Clearinghouse should not be based on undocumented information that could be used to coerce drivers. One of these commenters, OOIDA, said that employers should order a reasonable suspicion test when they have actual knowledge of a violation, but opposed permitting ''unverified'' actual knowledge violations to be reported to the Clearinghouse.

One commenter stated that no DUI information should be available.

Response. After considering the comments on this issue, FMCSA agrees that it is appropriate to include all actual knowledge violations of part 382 in the Clearinghouse. By including such violations, employers will be able to query the Clearinghouse to obtain a complete picture of a driver's drug and alcohol violations history. This change also allows employers to use a Clearinghouse query to satisfy the drug and alcohol background investigation requirements in §§ 382.413 and 391.23, as discussed above. We note that neither DOT nor non-DOT tests are included in the scope of reportable actual knowledge violations.

Any violation based on an employer's actual knowledge of a driver's drug or alcohol use requires detailed, contemporaneous documentation in the Clearinghouse. Employers are required to report the details of the violation and upload evidence documenting the violation by the end of the third business day following the triggering event. Employers must report the date of the violation, a detailed description of the event, including the approximate time the violation occurred, and the names and contact information for any corroborating witness. Employers must also provide evidence to support each fact alleged in its description of the violation. In the absence of any tangible written, video, or audio evidence, the employer must attest to each fact alleged in an affidavit. Finally, the employer must verify that it provided all of the evidence supporting the violation to the employee.

The Agency intends, during the implementation phase, to build technology into the Clearinghouse that allows an employer to report an actual knowledge violation *only* if the employer attests that the report contains the required evidentiary support, as described above, and that the employer has provided a copy of the report to the employee. In the event that an employer falsely certifies that either of those requirements for submission of the report have been met, the employee may request that the information be removed from the Clearinghouse under new § 382.717(a)(2)(ii). Additionally, the employer would be subject to criminal and civil penalties as discussed below.

Reporting an actual knowledge violation to the Clearinghouse will have the effect of prohibiting a driver from engaging in his or her occupation; however, it typically is not accompanied by the type of paperwork or documentation that accompanies a test result. Given the severity of the consequences for the employee, we do not believe that an employer should be able to report an actual knowledge violation without evidence substantiating each allegation. Accordingly, these requirements create objective standards for documenting actual knowledge violations and hold employers accountable for what they report to the Clearinghouse.

In addition, as a part of the system design and implementation process, FMCSA intends to build functionality into the Clearinghouse that requires the person submitting information to state that it is true and correct and that will warn the user that the submission of false or misleading information is subject to civil and criminal penalties under § 382.507. These requirements are implemented to address concerns about coercion and harassment. They are designed to ensure that no employer reports any violation based on actual knowledge without providing evidence to support the violation. Moreover, no employer will be able to report any violation based on actual knowledge after the window for reporting has closed, eliminating the possibility for after-the-fact harassment or coercion.

Although a full query will alert an employer or prospective employer when a driver has a prohibition based on an employer's actual knowledge, the Clearinghouse will not release the details of that violation to anyone other than the driver. The circumstances of the violation have no bearing on whether the employee is eligible to perform safety-sensitive functions. All that is relevant is whether the driver is prohibited from performing safety-sensitive functions.

The Agency believes that this reporting requirement does not impose an additional cost burden on employers because a prudent employer would compile such documentation to support the termination or transfer of an employee to a non-safety-sensitive function, pending the driver's completion of the return-to-duty process.

Reporting Refusals To Test

Comment. OOIDA expressed concern regarding a situation that exists under the current drug and alcohol testing program, in which a false allegation of a driver's refusal to test may be made by the motor carrier as a means of harassing, coercing, or retaliating against the driver. OOIDA cited a specific example in which an employer reported a test refusal for a driver who was no longer in the motor carrier's employ at the time of the alleged refusal. Among other things, OOIDA recommended that FMCSA require the employer to provide supporting documents to prevent the motor carrier's submission of false or inaccurate reports of driver refusals, and to provide for the timely removal of such reports if they do occur.

Response. The Agency understands the serious consequences to a driver whenever any violation is reported to the Clearinghouse. Consequently, it is incumbent upon FMCSA to ensure, to the extent feasible, that employers do not report violations to the Clearinghouse that are false or inaccurate, and that employers who do so will be subject to appropriate sanctions. FMCSA notes, however, that we have no basis on which to anticipate that widespread fraud by employers subject to the Clearinghouse reporting requirements will occur. On the other hand, we acknowledge that unscrupulous employers could, as the commenter described, attempt to use the Clearinghouse for purposes of coercion or harassment when reporting a test refusal.

Accordingly, we are adding new documentation requirements related to the reporting, by an employer, or a C/TPA acting as the employer's service agent, of a driver's failure to appear for an alcohol or drug test. Under 49 CFR 40.261(a)(1) and 49 CFR 40.191(a)(1), failure to appear at a testing site after being directed to do so by an employer constitutes a refusal. In submitting such reports to the Clearinghouse under § 382.705(b)(3), an employer must provide documentation, such as a contemporaneous record or an affidavit, of the time and date that the driver was notified to appear at a testing site, as well as the time and date the driver was directed to appear; documentation, such as electronic mail or an affidavit, of the date the employee was terminated or resigned (*if applicable*); and documentation, such as a certificate of service or other evidence, showing the employer provided the driver with all the information reported under this paragraph. C/TPAs who report ''failure to appear'' refusals by self-employed drivers pursuant to § 382.705(b)(6) would be required to document, by affidavit or other means, that they were designated as the service agent for that employer at the time the ''failure to appear'' refusal occurred. The Agency envisions that employers, or C/TPAs acting as their service agents, could rely on a single affidavit to fulfill these documentation requirements, as long as all the required information is included. Further, we presume that the documentation of test notifications, a driver's employment status, or the existence of a valid business relationship between self-employed drivers and C/TPAs, are records reasonably kept in the ordinary course of business and would not need to be created solely to comply with these reporting requirements.

The NPRM proposed, under § 382.705(b)(1), that employers report test refusals to the Clearinghouse by the close of the business day following the date on which they obtained the information. In recognition of the fact that additional time may be needed to comply with these new documentation requirements for ''failure to appear'' refusals, in this rule we extend the reporting period for all test refusals to the close of the third business day following the date on which the violation information was obtained. Further, we note that the 3-year implementation period for this rule will afford employers ample opportunity to make any necessary adjustments to their record keeping systems in order to comply with these requirements.

Similar to the reporting requirements for actual knowledge violations, FMCSA intends that the Clearinghouse functionality will allow ''failure to appear'' refusals to be reported only if the employer certifies that the report contains the required documentation, as described above, and a copy of the documentation has been provided to the employee. As noted above, FMCSA also intends that the Clearinghouse functionality will require the person submitting information to state that it is true and correct and will warn the user that the submission of false or misleading information is subject to civil and criminal penalties under § 382.507. These requirements are implemented to address concerns about coercion and harassment.

Finally, in the event that an employer falsely certifies either that the required documentation has been provided, or that the employee has received a copy of the documentation, the employee may request that FMCSA remove the report from the Clearinghouse pursuant to new § 382.717(a)(2)(iii).

Reporting Return-to-Duty Test Eligibility

Comment. FMCSA proposed to require SAPs to report the date they determined that a driver successfully completed the education and/or treatment process as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under part 382. A commenter said that the language referencing eligibility for testing was unnecessary and that employers could confuse it with a statement of fitness-for-duty determination. The commenter suggested limiting the SAP's determination to successful compliance with the SAP's recommendation.

Response. Section 382.705(d)(1)(iv), as proposed, accurately reflects the state of the law: Once a SAP determines that a driver has successfully completed the education and/or treatment process as defined in subpart O, the driver is eligible to take a return-to-duty test. *See* 49 CFR 40.305. FMCSA is unaware that employers have been confusing eligibility to take the return-to-duty test with a fitness-for-duty determination. Accordingly, FMCSA does not see any reason to change the language in this section.

Notice to Drivers and Employers of Entry, Revision, Removal or Release of Information (§ 382.707)

Comment. FMCSA proposed to notify a driver when information about that driver is entered, changed, removed, or released. Everyone commenting on this issue supported driver notification. OOIDA requested that drivers be able to obtain information identifying the person to whom records are released. SAPAA and TTD requested that FMCSA establish a time frame in which the driver would be notified about activity in the Clearinghouse. Driver Check asked how drivers licensed outside of the United States would be notified of Clearinghouse activity. SAPAA asked whether C/TPAs could receive notification on behalf of owner-operators. A commenter disagreed with the proposal to send notification of Clearinghouse activity via U.S. Mail and suggested that the rule provide for electronic notification.

Response. FMCSA understands that commenters have many questions about how the Clearinghouse will operate. Many of the operational details will be developed during the implementation phase, and thus are not appropriate for codification in FMCSA's rules. That said, it is FMCSA's intention that drivers will have access to their

Clearinghouse records, including information on who submits information and to whom information is released. With respect to timing, as soon as there is activity in a driver's Clearinghouse record, FMCSA will initiate notification. If a driver takes no action to designate an address or method of notification, the default method is to send notification via U.S. Mail to the current address on file with the driver's State of licensure. All drivers will have the option to provide an alternate electronic method of notification when they register with the Clearinghouse. The time it takes the driver to receive the notification would vary depending on which notification method is selected.

Drivers' Access to Information in the Clearinghouse (§ 382.709)

Comment. FMCSA proposed to grant drivers access to any information in their Clearinghouse record, except as restricted by law. Two commenters recommended that FMCSA prohibit drivers from having access to their own follow-up testing plans and prohibit employers from sharing that information with drivers. One of those commenters said that many employers believe that they are not prohibited from sharing follow-up testing plans with drivers. Boeing was concerned that owner-operators would have access to their follow-up plans. Finally, a driver requested clarification about how often he would be required to check his own records in the Clearinghouse.

Response. Section 382.705(d)(1)(v) of the NPRM proposed that SAPs report to the Clearinghouse the frequency, number, and type of follow-up tests as well as the duration of the follow-up testing plan. Section 40.329 currently requires that SAPs redact the follow-up testing information from any reports provided to employees so that they will not be aware of either the number or type of follow-up tests or the duration of the testing period. When DOT adopted this requirement in 2001, it noted the concern that providing employees with access to their follow-up plans ''could lessen the deterrent effect of follow-up tests'' (66 FR 41949 (August 2001)). However, the Privacy Act generally requires that an employee be permitted, upon request, access to information about him/her in their Clearinghouse record that is retrievable by that employee's name or other identifying particular. Accordingly, in order to ensure compliance with current part 40 requirements, in this rule FMCSA removes the proposed requirement in § 382.705 that SAPs report the follow-up testing plan to the Clearinghouse. SAPs will thus continue to provide that information directly to the employer as part of the follow-up evaluation report required by § 40.311(d). Therefore, follow-up testing plans will not be included in a driver's Clearinghouse record. Subsequent employers will be required to obtain the follow-up testing plan from the previous employer, if the driver's Clearinghouse record does not indicate that follow-up testing has been completed. In cases where a driver who is subject to follow-up testing is not currently employed, the gaining employer may obtain the driver's follow-up testing plan from the SAP, whose contact information will be available in the Clearinghouse. (*See,* also, discussion of this issue under ''Pre-Employment Investigations Under §§ 40.25, 382.413 and 391.23'', above.) Finally, nothing in this rule requires drivers to query the Clearinghouse. Drivers are, however, free to query their own records at any time and as often as they choose.

Clearinghouse Registration (Section 382.711)

FMCSA proposed that each employer and designated service agent register with the Clearinghouse before accessing or reporting information to the Clearinghouse.

Consumer Reporting and Background Screening Agencies

Comment. Many commenters, including Cahill-Swift, Driver IQ/CARCO, J.B. Hunt, Foley, NPTC, ABA, Schneider, C.R. England and several trucking associations, supported allowing consumer reporting and background screening agencies to access the Clearinghouse. A number of these commenters suggested that FMCSA expand the definition of ''service agent'' to include these third party service providers. OOIDA opposed third party service provider access to the Clearinghouse unless the service provider was acting specifically on behalf of an employer with a right to access the Clearinghouse. That commenter urged tight controls on Clearinghouse access.

Response. As noted previously, the final rule does not include a new definition of ''service agent,'' as proposed in the NPRM, because DOT recently expanded the definition of that term in 49 CFR 40.3 to apply to those persons who provide services in connection with the Clearinghouse. Accordingly, a consumer reporting or background screening agency acting on behalf of an employer in connection with fulfilling that employer's obligations under parts 40 and 382 may register to access the Clearinghouse, but those entities' use of the accessed information is limited. No third party service agent may disseminate, or make any other use of the information in the Clearinghouse except to communicate it directly to the specific employer that authorized the provider to query the Clearinghouse on its behalf. No third party service agent may publish or consolidate Clearinghouse information for commercial or other purposes.

SAP and MRO Access to Information in the Clearinghouse

Comment. SAPAA, American Substance Abuse Professionals, First Advantage and other commenters requested that SAPs and MROs have access to information in the Clearinghouse to help them assess return-to-duty treatment and education requirements.

Response. In FMCSA's judgment, Congress did not intend for anyone other than employers (or an employer's designated agent), SDLAs, the NTSB, and individual drivers to access the information in the Clearinghouse. (*See* 49 U.S.C. 31306a(h)–(j).) The statute limits employer use of the information to determine whether a driver has a drug or alcohol prohibition, while SDLAs may not use the information for any purpose other than determining the qualifications of a CDL applicant. The NTSB can use the information only in connection with a crash investigation. The statute does not contemplate using the information for MRO verifications and SAP assessment determinations. Moreover, we note that the DOT-wide drug and alcohol rules do not provide for MROs to use historical drug and alcohol information as a part of the verification process. Certainly, if a driver wishes to provide that information, he or she may. But it is not currently required as a part of the MRO's function. The Agency agrees that historical information may be relevant to the SAP's role in the return-to-duty process, and notes that nothing in this final rule prohibits SAPs from obtaining this information directly from the drivers under their care as a condition of providing an assessment.

Designation of Service Agents and Employees and Credentials Required for Registration

Comment. FMCSA proposed that employers must specifically designate those employees and service agents who are authorized to access the Clearinghouse on their behalf. FMCSA also proposed that MROs and SAPs must certify compliance with part 40 and provide evidence of the

professional credentials required by part 40. A commenter asked when the employer would designate its MRO and how it would make a change of designation. The same commenter said that some MROs are contracted with C/TPAs rather than individual employers. Several commenters asked what kind of evidence MROs and SAPs must provide concerning their professional credentials. First Advantage said that providing evidence of certification and licensing would be time consuming and expensive. An individual expressed concern about how FMCSA would verify or authenticate these credentials.

Several commenters asked whether an MRO working for several different organizations would need multiple registrations and whether different MROs working for one organization would need individual registrations. Finally, Driver IQ/CARCO suggested that employers and service agents should not have to verify their designated employees on an annual basis.

Response. An employer is not required to designate which MRO or MROs may report information to the Clearinghouse for that employer's employees. Furthermore, in an effort to eliminate the potential opportunity for employers to conceal violations of their own employees, FMCSA requires MROs, rather than employers, to report verified drug test results to the Clearinghouse. Requiring that MROs report verified drug test results independently will help preserve their impartiality while eliminating any potential for employers to exert pressure on the MRO during the verification process.

To register with the Clearinghouse, MROs and SAPs must upload documentation showing that they are qualified, in accordance with the requirements of 49 CFR 40.121 and 40.281, to act as an MRO or SAP. The type of documentation will vary depending on the individual MRO or SAP's professional qualifications. FMCSA does not consider this process to be time consuming. Under current rules, MROs and SAPs are otherwise required to maintain this documentation and provide it upon request to DOT agency representatives. (*See* 49 CFR 40.121(e) and 40.281(e).) Providing this information to the Clearinghouse as a condition of access is no different than responding to an agency request to produce the same information.

An MRO's registration will be personal to that individual and will depend on his or her credentials and other qualifications. Accordingly, each MRO must have his or her own personal registration regardless of the type of organization with which he or she is affiliated.

FMCSA did not make any changes to the requirement that employers annually verify the identity of employees who are authorized to access the Clearinghouse on their employer's behalf. All employers are obligated to keep their verifications updated, but in the event that an employer fails to do so, the annual verification procedure will ensure that unauthorized employees do not retain access to the Clearinghouse indefinitely.

Duration, Cancellation, and Revocation of Access (§ 382.713)

Comment. FMCSA proposed to make Clearinghouse registration effective for 5 years, cancel inactive registrations after 2 years, and revoke registration for failure to comply with applicable rules. Cahill-Swift asked whether non-payment of fees would result in revocation. OOIDA and another commenter stated that a registrant's access must be revoked if it fails to comply with the rules. OOIDA requested that a registrant's failure to comply with Clearinghouse rules be considered a pattern or practice of noncompliance under part 385, subpart K. Another commenter suggested that the Agency reconsider its proposal that FMCSA staff process Clearinghouse requests for motor carriers that have had their registrations revoked.

Response. While the details of payment options will be determined during the contract bidding process, FMCSA anticipates that payment would be made prior to an employer conducting a search or gaining access to information. Under this scenario, non-payment would simply result in the employer being unable to conduct a search.

In this final rule, FMCSA retains the right to revoke Clearinghouse registration for anyone who fails to comply with the applicable rules. However, an employer that had its registration revoked for failure to comply with the Clearinghouse rules would nonetheless have to ensure that its employees were not subject to prohibitions related to drug or alcohol violations. We anticipate that, in order to query or report violations, such employers would need to contact FMCSA's drug and alcohol program directly, so that program staff could conduct queries or enter violations into the Clearinghouse in a timely manner. The Agency recognizes that these alternative means of querying and reporting are not nearly as efficient as using the Clearinghouse directly and expects that revocation of an employer's access would occur only when an employer has egregiously violated the Clearinghouse's rules of use.

During the implementation phase, we will continue to explore more efficient means of querying and reporting for employers whose access has been revoked. We expect, however, that the civil and criminal penalties associated with an employer's failure to lawfully use the Clearinghouse (§§ 382.723(c) and 382.727) will provide, in most instances, an adequate deterrent to its misuse.

FMCSA's regulations governing patterns or practices of safety violations by motor carrier management are specifically limited to violations of safety regulations arising under 49 U.S.C. chapter 311, subchapter III. Authority for the Clearinghouse arises under 49 U.S.C. 31306a, which does not fall within chapter 311, subchapter III. Accordingly, instances of non-compliance with this final rule will not be considered for the purposes of establishing a pattern or practice of safety violations under part 385, subpart K.

Authorization To Enter Information Into the Clearinghouse (§ 382.715)

Comment. FMCSA proposed to require an employer to designate a C/TPA in the Clearinghouse before the C/TPA could enter information on the employer's behalf. A commenter asked whether this provision also applied to SAPs. Several commenters were confused by the section of the NPRM that proposed to require employers to designate SAPs for employees and requested that FMCSA clarify that employees, not employers, designate SAPs.

Response. As proposed, § 382.715 applied only to employer designations of C/TPAs. In the NPRM, FMCSA inadvertently stated that employers must designate SAPs in the Clearinghouse; that was not correct. In accordance with long-standing rules governing the selection of SAPs, the employer must provide the employee with the list of DOT-qualified SAPs and each employee is free to choose his or her own DOT-qualified SAP. (*See* 49 CFR 40.287, 40.289.) Accordingly, in this final rule, FMCSA amended § 382.715 to make clear that *employees* must designate SAPs to enter information about their own return-to-duty process. FMCSA makes this change to ensure that only the employee's selected SAP can report information to the Clearinghouse. FMCSA also made conforming changes to § 382.711 to make clear that service agents may

submit information on behalf of either an employer or an employee.

Procedures for Correcting Information in the Database (§ 382.717)

FMCSA proposed administrative procedures for correcting errors in a driver's Clearinghouse record.

FMCSA Review of Petitions for Correction

Comment. TTD, OOIDA and IBT stated that under the proposed process, it would take too long to resolve errors. TTD requested alternative ways to expedite the decision-making process. OOIDA requested that FMCSA respond to a petition within 14–21 days, depending on the nature of the correction. Yet another commenter requested a 5-day resolution period. CCTA stated that, if resolution of petitions were delayed, employers, MROs, and C/TPAs could face litigation. Another commenter recommended a simple appeals process, but did not include any specifics. An individual asked if it is the responsibility of the driver to update the Clearinghouse when a citation for a DUI in a CMV does not result in a conviction. Another seemed to have misunderstood this section, believing that drivers had only 30 days to submit a petition.

Response. In response to these comments, FMCSA decided to amend its proposal. This rule provides for a 14-day resolution period when a request for expedited treatment is granted in accordance with § 382.717(e). To be considered for expedited treatment, an inaccurate record, or a record not reported to the Clearinghouse in compliance with this section, must be preventing the petitioner from performing safety-sensitive functions. In addition, the petitioner must provide a complete petition including all documentation supporting his or her request. Failure to include all relevant information will impede the Agency's ability to resolve the petitioner's request in a timely manner.

The Agency also removed the proposed requirement in § 382.717(a) that petitions for review be submitted within 18 months of the date the allegedly erroneous information was reported to the Clearinghouse. Upon further consideration, we determined that drivers should have the option to request that inaccurate information be corrected for as long as the allegedly erroneous record is retained in the Clearinghouse. Finally, as further discussed below, FMCSA reduced the time in which it will resolve petitions for administrative review and notify the driver of its decision from 90 days, as proposed, to 45 days following the Agency's receipt of a complete petition. We also reduced the time in which we will complete an administrative review under § 382.717(f) from 60 days, as proposed, to 30 days.

Where an employer has reported a citation for DUI in a CMV to the Clearinghouse and that citation did not result in a conviction, the driver is responsible for submitting a request for removal under § 382.717(a)(2)(i).

Administrative Protections for Drivers

Comment. A commenter requested that the Clearinghouse contain contact information for those reporting information to the Clearinghouse. C.R. England, Foley, and other commenters requested complete, clear procedures for removing erroneous information. Some of those commenters also requested that FMCSA hold those who report erroneous information accountable. Other commenters were concerned with how FMCSA would handle false positives and identity theft. TTD stated that the credibility of the Clearinghouse depends on a fair and expeditious process for correcting errors. C.R. England wanted to ensure that the Clearinghouse would not prevent qualified drivers from working. IBT emphasized the need for accurate, up-to-date information.

Response. FMCSA believes that holding people who report to the Clearinghouse accountable for the accuracy of their submission is critical to the integrity of the Clearinghouse. When registering to access the Clearinghouse, all parties who have reporting obligations to the Clearinghouse will be required to provide identifying information, including name, address, telephone number and any other information needed to verify the registrant's identity (§ 382.711).

With respect to removing erroneous information, all procedures in part 40 continue to apply to the processing of drug and alcohol tests. A positive test that is reported but subsequently cancelled would not be a prohibition on driving and therefore would be removed from the Clearinghouse. If a positive test is incorrectly associated with a particular driver, regardless of whether the error results from identity theft, mistake, or administrative error, the affected driver would submit a petition under § 382.717 to correct the erroneously reported information. Additional remedies related to the correction or removal of violation reports submitted to the Clearinghouse are discussed below.

Privacy Act

Comment. OOIDA and another commenter requested that FMCSA include Privacy Act procedures in part 382, and one of those commenters requested FCRA procedures allowing an individual to submit a statement disputing or explaining their record. OOIDA stated that the Clearinghouse's authorizing statute requires FMCSA to comply with certain requirements for the release of information under the Privacy Act and the FCRA.

Response. MAP–21 requires that a ''release of information'' from the Clearinghouse comply with the applicable provisions of the Privacy Act and the FCRA (49 U.S.C. 31306a (d)(1) and (2)). The final rule complies with the ''release of information'' requirements of the Privacy Act, as defined in 5 U.S.C. 552(a)(b), which generally prohibit the disclosure of records ''except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.'' As noted above, an employer may not request access to an employee's Clearinghouse record without prior electronic consent of the driver, and the Agency must receive electronic consent from the driver before releasing a Clearinghouse record to the employer (§ 382.703(b) and (d)). Other Privacy Act procedures to which commenters refer are currently set forth in 49 CFR part 10, ''Maintenance Of and Access to Records Pertaining to Individuals,'' the DOT-wide rules implementing the Privacy Act. The part 10 regulations include, for example, procedures for individuals to request that their records be corrected (49 CFR 10.41) and to file a concise written statement of disagreement with an agency's refusal to amend that individual's record (49 CFR 10.45). Further, we note that the System of Records Notice (SORN), to be issued for public comment following publication of this final rule, will describe the specific means by which the Agency intends to implement the Privacy Act requirements as they pertain to the Clearinghouse, including how individuals can exercise their rights under the Privacy Act.

As discussed above, information disseminated through the Clearinghouse is considered ''excluded'' communications for the purposes of the FCRA. Accordingly, no FCRA procedures are necessary.

Challenges to Clearinghouse Data

Comment. Under proposed § 382.717(c), petitioners were limited to contesting the accuracy of information

reported to the Clearinghouse and could not challenge the accuracy of positive test results or refusals. CCTA said that FMCSA should permit challenges to the accuracy and correctness of Clearinghouse reports, including refusals. The same commenter requested that FMCSA create a clear dispute resolution process, clarifying what can be challenged through the process. C.R. England requested that FMCSA clearly define the rights of drivers with respect to correcting errors on their records, including placing the burden of proof on the reporting party. Finally, two commenters objected to removing a report of a citation for DUI in a CMV, even if that citation did not result in a conviction.

Response. Nothing in this final rule creates a new right under part 40 to challenge the substantive outcome of a drug or alcohol test or the accuracy of a driver's refusal to test at a collection site or a refusal to test when notified by an employer to submit to testing. Individuals wishing to challenge the accuracy of information in their Clearinghouse record that is not otherwise addressed under § 382.717 may follow the Privacy Act procedures set forth in 49 CFR part 10, subpart E (Correction of Records).

Section 382.717 does, however, contain data correction procedures to ensure accuracy in reporting. For example, a driver may use the procedures set forth in this rule to challenge an incorrect name or CDL number, or to remove duplicate test results (that is, a single test result reported more than once to the Clearinghouse), but may not challenge the outcome of a test. To make it clearer that the procedures in § 382.717 pertain primarily to the correction of data that is erroneously reported in the Clearinghouse record (except as otherwise provided in § 382.717(a)(2)) and not for substantive challenges to drug and alcohol violation determinations, we re-designated paragraph (c) as paragraph (a) in this section. FMCSA will consider each correction request on a case-by-case basis and assess the validity of information presented in determining whether correction is warranted.

FMCSA notes the importance of the difference between a citation for DUI in a CMV and a conviction. Although a driver must immediately discontinue safety-sensitive functions after being cited for a DUI in a CMV, he or she may resume safety-sensitive functions without completing the return-to-duty process if that citation does not result in a conviction. Prohibiting a driver from performing safety-sensitive functions when a citation does not result in a conviction contravenes fundamental principles of fairness. Using the expedited procedures in § 382.717, the driver is responsible for requesting that FMCSA remove from the Clearinghouse an employer's report related to a citation that did not result in a conviction.

Comment. OOIDA recommended that if a driver submits a ''substantive'' request for correction with complete supporting documentation, the challenged information should not be released in response to an employer query until a decision has been made on the request for correction.

Response. As explained above, resolution of a challenge to the substance of a drug or alcohol violation—as opposed to simple data correction or the employer's failure to comply with reporting requirements under § 382.705(b)(3) and (5)—is outside the scope of this rule. Accordingly, FMCSA will not process such a request under § 382.717. We note that the withholding of violation reports pending resolution of a request to challenge the substance of a violation would be inconsistent with DOT-wide drug and alcohol compliance rules. Section 40.331 of those rules requires an employer to release information with proper consent and does not provide an exception for information that a driver is challenging as inaccurate. That rule is applicable DOT-wide and FMCSA does not have the authority to change that provision.

Moreover, it would not be in the interest of safety to withhold violation reports during the review period. FMCSA believes that to do so would encourage drivers to file frivolous or baseless challenges to accurate reports solely for the purpose of extending their ability to continue performing safety-sensitive functions. Adopting the commenter's suggestion would thus delay necessary rehabilitation and keep drug and alcohol abusers on the road. Neither of these outcomes serves the best interests of the driver or the motoring public.

Notification to Employers of Corrections

Comment. One commenter suggested that, after correcting errors, FMCSA should require individuals to alert employers that queried the driver's record that inaccurate data has been corrected.

Response. FMCSA agrees that alerting employers that they have viewed inaccurate information about a driver significantly contributes to the accuracy and fairness of the Clearinghouse. Accordingly, this final rule includes new § 382.717(g), requiring that the Clearinghouse update employers when they have viewed information that was subsequently corrected or removed under § 382.717(a)(2) or in accordance with the Privacy Act.

Availability and Removal of Information (§ 382.719)

Comment. FMCSA proposed that information about a violation would remain available to employers for a term of either 3 or 5 years, or until the driver completed the return-to-duty process, whichever is longer. Many commenters were in favor of a 5-year term. Some of these commenters recommended 5 years because they were concerned that the record would otherwise be removed before the driver completed all follow-up tests. Others favored 5 years because it aligns with part 382 record keeping requirements. The Institute of Makers of Explosives stated that it would support an even longer retention period. Another commenter supported a 10-year retention period.

On the other hand, a number of individual commenters were in favor of a 3-year term. Yet others were in favor of removing information as soon as the driver completed the return-to-duty process. Some commenters suggested that information be retained for 3 years from the driver's completion of the return-to-duty process. Another commenter suggested that information be made available for at least 5 years after the driver's return-to-duty date.

Response. After carefully considering FMCSA's statutory authority and the safety implications of this proposed requirement, the Agency concluded that 5 years is the appropriate document retention period. We explain the rationale for our interpretation below.

The basis for a 3-year retention period was 49 U.S.C. 31306a(f)(3), which requires prospective employers to use the Clearinghouse to determine whether any employment prohibitions exist on new hires and prohibits employers from hiring anyone to drive a CMV if that person has had a drug or alcohol violation during the preceding 3 years. This requirement mirrors current FMCSA regulations that also direct employers to investigate prospective hires' compliance with DOT drug and alcohol programs during the preceding 3 years. (*See* 49 CFR 391.23(e); *see also* 49 CFR 40.25, 382.413.) FMCSA interprets section 31306a(f)(3) to codify the investigation requirement in § 391.23(e) and to mandate that employers use the Clearinghouse to conduct the investigation. We implement that statutory requirement by amending § 391.23(e) to state explicitly that conducting a pre-employment

search of the Clearinghouse, as required by § 382.701, satisfies the employer's obligation to investigate a prospective employee's drug and alcohol compliance history (with limited exceptions as previously noted). We do not interpret anything in section 31306a(f)(3) to require FMCSA to retire these records after 3 years. Nor do we interpret that provision to prohibit FMCSA from releasing information after 3 years have passed. In fact, nothing in this section directs FMCSA to take any action with respect to records retention. To the contrary, this section simply places an obligation on employers to conduct the background investigation already required in § 391.23 using the Clearinghouse.

Moreover, nothing in either FMCSA's existing regulations or section 31306a(f)(3) prohibits employers from requesting or obtaining drug and alcohol compliance histories going back more than 3 years. In FMCSA's judgment, the 3-year pre-employment look—back is intended to be the regulatory (and now statutory) *minimum.* Employers have an interest in obtaining information going back more than 3 years because a driver's drug or alcohol violation does not necessarily expire after 3 years; that violation continues to prohibit that driver from performing safety-sensitive functions until he or she completes the return-to-duty process. As long as the driver's consent to release records is not limited to a 3-year look back, employers can request and obtain information about drug and alcohol compliance going back at least 5 years because, under § 382.401, employers are required to keep records of drivers' drug and alcohol violations for a minimum of 5 years. Whether and to what extent employers seek records going back further than 3 years is a decision that individual employers make based on their particular business needs. For example, a company's safety or risk management policies may dictate a more extensive background investigation than the regulatory minimum. How an employer chooses to balance its hiring needs, risk management, and safety policies is a matter for private decision making. Nothing in this final rule would change this practice.

The basis for the 5-year retention period is section 31306a(g)(6), titled ''retention of records,'' which directs the Agency to hold records of driver violations in the Clearinghouse for 5 years, except where a driver has failed to complete the return-to-duty process. Assuming a driver completes the return-to-duty process within 5 years, the statute directs the Agency to archive the records in a separate location. We interpret this section to require the Agency to make all records of driver violations available to authorized employers for 5 years or until the driver completes the return-to-duty process, whichever is longer. After that, the Agency must move them to the archives.

There are fundamental differences between the 3-year and 5-year look—back provisions in section 31306a that direct us to require a 5-year retention period in this final rule. For example, while the 3-year look back in section 31306a(f)(3) focuses on the scope of an *employer's* pre-employment background investigation, the 5-year look back in section 31306a(g)(6) focuses on the *Agency's* recordkeeping requirements. As discussed above, FMCSA interprets section 31306a(f)(3) to codify the existing drug and alcohol investigation requirements and to direct employers to conduct those investigations using the Clearinghouse. We interpret section 31306a(g)(6), on the other hand, to be focused exclusively on the matter of how long FMCSA should make records available to employers and what to do with those records after they should no longer be made available.

Comparing the text of sections 31306a(f)(3) and (g)(6) provides additional support for this interpretation. Section 31306a(f)(3) provides no recordkeeping guidance at all; it does not address what happens if a prospective hire has an unresolved drug or alcohol violation dating back more than 3 years, or what should happen to the records after the time for release has expired. Nor does it make any mention of the look-back period for annual queries; it is focused exclusively on how an employer should conduct a pre-employment background investigation. Section 31306a(g)(6), on the other hand, addresses all of these other contingencies and is, in fact, titled ''retention of records.'' Based on all of the considerations discussed above, we interpret MAP–21 to mandate a 5-year record retention period.

But, even in the face of statutory ambiguity, we believe that safety interests dictate that the 5-year retention period is appropriate. Overwhelmingly, employers who submitted comments to the docket requested that they have access to 5 years' worth of drug and alcohol compliance histories so that they could make informed decisions about the risk they assume when they hire drivers. Moreover, FMCSA believes the fact that a driver's compliance history will follow him or her for a minimum of 5 years will act as a significant deterrent to illegal drug and alcohol use. As we continue to raise the severity of the consequences for unsafe conduct behind the wheel, drivers who wish to be productive participants in the industry should modify their behavior accordingly.

Comment. FMCSA proposed that information on a citation for a DUI in a CMV would be removed within 2 days of FMCSA granting a request for a determination that the citation did not result in a conviction. A commenter requested that this be shortened to 1 day.

Response. FMCSA believes that 2 days are required to verify the accuracy of the documentation supporting the request. Accordingly, this provision remains as proposed.

Comment. Cahill-Swift requested that the date FMCSA uses to determine whether sufficient time has passed to remove a violation from the Clearinghouse be the date the test was administered instead of the date of the violation determination. The commenter stated that, generally, part 40 uses the test date as the point of reference for future action and requested that FMCSA modify proposed § 382.719(a)(4) to conform.

Response. FMCSA concluded that the date a record is submitted to the Clearinghouse is the violation determination date, which will be used to calculate the date information will be removed from the Clearinghouse. This approach is consistent with MAP–21 requirements.

Fees (§ 382.721)

Comment. FMCSA proposed to collect a reasonable fee from employers querying the Clearinghouse, but to grant drivers access to their own records without assessing a fee. Most commenters were concerned about keeping the fees low or eliminating them altogether. At least one commenter asked the Agency to identify what the actual fees will be. Commenters such as First Advantage, ABA, C.R. England, ATA and several others requested that FMCSA establish subscription-based fees. ATA, Florida Trucking Association and other commenters stated that FMCSA had previously expressed preference for a subscription-based fee structure. SAPAA requested that there be only a one-time registration fee. NTPC, Ohio Trucking Association, Cahill-Swift, Driver IQ/CARCO, J.B. Hunt, and American Moving and Storage Association requested that FMCSA permit employers to choose between subscription- and transaction-based fees. One commenter suggested that FMCSA use the PSP program as a model. ATA suggested that it not be used as a model, stating that the

contractor would earn excessive and unreasonable profits based on the PSP fee structure. ATA and others stated that they did not want the fees to greatly exceed the contractor's costs to manage the Clearinghouse. Minnesota Trucking Association suggested that subscription-based fees should be limited to $10–$20 per employer. SAPAA asked for details regarding the procedure for paying the fees. OOIDA requested that the cost for the limited query be much lower than the cost for the full query. An individual requested that the fees be set at a more ''reasonable'' level.

Response. FMCSA proposed § 382.721 to establish its authority to collect fees from entities required to query the Clearinghouse; however, FMCSA does not set the specific dollar amounts for user fees as a part of this rulemaking. We note, however, that under § 382.721 no driver will be required to pay a fee to access his or her own records in the Clearinghouse.

FMCSA will contract with a third-party to operate and maintain the Clearinghouse. Accordingly, Clearinghouse user fees will be determined through that competitive bidding process. One of the criteria for selecting a contractor to design and operate the Clearinghouse will be the ability to provide reliable, accurate, and cost-effective service to stakeholders. In its request for proposal FMCSA will require batch processing of data, subscription fees and pre-population of recurring data. This should minimize transaction costs relative to the time per test, per driver and per entity costing methodology used to estimate the costs of queries.

The Regulatory Impact Analysis (RIA) acknowledges that annual queries to the Clearinghouse impose costs on employers not present under the current regulations. The annual query is a statutory requirement pursuant to 49 U.S.C. 31306a(f)(4). The RIA demonstrates that the rule produces net benefits based on a conservative estimate of the incremental cost of annual queries calculated on a per transaction basis (*e.g.,* cost per test, cost per driver, etc.). For purpose of the RIA, the Agency conceptualized fees for limited and full queries and pre-employment queries based on its experience with Pre-employment Screening Program (PSP) Database. The fee for requesting a driver's record through PSP is $10.[3] Employers' use of the PSP to screen prospective employees is voluntary. The Clearinghouse is a mandatory program with an expected number of transactions well in excess of the number of PSP voluntary transactions. As a result, FMCSA believes Clearinghouse fixed costs will be spread over a larger volume of transactions than the volume of PSP transactions. These costs include, but are not limited to, hardware, software, labor costs for systems analysts and contractor staff available to assist Clearinghouse users.

Unauthorized Access or Use Prohibited (Section 382.723)

Comment. FMCSA proposed rules that would prohibit unauthorized access to or misuse of information obtained from the Clearinghouse. One commenter was generally concerned that employers would misuse Clearinghouse information. TTD was concerned that prospective employers would query the Clearinghouse for information about a driver even if that driver were not applying for a position that mandated a Clearinghouse check. The same commenter requested that FMCSA include safeguards to ensure that people requesting information are legitimate employers and that the information goes to them directly. Another commenter recommended that FMCSA anonymize information before using it for research purposes.

Response. FMCSA takes its mandate to secure sensitive information and protect driver privacy very seriously. Accordingly, this final rule includes provisions that prohibit the release of information without affirmative driver consent and audit functions to verify compliance with these rules. Anyone who violates those provisions is subject to civil and criminal penalties. FMCSA appreciates all public comments on how to address driver privacy protections and will take all of them into consideration as it moves into the implementation process.

Access by State Licensing Authorities (§ 382.725)

Comment. FMCSA proposed to grant each SDLA access to the Clearinghouse to determine whether an applicant for a CDL is qualified to operate a CMV. ATA, J.B. Hunt and other commenters suggested that SDLAs be required to check the Clearinghouse before issuing a CDL. ATA suggested that SDLAs be required to check the Clearinghouse annually. ATA and the Florida Trucking Association recommended that SDLAs be required to revoke a CDL when violations are reported to the Clearinghouse. Another commenter pointed out that one provision of MAP–21 makes SDLA access to the Clearinghouse mandatory while another provision makes it permissive and asked FMCSA to reconcile this inconsistency. The same commenter also requested guidance on what an SDLA is supposed to do with Clearinghouse information. A number of commenters recommended that the Clearinghouse automatically notify SDLAs when there are changes to a driver's record. Schneider suggested that law enforcement have access to the Clearinghouse. A commenter suggested that FMCSA enter into agreements to obtain DUI information from SDLAs. Driver Check asked whether Canadian licensing agencies would have access to the Clearinghouse.

Response. After careful consideration of these comments, FMCSA decided to require that SDLAs access Clearinghouse information prior to issuing CDLs. While 49 U.S.C. 31306a(h)(2) requires that FMCSA only provide SDLAs with Clearinghouse access, section 31311(a)(24) requires that SDLAs use that access prior to issuing or renewing a CDL. Accordingly, FMCSA amended proposed § 382.725(a) to *require* SDLAs to access a driver's information in the Clearinghouse in order to determine whether the driver is qualified to operate a CMV prior to issuing, renewing, upgrading, or transferring a CDL. FMCSA also made conforming changes in existing § 383.73 to implement section 31311(a)(24) and make clear that Clearinghouse access is mandatory prior to the SDLA taking action on a CDL. To ease the burden on States, FMCSA intends to integrate this function into the CDLIS pointer system, which connects the records of CDL holders in all 50 States and the District of Columbia. FMCSA will work closely with AAMVA, which administers CDLIS, to provide for the most efficient and least burdensome method of granting SDLAs access to the Clearinghouse.

The information in the Clearinghouse may have a direct impact on the ability of the individual to hold or obtain a CDL. If information available to an SDLA shows that a CDL applicant is not qualified to operate a CMV, that driver should not be issued a CDL. FMCSA will provide more detailed guidance on this subject in conjunction with its implementation of SDLA access to the Clearinghouse.

At this time, FMCSA will not pursue agreements with law enforcement agencies to obtain information on DUI convictions. That information is currently available from other sources and need not be duplicated in the Clearinghouse. Further, because the Clearinghouse is limited to drug and alcohol violations under parts 40 and 382, inclusion of other disqualifying

[3] *https://www.psp.fmcsa.dot.gov/psp/default.aspx.*

offenses under part 383 is not appropriate.

Finally, Canadian and Mexican licensing agencies will not have access to the Clearinghouse because Congress authorized access for only the SDLAs in the 50 States and the District of Columbia (49 U.S.C. 31306a(h)(2)). However, in accordance with its authority under section 31306a(b)(5), FMCSA intends to explore alternative ways in which information about drug and alcohol violations for CMV drivers licensed in Canada and Mexico can be made available to their respective licensing authorities and to U.S. law enforcement, including using the Foreign Convictions and Withdrawal Database under § 384.209(a)(2).

Penalties (§ 382.727)

Comment. FMCSA proposed that employers, employees, and service agents be subject to penalties for violating new part 382, subpart G. An individual commenter asked how MROs would be held accountable for reporting positive tests. Another commenter said this provision should be worded the same as § 382.507, with the addition of the word ''alleged.'' Southern Company said that alleged violators should be issued a notice of claim or violation allowing the alleged violator to contest the charge. That commenter also requested that penalties be reserved for egregious violations. WPCI asked what the penalty would be for an employer that does not comply with the requirements.

Response. Any employer, employee, or service agent, including an MRO, that does not comply with his or her responsibilities under part 382, subpart G, is subject to civil or criminal penalties under 49 U.S.C. 521(b)(2)(C). The employer, employee, or service agent may be issued a notice of claim or violation and afforded the opportunity to contest those charges in accordance with existing procedures in 49 CFR part 386. The type and severity of the penalty would depend on the specific circumstances surrounding the violation.

Regulatory Impact Analysis

Comment. In the RIA, FMCSA provided an explanation of the costs and benefits associated with the proposed rule. A number of commenters expressed concern about the cost to employers and the burden those costs would place on the motor carrier industry. Two commenters noted that the additional costs incurred by laboratories, MROs and CTPAs will be passed on to the employer, thereby further increasing the cost to employers.

Response. FMCSA recognizes that various entities interacting with the Clearinghouse will incur new or incremental costs of conducting business under the rule. FMCSA estimates these costs for the first entity that incurs the cost, as opposed to the entity that is ultimately responsible for paying for the cost. The RIA estimates the societal benefits, not the distributional benefits resulting from the avoidance of crashes.

Motor carriers will benefit from this rule in a variety of ways. For example, the Clearinghouse will automate the pre-employment drug and alcohol background investigation process, which will save motor carriers time and conserve resources. In addition, closing the loopholes that allow job-hoppers to evade the consequences of drug and alcohol violations will increase employers' confidence in the pre-employment screening process, allowing them to more easily identify drivers who are not eligible to drive. While these are not the only benefits that will accrue to employers, they are some of the more tangible immediate benefits that will offset the costs of compliance.

Comment. One commenter also noted that many benefits discussed in the RIA are only speculative while the costs are real and extremely burdensome for the passenger motor carrier industry, which is largely made up of small businesses.

Response. The Agency disagrees that the benefits discussed in the RIA are speculative. As discussed above, motor carriers will see real benefits in terms of fewer resources being required to conduct investigations related to drivers' drug and alcohol violations, an increase in the quality of drivers hired, and a reduction in the liability costs associated with unsafe drivers.

Comment. A commenter said that the costs associated with this proposal, combined with the costs associated with a recent NPRM concerning vehicle leasing regulations, impose significant administrative costs on passenger motor carriers, and requests the Agency consider less burdensome alternatives.

Response. FMCSA is sensitive to the cumulative costs of industry compliance with the Agency's regulations. In responding to comments received in response to the NPRM, FMCSA considered the burden placed on stakeholders and made changes to alleviate those burdens where possible. But the Clearinghouse and many of its individual components are mandated by statute; the Agency's ability to find less burdensome alternatives is constrained by these limitations.

Comment. Two commenters said that FMCSA's cost estimate did not include the cost of training for service agents. A commenter estimated that implementing program changes for service agents may require up to 800 hours over a 3 to 5 month period, and a minimum of a year may be required for the effective implementation of the final program data requirements to allow for advanced planning and budgeting.

Response. FMCSA included the cost of training for service agents in the Final RIA Section 6.6, titled ''Registration, Rule Familiarization, and Verification'', which identifies costs associated with familiarizing service agents with use of the Clearinghouse. As discussed above, there will be a 3-year compliance period, which we believe will give stakeholders adequate time to conduct necessary training and otherwise prepare for implementation of this final rule.

Comment. A commenter said that the Agency also did not consider the full impact of entering data and creating a new laboratory report and the commenter estimated that the additional data entry would require an additional 15 seconds per specimen keyed. Some commenters also noted that implementing a new CCF containing the additional information that would be required under this proposal could result in significant cost to laboratories and those responsible for manufacturing and shipping forms. These commenters estimated that system modifications would require 750–910 hours per DHHS-certified laboratory conducting testing for FMCSA regulated employers, and at least 8 to 10 months for development, testing, implementation, and training.

Response. FMCSA removed the laboratory reporting requirement from the final rule; accordingly, there are no longer any costs associated with this provision.

Comment. A commenter challenged FMCSA's estimate of 20 minutes for registration and rule familiarization, asserting that first-time registration alone will take more than 10 minutes. Further, the commenter asserted the Agency did not account for the annual costs of verifying information entered in the database.

Response. The Agency does not agree that 20 minutes underestimates the time required for registration and rule familiarization. Much of the registration process will be automated and only a minimum amount of information is required to complete registration. All the information necessary for registration—name, address, phone number, authorized employees, USDOT

Number, and professional qualifications—is otherwise required under FMCSA or DOT rules and should, therefore, be readily available. Moreover, FMCSA intends that the Clearinghouse will be designed to be interactive and user-friendly to maximize efficiencies. Finally, the cost of annual verification of authorized users was accounted for in the regulatory analysis.

Comment. A commenter said that FMCSA underestimated the number of drivers subject to the rule by 1 million and provided an estimate of 5,240,740 drivers (based on commenter's own data and available data from other sources, such as laboratory reports submitted to DOT).

Response. The commenter estimated the number of FMCSA drivers as the difference between the total number of tests reported by all modes, including FMCSA,[4] to DOT in 2012, pursuant to part 40, Appendix C and the commenters' estimates of number random and pre-employment tests at a 25 percent testing rate applied to each mode's (other than FMCSA) estimate of the total number of safety-sensitive employees. The number of blind tests and ''all other tests'' are assumed to be 1 percent and 2 percent of safety-sensitive employees, respectively are also subtracted from the total number of tests. There are a number of flaws in this methodology. The commenter equates the number of employees to the number of tests. This is an apple to oranges comparison. The commenter ignores that drivers may change employers during the year, or are ''multiple-employer drivers'' as defined in 49 CFR 390.5 and as a result may be tested multiple times per year. The analysis estimates pre-employment tests as if they are random, by applying a 25 percent random testing rate to each modes total number of safety-sensitive employees.

FMCSA relies on the statistics it publishes to determine the number of drivers affected by this rule.[5] Although the number of drivers in operation at any given time is subject to change due to a variety of reasons, FMCSA believes this is the best estimate of the number of drivers currently subject to FMCSA's drug and alcohol regulations. In the Regulatory Impact Analysis (RIA), FMCSA used its estimate of the number of CDL-holder to the cost of annual queries. All other costs and benefits are estimated using the results of FMCSA's Annual Drug and Alcohol Surveys.

Comment. Several commenters stated that the cost of the proposed rule was overstated in the RIA. Commenters said that costs associated with completing the return-to-duty process should not be attributed to the Clearinghouse, claiming that they are attributed to the return-to-duty process under 49 CFR part 40, not part 382.

Response. The Agency made the best estimate of costs based on available data, but concluded that it was better to err on the side of over-estimating rather than under-estimating costs. That said, we disagree that the return-to-duty costs should not be included in the total cost of the rule. Although the return-to-duty requirement arises out of the DOT-wide drug and alcohol regulations in 49 CFR part 40, the costs of completing the process are attributable to each DOT mode's individual drug and alcohol program. One effect of the Clearinghouse is that drivers will improve their compliance with the return-to-duty requirements. Instead of job-hopping, we expect that drivers with violations will either complete the return-to-duty process or exit the industry. Accordingly, we take into account the increased costs—and benefits—of this improved compliance.

Comment. One commenter suggested the estimated cost of $2.50 for limited annual queries is too high.

Response. FMCSA agrees that the query cost estimates in the RIA were conservatively high. As discussed above, the dollar amount for the fees will ultimately be determined in connection with a competitive bidding process. The Agency expects that the per-transaction cost, whether structured on a per query or subscription basis, will be significantly lower than estimated in the RIA. In the absence of reliable data, we chose to base our estimate on the only comparable information available: The PSP user fees. We recognize, as commenters have stated, that the volume of Clearinghouse transactions will greatly exceed the number of PSP transactions, creating efficiencies that should result in significantly lower user costs.

Comment. Another commenter questioned why a query would take 10 minutes, and suggested the Agency could reduce the burden by allowing large carriers to submit a batch list of drivers.

Response. We agree that there is the potential for further cost savings through batch processing of queries. Among the options the Agency plans to explore is providing employers the opportunity to conduct annual queries in batches. Nothing in the rule would foreclose that possibility. FMCSA will provide information to stakeholders on Clearinghouse functionality closer to the rule's compliance date.

Comment. A commenter stated that the labor rate and fringe rates used in Table 15 and subsequent tables in the RIA are not appropriate. According to the commenter, more than 80 percent of carriers have one to five power units. These carriers do not have office staff; a driver's wage should be used for these carriers. The commenter questioned whether the assumption in the RIA that larger carriers will assign a sensitive task to a very low level staff person is reasonable. In addition, a commenter contended that the fringe rate used in the RIA is too high because the Bureau of Labor Statistics (BLS) fringe rate includes costs (leave, overtime, etc.) that BLS also includes in its wage rates, which are based on gross pay. The commenter alleged that combining the two results in double counting, and many drivers do not receive many of the fringe benefits.

Response. We disagree that the labor rates are inappropriate for carriers operating five or fewer power units. In the Agency's experience, many small motor carriers use C/TPAs, which employ office staff to administer drug and alcohol testing programs. We anticipate that C/TPAs will continue to administer the programs, including Clearinghouse requirements.

In addition, we believe that the appropriate wage rates were used for developing query and test reporting transaction costs. The wage rate used to calculate the cost incurred by SAPs to report to the Clearinghouse results of return-to-duty progress is the BLS estimate of the hourly wage for Occupational and Safety Workers. The BLS hourly wage for heavy truck drivers was used to estimate driver consent costs. These rates are directly applicable to the individuals responsible for performing these tasks. The remaining cost estimates for registration, familiarization with the rule, pre-employment queries, designation of C/TPAs, and reporting of test results are based on the BLS wage rate for Bookkeeping, Accounting and Audit Clerks.

The Agency has no information indicating that administrative functions performed by employees of C/TPAs, MROs, SAPs, and other service agents require a higher level sensitivity for personal information. Medical service and health care providers performing similar functions in other industries

[4] The other modes are Pipeline and Hazardous Materials and Safety Administration, Federal Railroad Administration, Federal Transit Administration, Federal Aviation Administration and the U.S. Coast Guard.

[5] *http://ntl.bts.gov/lib/54000/54800/54841/2015 Pocket-Guide-March-30-2015-ForWebPublishing-508c.pdf.*

have recordkeeping and reporting requirements comparable to the testing and reporting requirements of this rule. The commenter did not offer any information in support of the proposition that individuals responsible for administrative tasks associated with the rule fall under a BLS occupation other than for Bookkeeping, Accounting and Audit Clerks. Nevertheless, in the final Regulatory Impact Analysis, a wage rate of $33.27 per hour was used to estimate the cost for SAPs to report driver information to the Clearinghouse following an initial assessment. It is the median wage rate estimated by the BLS for Occupational Health and Safety Specialists.[6] This occupational description is more closely related to health care professionals whose responsibilities include reporting highly sensitive personal medical information.

Finally, the hourly wage rate and fringe benefits rate do not result in double counting of employment costs. Fringe benefits include paid leave, supplemental pay, insurance (health and life), retirement and savings, and legally required benefits (*i.e.,* Social Security and Medicare).

Comment. A commenter said the estimated benefits of the proposed rule were understated in the RIA. While the RIA mentioned benefits to drivers such as ''improved health, quality of life and increased life expectancy,'' these benefits were not included in the estimate. The commenter noted other benefits resulting from the rulemaking were not mentioned, including decreased drug and alcohol abuse by drivers, increased compliance with the regulations by employers, and the overall program benefits associated with improved drug and alcohol testing data. The commenter suggested expanding the discussion of non-quantifiable benefits.

Response. We agree with the commenter that there are residual benefits from the proposed rule. However, they are not ''direct'' primary benefits, but rather secondary or tertiary ones. Furthermore, since they are largely unquantifiable, such benefits are mentioned, but do not warrant extensive analysis in the RIA.

Changes From the Notice of Proposed Rulemaking

This final rule makes the following changes to the NPRM in response to comments.

In § 382.107, we removed the proposed definition of ''positive alcohol test.'' We eliminated proposed § 382.404, which would have required laboratories to report summary statistics on drug tests. As a result of that change, we will not collect employers' USDOT Numbers on the ATF and CCF and, accordingly, removed those proposed requirements from § 382.123. Section 382.705 now requires that employers report all violations of FMCSA's drug and alcohol testing program that are identified in part 382, subpart B, including violations based on any type of actual knowledge. We updated the text in other sections of the final rule to reflect these changes.

In § 382.413, we extended the drug and alcohol background investigation requirement to cover the previous 3 years, consistent with the requirement in § 391.23. In both §§ 382.413 and 391.23, we added provisions that require employers to query the Clearinghouse in lieu of conducting the background investigations required under §§ 40.25 and 391.23, as the query satisfies these requirements for employers subject to § 382.701(a), with specified exceptions. We added language to § 382.415 to make it clear that a driver need not report a violation to the employer that administered the test.

In § 382.701(a) and (b), we added language to make it more clear which type of query, full or limited, an employer is required to conduct, as well as a clearer explanation of the difference between full and limited queries. In paragraph (c) of that section we extended the employer notification period from 7 to 30 days after a Clearinghouse query. In paragraph (e), we clarified that, 3 years after the compliance date of this final rule, an employer who maintains a valid registration on the Clearinghouse system meets the recordkeeping requirement.

In § 382.705(a), we changed an MRO's reporting period to 2 business days. In paragraph (b), we changed the employer's reporting period to the close of the third business day. We added language distinguishing between the types of refusals employers and MROs must report. We also added the requirement that employers report all drug and alcohol violations based on an employer's actual knowledge and established evidentiary requirements for those reports. New paragraph (b)(3) identifies documentation requirements for the reporting of ''failure to appear'' test refusals. New paragraph (b)(6) requires owner-operators who employ themselves as drivers to designate a C/TPA to comply with all employer related reporting requirements with respect to the individual's drug and alcohol use. We provided new language for paragraph (c) that makes clear that C/TPAs are subject to the reporting requirements of the employers on whose behalf they report. Paragraph (c) also makes clear that the employer remains responsible for compliance regardless of whether it uses a C/TPA. We simplified the language in the introductory paragraph of paragraph (d) and amended paragraph (d)(2) to make clear that a SAP has until the close of the following business day to report his or her required information to the Clearinghouse. In paragraph (e), we expanded the responsibility for reporting information to the Clearinghouse truthfully and accurately by prohibiting anyone from reporting information he or she should know is false or inaccurate.

In § 382.711(b), we added the requirement that an employer update its service agent designation within 10 days of making a change. In paragraph (d), we extended the rules governing C/TPA registration to all service agents. We updated the text throughout the final rule to conform to this change.

In § 382.715, we updated the language to make clear that an employer must authorize a C/TPA or other service agent before they can enter any information into the Clearinghouse on the employer's behalf. In response to comments, FMCSA added paragraph (b) to make clear that it is the employee, not the employer, who designates a SAP to enter information about the employee.

We made changes to the procedures in § 382.717 for correcting information in the Clearinghouse. Any request for correction must be addressed to FMCSA's Drug and Alcohol Program Manager and must include the words ''Administrative Review of Drug and Alcohol Clearinghouse Decision.'' We shortened FMCSA's period for expedited treatment of a request for data correction from 30 days to 14 days and added a provision that requires the Agency to notify employers that previously accessed information was subsequently corrected or removed. We re-ordered the paragraphs, so that paragraph (a) clearly states that this section may only be used for data correction, with three exceptions related to a DUI citation that did not result in a conviction and reporting violations based on an employer's actual knowledge and a driver's refusal to appear for a test.

In § 382.725, we clarified that an SDLA's access to the Clearinghouse is solely for the purpose of determining whether the driver is qualified to operate a CMV. Finally, we amended part 383 to implement the statutory

[6] Bureau of Labor Statistics, ''Occupational Employment and Wages,'' May 2014, *http://www.bls.gov/oes/current/oes299011.htm#ind.*

requirement that SDLAs query the Clearinghouse in connection with the issuance, upgrade, transfer, or renewal of a CDL.

In § 383.73, we made changes to reflect the new requirement that SDLAs check the Clearinghouse before issuing, renewing, transferring or upgrading a CDL.

In § 391.23, we made changes to require employers subject to § 382.701(a) to use the Clearinghouse to conduct drug and alcohol background investigations.

VI. Section-by-Section Explanation of Changes From the Notice of Proposed Rulemaking

FMCSA amends parts 382, 383, 384, and 391 in the following ways.

A. Part 382

Section 382.103

In § 382.103, ''Applicability,'' this final rule makes clear that the requirements of part 382 apply to service agents; otherwise this section remains as proposed.

Section 382.107

In § 382.107, this final rule includes definitions of ''Clearinghouse'' and ''Negative return-to-duty test,'' which remain as proposed. ''Clearinghouse'' means the database implemented by this final rule that contains records of drug and alcohol program violations. A ''negative return-to-duty test'' is a negative drug test or an alcohol test showing an alcohol concentration of less than 0.02.

In response to comments, FMCSA removed the definition of ''positive alcohol test'' for the reasons explained in this final rule's response to comments.

Section 382.123

The Agency proposed to amend this section to require anyone filling out an ATF or CCF to record the employee's CDL number and State of issuance on the form. That requirement remains as proposed. FMCSA also proposed to require that the person filling out the form record the USDOT Number or EIN of the employer requesting the test. FMCSA requested that information so that laboratories could produce annual reports summarizing drug testing activity for specific employers. As discussed in the response to comments on this matter, the Agency eliminated the annual summary requirement. Without the annual summary requirement, it is not necessary to record USDOT Numbers or EINs on the ATF or CCF.

Section 382.217

FMCSA proposed a new § 382.217 that would prohibit an employer from allowing a driver to operate a CMV if the Clearinghouse has a record that shows that the driver has not successfully completed the return-to-duty process required by 49 CFR 40.305. The core function of this section remains as proposed, with several changes to conform to updates in other sections of the rule. The first change removes reference to a ''positive alcohol test'' and replaces it with the specific alcohol test result that constitutes a violation (0.04 BAC or higher). The remaining several changes update § 382.217 to prohibit an employer from allowing a driver to operate a CMV if the Clearinghouse shows any violation of part 382, subpart B, including violations based on actual knowledge of drug or alcohol use. This conforms to changes in § 382.701, discussed in the relevant response to comments section of this rule.

Section 382.401

Section 382.401, as proposed, was intended to require employers to keep records of all reportable drug and alcohol violations for a minimum of 5 years. As discussed in the response to comments on this issue, the proposed changes caused some confusion. Accordingly, this final rule makes clear that employers are required to keep records of all employee drug and alcohol violations for a minimum of 5 years.

Section 382.405

The changes to § 382.405 remain as proposed. Section 382.405(d) requires service agents who maintain records for an employer to make copies of all DOT drug and alcohol test results available to the Secretary, any DOT agency, or any State or local officials with regulatory authority over the employer. Paragraph (e) authorizes FMCSA to provide the NTSB access to a CDL driver's records in the Clearinghouse when that driver is involved in a crash under investigation by the NTSB and requires employers to disclose information related to the administration of post-accident testing following the crash under investigation.

Section 382.409

The changes to § 382.409 remain as proposed. The changes add the Clearinghouse to the list of entities to which an MRO or C/TPA is authorized to release a driver's drug test results. They also amend the title of § 382.409 to add the words ''or consortium/third party administrator'' so that it reads ''Medical review officer or consortium/third party administrator record retention for controlled substances'' to reflect more accurately the contents of the section.

Section 382.413

In response to comments, this final rule includes changes to § 382.413. That section previously required employers to request drug and alcohol testing information from an employee's employers during the preceding 2 years. First, we changed the scope of § 382.413 to cover drug and alcohol testing information during the preceding 3 years. This change reconciles § 382.413 with § 391.23(e), which currently requires employers to gather information going back 3 years. Second, § 382.413 now provides that an employer who queries the Clearinghouse does not have to make an additional request to previous FMCSA-regulated employers for this information once the Clearinghouse has been in effect for 3 years. In other words, querying the Clearinghouse will satisfy the § 382.413 background investigation requirement—but only with respect to FMCSA-regulated employers. Employers must continue to request information from previous employers if the employee was subject to drug and alcohol testing under an employer regulated by one of the other DOT modes.

For example, an FMCSA-regulated employer would have to request drug and alcohol information about employees who were subject to testing under Federal Railroad Administration, Federal Aviation Administration, or other modes' regulations. If an employee violates the drug or alcohol testing program with an employer regulated by another mode, that person may not perform safety-sensitive functions for motor carrier employers until he or she successfully complies with the part 40 return-to-duty process. Because records of violations with non-FMCSA-regulated employers will not be reported to the Clearinghouse, employers must continue to request those records directly from the previous employers.

In addition, we added an exception pertaining to drivers who are subject to follow-up testing who have not completed their follow-up testing plan. In such cases, the gaining employer is required to request that information from the previous employer since the number, type, and duration of follow-up tests will not be reported to the Clearinghouse.

Section 382.415

Section 382.415 remains largely as proposed. That section requires an employee to notify all current employers when he or she violates the drug and alcohol rules in part 382. FMCSA intends that employees notify all current employers, aside from the employer that administered the test. The purpose of this section is to place an obligation on an employee with multiple employers to notify all other employers when he or she has a drug or alcohol violation with one of them. As discussed above, there was some confusion about how this section should work. Accordingly, the Agency amended the proposal to make clear that the employee need not notify the employer that ordered the test or documented the violation.

Section 382.601

Section 382.601 remains largely as proposed. That section requires an employer to promulgate a policy on the misuse of drugs and alcohol and to provide educational materials on the subject to its new and current employees. This rule requires that materials required under this section put employees on notice that information on drug and alcohol violations will be reported to the Clearinghouse. FMCSA made several changes to the proposal to conform to other changes in this final rule. The first change removes reference to a ''positive alcohol test'' and replaces it with the specific result that constitutes a violation (0.04 BAC or higher). The remaining changes update the type of violations reportable to the Clearinghouse to include all violations in part 382, subpart B, including those based on actual knowledge of drug or alcohol use.

B. Part 382, Subpart G (§§ 382.701 Through 382.727)

Section 382.701

This section sets out the basic requirements for querying the Clearinghouse. Paragraph (a) requires employers to conduct a pre-employment query on all prospective drivers to determine if they have drug or alcohol program violations. We made two organizational changes to paragraph (a). First, we added a paragraph title, ''Pre-employment query required'' to alert the reader to the subject of the paragraph. Second, to provide better organization for the reader, we separated paragraph (a) into two subparagraphs. In paragraph (a)(1), we establish the employer's requirement to conduct a pre-employment query and identify the different types of drug and alcohol violations that will be searched in the query. We updated the language in that paragraph to remove reference to a positive alcohol test, as discussed above. Also as discussed above, we updated the language in this section to include all of the prohibitions in part 382, subpart B, that constitute violations of FMCSA's drug and alcohol program, including all violations based on an employer's actual knowledge, as defined at § 382.107.

In paragraph (a)(2), we added new language to state explicitly that an employer must have a prospective employee's specific consent for a full release of information before it can conduct a pre-employment query. We refer to this type of query as a full query, meaning that the consent obtained grants the employer access to information about that driver. This is distinguished from a limited query, described in § 382.701(b)(2), which tells the employer whether there is any information in the Clearinghouse about that driver, but does not provide access to the information without further consent.

For paragraph (b), we added a title, ''Annual query required,'' and separated the paragraph into three subparagraphs for organizational reasons. Paragraph (b)(1) requires employers to conduct a Clearinghouse query for all employees at least once a year to find out whether there is any information in the Clearinghouse about those employees. Paragraph (b)(2) explains that an employer may, but is not required, to conduct a full query. The employer may choose, instead, to conduct a limited query, which alerts the employer to whether information exists in the Clearinghouse about a particular employee, but does not release the substance of the information without additional specific consent from the employee. Paragraph (b)(3) tells the employer that if it conducts a limited query and the Clearinghouse reports back that it contains information about a particular employee, the employer must conduct a full query within 24 hours to determine whether that information shows that the employee is prohibited from performing safety-sensitive functions. Once 24 hours pass, the employer may not allow the employee to perform safety-sensitive functions until it has completed the full query and the results show that the driver does not have any violations prohibiting him or her from performing safety-sensitive functions. We added language making this last point more clear.

As proposed, paragraph (c) provided that the Clearinghouse would notify employers if new information appeared in the Clearinghouse within 7 days of conducting a query. We include two changes to this paragraph in this final rule. First, similar to changes made to paragraphs (a) and (b), FMCSA added the following title for organizational purposes: ''Employer notification.'' Second, as discussed in the response to comments on this matter, FMCSA extended the new information notification period to 30 days.

Paragraph (d) prohibits an employer from allowing an employee to drive if its Clearinghouse query shows that the employee has committed one of the part 382, subpart B, drug and alcohol violations without completing the return-to-duty process. We made two changes to this paragraph as a part of this final rule. First, like changes we made in the preceding paragraphs, we added a title for organizational purposes: ''Prohibition.'' Second, we updated the language in this section to include all of the prohibitions in part 382, subpart B, that constitute violations of FMCSA's drug and alcohol program, including those based on an employer's actual knowledge.

Paragraph (e) remains substantively as proposed. It requires employers to maintain records of all Clearinghouse queries. FMCSA amended this section to clarify that the employer can maintain those records on the Clearinghouse system so long as its Clearinghouse registration is valid. Regardless, nothing prohibits an employer from maintaining the records as a part of its own recordkeeping system. FMCSA made only one change to proposed paragraph (e): It now includes a title, ''Recordkeeping required,'' for organizational purposes.

Section 382.703

Section 382.703 remains largely as proposed. This section provides that no employer may obtain information about an individual from the Clearinghouse without that individual's express consent. It also provides that an employee cannot perform safety-sensitive functions if he or she refuses to give this consent. We updated the language in this section to make clear that the employee grants consent for the employer to view information about all of the driver's part 382, subpart B drug and alcohol violations, including those based on the employer's actual knowledge, as well as return-to-duty information. We also make clear, in new paragraph (d), that the driver must provide electronic consent to FMCSA before the Agency releases

Clearinghouse records to the employer. Paragraph (d), as it appeared in the NPRM, pertained to a driver's consent for FMCSA to release information under § 382.701(c). The text of that paragraph is unchanged and is now new paragraph (e).

Section 382.705

Section 382.705 describes who is responsible for reporting information to the Clearinghouse. This paragraph contains several key changes and additions. Paragraph (a) lays out MRO reporting responsibilities, which include reporting verified positive, adulterated, or substituted test results and those results the MRO determines to be a refusal. This paragraph explains what information the MRO will report, including information identifying the driver and test results. The MRO is required to report this information within 2 business days of reaching a determination. But if the MRO subsequently makes a change to its determination, it must report that change by the close of the next business day.

In response to comments, the Agency changed the initial MRO reporting period from 1 day to 2 days. Second, FMCSA simplified the instructions for recording a driver's CDL number and State of issuance. Finally, the Agency eliminated the requirement that MROs report the requesting employer's USDOT Number or EIN. As discussed above, FMCSA will no longer be collecting USDOT Numbers or EINs.

Paragraph (b) lays out employer responsibilities for reporting an alcohol confirmation test with a concentration of 0.04 or higher, alcohol refusals, drug refusals that do not involve an MRO determination, negative return-to-duty tests, and successful completion of follow-up tests. The NPRM required the employer to report this information by the close of business the day after having received notice of the determination. In order to accommodate the employer's need to comply with new documentation requirements for reporting certain violations, described below, we changed the reporting period to the end of the third business day following the date on which the employer obtained the violation information.

When an employer has actual knowledge, as defined at § 382.107, that an employee has used alcohol on duty, before duty, or prior to taking a post-accident test, or that an employee used drugs in violation of FMCSA's drug and alcohol regulations, the employer must report that use to the Clearinghouse. The employer must report *all* instances of actual knowledge of prohibited drug or alcohol use by the close of the third business day following the day the employer became aware of the use. As discussed in the response to comments, paragraph (b) requires the employer to report detailed information on its knowledge of the drug or alcohol use and further requires the employer to provide evidence to substantiate the employee's violation, and to demonstrate that this evidence was provided to the employee. No employer may report actual knowledge of drug or alcohol use after the close of the third business day following the day the employer became aware of the use.

Paragraph (b)(3) also identifies employer responsibilities for reporting ''failure to appear'' test refusals to the Clearinghouse. As explained in the response to comments, paragraph (b) identifies the types of documentation that employers, and the C/TPAs' designated as their service agents, must submit each time they report a ''failure to appear'' refusal and requires the employer to demonstrate that the documentation was provided to the employee.

New paragraph (b)(6) requires owner-operators who employ themselves as drivers to designate a C/TPA to comply with all employer-related reporting requirements with respect to the individual's drug and alcohol use.

Paragraph (c) lays out a C/TPA's Clearinghouse reporting responsibilities. In the NPRM, we provided a detailed list of all of the information an employer could ask a C/TPA to report. The comments we received indicated, however, that this approach caused confusion about how a C/TPA reports to the Clearinghouse. To eliminate this confusion, this final rule simply states that when a C/TPA acts on behalf of an employer, that C/TPA stands in the shoes of the employer with respect to all of the rights and responsibilities the employer delegated to it. Accordingly, a properly authorized C/TPA can fulfill any of an employer's responsibilities under paragraph (b). That said, an employer does not discharge its responsibilities under paragraph (b) when it delegates compliance to a C/TPA; the employer remains responsible for compliance with paragraph (b) regardless of whom it assigns to interact with the Clearinghouse on its behalf.

Paragraph (d) requires a SAP to report to the Clearinghouse when he or she conducts an initial assessment of an employee and when an employee completes the return-to-duty process. The NPRM proposed that the SAP make these reports within 1 business day following the day of the event or determination that triggered the reporting obligation. After consideration of comments, we changed the reporting period to require SAPs to complete their reporting requirements by the close of the business day after the event that triggered their reporting responsibility. In addition, as discussed above in the response to comments, we no longer require that the SAP report the follow-up testing plan to the Clearinghouse. SAPs will continue to provide that information directly to employers in accordance with 49 CFR 40.311.

Paragraph (e) obligates anyone reporting to the Clearinghouse to do so truthfully and accurately. As discussed in the Response to Comments section, we changed this final rule to prohibit anyone from reporting anything he or she knows or *should know* to be untruthful or inaccurate.

Section 382.707

Section 382.707 remains as proposed. This section requires FMCSA to notify a driver when information about that driver is entered in, revised, or removed from the Clearinghouse. It also requires FMCSA to notify a driver when information from the Clearinghouse is released to an employer and to state the reason for the release. The Agency will send a letter by U.S. Mail to the address on record with the SDLA that issued the driver's CDL unless drivers provide an alternate address or method of communication, such as electronic mail (email).

Section 382.709

Section 382.709 remains essentially as proposed. This section grants a driver the right to review information in the Clearinghouse about himself or herself. This section now makes clear that, in order to access such information, a driver must register with the Clearinghouse.

Section 382.711

Under § 382.711(a), all users must register with the Clearinghouse before querying or reporting any information. In the proposal, this paragraph stated that only employers and their service agents had to register. This language inadvertently excluded service agents that work for employees, *i.e.* SAPs, who also must register. We corrected this oversight by changing the language in this section to provide that each employer and each service agent must register with the Clearinghouse.

Paragraph (b) explains what an employer must do to register with the Clearinghouse. The employer must provide contact information, USDOT

Number, names of authorized users, and authorizations for service agents, if the employer uses them. The employer must keep its list of authorized users current, but at a minimum, will be required to re-authorize them annually. With respect to service agents, FMCSA added the requirement that employers must update their designations within 10 days of a change.

Paragraph (b) is different from the proposal in three ways. First, with respect to the contact information an employer must provide, we removed reference to the EIN. FMCSA will not allow a motor carrier to use an EIN in lieu of a USDOT Number for identification purposes. All motor carriers must use their USDOT Numbers to register. If an employer does not have a USDOT Number, it will leave this field blank. Second, we updated the language in paragraph (b)(3) to include service agents (other than C/TPAs) as entities that can act on an employer's behalf for querying and reporting to the Clearinghouse. Finally, to eliminate any confusion about an employer's obligation to update service agent designations, we included the 10-day period for reporting a change in service agent designation.

Paragraph (c) is the same as was proposed in the NPRM. It explains what MROs and SAPs must do to register with the Clearinghouse. MROs and SAPs must provide contact information, certification that the MRO or SAP meets the minimum requirements in part 40 for MROs or SAPs, and documentation that shows that the MRO or SAP meets those minimum qualifications or training requirements. For example, an MRO would be required to provide documentation showing that he or she is a licensed physician, as required by § 40.121(a), and has completed the required training or re-training requirements in § 40.121(c). He or she would also be required to certify that he or she has the basic knowledge and experience related to drug testing and DOT regulations, as required by § 40.121(b). A SAP would be required to provide documentation showing that he or she is licensed or certified to provide substance abuse counseling in accordance with the requirements of § 40.281(a), has completed the qualification training in § 40.281(c), and has completed the continuing education requirements in § 40.281(d). He or she would also be required to certify that he or she has the basic knowledge and experience related to substance abuse diagnosis and treatment, SAP functions, and DOT drug and alcohol testing regulations required by § 40.281(b).

Paragraph (d) remains largely as proposed. It explains what C/TPAs and other service agents must do to register with the Clearinghouse. They must provide contact information and names of authorized users. Similar to employer requirements in paragraph (b), C/TPAs and other service agents must verify their authorized users annually. The Agency made some changes to the text to make clear that these registration requirements apply to C/TPAs as well as other service agents acting on an employer's behalf.

Section 382.713

Section 382.713 remains as proposed. It explains the terms under which Clearinghouse registrations remain active, or are revoked or cancelled. The initial Clearinghouse registration term is 5 years unless the Agency takes action to revoke or cancel it. The Agency will cancel any registrant that does not use the Clearinghouse for 2 years. The Agency also has the authority to revoke the Clearinghouse registration of anyone who does not comply with Clearinghouse regulations.

Section 382.715

Section 382.715(a) requires employers to authorize C/TPAs or other service agents to access the Clearinghouse on their behalf before the C/TPA or other service agent can enter information on their behalf into the Clearinghouse. Similarly, paragraph (b) requires employees to authorize a SAP before the SAP can enter information about the employee's return-to-duty process.

The final rule differs from the proposal in several respects. Originally, this section had only one paragraph that required employers to designate C/TPAs acting on their behalf. Changes implemented in this final rule require employers to designate any other service agents authorized to enter information on the employer's behalf as well. That original paragraph is now paragraph (a). In response to comments, FMCSA added paragraph (b) to make clear that it is the employee, not the employer, who designates a SAP to enter information about the employee.

Section 382.717

Section 382.717 explains the procedures for a driver to request that FMCSA change information reported incorrectly to the Clearinghouse. We reordered the paragraphs in the final rule to highlight that the procedures in this section may be used primarily to request data correction. Accordingly, paragraph (a), which was proposed as paragraph (c), explains that no driver may use the procedures in § 382.717 to challenge a particular test result. The procedures are for challenging information that was not accurately reported. Paragraph (a) contains two exceptions related to reporting violations based on an employer's actual knowledge of drug or alcohol use and one exception related to reporting a driver's failure to appear for a test. The first remains as proposed: A driver may petition the Agency to remove a violation when it is based on the driver receiving a citation for DUI in a CMV and the citation does not result in a conviction. The second is new: A driver may petition the Agency to remove a report of a violation that does not meet the minimum reporting requirements, including evidentiary requirements, provided in § 382.705(b)(5). The third exception is also new: A driver may petition for removal of a report of a ''failure to appear'' refusal that does not meet the reporting requirements in new § 382.705(b)(3).

Paragraph (b), which was proposed as paragraph (a), provides that the petition must include information identifying the driver and the information he or she wants to be corrected, the reasons he or she believes the information is inaccurate, and evidence supporting his or her challenge. As noted above, we removed the proposed requirement that petitions be submitted within 18 months of the date the allegedly incorrect information was reported to the Clearinghouse.

The address for submitting the petition is in paragraph (c), which was originally proposed as paragraph (b). FMCSA added ''Attention: Drug and Alcohol Program Manager'' to the address as a part of this final rule. In addition, we added the option for electronic submission of petitions through the Clearinghouse system; the precise means by which electronic submission is accomplished will be addressed during the implementation process. In order to reflect the addition of an electronic submittal option, we changed the title of the paragraph from ''Address'' to ''Submission of Petition''.

Paragraph (d) provides that FMCSA will inform the driver of its decision to remove, retain, or correct the driver's information in the Clearinghouse and will explain the basis for its decision. The Agency reduced, from 90 days (as proposed) to 45 days, the time in which it will respond to petitions submitted under this section. We believe that the electronic submission of petitions will allow us to process those requests more efficiently.

Paragraph (e) provides an option for drivers to request expedited treatment. A driver may request expedited

treatment only if the driver is prohibited from performing safety-sensitive functions because of the information incorrectly reported under paragraph (a)(1) or (2). If the request is granted, FMCSA will subsequently issue a decision within 14 days of receiving a complete petition. Submission of a petition for correction does not authorize a driver to resume safety-sensitive functions or otherwise stay the effective date of the driver's prohibition on performing safety-sensitive functions. Paragraph (e) remains as proposed with one exception. This final rule shortens the time for FMCSA to consider an expedited request from 30 to 14 days. The reasons for this change are discussed in the response to comments discussion.

Paragraph (f) explains that a driver may seek administrative review if FMCSA does not grant his or her petition for correction. The driver must submit a request, with the words ''Administrative Review of Drug and Alcohol Clearinghouse Decision'' conspicuously noted at the top of the document, to FMCSA's Associate Administrator for Enforcement. The request must explain the basis for administrative review and provide all supporting explanations and documents. FMCSA will issue a decision within 30 days and that decision will constitute the final agency order on the matter. Paragraph (f) remains largely as proposed, except that this final rule added the requirement for prominent display of ''Administrative Review of Drug and Alcohol Clearinghouse Decision'' at the top of the request and the option to submit the request electronically through the Clearinghouse. We reduced the time in which the Agency will complete its administrative review from 60 days (as proposed) to 30 days because we believe the electronic submission of requests for review will allow for a speedier resolution. The 30-day time frame is also consistent with the administrative review provisions of the Privacy Act.

In response to comments, we added a new paragraph (g). That paragraph explains that after FMCSA corrects or removes information in response to a petition, it will notify any employer that viewed the incorrect information that a correction has been made.

Section 382.719

Under § 382.719, the Clearinghouse will stop releasing information about a driver's drug and alcohol violations under the following conditions: (1) The SAP reports all of the required information about the initial assessment and driver completion of the return-to-duty process; (2) the employer reports that the driver had a negative return-to-duty test; (3) the employer reports that the driver completed all of the prescribed follow-up tests; and (4) 5 years have passed since the date of the violation determination, which is the date the violation was submitted to the Clearinghouse. Unless all of these conditions are satisfied, information in the Clearinghouse will remain available to employers with authorized access. As previously noted, exceptions apply to records otherwise removed from the Clearinghouse, such as a DUI citation not resulting in a conviction or records removed in accordance with § 382.717. Once these conditions are satisfied and the information is removed, FMCSA will maintain an archived record of this information—not available to employers—for internal use such as research into the effectiveness of the drug and alcohol program, auditing for compliance with this rule, and identifying non-compliant employers or employees for enforcement action.

This final rule differs from the proposal in one critical aspect: How long the Clearinghouse will make records available to employers before moving them to the archives. In the NPRM, FMCSA announced a dual proposal concerning the searchable records retention period. Based on the language of MAP–21, the Agency concluded that there was a basis for making the minimum period for which employers could search records either 3 or 5 years. After considering comments, we conclude that the statutory provisions in MAP–21, as well as over-arching safety considerations, compel the Agency to implement the 5-year retention period. A full discussion of the Agency's analysis is in the response to comments.

Section 382.721

Section 382.721 remains as proposed. It authorizes FMCSA to collect fees from entities that are required to query the Clearinghouse. The Agency is prohibited, however, from collecting fees from drivers accessing their own records.

Section 382.723

Section 382.723 remains as proposed. It prohibits unauthorized access to the Clearinghouse, inaccurate or misleading reporting to the Clearinghouse, and unauthorized disclosure of information obtained from the Clearinghouse. Employers are limited to using information from the Clearinghouse for determining whether a driver is prohibited from operating a CMV. And employers may not divulge any information to anyone not directly involved in that determination. Anyone who violates the requirements of this section is subject to the civil and criminal penalties in § 382.507. This section would not prohibit FMCSA from accessing information in the Clearinghouse for research, auditing, or enforcement purposes. For example, FMCSA could use the information in the database to identify trends in testing data that could help the Agency focus its oversight activities.

Section 382.725

Section 382.725 requires each State chief commercial driver's license official to obtain information in the Clearinghouse about an applicant for a CDL for the purpose of determining whether that applicant is qualified to operate a CMV. The applicant is not required to grant prior consent; an applicant is deemed to have granted consent by virtue of applying for a CDL. The chief commercial driver's license officials are required to protect the privacy and confidentiality of the information they receive. Failure to comply will result in the official losing his or her right of access.

As proposed, this section authorized, but did not require, States to access the Clearinghouse. As discussed in the response to comments, section 31306a(h)(2) makes access permissive, but MAP–21 amendments to section 31311(a) make it mandatory. To implement the amendments to section 31311(a), this final rule will require that States query the Clearinghouse to determine whether an applicant is qualified under FMCSA's regulations to operate a CMV.

FMCSA is aware that some States have licensing standards that prohibit applicants from obtaining CDLs if they failed or refused a drug or alcohol test, or have other drug and alcohol program violations. This rule also will permit those States to use the information in the driver's record, obtained from the Clearinghouse, to determine whether the individual is qualified to operate a commercial motor vehicle in accordance with applicable State laws and regulations. This implements the permissive access requirements of section 31306a(h)(2) and reconciles the two different types of access referenced in that section and the amendments to section 31311(a).

Section 382.727

Section 382.727 remains as proposed. It explains that there are civil and criminal penalties for violations of the Clearinghouse regulations. As stated above, 49 CFR 382.507 already

establishes civil and criminal liability for employers and drivers who violate any provision of 49 CFR part 382; however, § 382.727 extends civil and criminal liability to all employees, medical review officers, and service agents for violations of 49 CFR part 382, subpart G.

C. Part 383

Section 383.73

This final rule includes changes to the CDL standards in part 383 that were not proposed in the NPRM. As discussed above and in the response to comments, these changes implement the statutory requirement that SDLAs obtain driver information from the Clearinghouse before issuing a CDL. Accordingly, new paragraphs (b)(10), (c)(10), (d)(9), and (e)(8) require the States to query the Clearinghouse before issuing a new, renewed, upgraded, or transferred CDL. FMCSA will work with the States to provide for an automatic, electronic query system to minimize costs and maximize efficiencies.

D. Part 384

Section 384.235

This final rule includes a conforming change to part 384. FMCSA recognizes the need to hold States accountable to request information from the Clearinghouse in accordance with the new changes to § 383.73.

E. Part 391

Section 391.23

This final rule includes changes to § 391.23(e) and (f) that were not proposed in the NPRM. Section 391.23(e) requires employers to investigate a prospective employee's drug and alcohol compliance history during the preceding 3 years. Section 391.23(f) prohibits employers from allowing a driver to operate a CMV if he or she refuses to grant consent for the release of his or her information. As discussed above and in the response to comments, section 31306a(f)(3) requires employers to use the Clearinghouse to conduct this background investigation. Once the Clearinghouse has been in operation for 3 years, any pre-employment query will provide the employee's 3-year compliance history. To implement the requirement in section 31306a(f)(3) and to avoid redundant searches and investigations, the Agency amended § 391.23(e) to state that an employer subject to § 382.701(a) must query the Clearinghouse, after it has been in operation for 3 years, to satisfy the drug and alcohol background investigation requirement. Similarly, the Agency amended § 391.23(f) to prohibit an employer from allowing a driver to operate a CMV if he or she refuses to grant consent for the query.

As explained in § 382.413, however, employers must continue to request information from previous employers if the employee was subject to drug and alcohol testing under an employer regulated by one of the other DOT modes. For employees subject to follow-up testing who have not completed their follow-up testing plan prescribed by the SAP, gaining employers must continue to request the follow-up plan from the previous employer because that information will not be reported to the Clearinghouse.

VII. Regulatory Analyses and Notices

Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563 (Improving Regulation and Regulatory Review)

FMCSA has determined that this rulemaking is an economically significant regulatory action under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). It also is significant under Department of Transportation regulatory policies and procedures because the economic costs and benefits of the rule exceed the $100 million annual threshold and because of the substantial congressional and public interest concerning the crash risks associated with CMV drivers operating while under the influence of drugs or alcohol. FMCSA has prepared a Regulatory Impact Assessment (RIA) of the benefits and costs of the rule. The summary of the RIA follows.

RIA Estimates of Benefits and Costs

In the Initial RIA, the Agency estimated the annual benefit of the proposed rule at $187 million and the annual cost at $186 million. The present value of the proposed rule was $9 million at a 7 percent discount rate. The Final RIA estimates the annual benefit of the final rule at $196 million and the annual cost at $154 million. The present value of the final rule is estimated at $42 million at a 7 percent discount rate.

The principal factor causing the reduction in costs is the analytical change necessary to account for the recent program concerning the testing rate for annual random drug tests. Effective January 1, 2016, the random drug testing rate is now 25 percent of drivers employed by a carrier, as opposed to 50 percent. This change was made pursuant to 49 CFR 382.305, and is unrelated to the Clearinghouse or the final rule. The industry has been in operation for less than a year at the lower testing rate. Therefore, no drug survey data is available that indicates that the random positive drug test rate has, or will, materially diverge from the three-year average of positive test rates used to estimate the number of positive random drug tests for the forecast period. This change reduces the estimate of the number of annual random positive drug tests from 28,000 in the Initial Regulatory Impact Analysis to 10,000 in the Final Regulatory Impact Analysis. The principal effect of this change is a reduction in return-to-duty costs from the $101 million estimated in the Initial Regulatory Impact Analysis to $56 million. The final analysis also includes updates of drug and alcohol survey data through 2013 and crash statistic. These changes had a modest impact on estimated benefits and estimated costs other than return-to-duty costs.

All employers subject to the drug and alcohol testing regulations are required to query the Clearinghouse (1) on an annual basis to determine whether their employees have drug or alcohol violations that would prohibit them from performing safety-sensitive function and (2) as part of a prospective driver's pre-employment screening process.

Given the established, sizeable success of mandatory testing programs on crash reduction,[7] concrete improvements in the process of disseminating positive-test results and making them accessible to employers are expected to bring substantial benefits.

The Agency estimates about $196 million in annual crash reduction benefits from the rule, which consists of $55 million from the annual queries and $141 million from the pre-employment queries. FMCSA estimates about $154 million in total annual costs, which include costs for:

- $29 million that is the estimated monetized value of employees' time to prepare annual employer queries;
- $11 million that is the estimated monetized value of employees' time to prepare pre-employment queries;

[7] Jacobson, Mireille, ''Drug Testing in the Trucking Industry: The Effect on Highway Safety,'' The Journal of Law and Economics, April 2003, Vol. 46, pp.130–156.

Brady, Joanne E., Susan P. Baker, Charles DiMaggio, Melissa McCarthy, George W. Rebok, and Guohua Li, ''Effectiveness of Mandatory Alcohol Testing Programs in Reducing Alcohol Involvement in Fatal Motor Carrier Crashes,'' American Journal of Epidemiology, Vol. 170, No. 6, pp.775–782 (Advance Access Publication 19-August-2009).

• $3 million for employers to designate service agents, and $1 million for SAPs to report initiation of the return-to-duty Initial Assessment;
• $5 million incurred by various reporting entities to register with the Clearinghouse, verify authorization, and become familiar with the rule, plus an additional $700,000 for these entities to report positive tests;
• $35 million of fees and consent and verification costs consisting of $24 million in Clearinghouse access fees incurred by employers for pre-employment queries, limited annual queries and full annual queries, plus $11 million of the monetized value of drivers' time to provide consents to employers and verification to FMCSA to allow employers access to drivers' records.;
• $2.2 million for development of the Clearinghouse and management of records;
• $56 million incurred by drivers to go through the return-to-duty process, including $7 million of opportunity costs incurred by drivers for those hours in which they are in substance abuse education and treatment programs; and
• $11.5 million of opportunity costs incurred by employers due to lost on-duty hours of drivers suspended from safety-sensitive functions until successful completion of the return-duty-process.

The annual net benefit of the rule is $42 million. The 10-year projection of net benefits is $316 million when discounted at 7 percent and $369 million when discounted at 3 percent. Estimated benefits include only those associated with reductions in CMV crashes.

FMCSA could not precisely quantify improved health, quality-of-life improvements, and increased life expectancy for CMV drivers. The Agency believes these non-quantified benefits are significant, and, if they were included in the benefits estimates, would clearly result in net benefits in excess of the estimated $38 million annual benefit. The net benefit of the final rule is summarized in the table below.

TOTAL NET BENEFIT PROJECTION OVER A 10-YEAR PERIOD

Total	Annual	10-year	10-year
Discount rate		7%	3%
Total Benefits	$196,000,000	$1,472,985,521	$1,722,077,349
Total Costs	154,000,000	1,157,345,7665	1,353,060,774
Total Net Benefits	42,000,000	315,639,0754	369,016,575

Benefit Analysis

The benefits of the rule derive from reductions in crashes due to the additional information on employee-failed and -refused drug and alcohol tests disseminated through the annual and pre-employment queries. The rationale is that drivers who fail or refuse drug and alcohol tests are assumed to be more crash-prone than drivers who take and pass these tests. Further, queries of the Clearinghouse provide the information on positive tests that prevents these identified drivers from operating until they successfully complete the return-to-duty process. Given this, the benefits of the rule are the reduction in crashes by drivers kept off the road by queries of the Clearinghouse. The Clearinghouse makes available information that employers would not otherwise obtain or be able to act on.

A major study on the effectiveness of mandatory *alcohol-testing* programs in reducing alcohol involvement in fatal motor carrier crashes was published in 2009.[8] The research analyzed data [9] on about 69,000 motor carrier drivers (and about 83,000 non-motor carrier drivers) involved in about 66,000 fatal multi-vehicle crashes over the 25 years from 1982 through 2006. Given that mandatory alcohol testing programs for motor carrier drivers began in 1995, this provides 13 years of data before the program was implemented and 12 years of data after implementation, which allows for a robust examination of the effectiveness of the program. The authors also controlled for age, gender, recent-past driving-while intoxicated (DWI) convictions, whether or not the driver survived, and other characteristics. These controls allowed for the specific isolation of whether (1995–2006) or not (1982–1994) the existence of a mandatory alcohol-testing program affected whether or not the fatal crash involved alcohol.

The authors performed multivariate logistic-regression analyses that estimated the effects of the above-listed factors on whether or not alcohol was involved in the fatal crash. Whether or not alcohol was involved in the crash was defined by a blood-alcohol-level (BAC) greater than or equal to 0.01 grams per deciliter (g/DL) for the driver involved in the fatal crash. With the controls for driver age, gender, history of driving while intoxicated, and survival status, ''implementation of the mandatory alcohol testing programs was found to be associated with a *23 percent reduced risk* of alcohol involvement in fatal crashes by motor-carrier drivers.'' [10] The authors concluded that the ''results from this study indicate that mandatory alcohol-testing programs may have contributed to a significant reduction in alcohol involvement in fatal motor carrier crashes.'' [11] Given the authors' estimate that the program reduces the risk by 23 percent, the Agency applies this percentage reduction to fatal crashes involving drivers for whom post-crash alcohol tests are positive.

A major study on the effectiveness of *drug-testing* programs in reducing fatal motor carrier crashes was published in 2003.[12] The research analyzed data [13] from all States (except Hawaii) for the 16 years from 1983 through 1998, generating 784 annual observations of fatal crashes (784 years = 49 States × 16 years per State). Federal drug-testing legislation passed in 1990, and 13 states passed drug-testing legislation between 1987–89,[14] so this provides many years of data both before and after the program implementation, allowing for a robust analysis of the effectiveness of

[8] Brady, JE, Baker SP, DiMaggio C, McCarthy ML, Rebok GW, Li G, ''Effectiveness of Mandatory Alcohol Testing Programs in Reducing Alcohol Involvement in Fatal Motor Carrier Crashes.'' *American Journal of Epidemiology*. 2009; 170(6): 775–783.

[9] From the Fatality Analysis Reporting System (FARS).

[10] Brady, et al., page 775.

[11] Ibid.

[12] Jacobson, Mireille, ''Drug Testing in the Trucking Industry: The Effect on Highway Safety,'' The Journal of Law and Economics, April 2003, Vol. 46, pp.130–156.

[13] Data is from the Fatality Analysis Reporting System (FARS).

[14] Connecticut, Iowa, Louisiana, Minnesota, Montana, Rhode Island, and Vermont in 1987, Utah, Nebraska, Kansas, Tennessee in 1988, and Florida and Maine in 1989.

the drug-testing program. The authors controlled for mandatory seat belt laws, speed-limit laws, the unemployment rate, miles driven and other factors. These controls allowed for the specific isolation of whether the fact that a State had standing drug-testing legislation or not (all States did after 1990) affected the number of traffic fatalities in the State.

The authors employed a negative binomial model that estimated the effects of the above-listed factors on the number of fatalities in a given State in a given year. With controls for seat-belt laws, speed-limit laws, and other factors, drug-testing legislation is estimated to have led to about a *9–10 percent reduction* in truck-accident fatalities.[15] Given this estimation, the Agency applies this percentage reduction to fatal crashes involving drivers testing positive for drugs.

The current drug-testing program is estimated to generate $152 million in annual crash-reduction benefits from 29,590 annual positive tests, which averages to approximately $5,100 per positive drug test ($152 million/29,590 positive tests, rounded to the nearest hundred). The *mandatory annual query* in the final rule would result in 6,100 instances of employer alerts to positive drug tests of their drivers that current employers would not otherwise have known about.[16] A requirement that disseminates additional information on 6,100 other positive testing drivers can be estimated to generate the same proportion of benefits that the 29,590 from the current program generates. If 29,950 positive tests and consequent alerts generate $152 million in benefits, then 6,100 additional alerts would generate *$31 million of benefits* (($152 million/29,520) = ($31.1 million/6,100), rounded to the nearest million).

The current alcohol testing program is estimated to generate $95 million in annual crash-reduction benefits from 3,135 annual positive alcohol tests, which averages to approximately $30,300 per positive alcohol test ($95 million/3,135 positive tests, rounded to nearest hundred). The *mandatory annual query* in the final rule would result in 800 instances of employer alerts to positive tests of their drivers that current employers would not otherwise have known about. A requirement that disseminates additional information on 800 other positive testing drivers can be estimated to generate the same proportion of benefits that the 3,135 from the current program generates. If 3,135 positive tests and consequent alerts generate $95 million in benefits, then 800 additional alerts would generate about *$24 million of benefits* (($95 million/3,135) = ($24.2 million/800), rounded to the nearest million).

The annual drug and alcohol queries required by the rule are estimated to generate $55 million in benefits. Annual drug testing is estimated to produce benefits totaling $31 million. Annual alcohol testing is estimated to produce benefits totaling $24 million. The *mandatory pre-employment query* required by the final rule results in 15,100 instances of employer alerts to positive drug tests that prospective employers would not otherwise have known about. A requirement that disseminates additional information on 15,100 other positive drug testing drivers can be estimated to generate the same proportion of benefits that the 29,590 from the current program generates. If 29,590 positive tests and consequent alerts generate $152 million in benefits, then 15,100 additional alerts would generate $77 million in benefits (($152 million/29,590) = ($77.0 million/15,100)), rounded to the nearest million.

The *mandatory pre-employment query* results in 2,100 instances where employers are alerted to positive alcohol tests of their drivers. Prospective employers of these drivers would not otherwise have known about these test results, in the absence of this rule. A requirement that disseminates additional information on 2,100 other positive testing drivers can be estimated to generate the same proportion of benefits that the 3,135 from the current program generates. If 3,135 positive tests and consequent alerts generate $95 million in benefits, then 2,100 additional alerts would generate $64 million in benefits (($95 million/3,135) = ($63.6 million/2,100), rounded to the nearest million).

With annual benefits to the drug-testing side of the pre-employment queries estimated at $77 million and the alcohol-testing side at $64 million, total annual benefits realized from pre-employment queries are estimated at $141 million ($77 million + $64 million).

Given the $55 million in annual benefits from the information on positive drug and alcohol tests disseminated because of the mandatory annual queries ($31 million drug and $24 million alcohol) and the $141 million in annual benefits from the information on positive tests disseminated because of the mandatory pre-employment queries ($77 million drug and $64 million alcohol), the total annual benefits of rule are *$196 million annually.* The table below presents these benefit totals.

TOTAL ANNUAL BENEFITS OF THE RULE

Queries	Drug	Alcohol	Total
Annual	$31,000,000	$24,000,000	$55,000,000
Pre-Employment	77,000,000	64,000,000	141,000,000
Total	108,000,000	88,000,000	196,000,000

Based on the annual benefits of $196 million, the *10-year benefit projection* is $1.472 billion when discounted at 7 percent and $1,722 billion when discounted at 3 percent.

By reducing drug and alcohol abuse by drivers, this rule could also lead to improved health, quality-of-life improvements, and increased life expectancy for drivers beyond those associated with reductions in vehicle crashes.

Cost Analysis

FMCSA estimates that the total annual cost of this action comes in at $154 million, which can be separated into several categories. The rule defines a number of entities with specific roles related to reporting to, or making queries of, the Clearinghouse. Therefore, the annual costs of the rule are organized by categories consistent with the role of each entity.

[15] Jacobson, M., p. 131.

[16] The Agency estimates that 6,100 drivers with multiple employers are job-hoppers that have multiple employers as defined in 49 CFR 391.63 and 49 CFR 391.65. That is, 30 percent of the sum of positive random survey tests (4,500), reasonable suspicion tests (405) and pre-employment tests (14,440) [6100 = ((4,500 + 405 + 14,440) × 30 percent).].

- $29 million that is the estimated monetized value of employees' time to prepare annual employer queries;
- $11 million that is the estimated monetized value of employees' time to prepare pre-employment queries;
- $3 million for employers to designate service agents, and $1 million for SAPs to report initiation of the return-to-duty Initial Assessment;
- $5 million incurred by various reporting entities to register with the Clearinghouse, verify authorization, and become familiar with the rule, plus an additional $700,000 for these entities to report positive tests;
- $35 million of fees and consent and verification costs consisting of $24 million in Clearinghouse access fees incurred by employers for pre-employment queries, limited annual queries and full annual queries, plus $11 million of the monetized value of drivers' time to provide consents to employers and verification to FMCSA to allow employers access to drivers' records.;
- $2.2 million for development of the Clearinghouse and management of records;
- $56 million incurred by drivers to go through the return-to-duty process, including $7 million of opportunity cost associates with the hours spent in substance abuse education and treatment programs in lieu of hours that could be spent in non-safety-sensitive in positions; and
- $11 million of opportunity costs incurred by employers due to lost on-duty hours associated with drivers suspended from safety-sensitive functions until successful completion of the return-duty-process.

Annual costs by cost category are summarized in the table below.

SUMMARY OF THE TOTAL ANNUAL COSTS OF THE RULE

Cost category	Entity	Annual cost
Annual Queries	Employers	$29,000,000
Pre-Employment Queries	Employers	11,000,000
Designate Service Agents/Report Driver Info	Employers	4,000,000
Report Positive Tests	Various	700,000
Register, Rule Familiarize, Verify Authorization	Various	5,000,000
Access Fees to Employers and Drivers' Cost to Provide Consent and Verification to FMCSA	Employers/Drivers	35,000,000
Clearinghouse IT Costs	FMCSA	2.2000,000
Return-to-Duty Process	Drivers	56,000,000
Employers Opportunity Cost Due to Return-to-Duty	Employer	11,490,000
New-CDL and CDL-Renewal Queries	SDLAs	0
Grand Total		154,000,000

Based on the annual cost of $154 million, the 10-year cost projection is $1,157 billion when discounted at 7 percent and $1.353 billion when discounted at 3 percent.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601)) requires Federal agencies to ''. . . endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' The Act requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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. Accordingly, DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies shall strive to lessen any adverse effects on these businesses.

A Final Regulatory Flexibility Analysis (RFA) must address the following topics:

(1) A statement of the reasons why action by the Agency is being considered;

FMCSA is issuing this final rule pursuant to a statutory mandate and recommendations of the National Transportation Safety Board (NTSB) and the General Accountability Office (GAO).

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405), codified at 49 U.S.C. 31306a, directs the Secretary of Transportation (Secretary) to establish a national clearinghouse containing commercial motor vehicle operators' violations of FMCSA's drug and alcohol testing program. In addition, FMCSA has general authority to promulgate safety standards, including those governing drivers' use of drugs or alcohol while operating a CMV. The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act), as amended, provides authority to regulate drivers, motor carriers, and vehicle equipment and requires the Secretary to prescribe minimum safety standards for CMVs. FMCSA has been delegated authority under 49 CFR 1.87(e) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation.

The NTSB recommendation arose from its investigation of 1999 bus crash in New Orleans resulted in 22 passenger fatalities. The driver of the motor-coach had failed pre-employment drug testing when applying for previous positions. He had also failed to disclose on his employment application that a previous employer had fired him after he tested positive for a controlled substance. Therefore, his employer at the time of the crash was unaware of the driver's history of positive tests because of his failure to provide a complete employment history. Without that history, his employer was unable to contact prior employers to obtain his drug and alcohol test history.[17]

The NTSB made recommendations to the Agency pertaining to the reporting of CMV driver drug and alcohol testing results. Specifically, the NTSB recommended that FMCSA ''develop a system that records all positive drug and

[17] ''Motor-coach Run-off-the-Road in New Orleans, Louisiana-May 9, 1999,'' National Transportation Safety Board, HAR 01/01, August 28, 2001, p. 66.

alcohol test results and refusal determinations that are conducted under the DOT testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision.'' [18] This final rule addresses the NTSB's recommendation.

The GAO issued two reports discussing its observations of drivers ''job-hopping'' under FMCSA's current regulations. When CDL holders fail, or refuse to submit to, a drug or alcohol test, some quit that job and—after a brief delay to ensure that drugs or alcohol are no longer detectable—pass the pre-employment test at another carrier and resume driving without having a completed the return-to-duty process. Obviously, job-hopping defeats the purpose of the drug and alcohol testing program. The GAO identified and verified 43 cases (based on insider information supplied by a third party to a Congressman).[19] The GAO recommended that Congress provide FMCSA the authority to establish a national database for reporting positive test results and that FMCSA undertake this rulemaking to create a national database of positive and refusal-to-test drug and alcohol test results to prevent CDL holders from job-hopping.[20]

(2) A statement of the significant issues raised by the public comments in response to the initial RFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

In response to the NPRM and Initial RFA, public comments were submitted by 165 individuals including national trucking and motor coach industry associations, regional trucking associations, trade unions, SDLA's and the NTSB.[21] There were no comments specific to the Initial RFA.

The final rule revises 49 CFR part 382, Controlled Substances and Alcohol Use and Testing, to establish a database, identified as the ''Commercial Driver's License Drug and Alcohol Clearinghouse,'' for reporting of drug and alcohol violations. Upon implementation, the final rule also requires employers to query the Clearinghouse for drug and alcohol test result information on employees and prospective employees. This rule is intended to increase compliance with FMCSA's drug and alcohol testing program.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not submit comments in response to the NPRM.

(4) Description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

Because FMCSA does not have direct revenue figures for all carriers, power units serve as a proxy to determine the carrier size that will qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit.

With regard to truck power units, the Agency has estimated that a power unit produces about $189,000 in revenue annually (in 2014 dollars).[22] According to the SBA, motor carriers with annual revenue of $27.5 million [23] are considered small businesses.[24] This equates to 146 power units (145.503 = $27,500,000/$189,000). Thus, FMCSA considers motor carriers of property with 146 PUs or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that will fall under that definition (of having 146 power units or fewer). The results show that over 99 percent of all interstate property carriers with recent activity have 146 power units or fewer.

This amounts to 515,000 carriers (514,800 = 99 percent × 520,000 active motor carriers, rounded to the nearest thousand). Therefore, an overwhelming majority of interstate carriers of property are small entities.

(5) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

The final rule requires additional reporting, recordkeeping and compliance requirements beyond what is required by FMCSA's current drug and alcohol testing regulations. The entities required to report to, or make queries of, the Clearinghouse are employers, MROs, C/TPAs and SAPs.

There are an estimated 58,500 annual positive drug and alcohol tests consisting of 52,000 positive drug tests and 6,500 positive alcohol tests at full participation (including refusals). Each positive drug test will be reported to the Clearinghouse by an MRO. Each positive alcohol test will be reported by an employer or a C/TPA. Each driver's subsequent return-to-duty process for positive test results and test refusals will be reported by an SAP. Ninety-nine percent of motor carriers, MROs, C/TPAs, and SAPs are most likely small entities. With regard to SAPs submitting driver information, FMCSA estimates that drivers, bookkeepers, audit clerks accounting clerks, and occupational health and safety specialists, will perform reporting functions under the final rule.

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;

The Agency did not identify any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or the Agency's statutory mandate to implement the Clearinghouse. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA

[18] Ibid., p. 74.

[19] Government Accountability Office, ''Examples of Job-hopping by Commercial Drivers after Failing Drug Tests,'' GAO 08–829R, (Washington, DC, June 30, 2008, p. 3.

[20] Government Accountability Office, ''Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road,'' GAO–08–600 (Washington, DC: May 15, 2008), pp. 44–45.

[21] See Regulation.gov at *http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=FMCSA-2011-0031;dct=O%252BPS.*

[22] ''The 2000 TTS Blue Book of Trucking Companies,'' number adjusted to 2014 dollars for inflation. $172,000 estimate in 2008 indexed for inflation to 2014 dollars: (236.736/215.303) × $172,000 = $189,000, rounded to nearest thousand) using the annual CPI. See *http://www.bls.gov/data/inflation_calculator.htm.* Accessed December 22, 2015.

[23] Subsector 484 on page 26 of SBA guidelines (July 14, 2014) See *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* Accessed December 22, 2015.

[24] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. See NAIC subsector 484, Truck Transportation.

regulations is neither feasible nor consistent with sound public policy.

(7) A description of the steps taken by the covered agency to minimize any additional cost of credit for small entities.

FMCSA is not a covered agency as defined in 5 U.S.C. 609(d)(2) of the Regulatory Flexibility Act. Therefore, it is not required to take steps to minimize any additional cost of credit for small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effect of their discretionary regulatory actions (2 U.S.C. 1531–1538). An assessment under UMRA is not required for regulations that incorporate requirements specifically set forth in law (2 U.S.C. 1531). Because MAP–21 mandated that DOT establish, operate, and maintain a clearinghouse for records related to alcohol and drug testing of CMV operators, an assessment was not prepared.

Federalism (E.O. 13132)

A rule has implications for Federalism under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. FMCSA recognized that, as a practical matter, this rule may have an impact on the States. Accordingly, by letters sent March 28, 2011, the Agency sought advice from the National Governors Association (NGA), National Conference of State Legislators (NCSL), and the AAMVA on the topic of developing a database that the Agency believed would increase the effectiveness of its drug and alcohol testing program. (Copies of the letters are available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, and AAMVA officials the opportunity to meet and discuss issues of concern to the States. FMCSA did not receive any responses to this letter. Nevertheless, during the public comment period several commenters indicated that the Clearinghouse rule would have implications for Federalism under this executive order.

At this time, section 32402 of MAP–21 preempts State and local laws inconsistent with the Clearinghouse. Preemption specifically applies to the reporting of drug and alcohol tests, refusals, and any other violation of FMCSA's drug and alcohol testing program. MAP–21 does not preempt State laws related to a driver's CDL or driving record. Each State must review its current requirements to determine whether they are compatible with this final rule.

Civil Justice Reform (E.O. 12988)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children (E.O. 13045)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined that this final rule will not create an environmental risk to health or safety that may disproportionately affect children.

Taking of Private Property (E.O. 12630)

FMCSA reviewed this action in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this action as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA has determined that this action would impact the handling of personally identifiable information (PII). FMCSA has also determined the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has examined and evaluated protections and alternative information handling processes in developing the rule in order to mitigate potential privacy risks. The Privacy Impact Assessment for the Clearinghouse is available for review in the docket for this rulemaking.

Intergovernmental Review (E.O. 12372)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed this action and preliminarily determined that its implementation would create a new information collection burden on CDL holders, motor carriers, and entities that provide services as part of FMCSA's mandatory alcohol and controlled substances testing process under 49 CFR part 382. FMCSA will seek approval of the information collection requirements in a new information collection entitled ''Commercial Driver's License Drug and Alcohol Clearinghouse.''

The collected information encompasses information that is generated, maintained, retained, disclosed, and provided to, or for, the Agency for a database that will be entitled the ''Commercial Driver's License Drug and Alcohol Clearinghouse'' or Clearinghouse.

DOT currently has approval for two information collections for its alcohol and controlled substances testing programs: (1) The Federal Chain of Custody and Control Form, OMB control number 0930–0158, and (2) the U.S. Department of Transportation Alcohol and Controlled Substances Testing Program, OMB control number 2105–0529. Although the Clearinghouse obtains information from the forms covered by the two information collections, this action does not create any revisions or additional burden under those collections.

This rule will create a new information collection to cover the requirements set forth in the amendments to 49 CFR part 382. These amendments will create new requirements for CDL drivers, employers of CDL drivers, MROs, SAPs, and C/TPAs to register with the new database, which will be created and administered by FMCSA. Clearinghouse registration will be a prerequisite to both placing information in the database and obtaining information from the database. Access to information in the database will be strictly limited and controlled, and available only with the consent of the CDL holders about whom information is sought.

Prospective employers of CDL drivers are required to query the Clearinghouse to determine if job applicants have controlled substance or alcohol testing violations that preclude them, under existing FMCSA regulations in part 382, from carrying out safety-sensitive functions. Employers will also be required to query the database once annually for information about drivers whom they currently employ. Employers, C/TPAs that perform testing and other services for carriers, MROs, and SAPs will place information into the database about alcohol and controlled substances testing violations.

This final rule contains procedures for correcting information in the database and specifies that most interactions with the database will be carried out using electronic media.

The total burden to respondents for queries, designations, registration, familiarization, reporting, and recordkeeping to the Clearinghouse is estimated at about 1.86 million hours annually. The hours attributed to each activity are presented in the table below.

TOTAL ANNUAL NUMBER OF BURDEN HOURS

Submissions	Responsible	Performed by	Instances	Minutes	Total hours
Annual Queries	Employer	Bookkeeping Clerk	5,200,000	10	867,000
Pre-Employment Queries	Employer	Bookkeeping Clerk	1,996,328	10	333,000
Designate C/TPAs	Employer	Bookkeeping Clerk	520,000	10	87,000
SAPs Report Driver Information Following Initial Assessment.	SAPs	Occupational Health Specialist.	55,580	10	9,000
Report/Notify Positive Tests	Various	Bookkeeping Clerk	117,000	10	20,000
Register/Familiarize/Verify	Various	Bookkeeping Clerk	793,000	20; 10	155,000
Driver Consent and Verifications	Drivers	Drivers	2,357,328	10	393,000
New-CDL and CDL-Renewal Queries	SDLAs	SDLAs	0	0	0
Total Instances/Hours			11,039,655		1,864,000

FMCSA prepared an information collection request and supporting statement that was submitted to the Office of Management and Budget and that is available for viewing pursuant to a notice to be published in the **Federal Register**.

National Environmental Policy Act and Clean Air Act

When FMCSA drafted the NPRM, the Agency prepared a draft environmental assessment (EA) under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The EA evaluated a range of proposed alternatives considered by FMCSA and determined that, if the NPRM reduces CMV crashes as estimated, there would be a small net benefit to the environment. The benefits include: Lives saved and injuries prevented from reducing CMV crashes, the reduction of fuel consumed and prevention of greenhouse gas and criteria pollutant emissions from traffic congestion caused by a CMV crash, the reduction of solid waste generated in CMV crashes from damaged vehicles, infrastructure and goods, and hazardous materials spilled during a CMV crash. (See section 3.2.1 of the draft EA for details.)

However, after reviewing FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680), FMCSA determined that this final rule is excluded from further environmental review and documentation because it falls under a categorical exclusion (CE). The CE in paragraph 6(r) applies to regulations implementing employer controlled substances and alcohol use and testing procedures. As FMCSA received no comments on the draft EA, and does not expect the environmental impacts listed above to be considered significant under NEPA, the Agency has prepared a statement of Categorical Exclusion Determination for this final rule and does not find it necessary to issue a final EA or prepare an Environmental Impact Statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and general conformity regulations (40 CFR part 51, subpart W, and part 93, subpart B) promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Environmental Justice (E.O. 12898)

FMCSA evaluated the environmental effects of this final rule in accordance with E.O. 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

Energy Supply, Distribution, or Use (E.O. 13211)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. While FMCSA's analysis shows a small reduction in fuel used due to eliminating traffic idling caused by CMV crashes, we have determined that it would not be a ''significant energy action'' under that Executive Order because it would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Indian Tribal Governments (E.O. 13175)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

FAST Act Waiver of Advance Notice of Proposed Rulemaking/Negotiated Rulemaking

FMCSA is aware of the regulatory reform requirements imposed by the FAST Act concerning public participation in rulemaking (49 U.S.C.

31136(g)). In the Agency's judgment, these requirements, which pertain to certain major rules, are not applicable to this final rule. In any event, the Agency finds that, for the reasons stated below, publication of an advance notice of proposed rulemaking under 49 U.S.C. 31136(g)(1)(A), or a negotiated rulemaking under 49 U.S.C. 31136(g)(1)(B), is unnecessary and contrary to the public interest in accordance with the waiver provision in 49 U.S.C. 31136(g)(3).

This final rule implements the MAP–21 mandate that DOT establish and maintain a national clearinghouse for records related to alcohol and controlled substances testing. The public had ample opportunity to comment on the Agency's February 20, 2014 NPRM proposing the establishment of the Clearinghouse (79 FR 9703). The Agency received 165 comments to the 2014 NPRM and made significant changes, reflected in this rule, in response to the commentary. Further, the final rule is the product of years of study and deliberation concerning an important public safety issue. As previously noted, this rule implements the NTSB's recommendation, included in its August 2001 report on the 1999 New Orleans bus crash resulting in multiple fatalities, that FMCSA establish a system to record positive DOT drug and alcohol test results and require prospective employers to query the system before hiring a driver. The rule also incorporates many of the findings and recommendations contained in FMCSA's March 2004 report to Congress, ''A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results to the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder''. In addition, this rule implements a key recommendation of the GAO's May 2008 Report to Congress, ''Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road'' (GAO–08–600) and responds to concerns identified in GAO's June 2008 report to Congress, ''Examples of Job-hopping by Commercial Drivers after Failing Drug Tests'' (GAO–08–0829R). In view of the extensive record of public input, study and oversight that informs this final rule, any further public participation measures would be unnecessary. Because the Agency strongly believes that establishment of the Clearinghouse will improve highway safety, the public interest is best served by the publication of this rule.

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 391

Driver qualification, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR parts 382, 383, 384, and 391 as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Amend § 382.103 by revising the introductory text of paragraph (a) to read as follows:

§ 382.103 Applicability.

(a) This part applies to service agents and to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State and are subject to:

* * * * *

■ 3. Amend § 382.107 by adding the definitions ''Commercial Driver's License Drug and Alcohol Clearinghouse'' and ''Negative return-to-duty test result'' in alphabetical order to read as follows:

§ 382.107 Definitions.

* * * * *

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of this part requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.

* * * * *

Negative return-to-duty test result means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in § 40.305 of this title.

* * * * *

■ 4. Add § 382.123 to read as follows:

§ 382.123 Driver identification.

(a) *Identification information on the Alcohol Testing Form (ATF).* For each alcohol test performed under this part, the employer shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the ATF.

(b) *Identification information on the Federal Drug Testing Custody and Control Form (CCF).* For each controlled substance test performed under this part, the employer shall provide the following information, which must be recorded as follows:

(1) The driver's commercial driver's license number and State of issuance in Step 1, section C of the CCF.

(2) The employer's name and other identifying information required in Step 1, section A of the ATF.

■ 5. Add § 382.217 to read as follows:

§ 382.217 Employer responsibilities.

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40 of this title.

(b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40 of this title.

(c) The driver refused to submit to a test for drugs or alcohol required under this part.

(d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

(e) An employer has actual knowledge, as defined at § 382.107, that a driver has:

(1) Used alcohol while performing safety-sensitive functions in violation of § 382.205;

(2) Used alcohol within four hours of performing safety-sensitive functions in violation of § 382.207; or

(3) Used a controlled substance.

■ 6. Amend § 382.401 by revising paragraph (b)(1)(vi) to read as follows:

§ 382.401 Retention of records.

* * * * *

(b) * * *

(1) * * *

(vi) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and

* * * * *

■ 7. Amend § 382.405 by revising paragraphs (d) and (e) to read as follows:

§ 382.405 Access to facilities and records.

* * * * *

(d) Each employer, and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the employer under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

(1) Employers must disclose information related to the employer's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and

(2) FMCSA will provide access to information in the Clearinghouse concerning drivers who are involved with the crash under investigation.

* * * * *

■ 8. Amend § 382.409 by revising the section heading and paragraph (c) to read as follows:

§ 382.409 Medical review officer or consortium/third party administrator record retention for controlled substances.

* * * * *

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in § 40.3 of this title) or a consortium/third party administrator (C/TPA as defined in § 382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse, or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G, of this title.

■ 9. Revise § 382.413 to read as follows:

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a) Employers must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25 of this title, except that the employer must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 40.25 of this title with respect to FMCSA-regulated employers. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of this title.

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the employer must request the alcohol and controlled substances information required under this section and § 40.25 of this title directly from those employers regulated by a DOT Agency other than FMCSA.

■ 10. Add § 382.415 to read as follows:

§ 382.415 Notification to employers of a controlled substances or alcohol testing program violation.

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements in this part who has violated the alcohol and controlled substances prohibitions under part 40 of this title or this part without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

■ 11. Amend § 382.601 by:

■ a. Removing the period at the end of paragraph (b)(11) and adding ''; and'' in its place; and

■ b. Adding paragraph (b)(12).

The addition reads as follows:

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

* * * * *

(b) * * *

(12) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

(i) A verified positive, adulterated, or substituted drug test result;

(ii) An alcohol confirmation test with a concentration of 0.04 or higher;

(iii) A refusal to submit to any test required by subpart C of this part;

(iv) An employer's report of actual knowledge, as defined at § 382.107:

(A) On duty alcohol use pursuant to § 382.205;

(B) Pre-duty alcohol use pursuant to § 382.207;

(C) Alcohol use following an accident pursuant to § 382.209; and

(D) Controlled substance use pursuant to § 382.213;

(v) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;

(vi) A negative return-to-duty test; and

(vii) An employer's report of completion of follow-up testing.

* * * * *

■ 12. Add subpart G to part 382 to read as follows:

Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

Sec.

Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

§ 382.701 Drug and Alcohol Clearinghouse.

(a) *Pre-employment query required.* (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) *Annual query required.* (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.

(c) *Employer notification.* If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 of this title and specified in the SAP report required by § 40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

§ 382.703 Driver consent to permit access to information in the Clearinghouse.

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;

(2) An alcohol confirmation test with a concentration of 0.04 or higher;

(3) A refusal to submit to a test in violation of § 382.211;

(4) An employer's report of actual knowledge, as defined at § 382.107, of:

(i) On duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213;

(5) A SAP report of the successful completion of the return-to-duty process;

(6) A negative return-to-duty test; and

(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.

(d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with § 382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with § 382.701(c).

§ 382.705 Reporting to the Clearinghouse.

(a) *MROs.* (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

(i) Verified positive, adulterated, or substituted controlled substances test results;

(ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

(i) Reason for the test;

(ii) Federal Drug Testing Custody and Control Form specimen ID number;

(iii) Driver's name, date of birth, and CDL number and State of issuance;

(iv) Employer's name, address, and USDOT number, if applicable;

(v) Date of the test;

(vi) Date of the verified result; and

(vii) Test result. The test result must be one of the following:

(A) Positive (including the controlled substance(s) identified);

(B) Refusal to test: Adulterated;

(C) Refusal to test: Substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) *Employers.* (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

(i) Reason for the test;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Employer name, address, and USDOT number;

(iv) Date of the test;

(v) Date the result was reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);

(B) Positive; or

(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at § 382.107, of:

(i) On-duty alcohol use pursuant to § 382.205;

(ii) Pre-duty alcohol use pursuant to § 382.207;

(iii) Alcohol use following an accident pursuant to § 382.209; and

(iv) Controlled substance use pursuant to § 382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

(i) Driver's name, date of birth, CDL number and State of issuance;

(ii) Employer name, address, and USDOT number, if applicable;

(iii) Date the employer obtained actual knowledge of the violation;

(iv) Witnesses to the violation, if any, including contact information;

(v) Description of the violation;

(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and

(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) *C/TPAs.* Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.

(d) *SAPs.* (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

(i) SAPs name, address, and telephone number;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Date of the initial substance-abuse-professional assessment; and

(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately.* Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver.	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver.	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result. —Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was initiated. —Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

§ 382.707 Notice to drivers of entry, revision, removal, or release of information.

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

§ 382.709 Drivers' access to information in the Clearinghouse.

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

§ 382.711 Clearinghouse registration.

(a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.* (1) Employer Clearinghouse registration must include:

(i) Name, address, and telephone number;

(ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and

(iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs.* Each MRO or SAP must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents.* Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

§ 382.713 Duration, cancellation, and revocation of access.

(a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

§ 382.715 Authorization to enter information into the Clearinghouse.

(a) *C/TPAs.* No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs.* A driver must designate a SAP before that SAP can enter any

information about the driver's return-to-duty process into the Clearinghouse.

§ 382.717 Procedures for correcting information in the database.

(a) *Petitions limited to inaccurately reported information.* (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) *Exceptions.* (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in § 382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in § 382.705(b)(3).

(b) *Petition.* Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition.* The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

(d) *Notice of decision.* Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment.* (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review.* (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: ''Administrative Review of Drug and Alcohol Clearinghouse Decision'' and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC–E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers.* When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

§ 382.719 Availability and removal of information.

(a) *Driver information not available.* Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

(1) The SAP reports to the Clearinghouse the information required in § 382.705(d);

(2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;

(3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and

(4) Five years have passed since the date of the violation determination.

(b) *Driver information remains available.* Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions.* (1) Within 2 business days of granting a request for removal pursuant to § 382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with § 382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available.* Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

§ 382.721 Fees.

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

§ 382.723 Unauthorized access or use prohibited.

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function

with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

§ 382.725 Access by State licensing authorities.

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

§ 382.727 Penalties.

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 13. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 7208 of Pub. L. 114–94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

■ 14. Amend § 383.73 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(8);

■ b. Removing the period at the end of paragraph (b)(9) and adding ''; and'' in its place;

■ c. Adding paragraph (b)(10);

■ d. Removing ''and:'' at the end of paragraph (c)(8) and adding a semicolon in its place;

■ e. Removing the period at the end of paragraph (c)(9) and adding ''; and'' in its place;

■ f. Adding paragraph (c)(10);

■ g. Removing the word ''and'' at the end of paragraph (d)(7);

■ h. Removing the period at the end of paragraph (d)(8) and adding ''; and'' in its place;

■ i. Adding paragraph (d)(9);

■ j. Removing ''and:'' at the end of paragraph (e)(6) and adding a semicolon in its place;

■ k. Removing the period at the end of paragraph (e)(7) and adding ''; and'' in its place;

■ l. Adding paragraphs (e)(8) and (f)(4).

The additions read as follows:

§ 383.73 State procedures.

* * * * *

(b) * * *

(10) Beginning January 6, 2020, request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter.

(c) * * *

(10) Beginning January 6, 2020, request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter.

(d) * * *

(9) Beginning January 6, 2020, request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter.

(e) * * *

(8) Beginning January 6, 2020, request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter.

(f) * * *

(4) Beginning January 6, 2020, for drivers seeking issuance, renewal, upgrade or transfer of a non-domiciled CDL, request information from the Drug and Alcohol Clearinghouse in accordance with § 382.725 of this chapter.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 15. The authority citation for this part is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 16. Add § 384.235 to read as follows:

§ 384.235 Commercial driver's license Drug and Alcohol Clearinghouse.

Beginning January 6, 2020, the State must request information from the Clearinghouse in accordance with § 383.73 of this chapter.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 17. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 18. Amend § 391.23 by adding paragraph (e)(4) and revising paragraph (f) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(e) * * *

(4) As of January 6, 2023, employers subject to § 382.701(a) of this chapter must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions.* (A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of this title.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(ii) [Reserved]

(f)(1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of § 40.321(b) of this title for the release of the information in paragraph (e) of this section. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier

employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of this section, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

* * * * *

Issued under the authority delegated in 49 CFR 1.87 on: November 8, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–27398 Filed 12–2–16; 8:45 am]

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Part III

Federal Deposit Insurance Corporation

12 CFR Part 370
Recordkeeping for Timely Deposit Insurance Determination; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AE33

Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to facilitate prompt payment of FDIC-insured deposits when large insured depository institutions fail. The final rule requires each insured depository institution that has two million or more deposit accounts to (1) configure its information technology system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the institution's failure, and (2) maintain complete and accurate information needed by the FDIC to determine deposit insurance coverage with respect to each deposit account, except as otherwise provided.

DATES: Effective April 1, 2017.

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 571–858–8224; Teresa J. Franks, Associate Director, Division of Resolutions and Receiverships, 571–858–8226; Shane Kiernan, Counsel, Legal Division, 703–562–2632; Karen L. Main, Counsel, Legal Division, 703–562–2079.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

With this final rule (''final rule''), the FDIC adopts regulatory requirements that will facilitate the FDIC's prompt payment of deposit insurance after the failure of insured depository institutions (''IDIs'') with two million or more deposit accounts. These institutions are typically large and complex. By law, the FDIC must pay deposit insurance ''as soon as possible'' after an IDI fails while also resolving the IDI in the manner least costly to the Deposit Insurance Fund (''DIF'').[1] The FDIC believes that prompt payment of deposit insurance is essential to the FDIC's mission for several reasons. First, prompt payment of deposit insurance maintains public confidence in the FDIC, the banking system and overall financial stability. Second, facilitating prompt access to insured funds for depositors enables them to meet their financial needs and obligations. A delay in the payment of deposit insurance—especially in the case of the failure of one of the largest IDIs—could harm the entire financial system and national economy. For example, the failure of such a large IDI could cause disruptions to check clearing processes, direct debit arrangements, or other payment system functions. Third, prompt payment can help to avoid a reduction in franchise value by expanding options for resolution thereby decreasing potential losses to the DIF. Fourth, the final rule seeks to promote long term stability in the banking system by reducing moral hazard.

The final rule is expected to significantly reduce the difficulties the FDIC would face in making prompt deposit insurance determinations at the largest IDIs. While the FDIC is authorized to rely upon the deposit account records of a failed IDI to determine deposit insurance coverage, the institution's records can be voluminous and inconsistent. Moreover, they may be incomplete for deposit insurance purposes. Consolidation of the banking industry has resulted in larger institutions that have more complex information technology systems (''IT systems'') and data management challenges. The final rule generally requires IDIs with two million or more deposit accounts (''covered institutions'') to maintain complete and accurate depositor information and to configure their IT systems in a manner that permits the FDIC to calculate deposit insurance coverage promptly in the event of failure.

The final rule will facilitate consideration of the full range of resolution options that can be invoked by the FDIC to resolve a covered institution in a manner that satisfies the least-cost resolution requirement. These resolution methods include: Purchase-and-assumption transactions; establishment of bridge depository institutions; and payout and liquidation, in which the FDIC pays depositors the insured amount of their deposits and liquidates the failed IDI's assets to pay remaining claims. Expanding the range of resolution options and including those that impose losses on uninsured depositors can also improve market discipline.

In order to resolve a bank under the least-cost requirement, the FDIC must be able to estimate the cost to the DIF of each possible resolution type. As part of this estimate, the FDIC must be able to rapidly identify insured versus uninsured deposits. Insufficient information about a bank's insured deposits and the difficulties posed in identifying relationships between deposit accounts at the time of closing, due in part to the large volume of deposit accounts managed by the institution, may impede the FDIC's ability to meet the least-cost requirement or to ensure timely access to insured funds.

Covered institutions often use multiple deposit systems, which complicates deposit insurance determinations. Depending on the structure of the deposit systems, data aggregation and account identification may be burdensome, inefficient, and time-consuming, all adding to the cost of resolution. For certain types of deposit accounts, depositors need daily access to funds, so prompt payment is essential to providing confidence and maintaining financial stability. While challenges resulting from incomplete information are present when any bank fails, obtaining the necessary information could significantly delay the availability of funds when information is incomplete for a large number of accounts. Such delays could lead to a decrease in public confidence in the FDIC's deposit insurance program. Ensuring the swift availability of funds for millions of depositors at a large institution promotes financial stability by increasing confidence in deposit insurance and availability of funds.

Another of the final rule's policy objectives is that depositors at both large and small failed banks receive the same prompt access to their deposits with full recognition of and respect for the deposit insurance limits, which should reduce potential disparities that might undermine market discipline or create unintended competitive advantages in the deposit market. Confidence in the ability of the FDIC to promptly determine insured amounts and provide access to insured deposits should help uninsured depositors realize that they may face losses in a large bank failure. This realization should mitigate moral hazard and help to curtail excessive risk taking on the part of the largest banks.

II. Background

A. Legal Authority

The FDIC is authorized to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (''FDI Act'').[2] Under the FDI Act, the FDIC is responsible for paying deposit insurance ''as soon as possible'' following the

[1] 12 U.S.C. 1821(f)(1); 12 U.S.C. 1823(c)(4).

[2] 12 U.S.C. 1819(a) (Tenth), 1820(g), 1821(d)(4)(B)(iv).

failure of an IDI.[3] It must also implement the resolution of a failed IDI at the least cost to the DIF.[4] To pay deposit insurance, the FDIC uses a failed IDI's records to aggregate the amounts of all deposits that are maintained by a depositor in the same right and capacity and then applies the standard maximum deposit insurance amount (''SMDIA'') of $250,000.[5] As authorized by law, the FDIC generally relies on the failed institution's deposit account records to identify deposit owners and the right and capacity in which deposits are maintained.[6] The FDIC has a right and a duty under section 7(a)(9) of the FDI Act to take action as necessary to ensure that each IDI maintains, and the FDIC receives on a regular basis from such IDI, information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution.[7] Requiring covered institutions to maintain complete and accurate records regarding the ownership and insurability of deposits and to have an IT system that can be used to calculate deposit insurance coverage in the event of failure will facilitate the FDIC's prompt payment of deposit insurance and enhance the ability to implement the least costly resolution of these institutions.

B. Current Regulatory Approach

Although the statutory requirement that the FDIC pay insurance ''as soon as possible'' does not specify a time period for paying insured depositors, the FDIC strives to pay depositors promptly in the event of an IDI's failure. Indeed, the FDIC strives to make most insured deposits available to depositors by the next business day after a bank fails. For the reasons set forth earlier, the FDIC believes that prompt payment of deposit insurance is essential.

The FDIC took an initial step toward ensuring that prompt deposit insurance determinations could be made at large IDIs through the issuance of § 360.9 of the FDIC's regulations.[8] Section 360.9 applies to IDIs with at least $2 billion in domestic deposits and at least 250,000 deposit accounts or $20 billion in total assets.[9] Currently, there are 155 IDIs that meet those criteria. Section 360.9 requires these institutions to be able to provide the FDIC with standard deposit account information that can be used in the event of the institution's failure. The appendices to 12 CFR part 360 prescribe the form and content of the data files that those institutions must provide to the FDIC. Section 360.9 also requires these institutions to maintain the technological capability to automatically place (and later release) provisional holds on deposit accounts if an insurance determination could not be made by the FDIC by the next business day after failure. Additionally, large volumes of deposit account data must be transferred from the IDI to the FDIC pursuant to § 360.9, which could cause further delay.

While § 360.9 would assist the FDIC in fulfilling its legal mandates regarding the resolution of a failed institution that is subject to that rule, the FDIC believes that if the largest of depository institutions were to fail with little prior warning, additional measures would be needed to ensure the prompt and accurate payment of deposit insurance to all depositors.

C. Need for Further Rulemaking

The FDIC is authorized to rely upon the deposit account records of a failed IDI to determine the amount of deposit insurance available on each account. However, in the FDIC's experience, it is not unusual for a failed bank's records to be ambiguous or incomplete. For example, an account may be titled as a joint account but may not qualify to be insured as a joint account because signature cards are missing or have not been signed by all joint account holders. A further complication is that bank records on trust accounts are often in paper form or electronically scanned images that require a time-consuming manual review.

In addition to problems with ambiguity or incompleteness of an institution's records, it is also possible that an institution simply is not required to maintain record of the beneficial owners of deposits with respect to certain types of deposit accounts under the existing regulatory framework. For example, under part 330, a deposit may be insured even if record of beneficial ownership is maintained outside of the IDI by an agent or third party that has been designated to maintain such record.

Under each of these circumstances, in order to ensure the accurate payment of deposit insurance without imposing risk of overpayment by the DIF, the FDIC would need to delay the payment of deposit insurance while it manually reviews files and obtains additional information. Such delays in the insurance determination process could increase the likelihood of disruptions to an assuming institution's or an FDIC-managed bridge depository institution's payment processing functions, such as clearing checks and authorizing direct debits.

While these challenges to accurately determining and promptly paying deposit insurance may be present at any size of failed institution, they become increasingly formidable as the size and complexity of the institution increases. Larger institutions are generally more complex, have more deposit accounts, greater geographic dispersion, multiple deposit systems, and more issues with data accuracy and completeness. The largest IDIs which grew through acquisition have inherited the legacy recordkeeping and deposit account systems of the acquired banks. Those systems might have inaccurate or incomplete deposit account records. Additionally, acquired records might not be automated or compatible with the acquiring institution's deposit systems, resulting in use of multiple deposit platforms.

Although some of the largest institutions are able to conduct their banking operations without integrating these inherited systems or updating the acquired deposit account records, the state of their deposit systems would complicate and prolong the deposit insurance determination process in the event of failure. Because of the potential problems posed by delays in determination and payment of deposit insurance, improved strategies must be implemented to ensure that deposit insurance can be paid promptly.

The FDIC's experiences during the most recent financial crisis, which peaked in the months following the promulgation of § 360.9, indicated that failures can often happen with very little notice and time for the FDIC to prepare. Since 2009, the FDIC was called upon to resolve 47 institutions with 30 days or less to plan the resolution (which includes review of deposit account records). While these 47 institutions were smaller, the financial condition of two banks with a very large number of deposit accounts—Washington Mutual Bank and Wachovia—deteriorated very quickly, also leaving the FDIC little time to prepare.[10] If a large bank were to fail because of liquidity problems rather than capital deterioration, for example, the FDIC would anticipate having less lead time to prepare to make deposit insurance determinations, which could result in the need for more time post-

[3] 12 U.S.C. 1821(f)(1).

[4] 12 U.S.C. 1823(c)(4).

[5] 12 U.S.C. 1821(a)(1)(C), 1821(a)(1)(E).

[6] 12 U.S.C. 1822(c), 12 CFR 330.5.

[7] 12 U.S.C. 1817(a)(9).

[8] 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).

[9] 12 CFR 360.9(b)(1).

[10] In their final Call Reports (2Q–08) Washington Mutual reported 42 million deposit accounts and Wachovia reported 29 million deposit accounts.

failure and less prompt payment of deposit insurance.

The FDIC has worked with institutions covered by § 360.9 for several years to confirm their ability to comply with that rule's requirements. This implementation process has led the FDIC to conclude that the standard data sets and other requirements of § 360.9 are not sufficient to mitigate the complexities presented in the failure of the largest institutions. Based on its experience reviewing deposit data (and often finding inaccurate or incomplete data), deposit recordkeeping systems, and capabilities for imposing provisional holds in the course of its § 360.9 compliance visits, the FDIC believes that § 360.9 has not been as effective as intended in enhancing the capacity of the FDIC to make prompt deposit insurance determinations necessary for the largest IDIs. Specifically, the continued growth in the number of deposit accounts at larger IDIs and the number and complexity of deposit systems used by many of these institutions since the promulgation of § 360.9 would exacerbate the difficulties present in making prompt deposit insurance determinations. Additionally, the institutions covered by § 360.9 are permitted discretion when populating the data fields that often results in missing information.

A failed IDI that has multiple deposit systems would further complicate the aggregation of deposits by depositor in a particular right and capacity, causing additional delay. Additionally, deposit taking practices have evolved, and innovative products and services have proliferated throughout the financial services markets. Customer use of deposit accounts has changed. Accounts that may have been used in the past as traditional savings vehicles are now used more frequently for transactional purposes. For example, checking accounts held in connection with a formal revocable trust are used to pay for everyday living expenses. Brokered deposits are sometimes held in money market deposit accounts (''MMDAs'').

Using the FDIC's IT system to make deposit insurance determinations at a failed institution with a large number of deposit accounts would require the transmission of massive amounts of deposit data from the IDI's IT system to the FDIC's IT system. The transfer of such a large volume of data would be very time consuming and the time required for processing that data would present a significant impediment to making deposit insurance determinations in the timely manner that the public has come to expect. The 38 institutions currently covered by the final rule each have between 2 million and 87 million deposit accounts as of June 30, 2016. Requiring these covered institutions to enhance their deposit account data and upgrade their IT systems so that the FDIC can promptly determine deposit insurance available on most deposit accounts using the covered institutions' IT systems would help to resolve the timing issues presented when transferring and processing such a large volume of deposit data.

Advance Notice of Proposed Rulemaking

On April 28, 2015, the FDIC published in the **Federal Register** an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on whether certain IDIs such as those that have two million or more deposit accounts should be required to take steps to ensure that depositors would have access to their FDIC-insured funds in a timely manner (usually within one business day of failure) if one of these institutions were to fail.[11] Specifically, the FDIC sought comment on whether these IDIs should be required to enhance their recordkeeping to maintain and be able to provide substantially more accurate and complete data on each depositor's ownership interest by right and capacity for all or a large subset of the institution's deposit accounts. The FDIC sought comment on whether these IDIs' IT systems should have the capability to calculate the insured and uninsured amounts for each depositor by deposit insurance right and capacity for all or a substantial subset of deposit accounts at the end of any business day. The FDIC also sought comment on the potential costs and benefits associated with instituting such requirements. The comment period ended on July 27, 2015. The FDIC received 10 comment letters. The FDIC also had six meetings or conference calls with banks, trade groups, and software providers.

Notice of Proposed Rulemaking

Following the ANPR, the FDIC developed and then published in the **Federal Register** a notice of proposed rulemaking entitled ''Recordkeeping for Timely Deposit Insurance Determination'' soliciting public comment on its proposal to require each IDI with two million or more deposit accounts to maintain complete and accurate information needed to allow the FDIC to determine promptly the deposit insurance coverage for each deposit account, and to have an IT system that is capable of calculating the insured and uninsured amounts for all deposit accounts in accordance with the FDIC's deposit insurance rules set forth in 12 CFR part 330 (the ''NPR'' for the ''proposed rule'').[12] Under the proposed rule, each covered institution's IT system would facilitate the FDIC's deposit insurance determination by being able to calculate deposit insurance coverage for each deposit account and adjust account balances to the insured amount within 24 hours after the appointment of the FDIC as receiver should the covered institution fail. Relief from the proposed rule's requirements would have come in the form of: An extension of the implementation deadlines; an exception from the information collection requirements for certain deposit accounts or types of deposit accounts if conditions for exception could be met; exemption from all of the proposed rule's requirements if all the deposits a covered institution takes are fully insured; or release from all of the proposed rule's requirements when a covered institution no longer meets the definition of a covered institution. Each covered institution would need to certify compliance with the proposed rule annually, with enforcement measures to be taken in accordance with § 8 of the FDI Act, if necessary.

The NPR's comment period expired on June 27, 2016. The FDIC received 14 comment letters in total from IDIs, industry trade associations, financial intermediaries, mortgage servicing companies, technology firms, an industry consultant, and an individual. In addition, FDIC staff participated in meetings or conference calls with industry representatives. The FDIC considered all of the comments it received when developing the final rule, and the comments and the FDIC's responses are discussed in *VI. Discussion of Comments.*

III. Description of the Final Rule

A. Summary

The scope of the final rule is unchanged from the NPR. It applies to any IDI that has two million or more deposit accounts, defined as a ''covered institution.'' As contemplated by the proposed rule, under the final rule, each covered institution must configure its IT system to be capable of accurately calculating the deposit insurance available for each deposit account in accordance with the FDIC's deposit insurance rules set forth in 12 CFR part 330 should the covered institution fail.

[11] 80 FR 23478 (April 28, 2015).

[12] 81 FR 10026 (February 26, 2016).

The FDIC would use the covered institution's IT system to facilitate the deposit insurance determinations in the event of the covered institution's failure.

In order for the FDIC to effectively use the covered institution's IT system to calculate deposit insurance, the covered institution's deposit account records must contain certain information concerning the identity of the owner of the funds on deposit and details about the right and capacity in which the deposit is held for deposit insurance purposes. The proposed rule would have required covered institutions to maintain this information in their deposit account records for all accounts unless the FDIC granted the covered institution an exception from this requirement. In light of comments received in response to the NPR, the final rule modifies this approach. Recognizing that insured depository institutions do not maintain all information needed for deposit insurance determination in their deposit account records for every account, along with the significant challenges associated with collecting that information, the FDIC has bifurcated the recordkeeping requirement.

Under the final rule's general recordkeeping requirements, a covered institution will need to ensure that its deposit account records contain the information needed for its IT system to be able to calculate deposit insurance coverage for those deposit accounts for which it already maintains the necessary information. A covered institution should, in the normal course of business, already maintain in its deposit account records the information necessary to do this for: Single ownership accounts; joint ownership accounts; accounts held by a corporation, partnership, or unincorporated association for themselves; informal revocable trust (*i.e.,* ''payable-on-death'' or ''in-trust-for'') accounts; and any account of an irrevocable trust for which the covered institution itself is the trustee.

The final rule recognizes that, under the FDIC's deposit insurance rules set forth in 12 CFR part 330, the amount of deposit insurance available may not be determinable without reference to information that an IDI does not, and is not otherwise required to, maintain in its deposit account records under the existing regulatory framework. After an IDI fails, this information must be provided to the FDIC so that the FDIC can determine the full amount of deposit insurance available. Accordingly, under the final rule, a covered institution does not need to meet the general recordkeeping requirements described in this section, but may instead meet alternative recordkeeping requirements with respect to certain types of deposit accounts for which it is not required under 12 CFR part 330 to maintain in its deposit account records the information that would be needed for the FDIC to determine the full amount of deposit insurance coverage. Certain additional provisions apply to deposit accounts with transactional features.

To meet the alternative recordkeeping requirements, the covered institution must maintain in its deposit account records certain information that will facilitate the FDIC's prompt collection of the information needed to determine deposit insurance with respect to those deposit accounts after its failure. These alternative recordkeeping requirements apply to deposit accounts that would be insured on a ''pass-through'' basis (such as brokered deposits) because beneficial owner information is not maintained by the covered institution, and to deposit accounts for which the amount of insurance is dependent on additional facts (such as deposit accounts held in connection with a trust). The FDIC also recognizes that it may not always be feasible for a covered institution to maintain information in its deposit account records needed to calculate the deposit insurance with respect to official items prior to presentment and, therefore, if the information needed for deposit insurance calculation is not available, the covered institution will need to maintain in its deposit account records certain information that will facilitate the FDIC's deposit insurance determination after the failure of a covered institution.

For deposit accounts with ''transactional features'' for which the covered institution maintains its deposit account records in accordance with the alternative recordkeeping requirements set forth in § 370.4(b)(1), a covered institution must certify that the information needed to calculate deposit insurance coverage will be submitted to the FDIC so that deposit insurance can be determined within 24 hours after the appointment of the FDIC as receiver. The FDIC has been concerned about timely deposit insurance determinations for accounts with transactional features since the inception of this rulemaking process. One of the options presented in the ANPR was that ''[f]or a large subset of deposits (''closing night deposits''), including those where depositors have the greatest need for immediate access to funds (such as transaction accounts and money market deposit accounts (''MMDAs''), deposit insurance determinations would be made on closing night.'' [13] The FDIC acknowledged that the concept of ''closing night deposits'' served as a proxy for those deposit accounts for which depositors would expect immediate access to their funds on the next business day. The ANPR explained that in order to make deposit insurance determinations on closing night, the covered institutions would be required to: ''Obtain and maintain data on all closing night deposits . . . at the end of any business day (since failure can occur on any business day).'' [14] The ANPR solicited comment from the banking industry regarding what types of deposits should be considered as ''closing night deposits.''

After reviewing the comments received on the ANPR, the FDIC concluded that there really was no consensus among the potentially covered institutions regarding what types of deposits could be designated as ''closing night deposits.'' As a result, the FDIC adopted the approach in the proposed rule that, generally, covered institutions would need to collect and maintain the necessary depositor information for all deposit accounts unless the conditions for exception could be satisfied. Then, the FDIC would have all the depositor information necessary to begin the deposit insurance determinations immediately upon the covered institution's failure. However, in response to the commenters' objections to the proposed rule's approach, the FDIC developed the bifurcated approach set forth in the final rule. In this way, the final rule is consistent with the recordkeeping standards established in §§ 330.5 and 330.7; *i.e.,* the deposit records for certain types of deposit accounts may be maintained off-site and with third parties rather than at the covered institution. Nevertheless, the requisite beneficial ownership information for those accounts must be made available to the FDIC so that the deposit insurance determination can be completed during the closing night process. The FDIC believes that requiring covered institutions to certify that the information needed to calculate deposit insurance coverage for certain deposit accounts with transactional features will be submitted to the FDIC by the respective account holder in time for the calculation to be performed within 24 hours after the appointment of the FDIC as receiver is important to ensure that the FDIC can make deposit insurance determinations expeditiously

[13] 80 FR 23478, 23480 (April 28, 2015).

[14] *Id.*

after failure of a covered institution to avoid delays in payment processing.

The proposed rule would have provided a two-year timeframe for implementation of IT system and recordkeeping requirements. Under the final rule, a covered institution has three years after the effective date for implementation and can apply to the FDIC for extension of that timeframe.

B. Section-by-Section Description of the Final Rule

1. Section 370.1 Purpose and Scope

The purpose of the final rule is to help the FDIC overcome the challenges it faces when fulfilling its statutory mandate to pay deposit insurance as soon as possible after the failure of an IDI with millions of deposit accounts at the least cost to the DIF. These challenges become more pronounced as the number of deposit accounts at an IDI rises above two million. Moreover, the number of deposit accounts is highly correlated with other attributes that contribute to this challenge, such as the complexity of account relationships and the use of multiple deposit systems by these institutions. Accordingly, the final rule requires IDIs with two million or more deposit accounts to configure their IT systems to be capable of calculating the amount of deposit insurance coverage available for each deposit account in the event of failure.

2. Section 370.2 Definitions

This section provides definitions of terms that are used in the final rule. A *covered institution* is an IDI which, based on its Reports of Condition and Income (''Call Reports'') filed with the appropriate Federal banking agency, has two million or more deposit accounts during the two consecutive quarters preceding the effective date of the final rule or thereafter.

For purposes of the final rule, *account holder* is defined as the person who has opened a deposit account with a covered institution and with whom the covered institution has a direct legal and contractual relationship with respect to the deposit. An account holder is often, but not always, the person who actually owns deposits in a deposit account, and to whom deposit insurance inures under the FDIC's deposit insurance rules set forth in 12 CFR part 330. The person who actually owns the deposits is commonly referred to as the ''beneficial owner'' of a deposit or as the ''principal.'' When the account holder does not have ownership rights to deposits, it is typically acting as an agent, custodian, or fiduciary on behalf of the beneficial owner of the deposit. In these situations, deposit insurance coverage can ''pass through'' the account holder to the beneficial owner of the deposit, and the deposit would be insured to the beneficial owner based on the deposit insurance right and capacity in which those deposits are owned. Because the account holder is the party with whom a covered institution has a deposit account relationship, it is the account holder who will need to provide the information needed for purposes of calculating deposit insurance. For that reason, the final rule's recordkeeping requirements with respect to certain deposit accounts are framed around the relationship between the covered institution and the account holder.

Several terms are defined by reference to their statutory or regulatory definitions. Specifically, *brokered deposit* has the same meaning as provided in 12 CFR 337.6(a)(2); *deposit* has the same meaning as provided under section 3(*l*) of FDI Act (12 U.S.C. 1813(*l*)); *deposit account records* has the same meaning as provided in 12 CFR 330.1(e); and *standard maximum deposit insurance amount* (or ''SMDIA'') has the same meaning as provided pursuant to section 11(a)(1)(E) of the FDI Act (12 U.S.C. 1821(a)(1)(E)) and 12 CFR 330.1(o). *Ownership rights and capacities* are set forth in 12 CFR part 330.

Compliance date means the date that is three years after the later of the effective date of this part or the date on which an IDI becomes a covered institution. In response to the NPR, commenters had suggested that a four-year implementation period be provided. In light of the bifurcated approach to recordkeeping taken in the final rule, the FDIC believes that a three-year implementation period will be sufficient.

Payment instrument means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency). This definition is consistent with § 1002(18) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481(18)) and common banking usage.

Transactional features, with respect to a deposit account, means that the depositor or account holder can make transfers or withdrawals from the deposit account to make payments or transfers to third persons or others (including another account of the depositor or account holder at the same institution or at a different institution) by means of a negotiable or transferable instrument, payment order of withdrawal, check, draft, prepaid account access device, debit card, or other similar order made by the depositor and payable to third parties, or by means of a telephonic (including data transmission) agreement, order or instruction, or by means of an instruction made at an automated teller machine or similar terminal or unit. For purposes of this definition, ''telephonic (including data transmission) agreement, order or instruction'' includes orders and instructions made by means of facsimile, computer, internet, handheld device, or other similar means. When interpreting this definition, the FDIC will consider the frequency with which a depositor or account holder may make transfers or withdrawals with respect to a deposit account, in addition to other account features. For example, an account comprised of time deposits will not be deemed to have transactional features solely because it allows a depositor or account holder who is not the beneficial owner to redeem or withdraw the time deposit and transfer the proceeds on a one-time basis to the beneficial owner.

Unique identifier means an alpha-numeric code associated with an individual or entity that is used by a covered institution to monitor its relationship with only that individual or entity. The unique identifier may be, but is not required to be, a government-issued identification number such as a social security number or tax identification number. It could also be a customer identification number already in use by the covered institution for other operational or regulatory purposes.

3. Section 370.3 Information Technology System Requirements

As was proposed in the NPR, each covered institution is required to configure its IT system to be capable of accurately calculating the deposit insurance available to each beneficial owner of funds on deposit in accordance with the FDIC's deposit insurance rules set forth in 12 CFR part 330. Additionally, the IT system must be able to adjust account balances within 24 hours after the appointment of the FDIC as receiver. Each covered institution's IT system would need to be capable of grouping each beneficial owner's deposits within the applicable ownership right and capacity because deposit insurance is available up to the SMDIA for each ownership right and capacity in which the deposits are held. To do this, a covered institution must maintain in its deposit account records certain information, as described in § 370.4. The covered institution's IT system would also need to be able to

generate a record that reflects the deposit insurance calculation. This record would contain, at a minimum, the name and unique identifier of the account holder or beneficial owner of a deposit if the account holder is not the beneficial owner, the balance of each beneficial owner's deposits in each deposit account grouped by ownership right and capacity, the aggregated balance of each beneficial owner's deposits within each applicable ownership right and capacity, the amount of the aggregated balance within each ownership right and capacity that is insured, and the amount of the aggregated balance within each ownership right and capacity that is uninsured. Appendix B to the final rule specifies the data format for the records that the covered institution's IT system would need to produce.

If a covered institution were to fail, its depositors' access to their funds would need to be restricted while the FDIC makes deposit insurance determinations in order to avoid overpayment. Each covered institution's IT system would need to be capable of restricting access to some or all of the funds in each deposit account until the FDIC has determined the deposit insurance coverage for that account using the covered institution's IT system.

The deposit insurance determinations for most deposit accounts would be made within 24 hours after failure and holds on those accounts would be removed. Holds would remain in place on deposit accounts for which a deposit insurance determination has not been made within that time frame and would be removed after the determination has been made.

The covered institution's IT system would need to adjust the balance in each deposit account, if necessary, after the deposit insurance determination has been completed so that only insured deposits are made available. Specifically, if any of a beneficial owner's deposits within a particular ownership right and capacity were not insured, then the covered institution's IT system would need to debit the respective deposit accounts for the uninsured amount associated with each account. To the extent that a beneficial owner of deposits is uninsured, it will have a claim against the receivership for the failed covered institution that would be paid out of the assets of the receivership on equal footing with all other deposit claims, including the FDIC's subrogated claim for insured deposits.

A covered institution's IT system would need to be capable of performing these functions for most deposit accounts within 24 hours after the FDIC's appointment as receiver should the covered institution fail, and within 24 hours after the FDIC receives from the remaining account holders the additional information needed to determine deposit insurance coverage.

The FDIC's regulations and resources concerning deposit insurance that are available to the public on the FDIC's Web site are useful tools that covered institutions can use to develop the capabilities of their IT systems to meet the final rule's requirements.[15] The FDIC also intends to offer guidance and outreach to facilitate covered institutions' efforts to meet this requirement.

4. Section 370.4 Recordkeeping Requirements

In response to commenters' recommendations, the final rule's recordkeeping requirements have been modified from those set forth in the proposed rule. While the proposed rule would have required covered institutions to collect and maintain significantly more information on deposit relationships than is currently contemplated under part 330, the final rule recognizes that such information may continue to reside in records maintained outside the covered institution by either the account holder or a party designated by the account holder, as set forth in part 330. The final rule contemplates, however, that in many instances, a covered institution will already maintain in its deposit account records the necessary information for its IT system to calculate deposit insurance coverage and therefore the institution will be capable of fulfilling the general recordkeeping requirement to maintain in its deposit account records for each account the unique identifier for the appropriate parties and the applicable ownership right and capacity code. Accordingly, § 370.4(a) imposes a general recordkeeping requirement whereby the covered institution must assign a unique identifier to each account holder, beneficial owner, grantor, and beneficiary, as appropriate, and assign the applicable ownership right and capacity code listed in Appendix A. A covered institution should, in the normal course of business, already have in its deposit account records the necessary information to do this for, among others, deposit accounts that would be insured as: single ownership accounts; joint ownership accounts; accounts owned by a corporation, partnership, or unincorporated association; informal revocable trust (*i.e.,* ''payable-on-death'' or ''in-trust-for'') accounts; and any account held in connection with an irrevocable trust for which the covered institution itself is the trustee.

The final rule recognizes, however, that under the FDIC's deposit insurance rules, where an IDI's deposit account records disclose the existence of a relationship that might provide a basis for additional insurance, the details of the relationship must be ascertainable from either the IDI's deposit account records or from records maintained by the depositor or by a third party that has undertaken to maintain such records for the depositor. (See 12 CFR 330.5 concerning recognition of deposit ownership and fiduciary relationships; 12 CFR 330.7 concerning accounts held by an agent, nominee, guardian, custodian, or conservator; 12 CFR 330.10 concerning revocable trust accounts; and 12 CFR 330.13 concerning irrevocable trust accounts.) Accordingly, under § 370.4(b), a covered institution may meet alternative recordkeeping requirements with respect to those types of accounts. Under the alternative recordkeeping requirements, the covered institution must maintain in its deposit account records for each deposit account where the basis for additional deposit insurance is contained in records maintained by the account holder, or a party designated by the account holder, the unique identifier for only the account holder. It must also maintain in its deposit account records information sufficient to populate the ''pending reason'' field of the pending file set forth in Appendix B, which is to be generated by the covered institution's IT system pursuant to § 370.3(b) of the final rule. For deposit accounts held in connection with formal trusts for which the covered institution is not trustee, the covered institution will need to maintain in its deposit account records the unique identifier of the account holder, and the unique identifier of the grantor (if the grantor is not the account holder) if the account has transactional features. The unique identifier of the grantor is needed in order to begin calculating how much deposit insurance would be available, at a minimum, on deposit accounts held in connection with a formal trust. The covered institution will also need to maintain in its deposit account records information sufficient to populate the ''pending reason'' field of the pending file set forth in Appendix B, which is to be

[15] *See* FDIC's Financial Institution Employee's Guide to Deposit Insurance, 2016 Ed., available at *https://www.fdic.gov/deposit/DIGuideBankers/index.html.*

generated by the covered institution's IT system pursuant to § 370.3(b) of the final rule.

Additionally, a covered institution will need to maintain in its deposit account records the information needed for its IT system to calculate deposit insurance coverage with respect to payment instruments drawn on an account of the covered institution (commonly referred to as ''official items''), such as a cashier's check, teller's check, certified check, personal money order, or foreign draft. The FDIC recognizes that it may not always be feasible to identify the beneficial owner of such instruments and, therefore, if the necessary information is not available, the covered institution will need to maintain in its deposit account records for those accounts only the ''pending reason'' code to indicate that more information is needed before deposit insurance can be calculated. This will be used to populate the ''pending reason'' field of the pending file set forth in Appendix B, which is to be generated by the covered institution's IT system pursuant to § 370.3(b) of the final rule.

To the extent that a covered institution does not meet the recordkeeping requirements set forth in § 370.4(a) and instead meets the alternative recordkeeping requirements set forth in § 370.4(b), it must take the additional action set forth in § 370.5 with respect to those deposit accounts that have transactional features.

5. Section 370.5 Actions Required for Certain Deposit Accounts With Transactional Features

The FDIC is concerned that many deposit accounts held in the name of someone other than the beneficial owner of the deposit (such as an agent, nominee, custodian, fiduciary, or other third party) are relied upon for transactions. In the case of a failure of a covered institution, with its millions of deposit accounts, any material delay in the payment of deposit insurance could undermine public confidence in the financial system and be extremely disruptive not only for individual depositors but also for the community or region as a whole. Widespread or extended delay could even result in systemic consequences. Therefore, § 370.5(a) imposes the requirement that, with respect to deposit accounts with transactional features that are held in the name of a third party for the benefit of others, the covered institution certify that all information needed to calculate deposit insurance coverage can and will be submitted to the FDIC upon failure of the covered institution to minimize any delay in the FDIC's efforts to calculate deposit insurance within 24 hours after appointment as receiver using the covered institution's IT system. The timeframe within which this information must be received will likely need to be less than 24 hours because the covered institution's IT system will need time to process the information once received. This requirement applies not only to traditional demand and checking accounts, but also to savings deposit accounts that have transactional features, such as MMDAs, and to prepaid accounts that are entitled to deposit insurance coverage. The final rule provides, however, that this certification requirement does not apply with respect to mortgage servicing accounts, lawyers trust accounts, real estate trust accounts, or accounts held by employee benefits plans. A covered institution that is unable to provide this certification must apply to the FDIC for an exception from the certification requirement. In addition, the final rule makes clear that a covered institution's failure to provide the certification shall be deemed not to constitute a violation of this part if the FDIC has granted the covered institution relief from the certification requirement.

6. Section 370.6 Implementation

This section provides that a covered institution must comply with the final rule no later than the compliance date, which is three years after the later of the effective date of the final rule or the date on which the institution becomes a covered institution by reaching the threshold of two million deposit accounts. Under § 370.6(b), a covered institution may request that the FDIC extend the implementation time period. The request must state the amount of additional time needed and the reasons therefor. It must also report the total number of, and dollar amount in, accounts for which the covered institution's IT system could not calculate deposit insurance coverage if the covered institution were to fail as of the date of the request.

7. Section 370.7 Accelerated Implementation

The final rule provides for accelerated implementation on a case-by-case basis and after notice from the FDIC to a covered institution in three scenarios. The first would be when a covered institution has received a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System (CAMELS rating) in its most recently completed Report of Examination. The second scenario would be when a covered institution has become undercapitalized, as defined in the prompt corrective action provisions of 12 CFR part 325. The third would be when the appropriate Federal banking agency or the FDIC, in consultation with the appropriate Federal banking agency, has determined that a covered institution is experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the covered institution by its appropriate Federal banking agency in its most recent Report of Examination.

While the FDIC recognizes concerns about the imposition of an accelerated implementation deadline during economic distress, including the concern that a covered institution's attention might be diverted to solving critical problems that threaten its financial condition, providing depositors with immediate access to funds and preserving systemic stability is also critical. The ability to accelerate the implementation deadline must be balanced against any hardship an accelerated implementation period might impose on a covered institution. Before accelerating the implementation time period, the FDIC would consult with the covered institution's appropriate Federal banking agency. The FDIC would also evaluate the complexity of the covered institution's deposit systems and operations, the extent of the covered institution's asset quality difficulties, the volatility of the covered institution's funding sources, the expected near-term changes in the covered institution's capital levels, and other relevant factors appropriate for the FDIC's consideration as deposit insurer.

8. Section 370.8 Relief

Under § 370.8(a) of the final rule, a covered institution may submit a request to the FDIC for an exemption if it demonstrates that it has not and will not take deposits which, when aggregated, would exceed the SMDIA (currently $250,000) for any beneficial owner of the funds on deposit. In other words, if each owner of deposits were to have an amount equal to or less than the SMDIA on deposit at a covered institution, then all deposits would be fully insured. Deposit insurance determinations at failed covered institutions that meet this condition should not be complicated and, therefore, the FDIC does not believe that requiring such covered institutions to develop the capability to calculate deposit insurance coverage would be necessary.

Recognizing that circumstances may currently exist, or emerge in the future,

for which a covered institution is unable to comply with the recordkeeping requirements set forth in § 370.4 or some particular provision therein with respect to an identified deposit account or class of deposit accounts, § 370.8(b) allows a covered institution to request an exception for those accounts. In its request letter, the covered institution must demonstrate the need for an exception, describe the impact of an exception on the ability to accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, those deposit accounts. When reviewing the request, the FDIC would consider the implications that a delayed deposit insurance determination would have for a particular account holder or the beneficial owners of deposits, the nature of the deposit relationship, and the ability of the covered institution to obtain the information needed for an accurate calculation of deposit insurance.

A covered institution that no longer meets the criteria for being a covered institution may submit a request for release from the final rule's requirements. Section 370.8(c) provides that if the number of deposit accounts at a covered institution drops below the two million deposit account threshold for three consecutive quarters based on Schedule RC–O in the Report of Condition and Income, the institution may request release. Like any other IDI, an institution released under this paragraph would become a covered institution again if it were to have two million or more deposit accounts for two consecutive quarters.

The objectives of the final rule supersede the objectives of 12 CFR 360.9. Accordingly, if a covered institution reaches full compliance with the final rule, the results intended under § 360.9 will be largely accomplished. Paragraph (d) permits a covered institution to request a release from the requirements set forth in § 360.9 upon submission of its first certification of compliance with the final rule's requirements.

This section further provides that the FDIC will consider all requests made under relevant provisions of the final rule on a case-by-case basis in light of the final rule's objectives, and that the FDIC's grant of a covered institution's request may be conditional or time-limited.

9. Section 370.9 Communication With the FDIC

This section requires that within ten business days after either the effective date of the final rule or becoming a covered institution, whichever is later, a covered institution notify the FDIC of the person(s) responsible for implementing the recordkeeping or IT system requirements set forth in this part. Point-of-contact information, reports and requests are to be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429–0002.

10. Section 370.10 Compliance

The final rule sets forth a two-part approach for compliance. First, beginning on or before the compliance date and annually thereafter, a covered institution must certify that it has implemented and successfully tested its IT system for compliance with the final rule's requirements during the preceding calendar year. The certification must be signed by the covered institution's chief executive officer or chief operating officer. Along with its certification of compliance, the covered institution must also submit a summary deposit insurance coverage report to the FDIC. The summary deposit insurance coverage report would list key metrics for evaluating deposit insurance risk to the DIF and coverage available to a covered institution's depositors. Those metrics are: The number of account holders, the number of deposit accounts, and the dollar amount of deposits by ownership right and capacity; the total number of fully-insured deposit accounts and the dollar amount of deposits in those accounts; the total number of deposit accounts with uninsured amounts and the total dollar amount of insured and uninsured amounts in those accounts; the total number of deposit accounts and the dollar amount of deposits in accounts, broken out by account type, for which the covered institution's IT system cannot calculate deposit insurance coverage because it is permitted to maintain alternative recordkeeping requirements as set forth in § 370.4(b); and a description of any substantive change to the covered institution's IT system or deposit taking operations since the prior annual certification.

Second, the FDIC will conduct periodic on-site inspections and tests of each covered institution's IT system's capability to accurately calculate deposit insurance coverage in the event of failure. Testing will begin no sooner than the last day of the first calendar quarter following the compliance date, and will occur no more frequently than on a three-year cycle thereafter, unless there is a material change to the covered institution's IT system, deposit-taking operations, or financial condition. The FDIC will provide data integrity and IT system testing instructions to covered institutions through the issuance of procedures or guidelines prior to the final rule's effective date and before initiating its compliance testing program, and will provide outreach to covered institutions to facilitate their implementation efforts. The final rule also requires covered institutions to assist the FDIC in resolving any issues that arise upon the FDIC's on-site inspection and testing of the IT system's capabilities.

The final rule provides that a covered institution will not be in violation of any requirements of the rule for which the institution has submitted a request for relief pursuant to § 370.6(b) or § 370.8(a)–(c) while awaiting the FDIC's response to the request.

IV. Expected Effects

Using current data, the FDIC estimates that the rule will apply to 38 institutions, each with two million or more deposit accounts.[16] Together, these institutions hold more than $10 trillion in total assets and manage over 400 million deposit accounts.

The FDIC has evaluated the estimated cost to implement this rule, as well as the benefits to the FDIC's resolution process and to the millions of account holders who would need immediate access to their funds in the event of failure of a covered institution. The main determinants of the estimated cost to institutions covered by the final rule are the number of deposit accounts they hold and the number of deposit IT systems they manage. Benefits of the rule include: Ensuring prompt and efficient deposit insurance determinations by the FDIC and thus the liquidity of deposit funds; enabling the FDIC to readily resolve a failed IDI; reducing the costs of failure of a covered institution by increasing the FDIC's resolution options; and promoting long term stability in the banking system by reducing moral hazard.

These benefits are expected to accrue to the public at large. However, because there is no market in which the value of these expected benefits can be determined, it is not possible to quantify these benefits with precision. As the public benefits cannot be quantified, the FDIC presents an analytical framework that describes the qualitative effects of the proposed rule and the quantitative effects where possible, consistent with

[16] All data in this section is calculated using FDIC Call Report Data as of June 30, 2016.

the *FDIC Statement of Policy on the Development and Review of FDIC Regulations and Policies.*

Expected Costs

The FDIC's initial estimate of the cost of this rule, as described in the NPR, was approximately $328 million. The FDIC has updated its cost estimate to $478 million, based in part upon comments the FDIC received in response to the NPR. The updated estimated cost to covered institutions represents $386 million of this total, with the remaining estimated costs accruing to depositors and the FDIC. Even with these updates, the estimated costs to covered institutions remain small relative to their revenues and expenses.

In estimating the costs of this rule, the FDIC engaged the services of an independent consulting firm. Working with the FDIC, the consultant used its extensive knowledge and experience with IT systems at financial institutions to develop a model to provide cost estimates for the following activities:

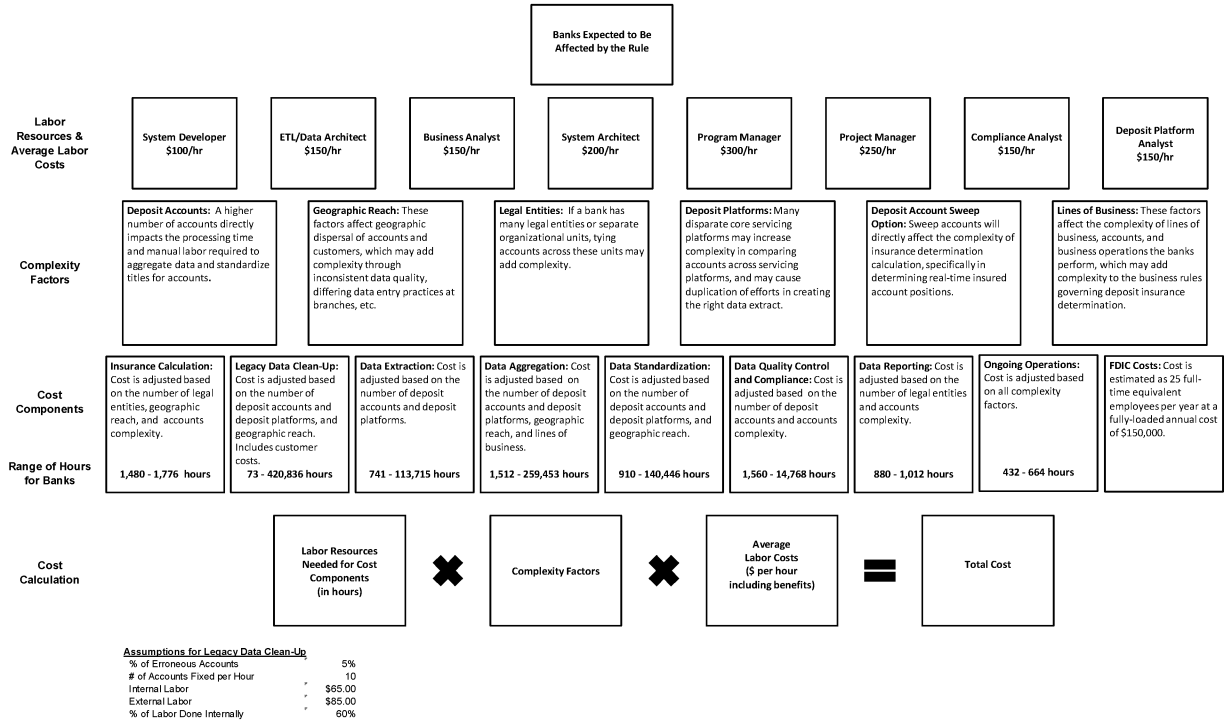
- Implementing the deposit insurance calculation
- Legacy data clean-up
- Data extraction
- Data aggregation
- Data standardization
- Data quality control and compliance
- Data reporting
- Ongoing operations

Cost estimates for these activities were derived from a projection of the types of workers needed for each task, an estimate of the amount of labor hours required, an estimate of the industry average labor cost (including benefits) for each worker needed, and an estimate of worker productivity. The analysis assumed that manual data clean-up would be needed for 5 percent of deposit accounts, 10 accounts per hour would be resolved, and internal labor would be used for 60 percent of the clean-up. This analysis also projected higher costs for institutions based on the following factors:

- Higher number of deposit accounts
- Higher number of distinct core servicing platforms
- Higher number of depository legal entities or separate organizational units
- Broader geographic dispersal of accounts and customers
- Use of sweep accounts
- Greater degree of complexity in business lines, accounts, and operations

Illustration 1 provides a diagram of the cost model.

ILLUSTRATION 1—MODEL FOR ESTIMATING IMPLEMENTATION* COSTS



*Implementation costs include both the initial and ongoing costs associated with adopting this final rule.

Table 1 shows that almost half of the rule's estimated total costs are attributable to legacy data clean-up. These legacy data clean-up cost estimates are sensitive to both the number of deposit accounts and the number of deposit IT systems. More than 90 percent of the legacy data clean-up costs are associated with manually collecting account information from customers and entering it into the covered institution's systems. Data aggregation, which is sensitive to the number of deposit IT systems, makes up about 13 percent of the rule's estimated costs.

TABLE 1—ESTIMATED IMPLEMENTATION * COSTS BY COMPONENT

Components	Component cost	Percent of total
Legacy Data Cleanup	$226,482,333	47.43%
Data Aggregation	64,015,373	13.41%
Ongoing Operations **	55,175,451	11.55%
Data Standardization	36,573,894	7.66%
FDIC Costs **	36,001,520	7.54%
Data Extraction	25,397,761	5.32%
Quality Control and Compliance	18,403,006	3.85%
Insurance Calculation	9,500,400	1.99%
Reporting	5,971,800	1.25%
Total Cost	477,521,538	100%

* Estimates of bank implementation costs include both initial and ongoing costs associated with this final rule.
** Present value of annual costs using a 3.5 percent discount rate over a 30-year time horizon. For example, this discount rate is used in OMB Circular No. A–4 and A–94, Appendix C (revised November 2015 for calendar year 2016).

TABLE 2—COMPARISON OF BANK IMPLEMENTATION * COSTS TO EXPENSES

[Amounts in thousands]

[Estimated cost to covered institutions: $385,517]

Expense item	2015 Expenses for covered institutions	Implementation * cost as percent of expense
Noninterest Expense	$260,857,965	0.15%
Personnel Expense	119,069,416	0.32%
Tax Expense	49,262,660	0.78%
Interest Expense	26,761,300	1.44%
Fixed Expense: Premises	28,446,163	1.36%
		Cost as Percent of Income
Pre-Tax Net Income, 2015	$157,197,668	0.25%
		Cost per Deposit Account
Number of Deposit Accounts, 2Q 2016	416,149.383	$0.93
		Cost as Percent of Assets
Total Assets, 2Q 2016	$10,558,645,376	0.004%

* Estimates of bank implementation costs include both initial and ongoing costs associated with this final rule.

These estimates of initial and ongoing costs of implementation are higher than those provided in the NPR. The increase in total estimated implementation costs is the result of updating the data, reviewing the cost methodology, and incorporating comments received on the NPR. Even with the revisions, however, the updated cost estimate does not alter the FDIC's overall assessment of the expected effects of the final rule.

The estimated total cost of the final rule remains relatively small for covered institutions. The estimated costs amount to an average of 93 cents per deposit account and one-quarter of one percent of pre-tax net income, as shown in Table 2. Banks with more serious deficiencies in their current systems or with greater complexity in their business lines, accounts, and operations are expected to incur above-average compliance costs. These estimates may overstate the costs of the final rule because some covered institutions are already undertaking efforts to improve their data quality to address their own operational concerns and to comply with other statutes and regulations.

Expected Benefits

The recent financial crisis has demonstrated that large financial institutions can fail very rapidly. The failure of a covered institution would likely involve millions of deposit insurance claims. An orderly resolution requires ready access to complete and accurate information about the insurance status of depositors. The final rule ensures that the FDIC can conduct an orderly resolution of covered institutions despite the informational challenges they pose.

Financial crises are, by their very nature, unpredictable, and unique and the likelihood, duration and magnitude of any such crisis cannot be predicted with mathematical precision. There are over $9 trillion in deposits in United States banks and the FDIC insures each qualifying account up to a maximum of $250,000, regardless of the events that unfold during any particular crisis. During the recent financial crisis, the federal government provided trillions of dollars of government support to large financial institutions.[17] Some of the

[17] *See, e.g.,* David Luttrell, Tyler Atkinson, & Harvey Rosenblum, *Assessing the Costs and Consequences of the 2007–09 Financial Crisis and Its Aftermath,* Federal Reserve Bank of Dallas Economic Letter (Sept. 2013), available at *http://www.dallasfed.org/assets/documents/research/eclett/2013/el1307.pdf;* Richard G. Anderson & Charles S. Gascon, *A Closer Look, Assistance*

Continued

institutions covered by this rule received government support that far exceeds the anticipated costs of this rule.

The FDIC expects that the benefits of the final rule will accrue broadly to the public at large, to bank customers, to IDIs not covered by the rule, and to the covered institutions themselves. As discussed earlier, the FDIC expects the final rule to provide significant benefits, including ensuring prompt and efficient deposit insurance determinations by the FDIC and thus the liquidity of deposit funds; enabling the FDIC to more readily resolve a failed IDI; reducing the costs of failure of a covered institution by increasing the FDIC's resolution options; and promoting long term stability in the banking system by reducing moral hazard.

The public at large will be the primary beneficiaries of the final rule. An effective failed bank resolution maintains liquidity in the economy by providing timely access to insured funds, promotes financial stability by ensuring an orderly, least costly resolution, and reduces moral hazard by recognizing deposit insurance limits (since uninsured depositors could be subject to losses even at the largest banks). Making accurate deposit insurance determinations for all insured institutions is a key component in carrying out the FDIC's mission of maintaining confidence in the banking system and minimizing costs to the DIF.

Broadly, the final rule facilitates the consideration of resolution methods that might otherwise be unavailable, enabling the FDIC to resolve a failing covered institution in the least costly manner. With more resolution options, the FDIC may be less likely to resolve a failing large institution by having another large institution absorb it; absorption by another large institution would further increase concentration among the largest banks and raise concerns about longer term financial stability. This final rule reduces the likelihood of invoking a systemic risk exception, the cost of assistance provided as the result of a failure and receivership for which the systemic risk exception has been invoked, and the associated long-term risk of increased moral hazard and damaged market discipline.[18]

Bank customers will also benefit from the final rule. Timely deposit insurance determinations will give bank customers expeditious access to insured funds to meet their transaction needs and financial obligations. Moreover, any current deficiencies in IT systems and data gathering that prevent covered institutions from identifying relationships between deposit accounts are likely to also prevent them from having the ability to quickly inform customers whether or not their deposits are insured, if asked.

IDIs not covered by the final rule will benefit because the prompt payment of deposit insurance at the largest IDIs should promote public confidence in the banking system as a whole. The provisions of the final rule will help to level the competitive playing field between large banks with two million or more deposit accounts and community banks, which typically maintain far fewer deposit accounts. The requirements of the final rule will reduce the perception that uninsured depositors at large banks are less likely to incur losses in the event of failure than their counterparts at smaller institutions.

The enhancements to data accuracy and completeness supported by the final rule should benefit covered institutions as well. Improvements to data on depositors and information systems as a result of adopting the final rule may lead to efficiencies in managing customer data. Accordingly, the upgrades in depositor information required under this rule are likely to benefit covered institutions by improving their ability to serve their customers and increasing their depositors' confidence that deposit insurance can be paid promptly by the FDIC in the event of failure. Moreover, the processing of daily bank transactions may be less prone to data errors.

V. Alternatives Considered

A number of alternatives were considered in developing the final rule. The major alternatives include (1) adjusting thresholds above or below the proposed two million accounts, (2) imposing recordkeeping requirements on all account types, (3) maintaining the FDIC's current approach to deposit insurance determinations (status quo), (4) developing an internal IT system and transfer processes within the FDIC capable of subsuming the deposit system of any large covered IDI in order to perform deposit insurance determinations, and (5) simplifying deposit insurance coverage rules. The FDIC considers the final rule to be the most effective approach among the alternatives in terms of cost to the industry, the speed and accuracy of deposit insurance determinations, access to funds, and reduction of systemic and information security risks. Development of the final rule was based on a careful evaluation of expected effects, public comments, and the FDIC's experience in resolving failed banks.

In deciding which institutions would be subject to the final rule, the FDIC considered thresholds above and below two million deposit accounts. Raising the threshold would decrease the costs of the final rule to the industry because fewer institutions would be covered, but would also increase the risk that the FDIC would be unable to make timely and accurate deposit insurance determinations for large institutions and limit the FDIC's resolution options, thereby potentially increasing the costs of resolution.

Making a correct and timely deposit insurance determination requires that the FDIC have access to accurate data on deposit accounts as well as on any relationships among those accounts. The FDIC has learned from prior experience that it is possible to manage data quality problems at small institutions without delaying or materially altering the outcome of the deposit insurance determination. However, the ability of the FDIC to promptly manage data quality problems at large institutions declines rapidly with the number and complexity of deposit accounts. Therefore, resolving data quality problems at institutions with the largest number of accounts and most complex deposit account systems prior to failure, as required by this final rule, should substantially lower the risk of inaccuracy or delay in making determinations.

As described in *IV. Expected Effects,* the FDIC estimates that the costs associated with the two million account threshold for these large IDIs will be relatively modest compared to their net income and other costs of doing business. Decreasing the threshold below two million accounts would impose higher costs on the industry as a whole, and the marginal benefits of

Programs in the Wake of Crisis, The Regional Economist, Federal Reserve Bank of St. Louis (Jan. 2011), available at *https://www.stlouisfed.org/~/media/Files/PDFs/publications/pub_assets/pdf/re/2011/a/bailouts.pdf;* U.S. Gov't Accountability Office, GAO–10–100, *Regulators' Use of Systemic Risk Exception Raises Moral Hazard Concerns and Opportunities Exist to Clarify the Provision* (2010), available at *http://www.gao.gov/assets/310/303248.pdf.*

[18] As mandated by the Dodd-Frank Act, future payments pursuant to the systemic risk exception can only be made with respect to an institution in receivership, removing the possibility of open bank assistance. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 1106, 124 Stat. 1376 (2010). This change increases the likelihood that the failure of a covered institution will involve millions of deposit insurance claims.

the rule would decline since smaller institutions present less risk to prompt deposit insurance determinations.

In determining the scope of the final rule, the FDIC considered requiring covered institutions to maintain complete and accurate records for all accounts as originally proposed. However, the FDIC recognizes that covered institutions may not maintain in their deposit account records, and may not be able to obtain, for all accounts the information needed for deposit insurance purposes. The FDIC's regulation that sets forth the standards for deposit insurance coverage, 12 CFR part 330, permits records to reside outside of an IDI with respect to certain types of deposit accounts, as long as certain requirements are satisfied, without adverse consequences for the insurability of deposits. Similarly, the final rule recognizes that covered institutions will not have and therefore do not need to keep complete records for deposit insurance purposes for those types of deposit accounts.

Additionally, costs associated with developing the ability to collect data, produce key account holder information in a timely manner, and perform a deposit insurance calculation are estimated to be relatively high for some account types. For example, for covered institutions the costs associated with collecting key information regarding beneficial ownership of deposits held by a prepaid account program manager on behalf of program participants is likely to be higher than for other account types for which beneficial ownership can be readily determined. For trust accounts, the identity and number of beneficiaries can often change, making the costs associated with collecting key information from the account holder, trustee, or other interested parties relatively high.

Another alternative is to maintain the status quo established by 12 CFR 360.9. However, that rule does not adequately address an important problem that arises in the resolution of the largest and most complex institutions. Deposit insurance determinations under § 360.9 necessitate a secure bulk download of depositor data that introduces additional delays in making determinations. The FDIC's experience in resolving large institutions shows that the amount of time for data to download can vary widely based on the file size, complexity of the data, and the number of deposit systems, among other things. Given the limited time available to the FDIC to make determinations, these delays pose the risk of creating financial hardships for depositors and disrupting financial markets.

Another alternative considered was to establish a system to rapidly transmit all deposit data from a failed IDI's IT system to the FDIC for processing in order to calculate and make deposit insurance determinations. Although this alternative utilizes a common deposit insurance calculation IT system, absorbing the deposit system or systems of a large, complex institution quickly enough to make a prompt insurance determination is infeasible as a practical matter. Unlike typical small and mid-sized IDIs, covered institutions have large amounts of data and often use multiple deposit account IT systems which are programmed to meet institution-specific needs. FDIC staff, working with staff from each large institution, would have to develop an individualized solution for each institution tailored to its IT systems and third-party applications. Extensive initial and ongoing testing would be required to establish that the data transmission would allow a prompt and accurate insurance determination. Additionally, covered institutions would still bear the cost of legacy data cleanup and data aggregation, which are the two largest cost components in the cost model.

The alternative of the FDIC establishing an IT system to rapidly transfer all deposit data from a failed IDI would also likely impose large ongoing costs for covered institutions because any significant change to the deposit system of a large IDI would necessitate further testing and validation. Further, the large IT development, testing, and recertification costs borne by the FDIC under this alternative would ultimately be paid by insured depository institutions through ongoing deposit insurance assessments. In contrast, the final rule requires that a covered institution's IT system have the ability to calculate deposit insurance coverage for all deposit accounts in the event of a failure. It would use the data that the covered institution has on hand at the time of failure as well as data collected by the FDIC from depositors shortly after failure. Under the final rule, IT costs would be absorbed by covered institutions rather than by the entire banking industry.

Another alternative the FDIC considered was to simplify deposit insurance coverage rules. Currently, deposit insurance is provided under different ownership rights and capacities, some of which involve complex types of deposit accounts. Reducing the number of rights and capacities or simplifying the coverage rules would reduce the costs associated with covered institutions' development of the capability to calculate deposit insurance coverage. However, efforts to simplify the deposit insurance coverage rules could effectively reduce coverage to depositors at all FDIC insured institutions, an approach that would impose a cost on a wider range of institutions and bank customers. Further, these complex account types present problems when the FDIC must analyze a significant number of these accounts at the same time. The FDIC's established methods for dealing with these more complex accounts in smaller and mid-sized resolutions include manual processing, an approach that could take too long in a larger resolution involving a significant number of these accounts. Consequently, the FDIC is not pursuing simplification of the deposit insurance coverage rules.

VI. Discussion of Comments

Generally, the issues raised by the commenters may be categorized under the following topics: The need for regulation, expected effects of the proposed rule, possible alternatives to the proposed rule, problems with the proposed rule's requirements, and possible adverse consequences.

A. Comments Concerning the Need for Regulation

The commenters generally agree that it is important for depositors to have prompt access to their insured deposits in the event of the failure of a large and complex IDI. However, some commenters contended that the proposed rule is unnecessary because covered institutions are unlikely to fail. One commenter remarked that the likelihood of failure is ''essentially zero.'' This commenter maintained that it is more likely that market forces and the FDIC's enforcement powers and supervisory authority would solve the problems of a large institution before failure. This commenter also asserted that, even if failure did occur, a transaction in which all deposits are assumed by another institution would be the least costly resolution, thereby avoiding the need for a deposit insurance determination. The payment of all uninsured deposits would preserve the failed bank's franchise value, this commenter argued, while adherence to deposit insurance limits could cause runs at other financial institutions and be systemically disruptive. Another commenter suggested that it would be ''unlikely'' that the FDIC would use a straight deposit payoff, an insured deposit transfer, or a deposit insurance national bank to resolve a large bank. Similarly, other commenters posited that, if a

covered institution were to fail, then an all-deposit purchase and assumption transaction would be the least costly resolution, thereby avoiding the need for a deposit insurance determination.

While the likelihood of any particular covered institution's failure may be low at a given point in time, history suggests that the financial condition of institutions that are perceived to be in good health can deteriorate quickly and with little notice. In 2008 and 2009, several large insured depository institutions failed, including IndyMac Bank and Washington Mutual Bank. In general, very large IDIs rely on credit-sensitive funding more than smaller IDIs do, which makes them more likely to suffer a rapid liquidity-induced failure.

The contention that warning signs will give the FDIC sufficient notice to plan for resolution of a covered institution and the related argument by another commenter that the ''FDIC has provided absolutely no evidence that a large bank . . . has ever failed with little prior warning'' are also controverted by the events of the recent banking and financial crisis. The financial condition of several large and complex financial institutions deteriorated very rapidly in 2008. Numerous academic studies, articles, reports to Congress, other government reports, and Congressional testimony (including testimony from FDIC officials) have documented that short term funding challenges rapidly caused distress at banks during the last financial crisis (resulting in either bank failure or government intervention to prevent failure, as in the case of Wachovia Bank and Citibank).[19] This dynamic, present in the failure of Washington Mutual, for example, increases the risk that the FDIC will have little lead time to prepare for the failure of a covered institution.

While certain post-crisis reforms have resulted in a more resilient banking system with stronger liquidity and capital, the effect of these reforms has not been tested in a crisis. These post-crisis reforms mitigate but do not eliminate the risk of failure. Other post-crisis reforms have limited the FDIC's authorities. For example, during the most recent crisis the FDIC was able to provide debt guarantees through the Temporary Liquidity Guarantee Program under then-existing statutory authority to bolster liquidity in the financial system. Under current law, such a program would require Congressional approval.

The contentions that, even if a large bank did fail, a transaction in which all deposits are assumed by another institution or in which all assets are purchased and deposit liabilities assumed would be the least costly resolution (thus avoiding the need for a deposit insurance determination), or that it would be ''unlikely'' that the FDIC would use a straight deposit payoff, an insured deposit transfer, or a deposit insurance national bank to resolve a large bank are again controverted by the facts. Since 2008, the FDIC has conducted 36 resolutions where an all-deposit assumption transaction could not be arranged. Moreover, the sheer size of many covered institutions limits the number of institutions that could even consider purchasing all assets and assuming all deposits (or simply assuming all deposits), increasing the chances that a deposit insurance payout or a bridge bank will be the least costly alternative.[20] To use these resolution methods, the FDIC must be able to make a deposit insurance determination.

Moreover, a former Chairman of the FDIC publicly shared his reaction to a commenter's suggestion that the FDIC would never need to determine deposit insurance for the largest banks, stating that the suggestion was ''in effect, proposing 100% deposit insurance at banks, which would sound the death knell for any pretense of market discipline and a private sector banking system.'' He stated that, historically, the FDIC ''had no ability to deal with large bank failures in any way other than by recapitalizing them or merging them into even larger banks if [the FDIC] couldn't quickly segregate the uninsured deposits from the insured. Without this information, the FDIC might as well throw in the towel on instilling private sector discipline in the banking system.'' [21] The possibility of failure must exist to maintain market discipline and avoid moral hazard.

Some commenters assert that additional regulation is unnecessary because the FDIC's informational needs for a deposit insurance determination are already addressed in its current regulation at 12 CFR 360.9. The current approach under § 360.9 is not adequate and additional regulation is necessary for two reasons. First, as discussed in *II. Need for Further Rulemaking,* the informational and provisional hold aspects of § 360.9 are inadequate for the largest depository institutions. The institutions covered by § 360.9 are permitted to populate the data fields by using only data elements currently maintained in-house. If the institution does not maintain the information to complete a particular data field, then a null value can be used in that field. As a result of this discretionary approach, these institutions' standard data files are frequently incomplete. The provisional hold capability falls short because § 360.9 requires these institutions to maintain the technological capability to automatically place and release holds on deposit accounts if an insurance determination could not be made by the FDIC by the next business day after failure. Although provisional holds allow depositors' access to a portion of their total deposit while the insurance determination is being finalized, the hold does not facilitate a faster or more efficient insurance determination.

Second, because deposit data files must be transmitted to the FDIC, standardized by FDIC staff, and then processed on the FDIC's IT system, a deposit insurance determination is still a very time consuming and manually intensive endeavor. While § 360.9 would assist the FDIC in fulfilling its legal mandates regarding the resolution of failed institutions subject to that rule, the FDIC believes that if one of the largest IDIs were to fail with little prior warning, additional measures would be needed to ensure the prompt and accurate payment of deposit insurance to all depositors.

Beyond the constraints apparent in § 360.9, significant resources are needed to collect and standardize the information needed to process the high volume of accounts a covered institution has in a manner that will

[19] *See, e.g.,* Testimony of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System, *The Acquisition of Wachovia Corporation by Wells Fargo & Company Before the Financial Crisis Inquiry Commission,* Before the Financial Crisis Inquiry Commission (Sept. 1, 2010); Testimony of Sheila C. Bair, Chairwoman of the FDIC, *Causes and Current State of the Financial Crisis Before the Financial Crisis Inquiry Commission,* Before the Financial Crisis Inquiry Commission (Jan. 14, 2010); Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States'' (U.S. Government Printing Office, 2011); Philip Strahan, *Liquidity Risk and Credit in the Financial Crisis,* Federal Reserve Bank of San Francisco Economic Letter (May 14, 2012); U.S. Gov't Accountability Office, GAO–10–100, *Federal Deposit Insurance Act: Regulators Use of Systemic Risk Exception Raises Moral Hazard Concerns and Opportunities Exist to Clarify the Provision* (April 2010).

[20] The least cost test does not consider indirect or speculative costs, such as costs to other entities in the economy that result from a bank's failure. Thus, absent a systemic risk determination, the FDIC cannot consider these costs as a reason to implement a more costly alternative.

[21] Bill Isaac (former FDIC Chairman), online response to Bert Ely, *FDIC's Sudden Concern with Insurance Limit Makes No Sense,* American Banker (May 18, 2016), available at *http://www.americanbanker.com/bankthink/fdics-sudden-concern-with-insurance-limit-makes-no-sense-1081055-1.html.*

avoid significant disruption to depositors and the payment system. Processing deposit accounts after gathering needed information can take significant time after failure as well. As the amount of time needed to gather information from a depositor increases, the speed of insurance payment to that depositor decreases. Delays in processing deposit insurance determinations at banks with millions of deposit accounts would likely be more significant than the delays imposed during past resolutions of smaller banks. For example, in the wake of IndyMac's failure, it took FDIC staff significant time and resources to complete deposit insurance determinations for many formal revocable trust and irrevocable trust accounts. Given the level of public anxiety after the failure of IndyMac Bank, it is not unreasonable to be concerned that the fear of loss on deposits could be even greater in the event of the failure of a covered institution. The reporting required under the final rule will help the FDIC prepare to make deposit insurance determinations after the failure of a covered institution.

Several commenters assert that there is no need for covered institutions to maintain account information that duplicates or overlaps with information already maintained outside the institution by account holders who can provide the information expeditiously in the event of the institution's failure. These commenters believe that a two-pronged approach by which prompt payment is made to most depositors and later payment is made to certain other depositors once the required information has been received has had no negative effect on public confidence in deposit insurance and the banking system. To a large extent, the final rule accommodates this concern by limiting the recordkeeping requirements for certain types of deposit accounts for which covered institutions do not already maintain the information needed for deposit insurance determination.

The evolution of deposit products and relationships has rendered current regulatory standards less effective in facilitating rapid deposit insurance determination. Account features and customer use and expectations have changed. Immediate and continuous access to deposit accounts is more common now than in the past. Deposit accounts are increasingly used by beneficial owners of deposits who are not the named account holder (*e.g.,* MMDAs associated with brokered sweep accounts and prepaid account programs administered by a third party that places deposits at an IDI on behalf of the cardholders). Also, demand deposit accounts held in connection with revocable trusts are used more commonly. Because these accounts are transactional, those depositors expect to have immediate access without regard for the respective institution's failure. Checks outstanding at the time of failure need to be processed and either paid or returned in a timely manner, often no more than a few business days, in order to avoid cascading consequences across the payments system. However, it could take time after failure for the FDIC to gather the information needed to make a deposit insurance determination for the deposit accounts that those checks are drawn upon. The final rule seeks to minimize the amount of time needed to make deposits in those accounts accessible so that the impact on depositors and the payments system in general is minimized.

Some of the commenters maintain that the FDIC should develop its own IT system capabilities to handle deposit insurance determinations at an institution of any size. One advocated for the development and use of a single insurance calculation system to be deployed at every covered institution, while another discussed the use of a custodial facility to reconcile depositor data transmitted by the institution with data transmitted by financial intermediaries. As described in *V. Alternatives Considered,* the FDIC considered developing a system to rapidly transfer all deposit data from a failed IDI's IT system to the FDIC for processing in order to calculate and make deposit insurance determinations but determined that absorbing the deposit system or systems of a large, complex institution quickly enough to make a prompt insurance determination is practically infeasible.

B. Comments Concerning the Expected Effects of the Rule

Several commenters challenged the conclusions and methodology of the FDIC's analysis of the proposed rule's expected effects. One commenter remarked that the ''proposed rule would impose unnecessary costs without delivering any benefit'' and that the FDIC ''almost certainly has grossly underestimated the cost to the affected banks of implementing and maintaining deposit-account aggregation as specified in the NPR.'' Commenters criticized different cost components of the analysis, including whether the model was up-to-date, captured the impact of the rule on all market participants, and the assumptions and robustness of the model. The FDIC has considered these comments in development of the final rule.

Expected Costs

FDIC costs: One commenter noted that the NPR did not include costs to the FDIC. The FDIC estimates that this rule may require as many as 15 full-time equivalent employees to assist with implementation of the regulation.[22] The present value of these costs at a 3.5 percent discount rate for 30 years increases the estimated cost of the rule by approximately $36 million.[23] The costs of these employees include wages, benefits, and taxes, and are adjusted for inflation. The FDIC believes this is a conservative estimate as it anticipates that administration of the rule will require less effort over time.

Costs to depositors: Commenters noted that the NPR did not include the costs that depositors will incur updating or providing account information to covered institutions. The FDIC believes that the number of accounts where depositors will be asked to provide account information is significantly reduced from the NPR given the alternative recordkeeping requirements provided for in the final rule. Even so, the FDIC estimates that the cost to depositors will be approximately $56 million. In calculating this estimate, the FDIC assumes a 100 percent response rate by depositors with a level of effort (LOE) for depositors equal to the LOE of the covered institutions and the average national wage rate of $27 per hour.[24] Depositors are not required to provide account information, however, and the FDIC expects that some depositors will not provide it. A depositor who provides the account information reveals that he or she perceives that the benefit of providing the information justifies the cost of doing so.

Costs to intermediaries: Some commenters criticized the FDIC's cost estimate because it did not include the potential impact on other market participants, including administrators, custodians, and sub-custodians. In response to comments discussed elsewhere in this preamble, the final rule provides alternative recordkeeping

[22] Costs for full-time equivalent employees should be considered opportunity costs (that is, hours worked on the implementation of the final rule rather than on other work assignments).

[23] For example, this discount rate is used in OMB Circular A–4 and A–94, Appendix C (revised November 2015 for calendar year 2016).

[24] Bureau of Labor Statistics, Establishment Data, Table B–3.

requirements for certain deposit accounts. The FDIC expects that the cost to intermediaries will be mitigated by the final rule's alternative recordkeeping requirements.

Number of deposit accounts: Several commenters criticized the FDIC's analysis on the grounds that it was based on outdated information, and it included some banks that would not be covered by the NPR and excluded some banks that would be covered. Based upon comments received on the NPR and taking into consideration the banks that amended their Call Reports to reflect a deposit account total under the two million threshold, the FDIC updated its model using June 30, 2016 Call Report data, adding banks that will be subject to the final rule and removing banks that are no longer expected to be subject to the final rule. The number of covered institutions increased from 36 to 38, and the number of deposit accounts rose by 4.7 percent. This update, by itself, added approximately $6.4 million to the estimated cost of the rule.

Ongoing costs: The FDIC's cost estimate was also criticized as not addressing the ongoing costs of compliance or considering anti-competitive effects. Some commenters argued that the FDIC failed to take into consideration ongoing costs; other commenters argued that the FDIC's estimate of these costs was too low. The FDIC did not receive any evidence that its estimate for one year of ongoing costs was too high; however, it did update its estimate to include costs incurred in later years. The FDIC extended the horizon for annual ongoing costs by calculating the present value of these costs over a 30-year horizon at a 3.5 percent discount rate.[25] This re-calculation raises the estimated cost of ongoing operations from $2.9 million to approximately $55 million.

Costs and risks of data breaches: Several commenters stated that the additional information maintained by banks as a result of this final rule would increase the risk and cost of data breaches. As stated in the NPR, covered institutions already maintain significant amounts of personally identifiable information (PII) on their depositors. However, the final rule has been modified in a way that should largely address this issue. It does not require covered institutions to bring records in-house that currently are permitted to reside outside the institution with the account holder or other designated third party.

Foreign deposits: One commenter stated that the rule should not cover foreign deposits. The rule does not cover foreign deposits and the cost calculations take into account only domestic deposit accounts.

Misinterpretation of rule requirements: Several commenters stated the costs of the final rule would be orders of magnitude higher than the FDIC's estimate as they believed the rule would require them to collect or report changes to beneficial ownership and account balances on a daily basis. The proposed rule did not contain any such requirement. Similarly, the final rule does not require daily collection or reporting but rather periodic demonstrations that covered institutions can promptly provide deposit account information to the FDIC. In any event, the final rule sets forth alternative recordkeeping requirements that can be met to satisfy the rule with respect to accounts insured on a pass-through basis and certain deposit accounts held in connection with formal trusts.

Model robustness to changes in assumptions: One commenter stated that the costs in the model are sensitive to the assumptions used by the FDIC. The FDIC did not receive any information that would indicate that its assumptions are inappropriate. Further, this comment ignored the effect that changing assumptions has on the benefits of the rule, which also rise with the banks' difficulty in obtaining accurate account information. For example, assuming that the percentage of accounts with insufficient deposit records will be higher would raise the costs of the rule, but it would also increase the benefits of the rule because, absent the final rule, a higher percentage of accounts with missing or incorrect information would likely further delay an insurance determination.

Reliability of cost estimate: The NPR noted that even if actual compliance costs turned out to be twice the projected cost, such costs would still be relatively small in the context of the size, annual income, and expenses of covered institutions. Referring to this statement, one commenter stated that the ''margin of error in the estimate could be as much as 100 percent.'' The FDIC recognizes that no model will perfectly capture all of the costs associated with this rule. Doubling the estimated costs merely demonstrates the robustness of the FDIC's cost estimate. Moreover, none of the commenters proposed an alternative model or provided their own compliance cost data. The FDIC invited the submission of such information when it issued the ANPR and the NPR.

Relative costs for smaller institutions: Another commenter states that the FDIC's compliance cost estimates do not accurately reflect the burden the proposed rule would place on covered institutions and that compliance burdens would fall disproportionately on smaller institutions, which do not have the economies of scale to absorb the costs. This commenter suggests that the FDIC provide a cost calculation that stratifies the financial impact of the proposal by total deposits, so that the actual costs relative to size, other expenses, and earnings can be accurately assessed. One commenter noted that, while the costs of the rule relative to revenue and expenses are very small for covered institutions as a whole, this is because of the outsized influence of large banks on aggregate revenue and expenses. While the FDIC recognizes that the cost of the rule per account and as a percentage of assets, revenue, and expenses will be higher for relatively smaller covered institutions and, while it considered these costs when determining whether to adopt the final rule, the FDIC concluded that incomplete deposit account information at institutions with two million or more deposit accounts poses an unacceptable risk to the DIF and depositors. However, institutions can submit a request to the FDIC for an exemption from the final rule if their deposit-taking business model does not pose a significant risk to the DIF or depositors because all deposits they accept are fully insured. Moreover, the primary determinant of the costs of the rule per institution is not likely to be the size of the institution, but rather the quality of its current IT system for deposit record-keeping. Those institutions with more robust and accurate record-keeping systems will incur fewer costs. Those with less robust and less accurate record-keeping systems will incur greater compliance costs.

Expected Benefits

Multiple commenters argued that the FDIC should quantify the expected benefits of the final rule. None of the commenters provided their view on the quantitative benefits of the rule. Because there is no market in which the value of these public benefits can be determined, it is not possible to quantify or estimate these benefits with precision.

Some commenters questioned the benefits that the rule would provide. One individual argued that the rule would not deliver any benefit. One group of trade associations described the expected benefits as ''marginal,'' and

[25] For example, this discount rate is used in OMB Circular A–4 and A–94, Appendix C (revised November 2015 for calendar year 2016).

another individual described the rule as providing little benefit. The commenters offered minimal explanation of their positions on the expected benefits apart from speculating that the failure of one of these large institutions was unlikely, notwithstanding the events of the recent financial crisis. In the FDIC's view, the final rule provides many benefits, as explained in *II. Background* and *IV. Expected Effects*.

C. Comments Concerning Possible Alternatives to the Proposed Rule

As described in *V. Alternatives Considered,* the FDIC considered a number of alternatives in developing the proposed and final rule, including: (i) Adjusting thresholds above or below the proposed two million accounts; (ii) excluding certain account types; (iii) maintaining the FDIC's current approach to deposit insurance determinations (status quo); (iv) developing an internal FDIC IT system and transfer processes capable of subsuming the deposit system of any large covered IDI in order to perform deposit insurance determinations; and (v) simplifying deposit insurance coverage rules. The FDIC received comments on these alternatives.

In deciding which institutions would be subject to the final rule, the FDIC considered thresholds above and below two million deposit accounts. The FDIC received one comment on this alternative. The commenter suggested that the threshold should include both the number of accounts and total dollar amount of deposits and suggested that the threshold for the number of accounts should be higher—10 million accounts. Raising the threshold would decrease the costs of the rule on the industry because fewer institutions would be covered, but would also increase the risk that the information would not be available for the FDIC to make timely and accurate deposit insurance determinations for large institutions and limit the FDIC's resolution options, thereby potentially increasing its loss.

Several commenters argued that it would be too costly to impose additional recordkeeping requirements for certain types of deposit accounts. The FDIC recognizes that under current generally applicable deposit insurance rules for certain types of deposit accounts, information needed for deposit insurance purposes may reside outside an IDI's deposit account records, and the final rule does not require that covered institutions collect the additional information needed from account holders for these types of deposit accounts.

Some commenters supported maintaining the status quo and considered existing regulatory standards (specifically § 360.9) to be adequate. Adoption of § 360.9 was an important step toward resolving a large depository institution in an efficient and orderly manner. However, while § 360.9 would assist the FDIC in fulfilling its legal mandates regarding the resolution of a failed institution that is subject to that rule, the FDIC believes that if the largest of depository institutions were to fail with little prior warning, additional measures would be needed to ensure the prompt and accurate payment of deposit insurance to all depositors.

The FDIC received a comment supporting the alternative in which the FDIC creates a software solution to calculate and make deposit insurance determinations to be deployed at all covered institutions. The FDIC finds that alternative is not feasible, given the challenge of creating one program to accommodate the different and bespoke deposit systems of all covered institutions.

D. Comments Concerning the Proposed Rule's Requirements

1. Problems Associated With Beneficial Ownership Information

One commenter stated that requiring a large amount of beneficial owner data to be collected on a daily basis would be superfluous because the FDIC would only need to use the data for deposit insurance determinations if and when a covered institution failed. Moreover, requiring daily updates on beneficial customer data would result in high costs and risk customer dissatisfaction. Generally speaking, beneficial ownership of deposits placed in covered institutions relies upon the principles of agency law or fiduciary relationships to provide ''pass-through'' deposit insurance coverage to the beneficial owners of those accounts. In most circumstances, the agents, fiduciaries, custodians, or other accountholders maintain the requisite beneficial ownership data in their own records, and presumably, those accountholders update their records as necessary, including on a daily basis, as ownership of the underlying deposits changes. While the final rule requires a covered institution's IT system to be capable of accepting and processing beneficial ownership data for all accounts on any given day, *i.e.,* the day of the covered institution's failure, the beneficial ownership information will not be required to be transferred and maintained *on a daily basis* at the covered institution provided that 12 CFR part 330 permits the recordkeeping associated with those deposit accounts to be maintained by an entity other than the covered institution. See, 12 CFR 330.5 and 330.7.

Some commenters remarked that having to submit requests for exceptions for individual account holders would be ''senselessly cumbersome and grossly inefficient—including for the FDIC itself—considering that all or most covered banks would be expected to seek exceptions for certain classes or accounts.'' The FDIC has considered the comments regarding the inefficiency as well as the burden to both the covered institutions and the FDIC of having to submit and process, respectively, requests for exceptions from the final rule's requirements for each individual account holder for whom it would not be possible to obtain the requisite information. The FDIC has revised its proposal to address this concern. As more fully described in *III. Description of the Final Rule,* the final rule adopts a bifurcated approach to deposit account recordkeeping requirements based upon the recordkeeping procedures permitted by 12 CFR part 330. Under this approach, covered institutions will not be required to collect and maintain information for certain deposit accounts provided that 12 CFR part 330 allows the requisite information to be maintained by the account holder or some other third party. Consequently, it will not be necessary for covered institutions to request exceptions for individual deposit accounts or for certain ''classes'' of deposit accounts provided that the relevant deposit account ownership information for those accounts is maintained in accordance with 12 CFR part 330.

Certain commenters claimed that the proposed rule would be unduly costly, burdensome, and impracticable in the case of particular account holders, such as banks needing to obtain ownership and balance information from agents and other custodians who service payment cards issued by large corporations as checking and debit substitutes. One commenter expected that information for retirement plan participants would not be forthcoming from sponsors, fiduciaries and others involved in plan administration because participants' interests change daily, there are multiple intermediaries from whom information would need to be collected, and because plan sponsors and fiduciaries won't disclose participant information for fear of violating participants' privacy and breaching fiduciary duties under the Employee Retirement Income Security

Act of 1974.[26] Another commenter contended that a lawyer's disclosure of clients' identities and interests in client trust accounts conflicts with ethical rules protecting confidential client information.

After balancing the goals of the final rule and the concerns of the commenters, the FDIC decided to align the deposit account recordkeeping requirements of this final rule with the recordkeeping requirements set forth in 12 CFR 330.5 and 12 CFR 330.7. These two sections of the FDIC's regulations address deposit account ownership (and recordkeeping) in the context of fiduciary relationships (as described in § 330.5) and which includes agents, nominees, guardians and custodians. Compliance with these recordkeeping requirements is necessary to ensure the availability of pass-through deposit insurance to the underlying beneficial owners of the deposits. The commenters presented various arguments for different types of pass-through deposits to support their request for ''class'' exceptions.

Retirement and other employee benefit plan accounts. For the reasons discussed, the FDIC will consider these accounts to be subject to the alternative recordkeeping requirements of final part 370. Nevertheless, the covered institutions will be required to assign a unique identifier to the account holder. Covered institutions will also be required to maintain a ''pending reason'' code in their deposit account records for each account to comply with § 370.4(b)(1)(ii) of the final rule. The covered institutions should have procedures in place to obtain the necessary plan participant information as soon as possible after failure. Any delay in the receipt of the requisite information post-failure will adversely impact the FDIC's ability to complete its deposit insurance determinations and disburse deposit insurance payments to the plan administrators.

Interest on Lawyer Trust Accounts and Real Estate Trust Accounts. Several commenters described the problems facing lawyers attempting to maintain current and accurate information regarding their clients' identities and transactions associated with their Interest on Lawyer Trust Accounts (''IOLTA'') accounts. The commenters asserted that frequent, if not daily, deposits and withdrawals are made on behalf of various clients. Therefore, requiring the lawyers to provide up-to-date information on a daily basis would be ''administratively difficult and costly'' for the lawyers who are the account holders. As the American Bar Association Model Rule 1.15 requires lawyers to keep adequate records on IOLTAs for up to five years, the lawyer or law firm (as the account holder) should be able to provide the necessary information regarding their clients, who are the beneficial owners of the deposit in the IOLTA account, in a timely fashion. The commenters also pointed out that lawyers have a fiduciary duty to maintain the confidentiality of their clients' sensitive or personal information and raised concerns that this duty could be compromised by routinely disclosing such information to a covered institution. The FDIC recognizes that FinCEN recently excepted IOLTAs and other lawyer escrow accounts from its customer due diligence final rule; it appears that FinCEN relied upon many of the same considerations discussed here.[27] It is important to note, however, that FinCEN and the FDIC are addressing different problems through their respective rulemakings; *i.e.,* the prevention of money laundering and timely deposit insurance determinations, respectively. Ultimately, the safeguards provided by the lawyers' rules of professional responsibility to properly manage their IOLTA accounts coupled with the off-site recordkeeping allowed pursuant to § 330.5(b)(1)–(3) for fiduciary relationships justify the reduced deposit account recordkeeping requirements for IOLTA accounts.

The same commenters asserted that Real Estate Trust Accounts (''RETAs'') are very similar in structure and concept to IOLTAs and, therefore, should also be excepted as a class of deposits from the recordkeeping requirements of final part 370. RETAs represent another type of pooled, custodial account in which a title/escrow agent deposits funds from multiple clients; the funds are usually held for a short period of time until the clients' real estate transactions are completed. Deposit account recordkeeping for RETAs is also subject to the off-site recordkeeping requirements of § 330.5(b)(1)–(3) for fiduciary relationships. Therefore, covered institutions will only be required to assign a unique identifier to the account holder and maintain a ''pending reason'' code in its deposit account records in accordance with § 370.4(b)(1)(ii).

Mortgage servicing accounts. The FDIC received several comments requesting that the recordkeeping requirements of the proposed rule be revised to allow relevant information regarding mortgagors whose payments are placed in a mortgage servicing account (''MSA'') to continue to be maintained with the mortgage servicing company rather than at the covered institution. Commenters from the mortgage servicing industry provided a description of the typical transactions which occur in a mortgage servicing account, explaining that there are safeguards which would make the need to access the funds in such an account on the first business day after a covered institution's failure a low priority for the servicer. For example, payments of principal and interest are made in advance; mortgage servicing contracts require the servicer to maintain back-up liquidity sources; and while the transaction volume in these accounts is usually high, the deposit amounts allocated to individual beneficial owners are typically far less than the SMDIA. In addition, mortgage servicing deposit accounts are expressly included in § 330.7(d) and are usually held by a mortgage servicing company in a custodial or fiduciary capacity. The FDIC has considered these comments and, based on these considerations, the FDIC has concluded that MSAs maintained by a third party mortgage servicer must only comply with the recordkeeping requirements set forth in 12 CFR 370.4(b)(1). On the other hand, MSAs for which the covered institution serves as the mortgage servicer must comply with the recordkeeping requirements set forth in § 370.4(a).

Brokered deposits and sweep accounts. Several commenters raised concerns about the impact of the proposed rule on brokered deposits. One proposed revising the exemption provision to apply to deposits received through a deposit allocation or sweep service in amounts that do not exceed the SMDIA, expressly permitting a custodian or sub-custodian, as account holder, to refuse to provide beneficial owner data for all deposits placed through a deposit placement network or cash sweep program, and granting an exception based on such refusal without requiring a particularized showing for each of the custodian's customers. Another commenter recommended excepting deposits placed in a covered institution by a non-covered institution through a deposit placement network.

Another commenter provided data concerning the scope and composition of brokered deposits and sweep programs as a subset of the entire banking industry's deposit base. According to this commenter, as of March 31, 2016, there were $813 billion of brokered deposits reported on bank Call Reports; of this amount,

[26] 29 U.S.C. 1002.

[27] 81 FR 29398, 29416 (May 11, 2016).

approximately $350 billion were brokered CDs. This commenter also estimated that $350 billion of the $813 billion reported brokered deposits are in sweep programs and noted that deposits in some sweep programs are not categorized as ''brokered deposits'' and are therefore not reported as such on the Call Reports of those banks in which they are deposited. According to this commenter, almost 13 percent of domestic deposits are held on a pass-through basis through broker-dealers or other banks through these various deposit programs, and average sweep deposit balances and purchases of brokered CDs are substantially below the SMDIA.

Brokered deposits—for example, those that are part of a deposit placement network or as brokered CDs offered by or sweep programs sponsored by a broker-dealer—represent another type of deposit account where a fiduciary or other agent or custodian is the account holder on behalf of beneficial owners. In recognition of the recordkeeping requirements set forth in § 330.5, the final rule provides for ''alternative recordkeeping'' for those deposit accounts. The covered institutions are authorized to maintain their account records for brokered deposit accounts in accordance with the off-site and multi-tiered relationship methods set forth in § 330.5(b). The covered institutions will be required to assign a unique identifier to the account holder which will be the entity placing the deposit(s) in the covered institution. The covered institutions will not be able to designate the appropriate right and capacity code because they will not have access to the requisite underlying information regarding the beneficial owners; consequently, they will need to maintain in their deposit account records information sufficient to populate the pending reason field in the pending file that would be generated by the IT system as required under § 370.4(b)(1) and Appendix B of the final rule and, if appropriate, comply with the certification requirement set forth in § 370.5.

Prepaid accounts. One commenter argued for a class exemption for closed-loop and non-reloadable cards because funds paid in exchange for many of these types of cards are not FDIC-insured on a pass-through basis, bank collection of information on the owners of the cards is limited at best, and the cards are often easily transferrable (*e.g.,* given to friends or relatives). As discussed in the preamble to the NPR (and acknowledged by the commenter), the funds paid to a merchant for a closed-loop (or merchant) card are not insured on a pass-through basis by the FDIC because ''the funds are not placed into a custodial deposit account at an insured depository institution.'' [28] The FDIC's *General Counsel's Opinion No. 8* (''*GC Opinion*'') affirms this principle by stating that the GC Opinion ''does not address merchant cards because such cards do not involve the placement of funds at insured depository institutions.'' [29] The guidance provided in the GC Opinion ''is limited to bank cards and other nontraditional access mechanisms, such as computers, that provide access to funds at insured depository institutions.'' [30]

This commenter also advocated for a class exemption for open-loop cards. The commenter noted that there are practical limitations to obtaining beneficiary-level information given customers' very real concern for data security and privacy. It emphasized that employers and government agencies are very sensitive to daily transmittal of PII and would prefer to maintain the information in their own systems. In addition, this commenter believed that it is highly unlikely that any individual would receive benefits on an open-loop payroll card or government benefits card in excess of $250,000. Finally, it pointed out that other Federal agencies (the Consumer Financial Protection Bureau, FinCEN) have issued regulations on prepaid accounts (or imposed additional customer identification requirements) that may or may not complement the proposed rule's requirements.

Covered institutions that issue and administer their own prepaid account programs will need to meet the general recordkeeping requirements set forth in § 370.4(a) because they maintain in their deposit account records the information needed to determine deposit insurance coverage. On the other hand, if an account holder (such as a third party program manager, for example) administers a prepaid account program and the covered institution does not maintain the information needed to determine deposit insurance coverage in its deposit account records, then those deposits would be eligible for pass-through deposit insurance coverage in accordance with §§ 330.5 and 330.7 if specified conditions are met. Consequently, the alternative recordkeeping requirements set forth in § 370.4(b)(1) would be applicable instead.

One comment stated that for a subset of prepaid accounts, the covered institutions have represented that they will modify their deposit systems (in addition to other IT systems enhancements required by the final rule) to be able to receive ''sensitive [PII] from employers and government agencies at the specific point in time of a bank resolution.'' According to the commenter, this additional modification would allow employers or governments to maintain the accuracy and integrity of employee/beneficiary data on their own systems. Industry-driven technological innovations also may facilitate the covered institutions' ability to comply with this critical timing requirement.

Under the final rule, the covered institutions will be permitted to rely on the alternative recordkeeping requirements set forth in § 370.4(b)(1) for any type of deposit account that meets the criteria set forth therein, *i.e.,* the covered institution's deposit account records disclose the existence of a relationship which might provide a basis for additional deposit insurance in accordance with 12 CFR 330.5 or 330.7 (a ''§ 370.4(b)(1) account''). Consistent with the goals of preserving public confidence, an additional condition applies to accounts with transactional features. The covered institution must certify that the respective account holder(s) will be able to provide the necessary depositor/beneficial owner information to the FDIC upon failure of the covered institution so that the FDIC will be able to determine the deposit insurance coverage within 24 hours after the FDIC's appointment as receiver to help ensure that the FDIC will be able to complete the deposit insurance determination over closing weekend. The requisite depositor information for these § 370.4(b)(1) accounts must be received by the FDIC so that they will be part of the initial deposit insurance determination process. Examples of such deposit accounts include, but are not limited to: Deposits placed by third parties with associated sweep accounts, whether or not those sweep accounts are categorized as brokered deposits, and prepaid accounts. If these deposit accounts are not part of the initial deposit insurance determination, then the FDIC would be required to place holds on the funds in those accounts until the necessary information is received and processed. As a result, the beneficial owners of these § 370.4(b)(1) accounts would not have access to their funds on the next business day after the covered institution's failure. It is possible that for some depositors, this

[28] 81 FR 10026, 10035 (February 26, 2016).

[29] FDIC General Counsel's Opinion No. 8—Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 74 FR 67155 (November 13, 2008), available at *https://www.fdic.gov/regulations/laws/rules/5500-500.html.*

[30] *Id.*

delay would create a hardship; the inability to access their funds could result in returned checks and an inability to handle their day-to-day financial obligations. In the event that a covered institution is unable to certify that that the account holder will be able to provide the required information regarding the § 370.4(b)(1) accounts to the FDIC upon failure of the covered institution so that the FDIC will be able to use the covered institution's IT system to determine deposit insurance coverage within 24 hours after its appointment as receiver, then the covered institution will have to request an exception from the FDIC.

2. Trust Accounts

Although deposit insurance coverage for trust accounts is not dependent upon the principle of pass-through insurance, issues concerning the identification of the beneficiaries of a trust and their respective interests create a similar problem for covered institutions, and ultimately for the FDIC, when faced with making such deposit insurance determinations. Several commenters contended that covered institutions, regardless of client base, would satisfy at least one, if not all three, of the criteria identified as warranting an exception under § 370.4(c) of the proposed rule for these types of accounts; *i.e.,* the covered institution does not maintain information identifying the beneficial owner(s) and the account holder has refused to provide such information, disclosure of such information is protected by law or by contract, and information concerning the beneficiaries changes frequently and updating the information is neither cost effective nor technologically practicable. They stated that trustees are bound by common law and statutory fiduciary duties to keep certain information confidential, including PII such as the names and Social Security Numbers (''SSNs'') of the trust beneficiaries. The fiduciary duties of loyalty and confidentiality are the basis for allowing a Certification of Trust (under § 1013 of the Uniform Trust Code), ''to protect the privacy of a trust instrument by discouraging requests from persons other than beneficiaries for complete copies of the instrument in order to verify a trustee's authority.'' These commenters further believed (based upon anecdotal information) that individual trustees would open accounts at other institutions not subject to the proposed rule's requirements to avoid having to respond to the unwanted inquiry from a covered institution. The commenters identified a number of different trust arrangements which should be included within the trust deposit exception: trusts administered by third-party individual or institutional trustees, collective investment funds (including common trust funds), corporate trustees for bond indentures, and fiduciary self-deposits made by covered institutions.

The FDIC has considered all of the arguments advanced by the commenters as described above. Rather than adopt the exception process as described in the proposed rule, the FDIC has decided to require recordkeeping for certain types of trust accounts based upon the covered institution's knowledge about the trustee or grantor (the account holder), as well as information regarding the beneficiaries of the trust which should be maintained by the covered institution. The FDIC has developed this approach based upon the comment letters. Moreover, the FDIC has considered the deposit account ownership analysis provided in 12 CFR part 330 in the context of the various types of trust accounts. For example, the FDIC recognizes that such factors as the common law and statutory duties of confidentiality and loyalty imposed upon trustees would make it difficult or impossible for them to disclose the necessary information regarding the beneficiaries of certain trust accounts. Therefore, the FDIC has determined that all deposit accounts established pursuant to a formal trust agreement—either formal revocable or irrevocable (when the trustee of the irrevocable trust is not the covered institution) must comply with the alternative recordkeeping requirements set forth in § 370.4(b)(2). This alternative recordkeeping method should include all formal revocable trust accounts which are commonly referred to as ''living trusts'' or ''family trusts'' [31] and all irrevocable trust accounts when established by another person or entity as trustee.[32] A covered institution would only be required to satisfy the more limited recordkeeping requirements set forth in § 370.4(b)(2) of the final rule for those deposit accounts governed by a formal trust agreement. One requirement of that paragraph, however, provides that the covered institution maintain a unique identifier for the grantor of a formal trust account if the trust account has transactional features. The FDIC recognizes that many consumers now open formal trust accounts and use them to handle their daily financial transactions. Compliance with this requirement regarding the grantor will permit the FDIC to begin the deposit insurance determination process and, during that delay, allow access to some portion of that deposit account and process outstanding checks.

In contrast, any deposit account held in a covered institution established pursuant to an informal testamentary trust will be required to comply with all of the recordkeeping requirements set forth in § 370.4(a) of the final regulation. ''Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten Trust accounts'' (''PODs'').[33] To comply with the FDIC's current regulations regarding deposit insurance coverage for informal revocable trust accounts, any IDI is already required to specifically name the beneficiaries in the deposit account records of the IDI.[34] Finally, covered institutions which act as the trustee for certain irrevocable trust accounts would also be required to maintain trust account information in accordance with § 370.4(a) of the final regulation.

As with other classes of deposits for which the FDIC will not have the requisite information at the time of a covered institution's failure, deposit insurance determinations on the various types of formal trust accounts will not be possible until the account holder provides the FDIC with the necessary trust documentation after closing weekend. Therefore, based upon how quickly the trust documentation and/or information about beneficiaries is provided as well as the number of trust accounts to be determined, account holders may experience a delay in receiving the insured deposits placed in their trust accounts. This is the deposit insurance determination process currently employed by the FDIC; however, the volume of trust accounts at a covered institution could prolong the deposit insurance determination period.

3. Security Risks of Collecting Depositors' PII

An area of particular concern for many commenters was the proposal's requirement that a covered institution obtain PII from third parties such as financial intermediaries, trustees, escrow companies, benefit plan administrators, and government entities who have opened deposit accounts on behalf of other entities. A commenter remarked that the requirement to obtain and store PII and other sensitive information regarding covered institutions' financial intermediary customers and their beneficial owners

[31] *See* 12 CFR 330.10(a).

[32] 12 CFR 330.13.

[33] 12 CFR 330.10(a).

[34] 12 CFR 330.10(b)(2).

''would cause substantial disruption in the deposit markets and increase the risk of breaches of security of depositors' [PII]''. The commenters expressed particular concern regarding the added security risk for both the financial intermediaries and the covered institutions if they are required to collect depositors' PII for deposit accounts opened by various third parties on behalf of numerous beneficial owners.

The FDIC has addressed this concern. Because the recordkeeping requirements for all types of pass-through deposit accounts will be based upon the existing recordkeeping requirements for deposit insurance purposes set forth in §§ 330.5 and 330.7, the covered institutions will not be required to request, collect, and maintain PII on the beneficial owners of the deposits placed by certain financial intermediaries. In addition, the covered institutions will not be required to request and maintain information regarding the beneficiaries (which are required to perform a deposit insurance determination) of trust accounts that are governed by a formal trust agreement pursuant to §§ 330.10 and 330.13.

4. Official Items

The statutory definition of deposit includes, but is not limited to, certified checks, traveler's checks, cashier's checks and money orders.[35] Informally, these types of deposit instruments are known as ''official items.'' Part 330 of the FDIC's regulations does not adopt this popular convention and contains no definition of official items. Nevertheless, the FDIC's *Financial Institution Employee's Guide to Deposit Insurance* utilizes the term and includes the following examples: Money orders, expense checks, interest checks, official checks/cashier's checks, travelers' checks, and loan disbursement checks.[36] Two commenters stated that cashier's checks, teller's checks, certified checks, and personal money orders (all commonly known as ''official items'') would be particularly problematic because the covered institution does not typically have tax identification numbers (''TINs'') for non-customer purchasers, payees, or holders of any of these instruments. Consequently, both commenters requested that these deposit instruments be exempted as a class from the proposed recordkeeping requirements in the final rule. Moreover, commenters from the banking industry and potentially covered institutions explained the practical difficulties with obtaining and maintaining the necessary depositor information regarding these deposit instruments. To address these issues, the FDIC adopted the following approach in the final rule: Covered institutions will not be required to modify their recordkeeping practices with respect to these types of deposits. While the FDIC believes that covered institutions do generally maintain records concerning the number of deposit instruments issued and for which they are primarily liable, they routinely will not have a SSN or TIN for the payee. Therefore, pursuant to § 370.4(c) of the final rule, covered institutions will not be required to assign a unique identifier to the payee or designate the appropriate right and capacity code. Nevertheless, the covered institution must maintain in its deposit account records a ''pending reason'' code in data field 2 of the pending file format set forth in Appendix B for all of its official items.

5. Assigning Right and Capacity Codes

One commenter submitted that the proposed rule's requirement to assign the appropriate ownership right and capacity code to each of the covered institution's deposit accounts presents practical and administrative challenges for both the covered institution and its deposit customers. Other commenters pointed out that covered institutions will be required to review all of their current account records in order to accurately identify and code their deposit accounts in accordance with the FDIC's deposit insurance categories. In addition, many accounts on legacy systems would have to be reviewed and missing data and documentation obtained in order to comply with certain part 330 requirements. According to one commenter, this would be ''a momentous undertaking'' imposing significant burden.

Covered institutions would also have to develop new procedures when opening accounts and re-train employees to classify accounts appropriately. Also, in many cases, the covered institutions' employees do not have the subject matter expertise to accurately designate some types of accounts such as trust accounts. Other types of deposit accounts potentially difficult to identify and/or designate include joint accounts and accounts for corporations, partnerships, and unincorporated associations. The problems with assigning the correct right and capacity code to joint accounts, as described by the commenters, will be discussed separately, *infra.* One commenter also believed that this requirement effectively transfers the FDIC's responsibility to interpret and apply part 330 to the covered institutions. It asserted that ''[n]on-covered institutions would not take on this additional responsibility.''

The commenters offered the following recommendations regarding the proposed requirement that covered institutions assign the correct right and capacity code to each deposit account. It appears the first choice would be for the FDIC to amend 12 CFR part 330 prior to finalizing proposed part 370—presumably by eliminating certain criteria which the FDIC uses to define or characterize various categories of deposit accounts. Another suggestion would be to allow the covered institutions to rely on their internal coding to assign the requisite codes rather than requiring them to align their designations with the FDIC's rights and capacities codes. Some commenters seem to assume that in the context of bank failures and the concomitant deposit insurance determination, the FDIC disregards part 330's requirements. The commenters requested that the final rule permit ''covered banks to classify accounts for FDIC insurance determination as recorded on their internal systems, in line with FDIC's current practice in bank failures.'' The commenters asked that the FDIC make deposit insurance determinations in the same manner (based upon the same criteria) for covered institutions as it would in the case of a smaller bank failure.

As discussed previously in the preamble to the NPR, the FDIC will not be amending 12 CFR part 330 prior to or in conjunction with the issuance of 12 CFR part 370 as a final rule.[37] While both regulations concern deposit insurance, they serve independent purposes. The purpose of part 330 is, among other things, to ''provide rules for the recognition of deposit ownership in various circumstances.'' [38] The FDIC follows part 330 when making deposit insurance determinations at the time of failure. Aside from governing the application of deposit insurance, the rules in part 330 are intended to assist both IDIs and their deposit customers to structure deposit accounts so that their accounts will conform with the rules for various account types. In that way, a depositor could be confident that his or her funds will be fully insured by the FDIC in the event of the IDI's failure. On the other hand, final part 370 requires

[35] 12 U.S.C. 1813(*l*)(1) and –(4).

[36] *See* FDIC's *Financial Institution Employee's Guide to Deposit Insurance,* 2016 Ed., available at *https://www.fdic.gov/deposit/DIGuideBankers/index.html.*

[37] 81 FR 10026, 10032 (February 26, 2016).

[38] 12 CFR 330.2.

the largest IDIs, the covered institutions, to develop IT systems capable of performing the deposit insurance calculations in the event of failure and to maintain their deposit account records in accordance with the information requirements set forth in the final rule. When 12 CFR part 370 is fully implemented, the FDIC will be in a better position to complete the deposit insurance determination ''as soon as possible'' rather than waiting for deposit account information to be provided after a covered institution's failure which might result in an unacceptable delay.

The covered institutions requested that they be allowed to rely on the internal coding of their deposit accounts. The FDIC presumes that for many accounts, the covered institutions' internal coding will, in fact, align with the appropriate FDIC right and capacity code, *e.g.,* individual, joint, business, and PODs. In certain circumstances, however, it may be necessary for the covered institutions to refer to the appropriate section of part 330 and/or the FDIC's *Financial Institution Employee's Guide to Deposit Insurance* (or perhaps call the FDIC Call Center) in order to make an accurate assignment of the FDIC right and capacity code. All of the deposits held by a depositor in the same right and capacity must be aggregated before the deposit insurance determination can be performed. Assigning the correct right and capacity code is necessary so that the FDIC would be able to complete the deposit insurance determination promptly. If the codes assigned by the covered institutions do not align with FDIC codes, then the FDIC could not rely on the covered institution's records for deposit insurance determination purposes. In the context of a bank failure, the FDIC typically will look behind the titling and will examine the failed bank's records if there is a question or concern regarding the proper deposit insurance coverage.

The FDIC does not anticipate handling deposit insurance determinations at a covered institution in a different manner than it has done historically with smaller IDIs. Smaller IDIs have not generally had numerous deposit accounts that are not readily assigned to the most common FDIC rights and capacities codes; therefore, this has not created a problem for either the smaller institutions or the FDIC at failure. The FDIC has recognized, however, that for certain types of deposit accounts, *e.g.,* those based upon pass-through deposit insurance and certain types of trust accounts, the covered institutions will not have sufficient information regarding the beneficial owners or the beneficiaries, respectively, to assign the correct FDIC right and capacity code. For those types of accounts, § 370.4(b)(1) and (b)(2) permit the covered institution to maintain a ''pending reason'' code in the pending file (as set forth in Appendix B) of its deposit account records in lieu of the correct right and capacity code.

Finally, the commenters asserted that this requirement, in effect, transfers the FDIC's responsibility to interpret and apply part 330 to the covered institutions. IDIs play an important role in maintaining a functioning deposit insurance system, which benefits them, their customers and the public in general. Prompt payment of deposit insurance is only possible when IDIs maintain sufficient records to enable the FDIC to perform its deposit insurance determination function consistent with FDI Act requirements and authority. The FDIC provides a number of different resources to the banking industry as well as the public to assist in the interpretation and application of the part 330 rules. For example, the FDIC conducts live Deposit Insurance Coverage Seminars for bank officers and employees throughout the year. Moreover, videos of these seminars are available on YouTube. The FDIC also provides guidance to IDIs and the public through the operation of a call center. FDIC staff receives calls from bank customer service representatives seeking assistance in real time to structure new deposit accounts for their customers properly. A new edition of the FDIC's *Financial Institution Employee's Guide to Deposit Insurance* was recently published, and finally, the Electronic Deposit Insurance Estimator (also known as ''EDIE'') is located on the FDIC's Web site. All of these FDIC resources are available for the use of IDIs (including the covered institutions) as well as the public. Presumably this information is instructive in opening and structuring deposit accounts so that they are (and remain) in compliance with the criteria set forth in part 330.

6. Joint Accounts and Signature Cards

Both in response to the ANPR and the NPR, certain commenters have expressed their concern with the challenges they would face trying to comply with § 330.9(c)(1)(ii) of the FDIC's regulations. That particular paragraph requires that ''each co-owner has personally signed a deposit account signature card'' in order to be a ''qualifying joint account'' for purposes of deposit insurance under part 330.[39] Some commenters stated that covered institutions would have to go through all of their deposit accounts (in this particular case, those accounts styled as joint accounts) to verify that those accounts satisfied the part 330 requirements. They have characterized this process as a ''momentous undertaking.'' Moreover, the covered institutions expect that keeping these records accurate and up-to-date ''would be a continuing and likely insurmountable challenge.'' They noted that frequently an individual opening a joint account will take the signature card for a co-owner to sign but never return the completed signature card to the bank establishing the account. Finally, the commenters asserted that ''there is no current requirement for banks to (1) ensure that all signature cards are complete and on file for joint accounts, or (2) record in deposit recordkeeping systems which joint accounts have complete signature cards.''

Regulations requiring that each co-owner of a joint account must personally sign a signature card or the account would not be treated as a joint account for deposit insurance determinations have been in existence since 1967.[40] Most recently, the FDIC addressed the commenters' concerns regarding § 330.9(c) in the preamble of the NPR.[41] Briefly, the FDIC's justifications for maintaining the joint ownership signature card requirement are as follows: (i) The FDIC's signature card requirement simply reflects safe and sound banking practice; (ii) the signature card represents the contractual relationship between the IDI and the depositor (or depositors), and signature cards are a reliable indicator of deposit ownership; and (iii) elimination of the signature card requirement for joint accounts could enable some depositors to ''disguise'' single accounts as joint accounts in order to be eligible for an additional $250,000 of deposit insurance coverage. Finally, the FDIC believes that the three year implementation time frame should provide the covered institutions with adequate time both to review their

[39] The other criteria which must be satisfied in order to be recognized as a ''qualifying joint account'' are: The co-owners of the funds in the account are ''natural persons'' as defined in § 330.1(*l*) and each co-owner possesses withdrawal rights on the same basis. 12 CFR 330.9(c)(i) and –(iii).

[40] 12 CFR 330.9; see FDIC, Final Rule, 32 FR 10408, 10409 (July 14, 1967); 12 CFR 564.9(b) (repealed); see FHLBB Final Rule, 32 FR 10415, 10416 (July 14, 1967). Certain types of accounts have been exempted from this requirement.

[41] 81 FR 10026, 10032 (February 26, 2016).

current and legacy account records and to develop procedures to maintain the accuracy of these records going forward. As discussed previously, the FDIC will not be amending provisions of 12 CFR part 330 as part of the adoption of part 370 as a final rule.

7. Community Banks

Several commenters noted that requiring account holders of deposits eligible for pass-through insurance to provide beneficial owner data would force community banks to share confidential data on their most vital asset, *i.e.,* their large-dollar depositors. One commenter believed that community banks would incur steep costs and potential customer dissatisfaction if forced to comply with the covered institutions' requests for the beneficial ownership information. However, financial intermediaries, which may include community banks, may not be willing to disclose sensitive and proprietary information regarding their customers to the covered institutions.

One of the commenters raised another concern that the proposed rule would adversely affect community banks that participate in deposit placement networks. According to this commenter, thousands of community banks participate in deposit placement networks and the commenter believes that deposit allocation services are a vital tool for community banks. Those banks would be required to furnish competing banks with confidential information about some of their largest depository customers any business day that a community bank placed customer funds at a covered institution. Two commenters recommended that an exception from the requirements of the proposed rule should automatically apply to the class of deposits (rather than an account by account exception) placed by community banks in a covered institution through a deposit placement network. According to the commenter, this type of exception would assure community banks that they would not be penalized if they participated in a deposit placement network.

The requirements of the final rule have addressed these potential concerns. As discussed above, the final rule provides for ''alternative recordkeeping'' for deposits placed by agents, custodians or some other fiduciary on behalf of others as set forth in §§ 330.5 and 330.7 of the FDIC's deposit insurance rules. Therefore, community banks will not be required to provide covered institutions with proprietary information concerning their large-dollar customers in the event a community bank places deposits with a covered institution. As currently permitted pursuant to the applicable provisions of part 330, community banks will be allowed to retain the beneficial ownership information on these customers rather than provide it to the covered institution. Likewise, the recordkeeping requirements applicable to deposit placement networks will not be affected by the issuance of the final rule. Nevertheless, if deposits placed by community banks with covered institutions serve as transaction accounts for the beneficial owners thereof, then the underlying ownership information (*i.e.,* the identity of each beneficial owner and their respective interest in the accounts) must be provided to the FDIC upon the covered institution's failure so that the FDIC will be able to use the covered institution's IT system to determine deposit insurance coverage for those deposit accounts within 24 hours after the FDIC's appointment as receiver.

8. Foreign Deposits

Two commenters recommended that foreign deposits, *i.e.,* those deposits placed in the foreign branches of U.S. banks, should not be within the scope of the final rule. Both commenters asserted that the FDIC does not need depositor information concerning these foreign deposits; foreign deposits are not ''insured'' deposits, and therefore, the FDIC does not require that type of information in order to complete its deposit insurance determination. One of the commenters added that the FDIC already has access to information concerning foreign deposits because that information is required pursuant to § 360.9 of the FDIC's regulations.

In accordance with 12 U.S.C. 1813(*l*)(5)(A), a foreign deposit is not a ''deposit'' unless it is dually payable in a U.S. branch and a foreign branch of a U.S. bank. If dually payable, however, it would be an uninsured deposit for purposes of the FDIC's deposit insurance determination and would be recognized as a general unsecured claim (a priority two claim) against the failed bank's receivership. Consequently, foreign deposits, by definition, are beyond the scope of the final rule. Therefore, no recordkeeping requirements will be imposed on the covered institutions with respect to foreign deposits. It is worth noting, however, that the FDIC will no longer have access to information regarding foreign deposits pursuant to § 360.9 once covered institutions are compliant with part 370 and are released from the § 360.9 requirements.

9. Exceptions Process

A commenter argued that providing the FDIC with the authority to approve or disapprove a covered institution's request ''in its sole discretion'' would confer unlimited power on the FDIC to discourage or prohibit lawful acceptance by well-capitalized covered institutions of brokered deposits and other deposits placed on a pass-through insurance basis through deposit allocation sweep services. This commenter cited as a source of concern recent regulatory actions by the FDIC and other Federal banking agencies and asked the FDIC to avoid the misperception that it will discourage lawful deposit brokerage relationships by making them too costly or burdensome for covered institutions.

The commenter's concern that the FDIC will exercise ''virtually unlimited power to use the Proposed Rule . . . to discourage or prohibit well-capitalized covered institutions from accepting brokered and other pass-through deposits'' is unfounded. The particular concern that the FDIC would discourage lawful brokerage relationships under this final rule is addressed by the adoption of alternate recordkeeping requirements permitted for brokered deposits. It is not intended to otherwise affect brokered deposits.

Several commenters asserted that obtaining the information from account holders that is needed for deposit insurance calculations would be a significant challenge; one of these commenters remarked that full compliance with the proposed rule for certain account types would be ''extremely difficult if not practically impossible.'' These commenters argued that the volume of information on financial intermediaries and their beneficial owners, the frequency of changes to the information, and certain legal impediments to disclosure would pose significant operational and cost issues. In addition to requesting exceptions for classes of deposits, some of the commenters believed that the final rule should also include a process for requesting exceptions for other ''idiosyncratic accounts'' for which obtaining the requisite depositor information would be impossible or cost-prohibitive.

The FDIC believes that the modifications to the recordkeeping requirements as described in the final rule should address the concerns of covered institutions and the concerns raised about community banks. As a result of the concerns raised by commenters, the FDIC has decided that the deposit account recordkeeping

requirements of part 370 should align with the existing deposit insurance recordkeeping requirements provided in § 330.5 and § 330.7. These two sections of 12 CFR part 330 allow an IDI to maintain the deposit account records for various types of pass-through deposit accounts off-site and with third parties. Nevertheless, in the event that a covered institution identifies other ''idiosyncratic accounts'' which would not be covered by the recordkeeping methods described in §§ 330.5 and 330.7, the final rule includes a procedure for requesting an exception from the recordkeeping requirements set forth in § 370.4. The covered institution would be required to submit a request to the FDIC for the exception in the form of a letter and explain the circumstances that would make it impracticable or overly burdensome to meet the applicable recordkeeping requirements. Additionally, the request must provide the number and dollar value of the deposit accounts that would be subject to the exception. When reviewing the request, the FDIC would consider primarily the implications that a delay in deposit insurance determination would have for a particular account holder or the beneficial owner of the deposits, the related effect on public confidence, the nature of the deposit relationship, and the ability of the covered institution to obtain the information necessary for the FDIC to make an accurate deposit insurance determination.

Several commenters believed a more detailed exception process than that provided for in the proposed rule is needed, and they posed a number of questions regarding the process. For example, there were several questions concerning how a covered institution would demonstrate that an entire class of deposit accounts would meet one or more of the three criteria for an exception. The commenters also asked whether a covered institution would be required to continue to gather depositor information on accounts subject to an exception request during the pendency of the FDIC's consideration of that request. They wanted assurances both that the FDIC would respond expeditiously to requests for exceptions and that in the event that a request was denied, the FDIC would not require immediate compliance. The commenters were concerned that a covered institution be allowed a reasonable time to achieve compliance should an exception request be denied.

As discussed, *supra,* the final rule does not provide for classes of deposits to be ''excepted'' from the requirements of part 370. Instead, covered institutions will continue to be allowed to maintain the beneficial ownership information for deposit accounts that are currently subject to the off-site recordkeeping provisions of §§ 330.5 and 330.7 with the appropriate custodian, agent, or other fiduciary as set forth in those sections of the FDIC's regulations. Therefore, there is no need for a process to request exceptions for classes of deposits. Further, the FDIC has addressed the commenters' concerns regarding the covered institutions' compliance during the pendency of an exception request, as the final rule provides that a covered institution will not be in violation of any requirements of the rule for which the institution has submitted a request for relief pursuant to § 370.6(b) or § 370.8(a)–(c) while awaiting the FDIC's response to the request. Finally, a covered institution will be given a reasonable amount of time to comply with recordkeeping requirements for certain deposit accounts in the event that the covered institution's request for an exception is denied.

The commenters asked whether there would be a general sunset time frame for approved exceptions, and if so, whether there would be a flexible process to renew those exceptions. The final rule does not impose a general sunset time frame for approved exceptions. Depending on the circumstances, approvals could be tailored to be time-limited or open-ended. Section 370.8(e) allows the FDIC to grant its approval of a covered institution's request for an exception subject to certain conditions that would have to be met or to limit its approval to a particular time frame.

The commenters also wanted to know what type of process there would be to appeal the FDIC's adverse ruling on a petition for an exception. They recommended that the FDIC provide public notice of all exceptions granted or denied on a timely and ongoing basis—without naming the petitioners or specific deposit account holders—with explanations of the bases for those rulings. These commenters also believed that because the exception process ''is so critical that input from covered institutions would be needed to assure a workable scheme,'' the exception process should be further clarified and re-proposed for public notice and comment.

The FDIC believes that the modifications to the recordkeeping requirements as described in the final rule should provide much of the requested relief. Given the alternative recordkeeping allowed for certain described deposit accounts, the FDIC does not anticipate that many covered institutions will need to request exceptions from the final rule's requirements. With respect to § 370.4(b)(1) accounts that have transactional features, if a covered institution will not be able to provide the certification required pursuant to § 370.5(a), then the covered institution must submit a request for an exception from that certification requirement as provided for in § 370.8(b).

10. Comments Concerning the Implementation Period

The proposed rule provided for an implementation period of two years, and several commenters proposed that four years would be an appropriate time-frame for implementation. The FDIC has considered the commenters' discussion of impediments that would exist for a two-year implementation period and believes that the modifications made in the final rule to harmonize it with the recordkeeping permitted under 12 CFR part 330 make a three-year implementation period reasonable and feasible.

E. Comments Concerning Possible Adverse Consequences

Several commenters expressed concern over possible adverse consequences for covered institutions, related entities, and the financial system generally if the proposed rule was adopted as proposed. One commenter specifically noted that the rule could result in treating some depositors at covered institutions differently than the same kind of depositors at non-covered institutions because the covered institution would be applying a more stringent standard to its deposits for insurance purposes, and deposit insurance determinations should not depend on the size or complexity of the depository institution. As discussed, *supra,* 12 CFR part 330 of the FDIC's regulations which govern the criteria for ownership of deposits by right and capacity has not been amended in connection with the adoption of final part 370. Specifically, the FDIC has not imposed ''more stringent standards'' on covered institutions with respect to ''qualifying joint accounts,'' for example, than on any other IDI. As discussed in I. *Policy Objectives,* the final rule ensures that customers of both large and small failed banks will receive the same prompt access to their funds and that deposit insurance limits are recognized equally at both large and small banks.

One commenter objected to the proposed rule's requirement that, if a covered institution is granted an exception, it must then notify account

holders that delays in the payment of deposit insurance are possible due to the absence of required information. According to this commenter, such a notification could raise concerns on the part of depositors, lead them to rethink their account relationships, drive deposits away from excepted accounts, create competitive disadvantages, and be categorically unfair. The final rule imposes no requirement that covered institutions notify depositors of a possible delay in payment of deposit insurance. Therefore, the commenter's concerns should be alleviated.

The FDIC has adopted the suggestion of another commenter, however, who argued that disclosures regarding a delay in payment should not be required whenever the custodian, administrator or other fiduciary will provide the current beneficial owner data to the FDIC before midnight on the day of the covered institution's failure. Section 370.5(a) requires a covered institution to certify to the FDIC that the information needed to calculate deposit insurance for § 370.4(b)(1) accounts with transactional features will be available to the FDIC upon failure of the covered institution so that the FDIC will be able to use the covered institution's IT system to determine deposit insurance coverage within 24 hours of its appointment as receiver. In view of this requirement, there is no need for covered institutions to provide notification of a possible delay in deposit insurance payments because the FDIC will have the requisite information in time to complete the deposit insurance determination on these time-sensitive accounts during the closing weekend.

One commenter asserted that certain account holders likely would be motivated to seek out alternative banking relationships rather than provide the information requested by the covered institutions. This would result in disruption to these account holders and to other aspects of their banking relationship, as well as to the deposit markets. One commenter argued that the proposed rule could discourage smaller and mid-sized retail-focused institutions from actively seeking small deposit accounts in order to avoid being covered by the proposed rule. This in turn could encourage such institutions to consider riskier and more volatile funding sources. The FDIC believes that these concerns have been addressed and mitigated by the alternative recordkeeping requirements found in § 370.4(b) of the final rule.

These commenters also asserted that ''end-to-end'' testing for compliance on an annual basis would involve an excessive commitment of time and personnel. The requirement for end-to-end testing has been deleted from the final rule. Finally, they contended that it is not necessary and not in accordance with corporate governance principles for a covered institution's board of directors to certify or attest to the covered institution's compliance with the proposed rule's requirements. This additional board responsibility would be an undue burden on the board and should remain within the purview of the covered institution's management. The FDIC considered this comment and revised the corporate governance requirement accordingly. In the final rule, § 370.10(a)(1)(ii), the annual certification must be signed by the covered institution's chief executive officer or its chief operating officer.

VII. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

The FDIC has determined that this final rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the ''PRA'') (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, the FDIC may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. OMB has assigned an OMB control number.

OMB Control Number: 3064–0202.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having two million or more deposit accounts and their depositors.[42]

Implementation Burden:[43]

Estimated number of respondents: 38 covered institutions and their depositors.

Estimated time per response:[44] 137,014 hours (average).

Low complexity: 29,158–35,072 hours.

Medium complexity: 38,404–59,588 hours.

High complexity: 69,908–911,016 hours.

Estimated total implementation burden: 5.21 million hours.

Ongoing Burden:

Estimated number of respondents: 38 covered institutions and their depositors.

Estimated time per response: 526 hours (average) per year.

Low complexity: 481–529 hours.

Medium complexity: 458–577 hours.

High complexity: 507–666 hours.

Estimated total ongoing annual burden: 20,000 hours per year.

Description of Collection

The final rule would require a covered institution to (1) maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the institution's deposit accounts, except as provided, and (2) configure its IT system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the institution's failure.

These requirements also must be supported by policies and procedures and will involve ongoing burden for testing, reporting to the FDIC, and general maintenance of recordkeeping and IT systems functionality. Estimates of both initial implementation and ongoing burden are provided.

Compliance with this proposed rule would involve certain reporting requirements:

- Not later than ten business days after the effective date of the final rule or after becoming a covered institution, a covered institution shall designate a point of contact responsible for implementing the requirements of this rulemaking.
- Covered institutions would be required to certify annually that their IT systems can calculate deposit insurance coverage accurately and completely within the 24 hour time frame set forth in the final rule. If a covered institution experiences a significant change in its deposit taking operations, it may be required to demonstrate more frequently than annually that its IT system can calculate deposit insurance coverage accurately and completely.
- In connection with the certification, covered institutions shall complete a deposit insurance coverage summary report (as detailed in VI. The Proposed Rule).
- Covered institutions may seek relief from any specific aspect of the final rule's requirements if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. When doing so, they must demonstrate the need for exception, describe the impact of an exception on

[42] Covered institutions will, as necessary, contact their depositors to obtain accurate and complete account information for deposit insurance determinations. For the purposes of this analysis, the FDIC assumes that every depositor will voluntarily respond.

[43] Implementation costs and hours are spread over a three-year period.

[44] For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

the ability to quickly and accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, the related deposit accounts.

Estimated Costs

Comments submitted in response to the NPR did not estimate with particularity the implementation and ongoing costs for covered institutions to comply with the proposed rule. The FDIC has, however, estimated the costs to covered institutions based on, among other things, information gathered in connection with § 360.9 compliance visitations, the cost model developed by an outside consultant for the purpose of developing the ANPR, and estimated costs associated with burdens that were identified by commenters in response to the NPR. The total projected cost of the final rule for covered institutions amounts to $386 million and approximately 5.2 million total labor hours over three years. The cost components of the estimate include (1) implementing the deposit insurance calculation, (2) legacy data cleanup, (3) data extraction, (4) data aggregation, (5) data standardization, (6) data quality control and compliance, (7) data reporting, and (8) ongoing operations. Estimates of total costs and labor hours for each component are calculated by assuming a standard mix of skilled labor tasks, industry standard hourly compensation estimates, and labor productivity. It is assumed that a combination of in-house and external services is used for legacy data clean up in proportions of 40 and 60 percent respectively. Finally, the estimated costs for each institution are adjusted according to the complexity of their operations and systems.

Implementation Costs

Implementation costs are expected to vary widely among the covered institutions. There are considerable differences in the complexity and scope of the deposit operations across covered institutions. Some covered institutions only slightly exceed the two million deposit account threshold while others greatly exceed that number. In addition, some covered institutions—most notably the largest—have proprietary deposit systems likely requiring an in-house, custom solution for the proposed requirements while others may purchase deposit software from a vendor or use a servicer for deposit processing. Deposit software vendors and servicers are expected to incorporate the proposed requirements into their products or services to be available for their clients.

The implementation costs for all covered institutions are estimated to total $330 million and require approximately 5.2 million labor hours. The implementation costs cover (1) making the deposit insurance calculation, (2) legacy data cleanup,[45] (3) data extraction, (4) data aggregation, (5) data standardization, (6) data quality control and compliance, and (7) data reporting. The estimated PRA burden for individual covered institutions will range from $2.3 million to $100 million, and require between 29,158 and 911,016 hours.

Ongoing Reporting Costs

The estimated burden on individual covered institutions for ongoing costs for reporting, testing, maintenance, and other periodic items is estimated to range between $68,676 and $99,865 annually and require between 458 and 666 labor hours.

Comments

The FDIC has a continuing interest in comments on paperwork burden. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (''RFA'') requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[46] For purposes of the RFA, ''small entities'' is currently defined to include depository institutions with assets of $550 million or less. The requirements of the final rule are not expected to apply to any depository institutions with assets of $550 million or less. Pursuant to section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Act

The Office of Management and Budget has determined that this final rule is a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*) (''SBREFA''). As required by the SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

D. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act requires that the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[47] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on IDIs shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[48]

In accordance with these provisions, the FDIC has considered the final rule's benefits and any administrative burdens that the final rule would place on covered institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. *IV. Expected Effects* details the expected benefits of the final rule and the administrative burdens that the final rule would place on depository institutions and their customers. The final rule imposes additional reporting and other requirements IDIs, and accordingly, shall take effect no earlier than the first day of the calendar quarter that begins on or after the date on which the final rule is published.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471) requires the Federal

[45] Including costs to depositors.

[46] *See* 5 U.S.C. 603, 604 and 605.

[47] 12 U.S.C. 4802(a).

[48] 12 U.S.C. 4802(b).

banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 370

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations.

Authority and Issuance

■ For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation adds part 370 to title 12 of the Code of Federal Regulations to read as follows:

PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DETERMINATION

Sec.

Authority: 12 U.S.C. 1817(a)(9), 1819 (Tenth), 1821(f)(1), 1822(c), 1823(c)(4).

§ 370.1 Purpose and scope.

Unless otherwise provided in this part, each ''covered institution'' (defined in § 370.2(a)) is required to implement the information technology system and recordkeeping capabilities needed to calculate the amount of deposit insurance coverage available for each deposit account in the event of its failure. Doing so will improve the FDIC's ability to fulfill its statutory mandates to pay deposit insurance as soon as possible after a covered institution's failure and to resolve a covered institution at the least cost to the Deposit Insurance Fund.

§ 370.2 Definitions.

For purposes of this part:

(a) *Account holder* means the person or entity who has opened a deposit account with a covered institution and with whom the covered institution has a direct legal and contractual relationship with respect to the deposit.

(b) *Brokered deposit* has the same meaning as provided in 12 CFR 337.6(a)(2).

(c) *Covered institution* means an insured depository institution which, based on its Reports of Condition and Income filed with the appropriate federal banking agency, has 2 million or more deposit accounts during the two consecutive quarters preceding the effective date of this part or thereafter.

(d) *Compliance date* means the date that is three years after the later of the effective date of this part or the date on which an insured depository institution becomes a covered institution.

(e) *Deposit* has the same meaning as provided under section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)).

(f) *Deposit account records* has the same meaning as provided in 12 CFR 330.1(e).

(g) *Ownership rights and capacities* are set forth in 12 CFR part 330.

(h) *Payment instrument* means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(i) *Standard maximum deposit insurance amount* (or ''SMDIA'') has the same meaning as provided pursuant to section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) and 12 CFR 330.1(o).

(j) *Transactional features* with respect to a deposit account means that the depositor or account holder can make transfers or withdrawals from the deposit account to make payments or transfers to third persons or others (including another account of the depositor or account holder at the same institution or at a different institution) by means of a negotiable or transferable instrument, payment order of withdrawal, check, draft, prepaid account access device, debit card, or other similar order made by the depositor and payable to third parties, or by means of a telephonic (including data transmission) agreement, order or instruction, or by means of an instruction made at an automated teller machine or similar terminal or unit. For purposes of this definition, ''telephonic (including data transmission) agreement, order or instruction'' includes orders and instructions made by means of facsimile, computer, internet, handheld device, or other similar means.

(k) *Unique identifier* means an alpha-numeric code associated with an individual or entity that is used consistently and continuously by a covered institution to monitor the covered institution's relationship with that individual or entity.

§ 370.3 Information technology system requirements.

(a) A covered institution must configure its information technology system to be capable of performing the functions set forth in paragraph (b) of this section within 24 hours after the appointment of the FDIC as receiver. To the extent that a covered institution does not maintain its deposit account records in the manner prescribed under § 370.4(a) but instead in the manner prescribed under § 370.4(b) or (c), the covered institution's information technology system must be able to perform the functions set forth in paragraph (b) of this section upon input by the FDIC of additional information collected from account holders after failure of the covered institution.

(b) Each covered institution's information technology system must be capable of:

(1) Accurately calculating the deposit insurance coverage for each deposit account in accordance with 12 CFR part 330;

(2) Generating and retaining output records in the data format and layout specified in Appendix B;

(3) Restricting access to some or all of the deposits in a deposit account until the FDIC has made its deposit insurance determination for that deposit account using the covered institution's information technology system; and

(4) Debiting from each deposit account the amount that is uninsured as calculated pursuant to paragraph (b)(1) of this section.

§ 370.4 Recordkeeping requirements.

(a) *General recordkeeping requirements.* Except as otherwise provided in paragraphs (b) and (c) of this section, a covered institution must maintain in its deposit account records for each account the information necessary for its information technology system to meet the requirements set forth in § 370.3. The information must include:

(1) The unique identifier of each

(i) Account holder;

(ii) Beneficial owner of a deposit, if the account holder is not the beneficial owner;

(iii) Grantor and each beneficiary, if the deposit account is held in connection with an informal revocable trust that is insured pursuant to 12 CFR 330.10 (*e.g.,* payable-on-death accounts, in-trust-for accounts, and *Totten* Trust accounts); and

(iv) Grantor and each beneficiary, if the deposit account is held by the covered institution as the trustee of an irrevocable trust that is insured pursuant to 12 CFR 330.12.

(2) The applicable ownership right and capacity code listed and described in Appendix A to this part.

(b) *Alternative recordkeeping requirements.* As permitted under this paragraph, a covered institution may maintain in its deposit account records less information than is required under paragraph (a) of this section.

(1) For each deposit account for which a covered institution's deposit account records disclose the existence of a relationship which might provide a basis for additional deposit insurance in accordance with 12 CFR 330.5 or 330.7 and for which the covered institution does not maintain information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must maintain, at a minimum, the following in its deposit account records:

(i) The unique identifier of the account holder; and

(ii) The corresponding ''pending reason'' code in data field 2 of the pending file format set forth in Appendix B (and need not maintain a ''right and capacity'' code).

(2) For each formal revocable trust account that is insured as described in 12 CFR 330.10 and for each irrevocable trust account that is insured as described in 12 CFR 330.13, and for which the covered institution does not maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must, at a minimum, maintain in its deposit account records:

(i) The unique identifier of the account holder;

(ii) The unique identifier of the grantor if the deposit account has transactional features; and

(iii) The corresponding ''pending reason'' code in data field 2 of the pending file format set forth in Appendix B (and need not maintain a ''right and capacity'' code).

(c) *Recordkeeping requirements for official items.* A covered institution must maintain in its deposit account records the information needed for its information technology system to meet the requirements set forth in § 370.3 with respect to accounts held in the name of the covered institution from which withdrawals are made to honor a payment instrument issued by the covered institution, such as a certified check, loan disbursement check, interest check, traveler's check, expense check, official check, cashier's check, money order, or any similar payment instrument that the FDIC identifies in guidance issued to covered institutions in connection with this part. To the extent that the covered institution does not have such information, it need only maintain in its deposit account records for those accounts the corresponding ''pending reason'' code in data field 2 of the pending file format set forth in Appendix B (and need not maintain ''right and capacity'' codes).

§ 370.5 Actions required for certain deposit accounts with transactional features.

(a) For each deposit account with transactional features for which the covered institution maintains its deposit account records in accordance with § 370.4(b)(1), a covered institution must certify to the FDIC that the account holder will provide to the FDIC the information needed for the covered institution's information technology system to calculate deposit insurance coverage as set forth in § 370.3(b) within 24 hours after the appointment of the FDIC as receiver. Such certification may be part of the annual certification of compliance required pursuant to § 370.10(a)(1).

(b) Notwithstanding paragraph (a) of this section, a covered institution need not provide such certification with respect to:

(1) Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal, interest, taxes and insurance;

(2) Accounts maintained by real estate brokers, real estate agents, or title companies in which funds from multiple clients are deposited and held for a short period of time in connection with a real estate transaction;

(3) Accounts established by an attorney or law firm on behalf of clients, commonly known as an *Interest on Lawyers Trust Accounts,* or functionally equivalent accounts; and

(4) Accounts held in connection with an employee benefit plan (as defined in 12 CFR 330.15(f)(2)).

(c) The covered institution's failure to provide the certification required under paragraph (a) of this section shall be deemed not to constitute a violation of this part if the FDIC has granted the covered institution relief from that certification requirement.

§ 370.6 Implementation.

(a) A covered institution must satisfy the information technology system and recordkeeping requirements set forth in this part before the compliance date.

(b) A covered institution may submit a request to the FDIC for an extension of its compliance date. The request shall state the amount of additional time needed to meet the requirements of this part, the reason(s) for which such additional time is needed, and the total number and dollar value of accounts for which deposit insurance coverage could not be calculated using the covered institution's information technology system were the covered institution to fail as of the date of the request. The FDIC's grant of a covered institution's request for extension may be conditional or time-limited.

§ 370.7 Accelerated implementation.

(a) On a case-by-case basis, the FDIC may accelerate, upon notice, the implementation time frame for all or part of the requirements of this part for a covered institution that:

(1) Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System (*CAMELS* rating), or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 325; or

(3) Is determined by the appropriate federal banking agency or the FDIC in consultation with the appropriate federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the covered institution by its appropriate federal banking agency in its most recent report of examination.

(b) In implementing this section, the FDIC must consult with the covered institution's appropriate federal banking agency and consider the complexity of the covered institution's deposit system and operations, extent of the covered institution's asset quality difficulties, volatility of the institution's funding sources, expected near-term changes in the covered institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its role as insurer of the covered institution.

§ 370.8 Relief.

(a) *Exemption.* A covered institution may submit a request in the form of a letter to the FDIC for an exemption from this part if it demonstrates that it does not take deposits from any account holder which, when aggregated, would exceed the SMDIA for any owner of the funds on deposit and will not in the future.

(b) *Exception.* A covered institution may submit a request in the form of a letter to the FDIC for exception from any specific aspect of the information technology system requirements, recordkeeping requirements,

certification requirements, or reporting requirements set forth in this part if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. In its request letter, the covered institution must demonstrate the need for exception, describe the impact of an exception on the ability to quickly and accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, the related deposit accounts.

(c) *Release from this part.* A covered institution may submit a request in the form of a letter to the FDIC for release from this part if, based on its Reports of Condition and Income filed with the appropriate federal banking agency, it has less than two million deposit accounts during any three consecutive quarters after becoming a covered institution.

(d) *Release from 12 CFR 360.9 requirements.* A covered institution is released from the provisional hold and standard data format requirements of 12 CFR 360.9 upon submitting to the FDIC the compliance certification required under § 370.10(a).

(e) *FDIC approval of a request.* The FDIC will consider all requests submitted in writing by a covered institution on a case-by-case basis in light of the objectives of this part, and the FDIC's grant of any request made by a covered institution pursuant to this section may be conditional or time-limited.

§ 370.9 Communication with the FDIC.

(a) *Point of contact.* Not later than ten business days after either the effective date of this part or becoming a covered institution, a covered institution must notify the FDIC of the person(s) responsible for implementing the recordkeeping and information technology system capabilities required by this part.

(b) *Address.* Point-of-contact information, reports and requests made under this part shall be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429–0002.

§ 370.10 Compliance.

(a) *Certification and report. A* covered institution shall submit to the FDIC a certification of compliance and a deposit insurance coverage summary report on or before the compliance date and annually thereafter.

(1) The certification must:

(i) Confirm that the covered institution has implemented and successfully tested its information technology system for compliance with this part during the preceding calendar year; and

(ii) Be signed by the covered institution's chief executive officer or chief operating officer.

(2) The deposit insurance coverage summary report must include:

(i) A description of any material change to the covered institution's information technology system or deposit taking operations since the prior annual certification;

(ii) The number of deposit accounts, number of different account holders, and dollar amount of deposits by ownership right and capacity code (as listed and described in Appendix A);

(iii) The total number of fully-insured deposit accounts and the total dollar amount of deposits in all such accounts;

(iv) The total number of deposit accounts with uninsured deposits and the total dollar amount of uninsured amounts in all of those accounts; and

(v) By deposit account type, the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution's information technology system cannot calculate deposit insurance coverage using information currently maintained in the covered institution's deposit account records.

(3) If a covered institution experiences a significant change in its deposit taking operations, the FDIC may require that it submit a certification of compliance and a deposit insurance coverage summary report more frequently than annually.

(b) *FDIC Testing.* (1) The FDIC will conduct periodic tests of a covered institution's compliance with this part. These tests will begin no sooner than the last day of the first calendar quarter following the compliance date and would occur no more frequently than on a three-year cycle thereafter, unless there is a material change to the covered institution's information technology system, deposit-taking operations, or financial condition.

(2) A covered institution shall provide the appropriate assistance to the FDIC as the FDIC tests the covered institution's ability to satisfy the requirements set forth in this part.

(c) *Effect of pending requests.* A covered institution that has submitted a request pursuant to § 370.6(b) or § 370.8(a) through (c) will not be considered to be in violation of this part as to the requirements that are the subject of the request while awaiting the FDIC's response to such request.

Appendix A to Part 370—Ownership Right and Capacity Codes

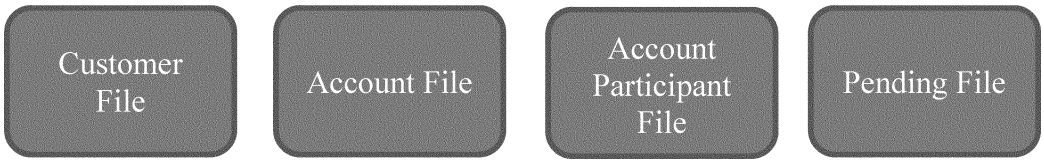
A covered institution must use the codes defined below when assigning ownership right and capacity codes.

Code	Illustrative description
SGL	Single Account (12 CFR 330.6): An account owned by one person with no testamentary or ''payable-on-death'' beneficiaries. It includes individual accounts, sole proprietorship accounts, single-name accounts containing community property funds, and accounts of a decedent and accounts held by executors or administrators of a decedent's estate.
JNT	Joint Account (12 CFR 330.9): An account owned by two or more persons with no testamentary or ''payable-on-death'' beneficiaries (other than surviving co-owners). An account does not qualify as a joint account unless: (1) All co-owners are living persons; (2) each co-owner has personally signed a deposit account signature card (except that the signature requirement does not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained on behalf of the co-owners by an agent or custodian); and (3) each co-owner possesses withdrawal rights on the same basis.
REV	Revocable Trust Account (12 CFR 330.10): An account owned by one or more persons that evidences an intention that, upon the death of the owner(s), the funds shall belong to one or more beneficiaries. There are two types of revocable trust accounts: (1) Payable-on-Death Account (Informal Revocable Trust Account): An account owned by one or more persons with one or more testamentary or ''payable-on-death'' beneficiaries. (2) Revocable Living Trust Account (Formal Revocable Trust Account): An account in the name of a formal revocable ''living trust'' with one or more grantors and one or more testamentary beneficiaries.
IRR	Irrevocable Trust Account (12 CFR 330.13): An account in the name of an irrevocable trust (unless the trustee is an insured depository institution, in which case the applicable code is DIT.

Code	Illustrative description
CRA	Certain Other Retirement Accounts (12 CFR 330.14 (b)–(c)) to the extent that participants under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan, including an individual retirement account described in section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)), an account of a deferred compensation plan described in section 457 of the Internal Revenue Code (26 U.S.C. 457), an account of an individual account plan as defined in section 3(34) of the Employee Retirement Income Security Act (29 U.S.C. 1002), a plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)).
EBP	Employee Benefit Plan Account (12 CFR 330.14): An account of an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act (29 U.S.C. 1002), including any plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)), but not including any account classified as a Certain Retirement Account.
BUS	Business/Organization Account (12 CFR 330.11): An account of an organization engaged in an 'independent activity' (as defined in § 330.1(g)), but not an account of a sole proprietorship. This category includes: a. Corporation Account: An account owned by a corporation. b. Partnership Account: An account owned by a partnership. c. Unincorporated Association Account: An account owned by an unincorporated association (*i.e.,* an account owned by an association of two or more persons formed for some religious, educational, charitable, social, or other noncommercial purpose).
GOV1–GOV2–GOV3	Government Account (12 CFR 330.15): An account of a governmental entity.
GOV1	All time and savings deposit accounts of the United States and all time and savings deposit accounts of a state, county, municipality, or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).
GOV2	All demand deposit accounts of the United States and all demand deposit accounts of a state, county, municipality, or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).
GOV3	All deposits, regardless of whether they are time, savings or demand deposit accounts of a state, county, municipality or political subdivision depositing funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located.
MSA	Mortgage Servicing Account (12 CFR 330.7(d)): An account held by a mortgage servicer, funded by payments by mortgagors of principal and interest.
PBA	Public Bond Accounts (12 CFR 330.15(c)): An account consisting of funds held by an officer, agent or employee of a public unit for the purpose of discharging a debt owed to the holders of notes or bonds issued by the public unit.
DIT	IDI as trustee of irrevocable trust accounts (12 CFR 330.12): ''Trust funds'' (as defined in § 330.1(q)) account held by an insured depository institution as trustee of an irrevocable trust.
ANC	Annuity Contract Accounts (12 CFR 330.8): Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts.
BIA	Custodian accounts for American Indians (12 CFR 330.7(e)): Funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the ''BIA'') on behalf of American Indians pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of American Indians pursuant to similar authority, in an insured depository institution.
DOE	IDI Accounts under Department of Energy Program: Funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.

Appendix B to Part 370—Output Files Structure

The output files will include the data necessary for the FDIC to determine the deposit insurance coverage in a resolution. A covered institution must have the capability to prepare and maintain the files detailed below. These files must be prepared in successive iterations as the covered institution receives additional data from external sources necessary to complete any pending deposit insurance calculations. The unique identifier is required in all four files to link the customer information. All files are pipe delimited. Do not pad leading and trailing spacing or zeros for the data fields.



Customer File. Customer File will be used by the FDIC to identify the customers. One record represents one unique customer. The data elements will include:

Field name	Description	Format
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character.
2. CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. Populate as follows:. —For a United States individual—Legal identification number (*e.g.,* SSN, TIN, Driver's License, or Passport Number). —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (*e.g.,* Alien Card). —For a Non-Individual—the Tax identification Number (TIN), or other register entity number.	Variable Character.
3. CS_Govt_ID_Type ...	The valid customer identification types, are noted below: ..... —SSN—Social Security Number. —TIN—Tax Identification Number. —DL—Driver's License, issued by a State or Territory of the United States. —ML—Military ID. —PPT—Valid Passport. —AID—Alien Identification Card. —OTH—Other.	Character (3).
4. CS_Type	The customer type field indicates the type of entity the customer is at the covered institution. The valid values are:. —IND—Individual. —BUS—Business. —TRT—Trust. —NFP—Non-Profit. —GOV—Government. —OTH—Other.	Character (3).
5. CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity	Variable Character.
6. CS_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character.
7. CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity	Variable Character.
8. CS_Name_Suffix	Customer suffix	Variable Character.
9. CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual	Variable Character.
10. CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record	Variable Character.
11. CS_Street_Add_Ln2	Street address line 2. If available, the second address line	Variable Character.
12. CS_Street_Add_Ln3	Street address line 3. If available, the third address line	Variable Character.
13. CS_City	The city associated with the permanent legal address	Variable Character.
14. CS_State	The state for United States addresses or state/province/county for international addresses .... —For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the permanent legal address. —For international address follow that country state code.	Variable Character.
15. CS_ZIP	The Zip/Postal Code associated with the customers' permanent legal address ..... —For United States zip codes, use the United States Postal Service ZIP+4 standard. —For international zip codes follow that standard format of that country.	Variable Character.
16. CS_Country	The country associated with the permanent legal address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character.
17. CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character.
18. CS_Email	The email address on record for the customer	Variable Character.
19. CS_Outstanding_Debt_Flag.	This field indicates whether the customer has outstanding debt with covered institution. This field may be used by the FDIC to determine offsets. Enter ''Y'' if customer has outstanding debt with covered institutions, enter ''N'' otherwise.	Character (1).
20. CS_Security_Pledge_Flag.	This field shall only be used for Government customers. This field indicates whether the covered institution has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter ''Y'' if the government entity has outstanding security pledge with covered institutions, enter ''N'' otherwise.	Character (1).

Account File. The Account File contains the deposit ownership rights and capacities information, allocated balances, insured amounts, and uninsured amounts. The balances are in U.S. dollars. The Account file is linked to the Customer File by the CS_Unique_ID.

The data elements will include:

Field name	Description	Format
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character.
2. DP_Acct_Identifier ...	Deposit account identifier. The primary field used to identify a deposit account ..... The account identifier may be composed of more than one physical data element to uniquely identify a deposit account..	Variable Character.
3. DP_Right_Capacity ..	Account ownership categories ..... —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —RR—Irrevocable trust accounts. —CRA—Certain retirement accounts.	Character (4).

Field name	Description	Format
	—EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	
4. DP_Prod_Cat	Product category or classification ..... —DDA—Demand Deposit Accounts. —NOW—Negotiable Order of Withdrawal. —MMA—Money Market Deposit Accounts. —SAV—Other savings accounts. —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable..	Character (3).
5. DP_Allocated_Amt ...	The current balance in the account at the end of business on the effective date of the file, allocated to a specific owner in that insurance category. For JNT accounts, this is a calculated field that represents the allocated amount to each owner in JNT category.. For REV accounts, this is a calculated field that represents the allocated amount to each owner-beneficiary in REV category.. For other accounts with only one owner, this is the account current balance.. This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).	Decimal (14,2).
6. DP_Acc_Int	Accrued interest allocated similarly as data field #5 DP_Allocated_Amt ..... The amount of interest that has been earned but not yet paid to the account as of the date of the file..	Decimal (14,2).
7. DP_Total_PI	Total amount adding #5 DP_Allocated_Amt and #6 DP_Acc_Int	Decimal (14,2).
8. DP_Hold_Amount	Hold amount on the account ..... The available balance of the account is reduced by the hold amount. It has no effect on current balance (ledger balance).	Decimal (14,2).
9. DP_Insured_Amount	The insured amount of the account	Decimal (14,2).
10. DP_Uninsured_Amount.	The uninsured amount of the account	Decimal (14,2).
11. DP_Prepaid_Account_Flag.	This field indicates a prepaid account with covered institution. Enter ''Y'' if account is a prepaid account with covered institutions, enter ''N'' otherwise.	Character (1).
12. DP_PT_Account_Flag.	This field indicates a pass-through account with covered institution. Enter ''Y'' if account is a pass-through with covered institutions, enter ''N'' otherwise.	Character (1).
13. DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter ''Y'' if account has transactional features, enter ''N'' otherwise.	Character (1).

Account Participant File. The Account Participant File will be used by the FDIC to identify account participants, to include the official custodian, beneficiary, bond holder, mortgagor, or employee benefit plan participant, for each account and account holder. One record represents one unique account participant. The Account Participant File is linked to the Account File by CS_Unique_ID and DP_Acct_Identifier.

The data elements will include:

Field name	Description	Format
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character.
2. DP_Acct_Identifier ...	Deposit account identifier. The primary field used to identify a deposit account. ..... The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Variable Character.
3. DP_Right_Capacity ..	Account ownership categories ..... —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —IRR—Irrevocable trust accounts. —CRA—Certain retirement accounts. —EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	Character (4).

Field name	Description	Format
4. DP_Prod_Category ..	Product category or classification ..... —DDA—Demand Deposit Accounts. —NOW—Negotiable Order of Withdrawal. —MMA—Money Market Deposit Accounts. —SAV—Other savings accounts. —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3).
5. AP_Allocated_ Amount.	Amount of funds attributable to the account participant as an account holder (*e.g.,* Public account holder of a public bond account) or the amount of funds entitled to the beneficiary for the purpose of insurance determination (*e.g.,* Revocable Trust).	Decimal (14,2).
6. AP_Participant_ID	This field is the unique identifier for the Account Participant. It will be generated by the covered institution and there shall not be duplicates. If the account participant is an existing bank customer this field is the same as CS_Unique_ID field.	Variable Character.
7. AP_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. Populate as follows: —For a United States individual—Legal identification number (*e.g.,* SSN, TIN, Driver's License, or Passport Number). —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (*e.g.,* Alien Card). —For a Non-Individual—the Tax identification Number (TIN), or other register entity number.	Variable Character.
8. AP_Govt_ID_Type ...	The valid customer identification types, are: ..... —SSN—Social Security Number. —TIN—Tax Identification Number. —DL—Driver's License, issued by a State or Territory of the United States. —ML—Military ID. —PPT—Valid Passport. —AID—Alien Identification Card. —OTH—Other.	Character (3).
9. AP_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity	Variable Character.
10. AP_Middle_Name ..	Customer middle name. Use only for the name of individuals and the primary contact for entity ..	Variable Character.
11. AP_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity	Variable Character.
12. AP_Entity_Name	The registered name of the entity. Do not use this field if the participant is an individual	Variable Character.
13. AP_Participant_ Type.	This field is used as the participant type identifier. The field will list the ''beneficial owner'' type: —OC—Official Custodian. —BEN—Beneficiary. —BHR—Bond Holder. —MOR—Mortgagor. —EPP—Employee Benefit Plan Participant.	Character (3).

Pending File. The Pending File contains the information needed for the FDIC to contact the owner or agent requesting additional information to complete the deposit insurance calculation. Each record represents a deposit account. The data elements will include:

Field name	Description	Format
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character.
2. Pending_Reason	Reason code for the account to be included in Pending file ..... For deposit account records maintained by the bank, use the following codes. —A—agency or custodian. —B—beneficiary. —OI—official item. —RAC—right and capacity code. For alternative recordkeeping requirements, use the following codes. —ARB—direct obligation brokered deposit. —ARBN—non-direct obligation brokered deposit. —ARCRA—certain retirement accounts. —AREBP—employee benefit plan accounts. —ARM—mortgage servicing for principal and interest payments. —ARO—other deposits. —ARTR—trust accounts. The FDIC needs these codes to initiate the collection of needed information.	Character (5).
3. DP_Acct_Identifier ...	Deposit account identifier. The primary field used to identify a deposit account ..... The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Variable Character.
4. DP_Right_Capacity ..	Account ownership categories ..... —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —IRR—Irrevocable trust accounts. —CRA—Certain retirement accounts.	Character (4).

Field name	Description	Format
	—EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	
5. DP_Prod_Category ..	Product category or classification ..... —DDA—Demand Deposit Accounts. —NOW—Negotiable Order of Withdrawal. —MMA—Money Market Deposit Accounts. —SAV—Other savings accounts. —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3).
6. DP_Cur_Bal	Current balance ..... The current balance in the account at the end of business on the effective date of the file. This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).	Decimal (14,2).
7. DP_Acc_Int	Accrued interest ..... The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2).
8. DP_Total_PI	Total of principal and accrued interest	Decimal (14,2).
9. DP_Hold_Amount	Hold amount on the account ..... The available balance of the account is reduced by the hold amount. It has no impact on current balance (ledger balance).	Decimal (14,2).
10. DP_Prepaid_Account_Flag.	This field indicates a prepaid account with covered institution. Enter ''Y'' if account is a prepaid account, enter ''N'' otherwise.	Character (1).
11. CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. Populate as follows:. —For a United States individual—Legal identification number (*e.g.,* SSN, TIN, Driver's License or Passport Number). —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (*e.g.,* Alien Card). —For a Non-Individual—the Tax identification Number (TIN), or other register entity number.	Variable Character.
12. CS_Govt_ID_Type	The valid customer identification types: ..... —SSN—Social Security Number. —TIN—Tax Identification Number. —DL—Driver's License, issued by a State or Territory of the United States. —ML—Military ID. —PPT—Valid Passport. —AID—Alien Identification Card. —OTH—Other.	Character (3).
13. CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity	Variable Character.
14. CS_Middle_Name ..	Customer middle name. Use only for the name of individuals and the primary contact for entity ..	Variable Character.
15. CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity	Variable Character.
16. CS_Name_Suffix	Customer suffix	Variable Character.
17. CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual	Variable Character.
18. CS_Street_Add_Ln1	Street address line 1 ..... The current account statement mailing address of record.	Variable Character.
19. CS_Street_Add_Ln2	Street address line 2 ..... If available, the second address line.	Variable Character.
20. CS_Street_Add_Ln3	Street address line 3 ..... If available, the third address line.	Variable Character.
21. CS_City	The city associated with the permanent legal address	Variable Character.
22. CS_State	The state for United States addresses or state/province/county for international addresses ..... —For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the permanent legal address. —For international address follow that country state code.	Variable Character.
23. CS_ZIP	The Zip/Postal Code associated with the customers' permanent legal address ..... —For United States zip codes, use the United States Postal Service ZIP+4 standard. —For international zip codes follow the standard format of that country.	Variable Character.
24. CS_Country	The country associated with the permanent legal address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character.
25. CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character.
26. CS_Email	The email address on record for the customer	Variable Character.
27. CS_Outstanding_Debt_Flag.	This field indicates whether the customer has outstanding debt with covered institution. This field may be used to determine offsets. Enter ''Y'' if customer has outstanding debt with covered institutions, enter ''N'' otherwise.	Character (1).

Field name	Description	Format
28. CS_Security_ Pledge_Flag.	This field indicates whether the CI has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter ''Y'' if the government entity has outstanding security pledge with covered institutions, enter ''N'' otherwise. This field shall only be used for Government customers.	Character (1).
29. DP_PT_Account_ Flag.	This field indicates a pass-through account with covered institution. Enter ''Y'' if account is a pass-through with covered institutions, enter ''N'' otherwise.	Character (1).
30. PT_Parent_Customer_ID.	This field contains the unique identifier of the parent customer ID who has the fiduciary responsibility at the covered institution.	Variable Character.
31. DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter ''Y'' if account has transactional features, enter ''N'' otherwise.	Character (1).

Dated at Washington, DC, this 15th day of November, 2016.

Robert E. Feldman,

Executive Secretary.

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM16–5–000; Order No. 831]

Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to address incremental energy offer caps. We require that each regional transmission organization (RTO) and independent system operator (ISO): Cap each resource's incremental energy offer at the higher of $1,000/megawatt-hour (MWh) or that resource's verified cost-based incremental energy offer; and cap verified cost-based incremental energy offers at $2,000/MWh when calculating locational marginal prices (LMP). Further, we clarify that the verification process for cost-based incremental offers above $1,000/MWh should ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs. This Final Rule will improve price formation by reducing the likelihood that offer caps will suppress LMPs below the marginal cost of production, while compensating resources for the costs they incur to serve load, by enabling RTOs/ISOs to dispatch the most efficient set of resources when short-run marginal costs exceed $1,000/MWh, by encouraging resources to offer supply to the market when it is most needed, and by reducing the potential for seams issues.

DATES: *Effective Date:* This rule will become effective February 21, 2017.

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SUPPLEMENTARY INFORMATION:

Order No. 831

Final Rule

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I. Introduction

1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) finds that current regional transmission organization (RTO) and independent system operator (ISO) offer caps on incremental energy offers [1] (offer cap) are not just and reasonable for the reasons discussed below. To remedy these unjust and unreasonable rates, we require, pursuant to section 206 of the Federal Power Act,[2] that each RTO/ISO: (1) Cap each resource's incremental energy offer at the higher of $1,000/megawatt-hour (MWh) or that resource's verified cost-based incremental energy offer; and (2) cap verified cost-based incremental energy offers at $2,000/MWh when calculating locational marginal prices (LMP) (hard cap).[3] Further, we clarify that the verification process for cost-based incremental offers above $1,000/MWh should ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs.

2. We reach this conclusion for several reasons. First, offer caps in some RTOs/ISOs may prevent a resource from recouping its short-run marginal costs by not permitting that resource to include all of its short-run marginal costs within its incremental energy offer. Second, current offer caps in some RTOs/ISOs are likely to suppress LMPs below the marginal cost of production during periods when fuel costs increase dramatically. Third, when several resources have short-run marginal costs above $1,000/MWh but are unable to reflect those costs within their incremental energy offers due to the offer cap, the RTO/ISO is unable to dispatch the most efficient set of resources because it will not be able to distinguish among the resources' actual costs. Finally, the $1,000/MWh offer cap in some RTOs/ISOs may discourage resources with short-run marginal costs above $1,000/MWh from offering supply to the RTO/ISO, even though the market may be willing to purchase that supply.[4] To remedy these problems, we are setting forth requirements for each RTO/ISO regarding the offer cap in this Final Rule. We believe generic action is appropriate to avoid the creation of seams that would result from different offer caps in adjacent RTO/ISO markets.

3. We have modified the proposal in the Notice of Proposed Rulemaking (NOPR) to include a $2,000/MWh hard cap for the purposes of calculating LMPs. While the offer cap proposed in the NOPR would address the concerns identified above, we are convinced by commenters that the absence of a hard cap creates practical concerns that must be addressed. First, several commenters note that RTOs/ISOs and/or Market Monitoring Units may have imperfect information about resource short-run marginal costs, which can create challenges for the proposed requirement to verify cost-based incremental energy offers above $1,000/MWh prior to the market clearing process. Additionally, as noted by market monitors, the dynamics of natural gas spot market prices during periods when they rise to levels that could result in the short-run marginal costs of some natural gas-fired resources exceeding $1,000/MWh can make verification challenging, particularly verification of expected costs. Thus, while a hard cap may diminish the ability to fully address the shortcomings of current offer caps identified above in all circumstances, we find that, on balance, a hard cap is necessary to reasonably limit the adverse impact that any imperfect information during the verification process could have on LMPs.

4. The goals of the price formation proceeding are to: (1) Maximize market surplus for consumers and suppliers; (2) provide correct incentives for market participants to follow commitment and dispatch instructions, make efficient investments in facilities and equipment, and maintain reliability; (3) provide transparency so that market participants understand how prices reflect the actual marginal cost of serving load and the operational constraints of reliably operating the system; and (4) ensure that all suppliers have an opportunity to recover their costs.[5]

5. The reforms adopted in this Final Rule advance two of the Commission's goals with respect to price formation. First, the reforms will result in LMPs that are more likely to reflect the true marginal cost of production when resources' short-run marginal costs exceed $1,000/MWh. In the short run, LMPs that reflect the short-run marginal costs of production are particularly important during high price periods because they provide a signal to consumers to reduce consumption and a signal to suppliers to increase production or to offer new supplies to the market. In the long run, LMPs that reflect the short-run marginal cost of production are important because they inform investment decisions. Second, the reforms will give resources the opportunity to recover their short-run marginal costs, thereby encouraging resources to participate in RTO/ISO energy markets. Adequate investment in resources and resource participation in RTO/ISO energy markets ensure adequate and reliable energy for consumers. The benefits summarized above and discussed in detail below would ultimately help to ensure just and reasonable rates.

6. As discussed below, we require each RTO/ISO to submit a filing with the tariff changes needed to implement this Final Rule within 75 days of the Final Rule's effective date.

[1] The incremental energy offer is the portion of a resource's energy supply offer that varies with output or level of demand reduction.

[2] 16 U.S.C. 824e (2012).

[3] In this proceeding, a hard cap refers to an upper limit on the incremental energy offers that RTOs/ISOs can use to calculate LMPs. The hard cap does not limit the cost-based incremental energy offers that a market participant may submit to the RTO/ISO.

[4] Many resources are subject to must-offer requirements in either the day-ahead or real-time markets. These offer cap reforms ensure that such a resource has an economic incentive that matches its tariff obligation and also provide an economic incentive to those resources that are not subject to a must-offer requirement.

[5] *See Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice Inviting Post-Technical Workshop Comments, Docket No. AD14–14–000, at 1 (Jan. 16, 2015) (Notice Inviting Comments); *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice, Docket No. AD14–14–000 (June 19, 2014) (Price Formation Notice).

II. Background

7. In June 2014, the Commission initiated a proceeding, in Docket No. AD14–14–000, to evaluate issues regarding price formation in the energy and ancillary services markets operated by RTOs/ISOs.[6] In the notice initiating that proceeding, the Commission stated that there may be opportunities for the RTOs/ISOs to improve the energy and ancillary services price formation process. As set forth in that notice, LMPs and market-clearing prices used in energy and ancillary services markets ideally ''would reflect the true marginal cost of production, taking into account all physical system constraints, and these prices would fully compensate all resources for the variable cost of providing service.'' [7]

8. In the instant proceeding, on January 21, 2016, the Commission issued a NOPR proposing to require that each RTO/ISO: (1) Cap each resource's incremental energy offer to the higher of $1,000/MWh or that resource's verified cost-based incremental energy offer; and (2) use verified cost-based incremental energy offers above $1,000/MWh to calculate LMPs.[8]

9. The Commission also sought comments on the NOPR proposal regarding: (1) Whether a hard cap on cost-based incremental energy offers used for purposes of calculating LMPs should be included in any Final Rule in this proceeding and, if so, whether the hard cap should equal $2,000/MWh or another value; (2) the ability of the Market Monitoring Unit or RTO/ISO to verify the costs underlying incremental energy offers above $1,000/MWh prior to the day-ahead or real-time market clearing process, including whether the verification of physical offer components is also necessary; (3) whether the Market Monitoring Unit or RTO/ISO may need additional information to ensure that all short-run marginal cost components, such as risk or opportunity costs that are often difficult to quantify, are accurately reflected in a resource's cost-based incremental energy offer, and whether an adder is appropriate; (4) whether the Market Monitoring Unit or RTO/ISO may need additional information or the authority to require revisions or corrections to cost-based incremental energy offers to ensure that cost-based incremental energy offers are accurate reflections of a resource's short-run marginal cost; (5) whether the proposal should apply to imports and whether a cost verification process for import transactions is feasible; (6) whether excluding virtual transactions above $1,000/MWh could limit hedging opportunities, present opportunities for manipulation or gaming, or create market inefficiencies; and (7) the impact the proposal would have on seams.[9]

A. Offer Caps in RTOs/ISOs

10. Supply offers in day-ahead and real-time energy markets consist of both financial and physical components. The financial components of a supply offer are denominated in dollars (*e.g.,* $/start and $/MWh) and represent the costs underlying a resource's offer to supply electricity in a given day-ahead or real-time interval. The physical components of a supply offer, which are not denominated in dollars, describe the resource's physical operating parameters. These include, for example, a resource's minimum and maximum operating limits in a given day-ahead or real-time interval, and are denominated in MW, MWh, time, or some other unit.

11. This Final Rule addresses the incremental energy offer component of a resource's supply offer, which is a financial component consisting of costs that vary with a resource's output or level of demand reduction. Incremental energy offers typically consist of a supply curve made up of multiple price-quantity pairs that indicate the price, expressed in $/MWh, that a resource is willing to accept to produce a given quantity of energy.

12. All six Commission-jurisdictional RTOs/ISOs have at one time imposed a $1,000/MWh cap on incremental energy offers.[10] The offer cap remains at $1,000/MWh in CAISO, ISO–NE., MISO, NYISO, and SPP, and resources in these RTOs/ISOs may not submit incremental energy offers above $1,000/MWh. As discussed further below, resources in PJM may submit incremental energy offers above $1,000/MWh provided they are cost-based, but PJM applies a hard cap that limits incremental energy offers to $2,000/MWh when calculating LMPs.[11]

13. While the current offer caps restrict the incremental energy offers, one of the components used to set LMP, they do not limit LMPs to the level of the offer caps because the addition of the congestion and loss components of the LMP can result in LMPs that exceed the offer cap. Scarcity or shortage pricing and emergency purchases can also cause LMPs to exceed the offer cap.

B. Offer Caps Waivers and Tariff Changes

14. As described in the NOPR, after the extreme weather experienced during the winter of 2013/14, dubbed the ''Polar Vortex'', PJM, NYISO, and MISO filed various requests to either temporarily or permanently revise their respective offer caps.[12] During the winter months of 2014, the Commission approved requests to temporarily waive tariff provisions related to offer caps in NYISO [13] and PJM.[14] In the following winter of 2014/15, the Commission approved temporary changes to the PJM tariff and temporarily waived some MISO tariff provisions to address issues with the offer caps in the PJM and MISO energy markets.[15] During the winter of 2015/16, PJM and MISO again filed requests to modify their respective offer caps. On December 11, 2015, the Commission accepted tariff revisions in PJM that would raise the cap on cost-based incremental energy offers to $2,000/MWh for purposes of calculating

[6] Price Formation Notice, Docket No. AD14–14–000.

[7] Price Formation Notice, Docket No. AD14–14–000 at 2.

[8] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators,* 81 FR 5951 (Feb. 4, 2016), FERC Stats. & Regs. ¶ 32,714, at P 3 (2016) (NOPR).

[9] *Id.* P 73.

[10] *See, e.g.,* California Independent System Operator Corporation, eTariff, 39.6.1.1 (11.0.0); ISO New England Inc., Transmission, Markets and Services Tariff, Market Rule 1, III.1.10.1A(c)(iv), III,1.10.IA(d)(iv), III.2.6(b)(i), and III.A.15.1(b) (46.0.0); Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module D 39.2.5 (35.0.0), 39.2.5A (34.0.0), 39.2.5B (34.0.0), 40.2.5 (35.0.0), 40.2.6 (35.0.0) and 40.2.7 (33.0.0); New York Independent System Operator, Inc., NYISO Tariffs, NYISO Markets and Services Tariff, 21.4 and 21.5.1 (7.0.0); PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Tariff Operating Agreement, Attachment K, Appendix, 1.10.1A(d) (24.0.0); Southwest Power Pool, Inc., OATT, Sixth Revised Volume No. 1, Attachment AE, Section 4.1.1 (2.0.0).

[11] *PJM Interconnection, L.L.C.,* 153 FERC ¶ 61,289, at P 25 (2015) (PJM 2015 Offer Cap Order).

[12] NOPR, FERC Stats. & Regs ¶ 32,714 at PP 13–17.

[13] *N.Y. Indep. Sys. Operator, Inc.,* 146 FERC ¶ 61,061, at PP 2–4 (2014).

[14] PJM filed concurrently two tariff waiver requests related to its offer cap. In its first request, which the Commission granted for the January 24–February 10, 2014 period, PJM requested that certain resources with cost-based offers above $1,000/MWh receive uplift payments to recoup those costs. *See PJM Interconnection, L.L.C.,* 146 FERC ¶ 61,041, at P 2 (PJM 2014 Waiver Order I), *order on reh'g,* 149 FERC ¶ 61,059 (2014). In its second request, which the Commission granted for the February 11–March 31, 2014 period, PJM requested that certain resources be allowed to submit cost-based incremental energy offers in excess of $1,000/MWh, with no cap on cost-based offers. *See PJM Interconnection, L.L.C.,* 146 FERC ¶ 61,078, at PP 3–4 (2014) (PJM 2014 Offer Cap Order II).

[15] The temporary revisions to the PJM tariff were accepted for the January 16, 2015 through March 31, 2015 period. *See PJM Interconnection, L.L.C.,* 150 FERC ¶ 61,020, at P 5 (2015) (PJM 2014/15 Offer Cap Order). The temporary waiver of the MISO tariff provisions was granted for December 20, 2014 through April 30, 2015 period. *See Midcontinent Indep. Sys. Operator, Inc.,* 150 FERC ¶ 61,083, at P 3 (2015) (MISO 2014/15 Offer Cap Order).

LMPs.[16] The Commission also granted MISO's request to temporarily waive tariff provisions related to its $1,000/MWh offer cap.[17] MISO recently filed another request to temporarily waive tariff provisions related to its offer cap for the upcoming winter of 2016/17.[18]

III. Need for Reform

15. In the NOPR, the Commission preliminarily found that the $1,000/MWh offer caps currently in effect in some RTOs/ISOs [19] are unjust and unreasonable for four reasons.[20] First, some current RTO/ISO offer caps may prevent a resource from recouping its short-run marginal costs by not permitting that resource to reflect its short-run marginal costs within its incremental energy offer. Second, current offer caps may suppress LMPs below the marginal cost of production. Third, when several resources have short-run marginal costs above $1,000/MWh but are unable to reflect those costs within their incremental energy offers due to the offer cap, the RTO/ISO may not dispatch the most efficient set of resources because it will not be able to distinguish between the resources' actual costs. Finally, the $1,000/MWh offer cap in some RTOs/ISOs may discourage resources with short-run marginal costs above $1,000/MWh from offering supply to the RTO/ISO, even though the market may be willing to purchase that supply.[21] We believe generic action is appropriate to avoid the creation of seams that would result from different offer caps in adjacent RTO/ISO markets. As described below, based on our analysis of the record, we adopt the preliminary findings in the NOPR and conclude that the current offer caps in RTOs/ISOs are unjust and unreasonable.

A. Comments

1. Comments That Support the Preliminary Finding That Current Offer Caps are Unjust and Unreasonable

16. Several commenters, for various reasons, support the Commission's preliminary finding in the NOPR that existing offer caps in RTOs/ISOs are unjust and unreasonable,[22] and others express general or conditional support for the NOPR.[23] Some commenters agree that the $1,000/MWh offer cap prevents resources from recovering their short-run marginal costs.[24] For example, Direct Energy states that generator cost assurance is key to maintaining reliability because it ensures that resources will have the incentive to follow RTO/ISO dispatch instructions when called upon by the RTO/ISO, without concern for receiving compensation below their short-run costs.[25] Six Cities states that exceptional circumstances may give rise to marginal costs for specific resources that exceed $1,000/MWh and those resources should have an opportunity to recover their actual costs of production.[26]

17. Several commenters support the Commission's preliminary finding that existing RTO/ISO offer caps should be reformed because they can suppress LMPs below the marginal cost of production.[27] For example, PJM/SPP [28] state that the current offer caps could undermine market efficiency by preventing legitimate incremental energy offers above $1,000/MWh, which they state has occurred in some parts of the country, because LMPs that fail to reflect the cost of serving demand are inefficient.[29] Competitive Suppliers assert that while the costs of the marginal resources have not frequently exceeded $1,000/MWh, the impact of the $1,000/MWh offer cap is not trivial because artificially suppressing day-ahead or real-time LMPs during those few intervals can prevent economic outcomes that will support reliability and motivate consumers to reduce consumption during stressed system conditions.[30] Midcontinent Joint Consumer Advocates support changing the offer cap because incremental energy costs would only exceed $1,000/MWh in extreme conditions.[31]

18. Other commenters agree with the Commission's preliminary finding that the $1,000/MWh offer cap should be reformed because it can discourage a resource with costs above the offer cap from offering its supply to the RTO/ISO, even though the market may be willing to purchase that supply.[32] For example, OMS states that when the (primarily fuel) cost to generate electricity is unusually high, the current $1,000/MWh offer cap can limit the willingness of resources to offer into the day-ahead and real-time markets.[33]

19. CEA and EEI express general support for the Commission's preliminary finding in the NOPR that current offer caps could also prevent the RTO/ISO from dispatching the most efficient set of resources because the RTO/ISO will not have access to the underlying costs associated with the multiple incremental energy offers above the offer cap.[34]

2. Comments That Oppose Reforming Current Offer Caps

20. Several commenters disagree with the Commission's finding that the current offer cap is unjust and unreasonable and therefore should be reformed. For example, CAISO argues that the current $1,000/MWh offer cap in CAISO should not be changed because $1,000/MWh is far in excess of what the highest reasonable cost-justified offer could be from a CAISO resource.[35] CAISO explains that natural gas prices have generally been stable, and argues that even if natural gas market fundamentals changed, periods when incremental energy costs exceed $1,000/MWh would be infrequent and short-lived and do not justify the offer cap changes proposed in the NOPR.[36] ISO–NE does not oppose raising its current offer cap to a higher fixed level, but nonetheless maintains that the

[16] PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 25. The tariff provisions related to the offer cap do not have a sunset date.

[17] *Midcontinent Indep. Sys. Operator, Inc.,* 154 FERC ¶ 61,006, at P 1 (2016) (MISO 2015/16 Offer Cap Order). This waiver was granted for the January 1, 2016 through April 30, 2016 period.

[18] *Midcontinent Indep. Sys. Operator, Inc.,* Transmittal, Docket No. ER16–2685–000.

[19] Specifically CAISO, ISO–NE., MISO, NYISO, and SPP. *See supra* n.10.

[20] *See* NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 43–47.

[21] *Id.* PP 44–47.

[22] *See generally* CEA Comments at 3–4; Direct Energy Comments at 2–3; Exelon Comments at 5–7; PJM/SPP Comments at 1–2; EEI Comments at 3–4; Competitive Suppliers Comments at 4, 6, 7–15; Ohio Commission Comments at 4. A list of commenters and the abbreviated names used for them in this Final Rule appears in the Appendix.

[23] *See generally* Dominion Comments at 3; EEI Comments at 3–5; Golden Spread Comments at 1; Midcontinent Joint Consumer Advocates Comments at 2; MISO Comments at 1; NESCOE Comments at 1; New Jersey Commission Comments at 1; NY Transmission Owners Comments at 2; NYISO Comments at 2; OMS Comments at 2; OPSI Comments at 10; PJM/SPP Comments at 1; Potomac Economics Comments at 1; Powerex Comments at 6; Six Cities Comments at 2.

[24] CEA Comments at 4; Direct Energy Comments at 2–3; OMS Comments at 2; Six Cities Comments at 2.

[25] Direct Energy Comments at 2.

[26] Six Cities Comments at 2.

[27] *See generally* CEA Comments at 3–4; Competitive Suppliers Comments at 9–13; Exelon Comments at 5–7; EEI Comments at 3–5; PJM Power Providers Comments at 1–2; PJM/SPP Comments at 1–2; Powerex Comments at 6.

[28] ''PJM/SPP'' indicates comments filed jointly by PJM and SPP. PJM and SPP also make individual comments within their joint filing.

[29] PJM/SPP Comments at 1–2 (citing PJM, Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events (May 8, 2014), *available at http://www.pjm.com/~/media/committeesgroups/task-forces/cstf/20140509/20140509-item-02-cold-weather-report.ashx*).

[30] Competitive Suppliers Comments at 9.

[31] Midcontinent Joint Consumer Advocates Comments at 3–4.

[32] *See generally* CEA Comments at 3–4; Competitive Suppliers Comments at 13; OMS Comments at 2; Powerex Comments at 6.

[33] OMS Comments at 2.

[34] CEA Comments at 2–3; EEI Comments at 3–4.

[35] CAISO Comments at 4.

[36] *Id.* at 4–5.

current $1,000/MWh offer cap in ISO–NE is just and reasonable because the cap has not inappropriately limited LMPs below the marginal cost.[37]

21. The ISO–NE and SPP Market Monitors assert that there is no need to reform the offer caps in their markets. The ISO–NE Market Monitor states that there is no need to revise ISO–NE's $1,000/MWh offer cap because natural gas prices have become more stable and, if completed, proposed pipeline expansions in New England will help alleviate some of the natural gas congestion that led to the high LMPs observed in ISO–NE in 2014.[38] The SPP Market Monitor states that SPP resources have not experienced costs above $1,000/MWh and the SPP Market Monitor expects that fuel price spikes that would raise costs to that level would rarely occur.[39]

22. A number of commenters argue, for various reasons, that current RTO/ISO offer caps should not be revised.[40] For example, several commenters assert that revising the offer cap is an overreaction to anomalous, infrequent, and/or transitory market and weather conditions that do not justify changing the offer cap. Steel Producers' Alliance observes that the current offer cap has only been an issue in a handful of instances, which it argues demonstrates that the offer cap is set at the appropriate level and performing as intended.[41] APPA, NRECA, and AMP assert that the offer cap issues described in the NOPR are merely hypothetical, and that there is insufficient evidence that current offer caps are unjust and unreasonable.[42]

23. Some commenters disagree with the NOPR's preliminary finding that offer caps are unjust and unreasonable because they can suppress LMPs below the marginal cost of production. For example, ODEC argues that a higher cap is unnecessary because LMPs are lower in PJM than they were when PJM's current higher offer cap was adopted.[43] Other commenters argue that LMPs above $1,000/MWh do not send a useful price signal to consumers,[44] and may in fact harm consumers because most demand for electricity is inelastic, or unresponsive to price changes.[45] These commenters argue that, because most demand is inelastic, raising the offer cap would lead to market power abuses and transfer payments from load to generators.[46] For example, Industrial Customers argue that resources can take advantage of inelastic demand and exercise market power to obtain prices above competitive levels.[47] The New York Commission argues that without sufficient competition, including from demand response, raising the offer cap will not change behavior in NYISO and will only increase prices and burden ratepayers.[48] The New York Commission asserts that the Commission should not revise the offer cap until more effective demand response resources can participate in NYISO's real-time energy market.[49]

24. Many commenters argue that the current offer caps in RTOs/ISOs should be maintained because they protect consumers from excessive LMPs that result from market power abuse.[50] For example, NY Department of State argues that the offer cap benefits consumers by shielding customers from high real-time LMPs or market manipulation.[51] Similarly, TAPS states that the current offer caps act as a critical safety valve to protect consumers from excessive prices.[52] Industrial Customers assert that increasing the offer cap above $1,000/MWh would raise consumers' costs to hedge electricity procurements.[53] Industrial Energy Consumers stress that offer caps are essential for consumers to be confident that rate structures are fair and nondiscriminatory.[54]

25. Some commenters argue that current offer caps do not suppress LMPs in a manner that impacts resource investment decisions. AF&PA asserts that periodic and unpredictable price spikes have limited value in sustaining resource viability or inducing consumers to make long term behavioral changes.[55] Similarly, TAPS argues that allowing offers above $1,000/MWh to set the LMP would not have a practical impact on resource investment decisions because, even if the offer cap were raised, the LMP would remain the same in the vast majority of hours. TAPS adds that no resource owner would base its capital investments on the hope that LMPs will be extremely high for just a few hours every year.[56]

26. Some commenters argue that offer cap waivers are the best remedy to address issues associated with the offer cap.[57] For example, Industrial Energy Consumers state that the Commission adequately addressed the isolated Polar Vortex event by granting either temporary, limited waivers, or uplift payments, thereby sending the correct price signal for investment.[58] AF&PA supports current Commission protocols of waivers and other reforms that allow generators to recover verifiable costs in certain situations, and supports the expansion and streamlining of these protocols.[59]

3. Generally Applicable Offer Cap Reforms

27. In addition to the four preliminary findings stated above,[60] the Commission also stated in the NOPR that the lack of a uniform offer cap has the potential to exacerbate seams issues between neighboring RTOs/ISOs.[61] The Commission recognized in the NOPR that the proposed reforms could result in neighboring markets having different effective offer caps in a given interval because the marginal cost of production in one RTO/ISO may differ from neighboring markets due to resources with different short-run marginal costs being on the margin in those markets.[62] The Commission preliminarily found, however, that these differences will not adversely affect seams because the differences would be driven by actual costs and not by offer caps artificially suppressing LMPs. The Commission stated that, to the extent incremental energy offers can be verified, a reform applicable to all RTOs/ISOs that allows cost-based incremental energy offers to exceed $1,000/MWh would enhance

[37] ISO–NE Comments at 1–3.

[38] ISO–NE Market Monitor Comments at 12–14 (citing ISO–NE Market Rule 1, Appendix A, Section III.A.15).

[39] SPP Market Monitor Comments at 8–9.

[40] *See generally* APPA, NRECA, and AMP Comments at 5–8; AF&PA Comments at 2–3; CAISO Comments at 2; Industrial Customers Comments at 3–9; Industrial Energy Consumers Comments at 2; ISO–NE Market Monitor Comments at 12–14; NY Department of State Comments at 3–5; NYPSC Comments at 1, 4; Steel Producers' Alliance Comments at 2–3; ODEC Comments at 3–5; PG&E Comments at 1–2; PJM Joint Consumer Advocates Comments at 2–4; SPP Market Monitor Comments at 2, 6, 12–13; TAPS Comments at 1, 4–7.

[41] Steel Producers' Alliance Comments at 2.

[42] APPA, NRECA, and AMP Comments at 9–13.

[43] ODEC Comments at 3–4.

[44] NY Department of State Comments at 3; New York Commission Comments at 5–6.

[45] AF&PA Comments at 2–3; Industrial Energy Consumers Comments at 2; Industrial Customers Comments at 10; PJM Joint Consumer Advocates Comments at 4; TAPS Comments at 6, 12.

[46] Direct Energy Comments at 3–5; Industrial Customers Comments at 10; NY Department of State Comments at 3; TAPS Comments at 3.

[47] Industrial Customers Comments at 10.

[48] New York Commission Comments at 5–6.

[49] New York Commission Comments at 6.

[50] Industrial Customers Comments at 3, 10–11; Industrial Energy Consumers Comments at 2; TAPS Comments at 1, 8–12, NY Department of State Comments at 4.

[51] NY Department of State Comments at 4.

[52] TAPS Comments at 1.

[53] Industrial Customers Comments at 20.

[54] Industrial Energy Consumers Comments at 2.

[55] AF&PA Comments at 2–3.

[56] TAPS Comments at 6–7.

[57] AF&PA Comments at 6–7; Industrial Energy Consumers Comments at 2; Steel Producers' Alliance Comments at 2–3.

[58] Industrial Energy Consumers Comments at 2.

[59] AF&PA Comments at 6.

[60] *See supra* P 2.

[61] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 70.

[62] *Id.* P 71.

market efficiency and mitigate the potential for seams issues.[63] The Commission sought comment on these preliminary findings and other seams issues related to this proposal.

28. The majority of commenters agree with the NOPR's proposal to make a change in the offer cap across all RTOs/ISOs in order to avoid seams issues,[64] and several commenters generally agree with the importance of mitigating seams issues.[65] For example, the IRC notes the importance of uniformity in the treatment of offer caps, particularly in neighboring RTOs/ISOs.[66] NYISO supports a uniform RTO/ISO offer cap and argues that, in areas with a common fuel source, differing offer caps in neighboring regions could lead to restricted fuel procurement in the region with the lower offer cap.[67] MISO asserts that without a common offer cap, tight operating conditions could provide counterproductive arbitrage opportunities.[68] The ISO–NE Market Monitor notes that different offer caps in neighboring regions could be detrimental to ISO–NE's ongoing efforts to develop a clearing mechanism to select external resources in economic merit order.[69]

29. The PJM Market Monitor states that the proposal's impact on seams would be consistent with efficient markets whereby energy would flow to where it is valued most.[70] EEI argues that the actual effect of the NOPR on seams would be determined by market forces and the marginal cost to operate the system.[71]

30. With respect to the Western Electricity Coordinating Council (WECC), CAISO and Exelon argue that the Commission must address how it will ensure consistency between the proposed offer cap in CAISO and the existing $1,000/MWh offer cap in WECC.[72] CAISO and Exelon observe that, in instituting the existing offer cap in WECC, the Commission recognized the interdependency between CAISO and WECC and therefore stated that it would be unjust and unreasonable to have different offer caps in these two regions.[73] CAISO further asserts that for those RTOs/ISOs, such as CAISO, that do not share a seam with another RTO/ISO, the Final Rule should allow these RTOs/ISOs to demonstrate that raising the offer cap is unnecessary.[74]

31. Some market participants support the NOPR's applicability to all RTOs/ISOs in theory, but argue that the effect on seams would depend on implementation. The Delaware Commission cautions that the degree to which the verification of cost-based offers above $1,000/MWh is sufficiently rigorous will determine the effect on seams and that this will not be known until implementation.[75] ISO–NE agrees that consistent energy offer caps are important to prevent flows that run contrary to reliability needs, but argues that the NOPR's actual effect on seams is unknown because real-time cost verification for imports is not possible.[76] PJM Joint Consumer Advocates argue that the Commission's proposal could exacerbate seams because shortage pricing mechanisms vary across RTOs/ISOs.[77] Industrial Energy Consumers note that allowing different offer caps in adjacent markets could create seams issues.[78]

32. Other commenters argue that there should be regional flexibility in implementing an offer cap. PG&E argues that a one-size-fits-all solution for all RTO/ISO markets is not appropriate.[79] As noted above, the NY Transmission Owners suggest that different hard caps in different regions might be justified, so long as regions that are dependent on the same gas supply coordinate their caps.[80] Direct Energy supports the NOPR's proposal for verified cost-based offers above $1,000/MWh, but argues that individual RTOs/ISOs should be able to set offer caps above $1,000/MWh in recognition of regional differences.[81]

33. APPA, NRECA, and AMP assert that the NOPR runs counter to the Commission's usual practice of recognizing and accommodating regional differences.[82] APPA, NRECA, and AMP state that a concern over seams is not adequate justification for the rule because it fails to account for regional differences, and because the Commission determined that the need for an increase in the offer cap outweighed seams issues when it approved PJM's $2,000/MWh offer cap.[83]

B. Determination

34. Based on our analysis of the record, we adopt the preliminary findings in the NOPR, and conclude that the offer caps currently in effect in RTOs/ISOs are unjust and unreasonable. We find that the currently effective offer caps may prevent a resource from recovering its short-run marginal costs, which could result in that resource operating at a loss.[84] We also find that the $1,000/MWh offer caps in effect in some RTOs/ISOs may suppress LMPs below the marginal cost of production given that recent history demonstrates that resource short-run marginal costs can exceed $1,000/MWh.[85] We also find that preventing resources from including all of their short-run marginal costs in their incremental energy offers when those costs exceed $1,000/MWh may discourage resources that are not subject to must-offer requirements from offering their supply to the RTO/ISO energy market. Finally, preventing resources from including their short-run marginal costs in their incremental energy offers when those costs exceed $1,000/MWh may also prevent the RTO/ISO from dispatching the most efficient resources when several resources have short-run marginal costs above $1,000/MWh.

35. We disagree with commenters who argue that there is no need to reform the offer cap or that the problems described in the NOPR are hypothetical and that insufficient evidence exists to

[63] *Id.* P 48.

[64] *See generally* Dominion Comments at 8; Competitive Suppliers Comments at 23, 25; EEI Comments at 4; Exelon Comments at 22–23; MISO Comments at 19; NESCOE Comments at 2; PJM Power Providers Comments at 6–7; OMS Comments at 4; PJM/SPP Comments at 2–3; IRC Comments at 3; NY Department of State Comments at 6; NYISO Comments at 9–10; ISO–NE Market Monitor Comments at 14; Steel Producers' Alliance Comments at 3–4. Some of these commenters express conditional or qualified support of the NOPR and/or propose alternative offer caps.

[65] Industrial Customers Comments at 21, 24; Midcontinent Joint Consumer Advocates Comments at 9–10; TAPS Comments at 21–22.

[66] IRC Comments at 1, 3.

[67] NYISO Comments at 10.

[68] MISO Comments at 19.

[69] ISO–NE Market Monitor Comments at 14.

[70] PJM Market Monitor Comments at 12.

[71] EEI Comments at 4.

[72] CAISO Comments at 14; Exelon Comments at 22.

[73] CAISO Comments at 14 (citing *Western Electric Coordinating Council,* 133 FERC ¶ 61,026 (2010)); Exelon Comments at 22 (citing *Western Electric Coordinating Council,* 131 FERC ¶ 61,145 (2010)).

[74] CAISO Comments at 2, 4.

[75] Delaware Commission Comments at 14–15.

[76] ISO–NE Comments at 9.

[77] PJM Joint Consumer Advocates Comments at 6–7.

[78] Industrial Energy Consumers Comments at 2.

[79] PG&E Comments at 1–2.

[80] NY Transmission Owners Comments at 4–5.

[81] Direct Energy Comments at 5–6.

[82] APPA, NRECA, and AMP Comments at 5–6.

[83] *Id.* at 6 (citing PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 55). Additionally, APPA, NRECA, and AMP argue that the fact that PJM has this higher offer cap and it has not resulted in seams issues proves that concerns over seams are purely hypothetical. *Id.*

[84] As discussed above, the Commission has previously accepted temporary changes to tariff provisions in MISO that enabled resources to receive uplift for short-run marginal costs above the $1,000/MWh offer cap. However, cost recovery through uplift is only guaranteed if a resource experiences short-run marginal costs above $1,000/MWh during the time period for which the Commission has accepted tariff revisions related to the offer cap. *See supra* P 14. Currently, resources in many RTOs/ISOs do not have the opportunity to recover short-run marginal costs above $1,000/MWh without a tariff modification.

[85] PJM 2014/15 Offer Cap Order, 150 FERC ¶ 61,020 at P 6.

conclude that the current offer caps are unjust and unreasonable. As discussed in the NOPR, three RTOs/ISOs made filings with the Commission (two on multiple occasions) to address issues related to the level of the offer cap.[86] The waiver requests and high natural gas costs experienced during the Polar Vortex, which could have caused some resources to experience costs above $1,000/MWh, demonstrate that the deficiencies of current offer caps, in particular the $1,000/MWh offer cap, are concrete rather than hypothetical.

36. Without Commission action to remedy these deficiencies, some resources could be forced to operate at a loss and some resources would be discouraged from offering their supply to the grid when it is most needed. A central tenet of sound wholesale electric market design is that resources must have an opportunity to recover their costs, so the question left to the Commission is how to provide that opportunity for cost recovery when short-run marginal costs exceed the $1,000/MWh offer cap. We have essentially two choices to enable resources to recover short-run marginal costs above $1,000/MWh: To allow cost recovery through energy prices or through uplift. Short-run marginal costs, which resources include in the incremental energy component of their supply offers, are typically used to calculate LMP. As noted above,[87] ensuring that LMPs reflect the marginal cost of production sends critical information to market participants, improves transparency, and generally results in more efficient outcomes in RTO/ISO energy markets. We find that recovery through energy prices, in most circumstances, will provide the additional benefit that LMPs reflect the marginal cost of production, will increase transparency about the functioning of RTO/ISO energy markets, and will facilitate efficient dispatch of resources with short-run marginal costs above $1,000/MWh.[88] While we recognize that offer caps may not bind frequently, the Federal Power Act requires the Commission to ensure that rates are just and reasonable.

37. We also disagree with commenters that LMPs above $1,000/MWh do not send useful price signals to market participants because, in fact, the Commission has found on prior occasions that LMPs based on short-run marginal cost send efficient short-run and long-run signals to the market.[89] In the short-run, LMPs based on short-run marginal costs are an effective way to communicate information to market participants about the cost of providing the next unit of energy. For example, when LMPs are high, they provide a signal to customers to reduce consumption and a signal to suppliers to increase production or to offer new supplies to the market. In the long-run, LMPs based on short-run marginal costs can help to inform investment decisions.[90]

38. Furthermore, as noted by Competitive Suppliers and EEI, even if LMPs exceed $1,000/MWh for only a few hours during the year, the resulting LMPs in those hours could affect long-term price signals.[91] For all of these reasons, we conclude that the existing offer caps are not just and reasonable and, thus, need to be reformed.

39. With respect to the applicability of the reforms adopted in this Final Rule, we find that making the reforms applicable to all RTOs/ISOs will avoid seams issues that could arise if RTOs/ISOs had different offer caps.[92] We find that these offer cap reforms will also result in more economically efficient flows between RTOs/ISOs because transactions across RTO/ISO seams will occur based on economic merit rather than based on differences in the offer cap.[93]

40. We also find that continued use of temporary waivers related to the offer cap, as advocated by some commenters, is an inappropriate remedy for problems associated with current offer caps in RTOs/ISOs. The reforms adopted in this Final Rule will provide more certainty to market participants and reduce the administrative burden on RTOs/ISOs associated with requests for temporary waivers of various tariff provisions related to the $1,000/MWh offer caps prior to the start of every winter to ensure that resources are given the opportunity to recover their costs.[94] We also find that problems identified with the current offer caps are better addressed through a rulemaking rather than through continued use of either *ad hoc* actions to approve tariff waivers or temporary changes to tariff provisions to remedy issues associated with existing RTO/ISO offer caps.

41. We find that the reasons for requiring the proposed offer cap reforms apply equally to CAISO. As discussed above, the potential for resources to have short-run marginal costs above CAISO's current $1,000/MWh offer cap requires some action to ensure that resources have an opportunity to recover costs. As in other RTO/ISO markets, increasing the offer cap will improve price formation in CAISO at times when the short-run marginal costs of CAISO resources exceed $1,000/MWh. CAISO's lack of a seam with another RTO/ISO does not alter these effects. Contrary to the implication of CAISO's argument, as explained above, we are not relying on the avoidance of seams issues as the sole rationale for adopting this Final Rule. With respect to comments regarding the WECC offer cap, we find that this issue is unique to CAISO, and if CAISO finds that this Final Rule raises seams issues with WECC, it may raise such issues elsewhere.

IV. Offer Cap Reforms

42. Having concluded that the existing offer caps are not just and reasonable, section 206 of the Federal Power Act requires that the Commission determine the practices that are just and reasonable.[95] We direct each RTO/ISO to establish in their tariffs the following three requirements:

(1) A resource's incremental energy offer must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at $2,000/MWh. (Offer cap structure requirement)

(2) The costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if

[86] NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 13–17.

[87] *See supra* P 5.

[88] We note that uplift is necessary in some circumstances. For example, resource start-up and no-load costs are not typically included in LMP, and some resources receive uplift to recover these costs.

[89] *PJM Interconnection, L.L.C.,* 110 FERC ¶ 61,053, at P 114 (2005) (''offers [in a competitive market] should set the market clearing price in order to send appropriate price signals about the need for new generation or enhanced load response''). PJM 2014 Offer Cap Order II, 146 FERC ¶ 61,078 at P 40 (''By limiting legitimate, cost-based bids to no more than $1,000/MWh, the market produces artificially suppressed market prices and inefficient resource selection'').

[90] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 7.

[91] Competitive Suppliers Comments at 9; EEI Comments at 5.

[92] NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 70–71.

[93] *Id.* P 74.

[94] *Id.* PP 45, 49 (citing Notice Inviting Comments, Docket No. AD14–14–000 at 2).

[95] 16 U.S.C. 824e (2012).

that resource is dispatched and the resource's costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds $2,000/MWh. (Verification requirement)

(3) All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh. (Resource neutrality requirement)

43. The offer cap structure requirement is discussed in section IV.A. The verification requirement is discussed in section IV.B. The resource neutrality requirement is discussed in section IV.C.

A. Offer Cap Structure

1. NOPR Proposal

44. In the NOPR, the Commission proposed the following offer cap structure requirement:

A resource's incremental energy offer used for purposes of calculating Locational Marginal Prices in energy markets must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer.[96]

The Commission sought comments on this proposed offer cap structure requirement and whether a hard cap that limited the incremental energy offers used to calculate LMPs would be necessary. The Commission also sought comment on whether the level of the hard cap should be $2,000/MWh or another value.[97]

2. Comments

45. Comments about the proposed offer cap structure focus on two key areas: (1) Whether incremental energy above $1,000/MWh should be cost-based; and (2) how LMPs should be calculated when resource short-run marginal costs exceed $1,000/MWh, including whether resources with costs above $1,000/MWh should be compensated through higher LMPs or through uplift, whether a hard cap is necessary, and the appropriate level of any hard cap.

a. Whether Incremental Energy Offers Above $1,000/MWh Should be Cost Based

46. Commenters differed on the proposal to limit incremental energy offers above $1,000/MWh to cost-based incremental energy offers. Some commenters support this proposal and argue that it is appropriate to limit incremental energy offers that are *not* cost-based to $1,000/MWh as a backstop mitigation measure.[98] As discussed further below,[99] many commenters support the verification requirement proposed in the NOPR and stress that incremental energy offers above $1,000/MWh must be cost-based incremental energy offers before such offers are eligible to calculate LMPs.[100]

47. Regarding offer caps in general, MISO states that the offer cap is currently necessary because demand in RTO/ISO energy and ancillary service markets is inelastic and also because they serve as a safety net.[101] MISO adds that offer caps should be set high enough so as not to interfere with valid market dynamics.[102] NY Transmission Owners maintain that the $1,000/MWh offer cap is an important backstop to protect consumers from the exercise of market power should mitigation fail.[103]

48. Some commenters argue that the $1,000/MWh threshold, above which a resource's incremental energy offer submitted to the RTO/ISO must be cost-based, is too high. The Delaware and New Jersey Commissions recommend that in PJM, all incremental energy offers above $400/MWh be verified before such offers are eligible to set LMP,[104] and the Pennsylvania Commission asks the Commission to carefully consider the threshold above which incremental energy offers are verified.[105] The PJM Market Monitor states that there is no reason that $1,000/MWh should be the dividing line between incremental energy offers that can include markups and incremental energy offers that must be cost-based, and that the threshold could be lowered to $500/MWh in PJM noting that only 0.17 percent of all offers were above $400/MWh in 2015.[106]

49. Exelon states that while it supports removing the offer cap completely, if the Commission finds that incremental energy offers above a certain threshold must be cost-based,[107] Exelon recommends a $2,000/MWh threshold which it states is above a recent fully supported cost-based incremental energy offer of $1,724/MWh seen in PJM in 2014.[108] Exelon also recommends that this threshold be reevaluated on a triennial basis to ensure it reflects market realities.[109]

50. Other commenters support an absolute cap on the incremental energy offers, even if a resource's short-run marginal costs exceed that cap.[110] Industrial Customers also claim that if incremental energy offers above $1,000/MWh are permitted, resources would have no incentive to minimize their fuel costs because they would recover all of their costs if they were dispatched by the RTO/ISO.[111] Potomac Economics states that resources should be prohibited from submitting incremental energy offers above $2,000/MWh, and claims that without such an absolute cap, natural gas prices could be bid up to extraordinary levels.[112]

51. However, several commenters state that resources should be able to submit incremental energy offers that reflect their short-run marginal costs, even if those offers exceed $1,000/MWh.[113] For example, CEA argues that it is prudent to modify current offer caps to allow resources to submit incremental energy offers above $1,000/MWh when fuel and other inputs cause the marginal cost of production to exceed $1,000/MWh.[114] PJM Power Providers argue that raising the offer cap is important because it would allow energy clearing prices to reflect market conditions and provide stability to consumers and suppliers by eliminating the need for *ad hoc* waivers.[115]

52. Some commenters argue that offer caps that limit the incremental energy offers that resources can submit should

[96] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 53.

[97] *See id.* P 55.

[98] MISO Comments at 7; NY Transmission Owners Comments at 2–3.

[99] *See infra* PP 100–101.

[100] *See generally* NYISO Comments at 2; SCE Comments at 1–2; PG&E Comments at 3; NY Transmission Owners Comments at 3; Golden Spread Comments at 3; Delaware Commission Comments at 11; TAPS Comments at 12; NESCOE Comments at 3.

[101] MISO Comments at 7.

[102] *Id.* at 7.

[103] NY Transmission Owners Comments at 2–3.

[104] Delaware Commission Comments at 4–7; New Jersey Commission Comments at 9.

[105] Pennsylvania Commission Comments at 10–13.

[106] PJM Market Monitor Comments at 2.

[107] Exelon refers to this threshold as a ''market-based offer cap.'' *See, e.g.,* Exelon Comments at 1, 7–10.

[108] Exelon Comments at 9–10.

[109] *Id.* at 10.

[110] Industrial Customers Comments at 10; Potomac Economics Comments at 7.

[111] Industrial Customers Comments at 19.

[112] Potomac Economics Comments at 7. Potomac Economics is the external independent market monitor for NYISO, MISO, and ISO–NE. ISO–NE and NYISO also have internal Market Monitoring Units.

[113] *See generally* Competitive Suppliers Comments at 12–14; Dominion Comments at 3–4; EEI Comments at 3–4; Golden Spread Comments at 1; MISO Comments at 6; NY Transmission Owners Comments at 3; OMS Comments at 3; PJM/SPP Comments at 6; PJM Market Monitor Comments at 1; Six Cities Comments at 2.

[114] CEA Comments at 3–4.

[115] PJM Power Providers Comments at 1–2 (citing NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 14, 16, 17).

be increased [116] or removed entirely.[117] For example, API and the Texas Commission argue that the offer cap should be raised significantly.[118] The Texas Commission asserts that MISO's offer cap should be raised significantly to provide greater assurance of resource adequacy, reduce administrative complexity, and minimize uplift charges.[119]

53. MISO states that it does not oppose the NOPR proposal to revise the offer cap because the proposal will allow market clearing prices to more accurately reflect the true marginal cost of production while protecting consumers from the effects of manipulation and improving price transparency, and the proposal should also reduce uplift payments.[120] However, MISO urges the Commission to consider whether the offer cap proposal in the NOPR is an appropriate long-term approach and states that it could support a gradual relaxation of offer caps to allow market forces to respond accordingly.[121]

54. PJM Power Providers assert that resources should be able to submit cost-based incremental energy offers that reflect all short-run marginal costs.[122] Competitive Suppliers and Exelon argue that the offer cap should be removed entirely, or raised to avoid adverse impacts on the market.[123] According to Competitive Suppliers, significant improvements in electricity markets and market monitoring have occurred since the $1,000/MWh offer cap was put in place nearly 20 years ago.[124] Competitive Suppliers also argue that, given these improvements, the offer cap should be removed, or if that approach is not taken, the verification process should involve minimal distortions.[125]

b. How LMPs Should Be Calculated When Resource Short-Run Marginal Costs Exceed $1,000/MWh

55. Several commenters discuss how LMPs should be calculated when resource short-run marginal costs exceed $1,000/MWh, with some commenters arguing that LMPs should rise to reflect the marginal cost of production and others arguing that resources with short-run marginal costs above $1,000/MWh should be compensated outside of the market through uplift rather than through higher LMPs. Commenters also discuss the need for a hard cap and the appropriate level for any hard cap.

i. Whether To Compensate Resources With Costs Above $1,000/MWh Through Uplift or Higher LMPs

56. As noted above,[126] several commenters state that incremental energy offers above $1,000/MWh should be used to calculate LMPs because the resulting LMPs will better reflect the marginal costs of production.[127] MISO states that permitting cost-based incremental energy offers above $1,000/MWh to set LMPs should improve price transparency and should reduce uplift payments.[128] EEI states that competitive wholesale electricity markets should provide accurate price signals and that cost-based incremental energy offers above $1,000/MWh should be used to calculate LMPs because LMPs should reflect the marginal cost of operating the system, which will promote efficient operation, resource accuracy, and result in savings for consumers.[129]

57. However, other commenters argue that incremental energy offers above $1,000/MWh, even if they are cost-based, should not be able to set LMP.[130] For example, Industrial Customers argue that letting incremental energy offers set LMP would be a windfall to resources.[131] Many commenters argue that uplift or temporary waivers should be used to account for instances when resources' short-run marginal costs exceed the offer cap. Some commenters argue that rather than letting incremental energy offers above $1,000/MWh set LMP, resources with costs above the $1,000/MWh offer cap should be compensated through uplift.[132] For example, the New York Commission argues that an uplift mechanism could ensure that generators can recover all short-run marginal costs.[133] KEPCo/NCEMC asserts that if cost-based incremental energy offers above $1,000/MWh are based on inaccurate fuel cost estimates, there may be no means of remedying the effects on the markets.[134] KEPCo/NCEMC add that uplift is a more cost effective way to ensure both resource cost recovery and just and reasonable prices.[135] Industrial Customers assert that uplift is preferable to using incremental energy offers above $1,000/MWh to calculate LMP because uplift payments ensure cost recovery and can be limited to the resources that are necessary to balance supply and demand, rather than compensating all resources.[136]

ii. Whether To Adopt a Hard Cap

58. Comments differ on the need for a hard cap that would limit the incremental energy offers RTOs/ISOs use to calculate LMPs, a limit referred to herein as a hard cap. Many commenters support a hard cap,[137] and some argue that a hard cap serves as an important backstop mitigation measure to address concerns about the competitiveness of natural gas markets or as a means to protect consumers from unreasonably high LMPs.[138]

59. CAISO, ISO–NE, and NYISO support a hard cap. CAISO asserts that, assuming it were able to verify cost-based offers above $1,000/MWh, a hard cap is necessary if the Commission permits resources to submit incremental energy offers above $1,000/MWh.[139] CAISO adds that a hard cap may help mitigate price spikes in fuel markets.[140] ISO–NE supports a hard cap established at a fixed level and argues that any new offer cap should be imposed in a straightforward manner such that market participants know the level of

[116] API Comments at 3, 8, 13; Exelon Comments at 7; OMS Comments (on behalf of Public Utility Commission of Texas (Texas Commission), referring to MISO's $1,000/MWh offer cap) at 3 n. 7; NEI Comments at 2, 4–5.

[117] NEI Comments at 2, 4–5; Competitive Suppliers Comments at 4–5, 7, 13–15; Exelon Comments at 9–10.

[118] API Comments at 3, 8, 13; OMS Comments (on behalf of Texas Commission) at 3 n.7.

[119] OMS Comments (on behalf of Texas Commission) at 3 n.7.

[120] MISO Comments at 6.

[121] *Id.* at 7.

[122] PJM Power Providers Comments at 2.

[123] Competitive Suppliers Comments at 4–5, 8, 14; Exelon Comments at 10.

[124] Competitive Suppliers Comments at 8, 14–15.

[125] *Id.* at 4–5.

[126] *See supra* P 17.

[127] CEA Comments at 3–4; Competitive Suppliers Comments at 9–13; EEI Comments at 3; Exelon Comments at 5–7; Powerex Comments at 6; PJM Providers Group Comments at 2; Golden Spread Comments at 1; MISO Comments at 6; PJM/SPP Comments at 1–2.

[128] MISO Comments at 6.

[129] EEI Comments at 3–4.

[130] APPA, NRECA, and AMP Comments at 8–10; Industrial Customers Comments at 9; NY Department of State Comments at 3; ODEC Comments at 3; PJM Joint Consumer Advocates Comments at 5; TAPS Comments at 5–6; Steel Producers' Alliance Comments at 3.

[131] Industrial Customers Comments at 9.

[132] APPA, NRECA, and AMP Comments at 8, 13–14, 16; Industrial Customers Comments at 8–9, 23–24; KEPCo/NCEMC Comments at 4; TAPS Comments at 5–6; New York Commission Comments at 6–7; SPP Market Monitor Comments at 2, 4, 6–7; Industrial Energy Consumers Comments at 2.

[133] New York Commission Comments at 6–7.

[134] KEPCo/NCEMC Comments at 4.

[135] *Id.* at 4.

[136] Industrial Customers Comments at 8–9.

[137] ISO–NE Comments at 3; ISO–NE Market Monitor Comments at 12; Joseph Margolies Comments at 8; NYISO Comments at 7; SPP Market Monitor Comments at 2, 13; TAPS Comments at 7.

[138] Direct Energy Comments at 3–5; Industrial Customers Comments at 12; ISO–NE Comments at 3; Joseph Margolies Comments at 3; Potomac Economics Comments at 7; NY Department of State Comments at 3; TAPS Comments at 7.

[139] CAISO Comments at 10. As noted in P 20, *supra,* CAISO opposes raising CAISO's current $1,000/MWh offer cap.

[140] *Id.* at 10. CAISO refers to the hard cap as a ''secondary hard cap.''

the offer cap with certainty when making advance fuel supply arrangements.[141] NYISO asserts that a hard cap will protect the market from the inadvertent submission of offers above the cap, create bounds for offers that are difficult to verify, and prevent potential attempts to exercise market power that are not otherwise addressed by existing mitigation rules.[142] While MISO takes no position on a hard cap as discussed further below,[143] MISO states that a hard cap is easier to integrate with other market design elements because it is more challenging to establish the appropriate levels for other market elements, such as MISO's Operating Reserve and Transmission Constraint demand curves, without a hard cap because the maximum incremental energy offers would not be limited to a pre-defined value.[144]

60. Potomac Economics, and the ISO–NE and PJM market monitors stress the need for the hard cap to address concerns about uncompetitive conditions in natural gas markets when natural gas supplies are scarce.[145] Potomac Economics contends that during natural gas shortages, natural gas markets have two dominant customer types: Local gas distribution companies and natural gas generators.[146] Potomac Economics states that natural gas generators are frequently the marginal buyers since local gas distribution companies will not interrupt supply to their customers at any price. Potomac Economics asserts that without a hard cap, natural gas prices could be bid up to extraordinary levels because local distribution companies are guaranteed to recover their cost, regardless of how high.[147] The PJM Market Monitor also states that vertically-integrated utilities with a gas marketing function could have the incentive to exercise market power in natural gas markets during extreme conditions in an effort to exercise market power in electricity markets.[148]

61. The ISO–NE Market Monitor also asserts that natural gas markets lack structural measures to prevent the exercise of market power. According to the ISO–NE Market Monitor, the offer cap in electricity markets can impact prices in natural gas markets when natural gas supplies are scarce because natural gas resources, particularly resources with must-offer requirements, are the marginal customers in natural gas markets and thus have a significant impact on natural gas prices.[149]

62. Although the PJM Market Monitor argues that, in the absence of market power, there should be no absolute cap on the short-run marginal costs reflected in an incremental energy offer,[150] the PJM Market Monitor opines that the removal of hard caps in electricity markets should be considered in light of the competitiveness of natural gas markets. The PJM Market Monitor asserts that it is essential that market participants have confidence in the competitiveness of natural gas markets before removing hard caps in electricity markets.[151]

63. The ISO–NE, PJM, and SPP market monitors also explain that when natural gas supplies are scarce, open exchanges for natural gas, such as the Intercontinental Exchange (ICE), tend to have low liquidity and wide bid-ask spreads. These market monitors state that it can be difficult to verify the short-run marginal cost of natural gas resources during periods when open natural gas exchanges have low liquidity because natural gas resources may purchase natural gas bilaterally rather than through the exchanges, and therefore the bid and ask spreads and settled transactions observed on the open exchanges may not represent the costs of the natural gas resources that make bilateral natural gas purchases. Furthermore, when liquidity in the open exchanges is low and the bid-ask spreads are wide, the ISO–NE, PJM, and SPP market monitors explain that there may be little basis on which to verify a resource's natural gas procurement costs.[152]

64. The New Jersey Commission and NY Transmission Owners also argue that a hard cap is necessary to address issues related to the interactions between the gas and electricity markets.[153] NY Transmission Owners explains that resource owners with costs above $1,000/MWh that also own infra-marginal resources may benefit from paying more for natural gas which in turn increases LMPs and thus the revenues that infra-marginal resources receive.[154] NY Transmission Owners further states that it will be difficult for market monitors to ascertain whether the price a resource has paid for natural gas reflects its expectations about the electricity market or an attempt to impact LMPs, and suggests that a hard cap can address these issues.[155] The New Jersey Commission similarly states that, absent a hard cap, market power in natural gas markets could drive up cost-based incremental energy offers in electricity markets and increase LMPs.[156]

65. The SPP Market Monitor states that it would prefer to maintain SPP's existing $1,000/MWh offer cap, but if it is to be revised, it would prefer a new fixed hard cap to serve as a backstop market power mitigation measure during periods of market anomalies when existing measures may fail to protect consumers.[157]

66. Comments from other stakeholders generally support a hard cap to protect customers against market power abuse.[158] For example, the Ohio Commission asserts that if the Commission does not require PJM and the PJM Market Monitor to jointly review these cost-based energy offers, the $2,000/MWh hard cap in PJM should remain to protect against market power concerns and unverified price increases.[159] Industrial Customers argue that the offer cap works in tandem with market power mitigation measures to prevent excessive prices when supplies are tight given that demand is inelastic.[160]

67. Some commenters argue that a hard cap is necessary to protect customers from unjust and unreasonable prices resulting from market aberrations or other events when RTOs/ISOs fail to function properly.[161] For example, TAPS asserts that removing the offer cap entirely would result in the Commission failing to meet its statutory duty to protect against excessive prices,[162] and it argues that the hard cap provides crucial damage control to shield consumers from unreasonably high prices.[163] Industrial Customers argue that the hard cap helps discipline generator fuel procurement costs, stating that full cost recovery would significantly reduce incentives for

[141] ISO–NE Comments at 2–3.

[142] NYISO Comments at 8.

[143] *See infra* P 69.

[144] MISO Comments at 13.

[145] ISO–NE Market Monitor Comments at 13–14; Potomac Economics Comments at 7; PJM Market Monitor Comments at 4.

[146] Potomac Economics Comments at 7.

[147] *Id.*

[148] PJM Market Monitor Comments at 4.

[149] ISO–NE Market Monitor Comments at 13–14.

[150] PJM Market Monitor Comments at 1.

[151] *Id.* at 4.

[152] ISO–NE Market Monitor Comments at 8; PJM Market Monitor Comments at 6; SPP Market Monitor Comments at 7.

[153] NY Transmission Owners Comments at 3–4; New Jersey Commission Comments at 9.

[154] NY Transmission Owners Comments at 4.

[155] *Id.*

[156] New Jersey Commission Comments at 9.

[157] SPP Market Monitor Comments at 6, 13.

[158] *See generally* Direct Energy Comments at 4–5; Ohio Commission Comments at 6–7; Industrial Customers Comments at 10–11; TAPS Comments at 8–10; New Jersey Commission Comments at 7.

[159] Ohio Commission Comments at 6–7.

[160] Industrial Customers Comments at 10–11.

[161] TAPS Comments at 8–9; Industrial Customers Comments at 19–20.

[162] TAPS Comments at 10 (citing *FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760, 764 (2016)).

[163] *Id.* at 9–10.

generators to minimize their costs if these costs can be passed on to consumers.[164]

68. Commenters opposed to the inclusion of a hard cap on offers used to calculate LMPs generally argue that any cap would artificially suppress LMPs and increase uplift payments.[165] PJM/SPP state that there should not be a hard cap on cost-based offers used to calculate LMPs provided that appropriate verification processes are in place to ensure cost-based incremental offers reflect legitimate costs.[166] PJM/SPP also assert that a hard cap can create unhedgeable uplift payments.[167] PJM Power Providers assert that resources should be able to submit cost-based incremental energy offers that reflect their short-run marginal costs and that those offers should be able to set the LMP.[168]

69. MISO states that it does not have a strong preference on the imposition of a hard cap and notes that the same benefits and drawbacks that exist for the current $1,000/MWh hard cap (in some markets) would apply to any new hard cap.[169] MISO identifies two drawbacks of a hard cap: (1) A hard cap could suppress LMPs below the marginal cost of production; and (2) a special uplift mechanism would be needed for offers that exceed the hard cap.[170] MISO states that a hard cap may not be necessary because the verification requirement safeguards the market and states that the limitations and implementation costs associated with a hard cap would likely overshadow the benefits.[171]

70. Exelon and EEI oppose a hard cap, arguing that it is important for LMPs to be as consistent as possible with the marginal cost of operating the system and that, therefore, resources should always be permitted to offer their costs, and that such offers should always be eligible to set LMP.[172] As noted above, Competitive Suppliers assert that the offer cap should be removed entirely.[173]

71. Additionally, some commenters opposed to a hard cap assert that existing market monitoring and mitigation measures, as well as the proposed verification requirement for cost-based incremental energy offers above $1,000/MWh, render a hard cap unnecessary and duplicative.[174] For example, Dominion states that a hard cap is not necessary for cost-based incremental energy offers because market power concerns are not relevant for cost-based incremental energy offers as offers based on resource costs do not constitute an exercise of market power.[175]

72. Commenters disagree about the appropriate level for any new hard cap. ISO–NE states that it does not have evidence to substantiate a specific recommendation for the level of any new hard cap.[176] NYISO states that the Commission should hold a technical workshop to determine the appropriate level of the hard cap that analyzes the elasticity of the fuel markets, including natural gas markets, and fuel prices at various demand levels.[177]

73. Potomac Economics states that the $2,000/MWh level approved in PJM would be a reasonable hard cap for all RTOs/ISOs in the Eastern Interconnect.[178] However, Potomac Economics states that the Commission should adopt a $2,000/MWh cap that not only caps the incremental energy offers eligible to set LMP but also prevents resources from recovering incremental energy costs above $2,000/MWh.[179] Potomac Economics adds that the loss of generation resulting from any natural gas resources that do not procure natural gas during natural gas shortages due to such a cap will not substantially increase the probability of an electric outage.[180]

74. TAPS argues that offers above $1,500/MWh should not be used to calculate LMPs because a MISO analysis indicated that natural gas resources in MISO would have a marginal cost below $1,138/MWh if natural gas prices reached $65/MMBtu and that more than 98 percent of MISO's gas capacity would have a marginal cost below $1,500/MWh if gas prices reached $100/MMBtu.[181] TAPS further argues that $2,000/MWh is too high and that the value was not supported by PJM other than as a compromise between PJM stakeholders.[182] Midcontinent Joint Consumer Advocates argue that a $2,000/MWh hard cap is unreasonably high and could cause prices to rise up to $2,000/MWh.[183]

75. As noted above, some commenters support a $1,000/MWh hard cap on the incremental energy offers that are used to calculate LMPs.[184] For example, APPA, NRECA, and AMP assert that the hard cap should be set to $1,000/MWh in all RTOs/ISOs, including PJM, which currently has a $2,000/MWh hard cap.[185] Direct Energy and NY Transmission Owners state that different hard caps across RTOs/ISOs may be justified given differences in regional natural gas prices, but add that RTOs/ISOs with the same natural gas supply should have the same hard cap.[186] Additionally, APPA, NRECA, and AMP, ODEC, PJM Joint Consumer Advocates, and Steel Producers' Alliance all ask the Commission to reinstate PJM's previous $1,000/MWh offer cap.[187] ODEC and PJM Joint Consumer Advocates state that although they supported the consensus position on PJM's current $2,000/MWh offer cap as an interim measure, they state that they were awaiting Commission action on offer caps and do not support such a cap as a long-term policy.[188] ODEC and PJM Joint Consumer Advocates argue that the $2,000/MWh offer cap on cost-based offers is no longer necessary and that a $1,000/MWh offer cap is more appropriate because new measures, such as PJM's new capacity construct and additional measures implemented in response to the Polar Vortex, will ensure that prices remain at reasonable levels.[189]

76. Dominion states that the NOPR proposal will result in more accurate price signals and a better understanding of the true costs of serving demand, reduce uplift during stressed periods, and allow customers to more effectively hedge the costs of reliability through market participation.[190] NESCOE states

[164] Industrial Customers Comments at 19–20.

[165] Competitive Suppliers Comments at 12–15; Dominion Comments at 4; Exelon Comments at 21–22; Golden Spread Comments at 2; PJM/SPP Comments at 6; EEI Comments at 7.

[166] PJM/SPP Comments at 6.

[167] *Id.*

[168] PJM Power Providers Comments at 2.

[169] MISO Comments at 13.

[170] *Id.*

[171] MISO Comments at 13.

[172] Exelon Comments at 21; EEI Comments at 4.

[173] Competitive Suppliers Comments at 13.

[174] Competitive Suppliers Comments at 14; PJM/SPP Comments at 6; Dominion Comments at 4.

[175] Dominion Comments at 4.

[176] ISO–NE Comments at 3.

[177] NYISO Comments at 8.

[178] Potomac Economics Comments at 7–8.

[179] *Id.* at 8. Potomac Economics notes that its recommendation would require modifying PJM's current offer cap, which permits resources to recover costs above PJM's $2,000/MWh hard cap.

[180] *Id.*

[181] TAPS Comments at 10–11. TAPS uses the phrase ''hard offer cap,'' which could indicate that RTOs/ISOs should limit offers to $1,500/MWh for purposes of calculating LMPs or that resources should not be able to submit incremental energy offers above $1,500/MWh.

[182] *Id.* at 11.

[183] Midcontinent Joint Consumer Advocates Comments at 4.

[184] New Jersey Commission Comments at 8–9; TAPS Comments at 10–11; APPA, NRECA, and AMP Comments at 8–9.

[185] APPA, NRECA, and AMP Comments at 9.

[186] Direct Energy Comments at 3–4; NY Transmission Owners Comments at 5.

[187] APPA, NRECA, and AMP Comments at 7; ODEC Comments at 3–5; PJM Joint Consumer Advocates Comments at 2–4; Steel Producers' Alliance Comments at 5.

[188] ODEC Comments at 3; PJM Joint Consumer Advocates Comments at 2.

[189] ODEC Comments at 5; PJM Joint Consumer Advocates Comments at 2–3.

[190] Dominion Comments at 3.

that the offer cap reforms proposed in the NOPR appear to appropriately balance price formation issues, seams issues, and the potential for market power abuse while allowing for regional variation in implementing consumer protection mechanisms.[191]

3. Determination

77. The Commission is adopting aspects of the offer cap structure set forth in the NOPR, which caps a resource's incremental energy offer used for purposes of calculating LMPs in day-ahead and real-time energy markets at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. Based on the comments received in this proceeding, the Commission is also adopting a hard cap as part of this Final Rule.[192] Although a resource may submit a cost-based incremental energy offer above $2,000/MWh, the hard cap will prohibit the use of such offers above $2,000/MWh when calculating LMPs. As discussed further in section IV.B below, incremental energy offers above $1,000/MWh must be verified before they are used to calculate LMPs. As noted above, RTOs/ISOs must cap verified cost-based incremental energy offers at $2,000/MWh when calculating LMPs.

78. As a result of this Final Rule, an RTO/ISO will treat resources' incremental energy offers differently, depending on the level of the offer itself. Each RTO/ISO shall treat incremental energy offers below $1,000/MWh as it currently does. Such offers: (1) Are subject to existing RTO/ISO market power mitigation procedures and are not required to be cost-based; and (2) may be used to calculate LMPs. A resource may only submit an incremental energy offer equal to or above $1,000/MWh if the offer is cost-based, that is, if the offer accurately reflects that resource's actual or expected short-run marginal costs. For an incremental energy offer equal to or above $1,000/MWh and less than or equal to $2,000/MWh, the RTO/ISO or Market Monitoring Unit must verify that the offer is cost-based before the RTO/ISO may use the offer to calculate LMPs. For an incremental energy offer above $2,000/MWh, the RTO/ISO or Market Monitoring Unit must also verify that the offer is cost-based. Cost-based incremental energy offers in excess of $2,000/MWh will be capped at $2,000/MWh for purposes of calculating LMPs. As such, the $2,000/MWh hard cap places an upper limit on the incremental energy offers that the RTO/ISO can use to calculate LMPs.[193] We note that the resulting LMPs may exceed $2,000/MWh due to losses and congestion. Additionally, resources with verified cost-based incremental energy offers above $2,000/MWh will be eligible to receive uplift.

79. After consideration of the record in this proceeding, including responses to the question we asked about the need for a hard cap, we adopt a modified version of the offer cap structure proposed in the NOPR. This modified version recognizes the practical issues raised by commenters. While a hard cap may diminish the ability to fully address the shortcomings of the current offer caps identified above[194] in all circumstances, we find that, on balance, a hard cap is necessary to reasonably limit the adverse impact that imperfect information about a resource's short-run marginal costs during the verification process could have on LMPs.

80. First, the offer cap structure will reduce the likelihood that the $1,000/MWh offer cap in effect in some RTOs/ISOs[195] will suppress LMPs below the marginal cost of production. Ideally, LMPs in RTO/ISO energy markets should reflect the short-run marginal cost of the marginal resource. Under the offer cap structure adopted in this Final Rule, cost-based incremental energy offers up to $2,000/MWh that have been verified by either the RTO/ISO or Market Monitoring Unit as being a reasonable reflection of a resource's actual or expected short-run marginal cost may be used to calculate LMPs.

81. Second, the offer cap structure and associated uplift payments discussed further in section IV.B below give resources the opportunity to be compensated for the short-run marginal costs they incur to provide service, which achieves the price formation goal of ensuring that resources have an opportunity to recover their costs.

82. Third, the offer cap structure adopted in this Final Rule will encourage a resource to offer supply to the market when it is needed most. A resource that is compensated for its costs has an incentive to offer its supply into the market even when those costs are high, which often occurs when supplies are tight. Fourth, the offer cap structure enables RTOs/ISOs to dispatch the most efficient set of resources when resources' short-run marginal costs exceed $1,000/MWh.

83. We also find that the offer cap structure will mitigate market power associated with incremental energy offers above $1,000/MWh, as some commenters suggest. The requirement that incremental energy offers above $1,000/MWh be cost-based retains the backstop mitigation function that current offer caps play in existing RTO/ISO market power mitigation because incremental energy offers that are not cost-based may not exceed $1,000/MWh. A cost-based incremental energy offer is based on the associated resource's short-run marginal cost, which constitutes a competitive offer free from the exercise of market-power.

84. Revising the offer cap to permit cost-based incremental energy offers up to $2,000/MWh to set LMP will reduce the likelihood that the offer cap will suppress LMPs below the marginal cost of production. Permitting cost-based incremental energy offers up to $2,000/MWh to set LMP will also reduce uplift associated with the current offer caps, which will be beneficial to the market because uplift payments are less transparent to market participants than LMPs that reflect the marginal cost of production. Therefore, we disagree with arguments that all resources with short-run marginal costs above $1,000/MWh should be compensated through uplift rather than through the LMP. As discussed further below, we adopt a hard cap and provide cost recovery for resources with short-run marginal costs above $2,000/MWh to address practical concerns raised about the offer verification process. As discussed further below, some resources may not know their actual short-run marginal costs at the time they submit cost-based incremental energy offers.[196] Accordingly, the RTO/ISO or Market Monitoring Unit will have to verify that such offers reasonably reflect the associated resource's expected short-run marginal costs, which necessarily involves an estimate. Furthermore, the information that RTOs/ISOs and/or Market Monitoring Units have to estimate and/or verify the short-run marginal costs of some resources may be imperfect. For example, as noted above, information about the short-run fuel costs of certain natural gas-fired resources may be limited when natural gas supplies are scarce because publicly available natural gas indices may not be representative of the price that such resources actually pay for fuel.[197] Given

[191] NESCOE Comments at 2.

[192] The hard cap was not included in the proposal set forth in the NOPR, but the Commission sought comment on it. *See* NOPR, FERC Stats. & Regs. ¶ 32,714 at P 55.

[193] The $2,000/MWh hard cap requires that the cost-based incremental energy offers that RTOs/ISOs may use to calculate LMPs may not exceed $2,000/MWh.

[194] *See supra* P 2.

[195] Specifically CAISO, ISO–NE, MISO, NYISO, and SPP.

[196] *See infra* PP 105–108.

[197] *See supra* P 63.

these limitations, we find it is appropriate to include a hard cap to ensure that LMPs calculated based on verified cost-based incremental energy offers above $1,000/MWh are just and reasonable.

85. We disagree with Industrial Customers that resources would have no incentive to minimize their fuel costs if the offer cap is above $1,000/MWh because, in the absence of market power, resources have an incentive to compete with other resources in order to clear the RTO/ISO day-ahead and real-time energy markets. Any resource that is able to procure natural gas at a cost less than the cost that sets the LMP will earn a profit and thus has a strong incentive to manage its fuel procurement.

86. However, as part of the offer cap structure, we will require a hard cap of $2,000/MWh on offers that are used to calculate LMPs. Under the hard cap, an RTO/ISO must place an upper limit, or hard cap, on the cost-based incremental energy offers that it uses to calculate LMPs.[198] To implement the hard cap, we modify the offer cap structure requirement proposed in the NOPR and adopt the following offer cap structure requirement:

A resource's incremental energy offer must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. *For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at $2,000/MWh.*

87. We find that a hard cap is necessary for two primary reasons. First, a hard cap will address the fact that RTOs/ISOs and/or Market Monitoring Units may have imperfect information about resources' short-run marginal costs during the verification process. As discussed further in section IV.B below, several commenters note that there may be imperfect information associated with the verification of cost-based incremental energy offers above $1,000/MWh prior to the market clearing process because some of those offers will be based on a resource's estimate of its costs and RTOs/ISOs or Market Monitoring Units may not have perfect information with which to estimate those costs. Additionally, as noted by market monitors, when natural gas spot market prices rise to levels that could result in the short-run marginal costs of some natural gas-fired resources exceeding $1,000/MWh, over-the-counter natural gas markets often lack liquidity or have wide bid-ask spreads, which can make verification challenging, particularly verification of expected costs. At those times, a market participant's expected costs could vary significantly from its actual costs. Although, as discussed further below, only verified cost-based incremental energy offers above $1,000/MWh may be used to calculate LMPs subject to the $2,000/MWh hard cap. We find that, on balance, a hard cap will reasonably limit the adverse impact that any imperfect information about resources' short-run marginal costs during the verification process could have on LMPs.

88. Second, we agree with MISO that a hard cap will be easier to integrate with other market constructs that place caps or upper bounds on various market elements (*e.g.,* penalty factors associated with shortage pricing or violating transmission constraints).

89. We are not persuaded by comments that a hard cap is duplicative of existing market power mitigation rules because existing market power mitigation provisions in most RTOs/ISOs only apply under certain circumstances, whereas this Final Rule essentially mitigates all incremental energy offers above $1,000/MWh to a level based on short-run marginal costs. Additionally, as noted above, the hard cap is necessary to address concerns about the imperfect information that RTOs/ISOs and/or Market Monitoring Units have about resources' short-run marginal costs during the verification process.

90. Having determined that a hard cap is necessary, we find that $2,000/MWh is a just and reasonable level for that hard cap based on the record in this proceeding. Historically, high natural gas prices during the Polar Vortex resulted in at least one resource with a cost-based incremental energy offer of $1,724/MWh.[199] Based on this experience and noting that it occurred in an otherwise low natural gas price environment, we expect that resources may experience costs that approach but are unlikely to exceed $2,000/MWh. With a hard cap of $2,000/MWh, we find that resources will be able to recover those costs and that LMPs will reflect marginal costs.[200] The Commission has previously relied upon high and volatile natural gas prices as a justification for increasing offer caps.[201] This $2,000/MWh level was also generally supported by Potomac Economics.[202] With respect to treatment of cost-based incremental energy offers above $2,000/MWh, we expect RTOs/ISOs to use such offers to determine merit-order dispatch. We note that the Commission allowed this approach when accepting PJM's current offer cap structure, in which PJM uses cost-based incremental energy offers above $2,000/MWh to determine merit order dispatch but limits cost-based incremental energy offers to $2,000/MWh for purposes of calculating LMPs.[203]

91. We recognize that a $2,000/MWh hard cap leaves some possibility for price suppression when the marginal cost of production legitimately exceeds $2,000/MWh. However, by allowing verified cost-based incremental energy offers in the $1,000/MWh–$2,000/MWh range to set LMPs, we significantly reduce the likelihood of such price suppression, and we find this balanced approach just and reasonable.

92. We decline to hold a technical workshop as suggested by NYISO or a triennial review as suggested by Exelon to determine an appropriate level for the hard cap because there is sufficient evidence in this record to support $2,000/MWh as a just and reasonable value. Based on the record, we decline to adopt a lower hard cap level, such as the $1,500/MWh value TAPS proposes, because this level is demonstrably lower than cost-based incremental energy offers observed during the Polar Vortex. Additionally, the PJM Market Monitor reported that on 54 occasions in early 2015, resources submitted cost-based incremental energy offers at prices above $1,000/MWh.[204]

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[198] We note that PJM currently permits resources to submit cost-based incremental energy offers above its current $2,000/MWh hard cap, and PJM may use such offers to dispatch resources. However, incremental energy offers are capped at $2,000/MWh for purposes of calculating LMPs. *See* PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289.

[199] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 13 (citing PJM 2014 Offer Cap Order I, 146 FERC ¶ 61,041 at P 2).

[200] *See Envtl. Action, Inc.* v. *FERC,* 939 F.2d 1057, 1064 (D.C. Cir. 1991) (''it is within the scope of the agency's expertise to make such a prediction about the market it regulates, and a reasonable prediction deserves our deference notwithstanding that there might also be another reasonable view.''). *See also Michigan Consol. Gas Co.* v. *F.E.R.C.,* 883 F.2d 117, 124 (1989) (''It is also quite clear FERC may make predictions—''[m]aking . . . predictions is clearly within the Commission's expertise'' and will be upheld if ''rationally based on record evidence.'') (citing *East Tennessee Natural Gas Co.* v. *FERC,* 863 F.2d 932, 938–39 (1988) (citing *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1008 (1987)).

[201] *See California Indep. Sys. Operator Corp.,* 114 FERC ¶ 61,026, at P 25 (2006) (In CAISO, natural gas prices rose from $3–$4/MMBtu when the bid cap in CAISO was $250/MWh to $14/MMBtu. Based on this information, the Commission found ''that raising the bid cap is justified by the well-documented rise in gas prices'' and accepted CAISO's proposal to raise the bid cap from $250/MWh to $400/MWh.).

[202] Potomac Economics Comments at 8.

[203] PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 11.

[204] Monitoring Analytics, Report on PJM Energy Market Offers January 16 to March 31, 2015, at 2 (May 1, 2015), *available at http://*

93. With respect to APPA, NRECA, and AMP's argument that concerns over seams do not justify revising RTO/ISO offer caps, particularly because the Commission accepted PJM's current $2,000/MWh offer cap, we reiterate that the Commission's finding in that order was limited to the facts in that record. In accepting PJM's proposal, the Commission stated that it would not prejudge broader reforms in the price formation proceeding.[205]

94. We decline to hold, as CAISO suggests, a technical workshop on implementation challenges. We expect that any issues regarding the implementation of this Final Rule will be raised by RTOs/ISOs on compliance, and the Commission will address them at that time. We also decline to implement a $400/MWh cap on incremental energy offers that are not cost-based, as some commenters have suggested. We find that the fact that resources rarely submit incremental energy offers above $400/MWh does not indicate that allowing resources to submit incremental energy offers as high as $1,000/MWh which are not cost-based (referred to as ''market-based offers'' in PJM) will result in unjust and unreasonable rates.

95. In response to MISO's suggestion that future adjustments to the offer cap may be needed in response to market-based solutions that increase demand elasticity or resource mix changes, we decline to speculate as to what changes may or may not be necessary in the future.

B. Cost Verification

1. NOPR Proposal

96. In the NOPR, the Commission proposed the requirement that cost-based incremental energy offers above $1,000/MWh be verified by the RTO/ISO or Market Monitoring Unit prior to being used to calculate LMPs (verification requirement).[206] The Commission proposed the following verification requirement:

The costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that resource's incremental energy offer in excess of $1,000/MWh may not be used to calculate Locational Marginal Prices. In such circumstances a resource would be eligible for a make-whole payment if that resource clears the energy market and the resource's costs are verified after-the-fact.[207]

97. The Commission reasoned that this requirement would ensure that the proposal results in LMPs that reflect the marginal cost of production during intervals when the marginal resource's short-run marginal cost exceeds $1,000/MWh. Further, in the NOPR, the Commission preliminarily found that the verification requirement was necessary to reduce the potential exercise of market power by resources, which could result in unjust and unreasonable rates.[208]

2. Comments

98. As discussed further below, the Commission received several comments about the proposed verification requirement. Comments about the proposed verification requirement focus on whether it is needed and what type of verification would be acceptable and feasible. A number of commenters generally support the proposed verification requirement, but they express concerns or seek clarification about the proposed verification requirement.[209]

a. Need for the Verification Requirement

99. Commenters disagree about whether the proposed verification requirement for cost-based incremental energy offers above $1,000/MWh is necessary to reduce the potential exercise of market power. Several commenters support the verification requirement,[210] some asserting that the verification requirement is a critical element of the proposal.[211]

100. OMS contends that the verification requirement protects retail consumers from unlimited and unjustified wholesale price increases.[212] The Delaware Commission and TAPS assert that the verification requirement is necessary to address market power concerns.[213] TAPS states that although it opposes revisions to the offer cap, the proposed verification requirement is needed to protect the integrity of the RTO/ISO markets and will help avoid litigation costs associated with re-running markets after-the-fact in the event that an LMP is subsequently found not to be cost-justified.[214] PG&E and SCE generally support the prevention of unverified incremental energy offers above $1,000/MWh from setting the LMP, although PG&E does not support the proposal overall.[215]

101. PJM Joint Consumer Advocates argue that the only way to protect consumers from unfair prices is to verify offers prior to the market clearing process and that fairness demands such a review, even if the verification process is technically complex. PJM Joint Consumer Advocates assert that market-based offers, which are not strictly tied to costs, should not be eligible to set LMP because they would unfairly inflate costs to consumers and result in a windfall for suppliers.[216]

102. Other commenters assert that the verification requirement is unnecessary[217] or unduly cumbersome.[218] Potomac Economics and PJM Power Providers argue that cost verification is unnecessary given other RTO/ISO market constructs.[219] Potomac Economics states that the justification for the proposed verification requirement is limited because competition is not diminished during the fuel price spikes that could cause a resource's short-run marginal costs to exceed $1,000/MWh. Potomac Economics also argues that existing RTO/ISO market power mitigation measures address market power concerns.[220] PJM Power Providers state that the verification requirement is unnecessary because resources have the incentive to submit incremental energy offers that reflect actual costs. PJM Power Providers assert that the threat of an investigation from the Commission's Office of Enforcement and possible associated fines incent good behavior and discourage the exercise of market power.[221] Industrial Energy Consumers also state that the NOPR could lead markets to become more complicated

www.monitoringanalytics.com/reports/Reports/2015/IMM_Informational_Filing_Docket_No_EL15-31-000_20150505.pdf.

[205] PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 55.

[206] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 56.

[207] *Id.*

[208] *Id.* P 57.

[209] ISO–NE Comments at 6; NYISO Comments at 2; PJM/SPP Comments at 2–3; TAPS Comments at 12.

[210] SCE Comments at 1–2; PG&E Comments at 1–3; NY Transmission Owners Comments at 3.

[211] Golden Spread Comments at 3; Delaware Commission Comments at 11; TAPS Comments at 12; NESCOE Comments at 3.

[212] OMS Comments at 3.

[213] Delaware Commission Comments at 11; TAPS Comments at 12–13.

[214] TAPS Comments at 12–13.

[215] PG&E Comments at 1–3; SCE Comments at 1–2.

[216] PJM Joint Consumer Advocates Comments at 5.

[217] Potomac Economics Comments at 12; PJM Power Providers Comments at 5.

[218] OMS Comments (on behalf of Texas Commission) at 3 n.7.

[219] Potomac Economics Comments at 12; PJM Power Providers Comments at 5.

[220] Potomac Economics Comments at 12.

[221] Exelon Comments at 9; PJM Power Providers Comments at 5 (citing *Public Citizen, Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 154 FERC ¶ 61,224, at P 88 (2016)).

and opaque, potentially leading to unintended consequences.[222]

b. Verification Standard

103. The Commission sought comment on the Market Monitoring Unit's or RTO's/ISO's ability to timely verify cost-based incremental energy offers above $1,000/MWh prior to the day-ahead or real-time market clearing process.[223] In response, the Commission received a wide array of comments about the feasibility of the proposed verification requirement and the challenges associated with implementing the requirement.

104. Many of the comments highlighted the difference between verification of *actual* costs and verification of *expected* costs. They noted that because verification has to occur before the market runs, verification of *actual* costs was more difficult than verification of *expected* costs. Indeed, several commenters contend that it is not possible prior to the market clearing process to verify that a resource's cost based-incremental energy offer equals that resource's *actual* costs.[224] Commenters raise two key obstacles to the verification of a resource's actual costs prior to the market clearing process: (1) Some natural gas resources do not know their actual costs at the time they submit offers; and (2) natural gas resource fuel costs are particularly difficult to verify during periods when natural gas supplies are scarce. Each obstacle is discussed in turn below.

i. Resource Cost Uncertainty When Submitting Offers

105. Many commenters, including RTOs/ISOs, market monitors, and generators, assert that because some resources, specifically natural gas resources, do not know their actual fuel procurement costs when they submit incremental energy offers to the RTO/ISO, it is impossible to verify the incremental energy offers of such resources prior to the market clearing process.[225]

106. ISO–NE, MISO, and PJM/SPP state that some natural gas resources have not procured fuel by the time that they submit incremental energy offers to the RTO/ISO markets, and thus ISO–NE and PJM/SPP state that such resources often submit offers based on the cost that the resources expect to pay for natural gas on the natural gas spot market.[226] For example, PJM/SPP state that some natural gas resources procure all or part of their natural gas requirements in the daily natural gas spot market, which is more volatile than month-ahead index prices because of changes in commodity prices and weather, as well as interstate natural gas pipeline capacity curtailments and maintenance activities.[227]

107. Comments from market monitors also suggest that some natural gas resources do not know their actual fuel costs at the time they submit offers.[228] For example, the ISO–NE Market Monitor states that natural gas resources that have not purchased natural gas in advance submit offers based on their best estimate of what they expect to pay for natural gas in real-time.[229] Potomac Economics and the ISO–NE Market Monitor state that resources submit initial incremental energy offers [230] or updates to their cost-based incremental energy offers [231] based on expected, rather than actual costs. Potomac Economics adds that such offers reflect a resource's expectation of its costs, and these costs may be subject to substantial uncertainty and thus cannot be verified in advance.[232] The ISO–NE Market Monitor, Potomac Economics, and the SPP Market Monitor conclude that strict verification of a resource's actual costs prior to the market clearing process is not possible.[233]

108. Generators also state that verification of actual costs may not be possible because some natural gas resources can only submit an estimate of their expected fuel costs.[234] For example, Exelon states that when a resource submits a day-ahead offer, which is due 24–48 hours prior to actual dispatch, that resource must consider numerous costs and may have to make complicated and somewhat imprecise judgments to predict future events, which makes it difficult to quantify and substantiate risks on either an before-the-fact or after-the-fact basis.[235] Additionally, EEI states that a resource that is not committed or not fully committed in the day-ahead market may not procure enough natural gas to meet its full output in the real-time market and may need to purchase fuel in the intra-day natural gas market where prices are significantly higher and more volatile than the day-ahead natural gas market.[236]

ii. Cost Verification During Peak Periods

109. Several commenters state that the challenges associated with pre-verification become more acute during stressed system conditions when natural gas supplies are limited, which is precisely when resources may have incremental energy costs above $1,000/MWh.[237]

110. PJM states that higher natural gas prices have led to higher cost-based incremental energy offers from resources, but verifying resource costs with natural gas price indices can be challenging because there is not a strong or straightforward correlation between changes in natural gas index prices and the magnitude of changes in cost-based offers, particularly when cost-based incremental energy offers in PJM are high.[238] ISO–NE argues that indices may not fairly represent the fuel prices that resources must pay, particularly when natural gas supplies are tight.[239] ISO–NE notes that there may be scant independent or timely information on natural gas resources' costs during such times.[240] Various commenters explain that during such times, natural gas resources must often purchase natural gas outside of the exchange trading platforms [241] through bilateral deals that are not reported on such exchanges, and that a significant amount of such purchases tends to make natural gas

[222] Industrial Energy Consumers Comments at 2.

[223] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 59.

[224] EEI Comments at 6; Exelon Comments at 11; IRC Comments at 2–3; ISO–NE Comments at 2, 6–7; MISO Comments at 9; PJM/SPP Comments at 12–13; Potomac Economics Comments at 3–4; SPP Market Monitor Comments at 9.

[225] Dominion Comments at 5; Exelon Comments at 16; ISO–NE Market Monitor Comments at 7; ISO–NE Comments at 6; MISO Comments at 9; PJM Market Monitor Comments at 6; PJM/SPP Comments at 10; Potomac Economics Comments at 3–5; SPP Market Monitor Comments at 9.

[226] ISO–NE Comments at 5; MISO Comments at 9; PJM/SPP Comments at 9.

[227] PJM/SPP Comments at 9–10.

[228] ISO–NE Market Monitor Comments at 7; Potomac Economics Comments at 4; SPP Market Monitor Comments at 9.

[229] ISO–NE Market Monitor Comments at 7.

[230] Potomac Economics Comments at 4.

[231] ISO–NE Market Monitor Comments at 7.

[232] Potomac Economics Comments at 4.

[233] ISO–NE Market Monitor Comments at 4; Potomac Economics Comments at 3–4; SPP Market Monitor Comments at 9.

[234] Dominion Comments at 5; Exelon Comments at 11–16.

[235] Exelon Comments at 11–17.

[236] EEI Comments at 5–6.

[237] *See generally* Dominion Comments at 4–5; PJM/SPP Comments 11; ISO–NE Comments at 4–5; SPP Market Monitor Comments at 7; PJM Market Monitor Comments at 6; EEI Comments at 6; Exelon Comments at 13–14; PJM Power Providers Comments at 3.

[238] PJM/SPP Comments at 11 (citing Attachment A). Attachment A presents an analysis of cost-based incremental energy offers and natural gas prices during the winters of 2013/14, 2014/15, and 2015/16. The analysis in Attachment A shows that for cost-based offers in the $500/MWh–$750/MWh range, the median gas price corresponding to the range of offers was $10.44/MMBtu in the 2013/14 winter, $15.62 MMBtu in the 2014/15 winter, and $3.75/MMBtu in the 2015/16 winter.

[239] ISO–NE Comments at 4–5.

[240] *Id.*

[241] Industrial Customers Comments at 16; ISO–NE Comments at 4–5; ISO–NE Market Monitor Comments at 8; PJM Market Monitor Comments at 6; SPP Market Monitor Comments at 7.

indices less representative of the price natural gas resources pay for natural gas.[242]

111. The ISO–NE., PJM, and SPP market monitors state that cost verification is most challenging when natural gas demand is high because of low liquidity and high bid-ask spreads for natural gas purchased on open exchanges such as the ICE.[243] For example, the PJM Market Monitor and the ISO–NE Market Monitor state that the natural gas market is least transparent on days with very high electric demand and that the ICE index is likely to be unsuitable for verification purposes because there are either no completed trades reported, a low number of completed gas trades (*i.e.,* low liquidity), or the bid-ask spread is so wide as to be meaningless.[244] The SPP Market Monitor states that the risk inherent in determining accurate fuel costs from natural gas indices is acceptable in most periods, but that the risk increases to unacceptable levels during extremely stressed fuel supply conditions.[245] Comments from generators also suggest that natural gas indices become less reliable during periods when natural gas supplies are limited and natural gas prices spike.[246] Dominion and Exelon assert that purchasing natural gas outside of an exchange through marketers or bilateral deals also increases the risks that a natural gas resource faces when it formulates its bid, and can increase the error associated with a resource's estimate of its actual costs.[247]

c. Feasibility of Verification Requirement

112. The Commission sought comment on the feasibility of the proposed verification requirement.[248] As discussed further below, ISO–NE, MISO, and NYISO state that current mitigation procedures could satisfy the proposed verification requirement if the Commission clarifies that the verification process can include expected, rather than actual, costs.[249] Several commenters express concerns that timely verification of a resource's actual short-run marginal costs is not possible within the timeframe of the RTO/ISO day-ahead and real-time market clearing process.[250]

113. For example, Potomac Economics states that time constraints will make the proposal infeasible if the proposed verification requires that resource cost data be collected and fully validated to actual cost prior to market clearing.[251] The ISO–NE Market Monitor states that the lack of solid information about natural gas prices on high-volatility, low-liquidity days makes validation of a resource's expected short-run marginal costs difficult, particularly if many resources seek to update their cost-based incremental energy offers.[252] The PJM Market Monitor notes that in PJM, a large volume of data, including information from approximately 420 gas-fired resources and about 35 gas trading points, must be processed to review cost-based incremental energy offers.[253] The SPP Market Monitor states that verification prior to market clearing may not be feasible in SPP given the tight timeline, particularly during sudden fuel shortages and fuel price spikes, and adds that it would need additional technical capabilities for such verification.[254] The SPP Market Monitor states that the proposal could also negatively affect RTO/ISO market monitors' ability to conduct timely market power mitigation under the proposed timeline because market monitors would be required to perform cost verification and market mitigation before completion of the market clearing process.[255]

114. Industrial Customers argue that market monitors cannot be expected to have the ability to assess the legitimacy of the cost component of resource offers in real-time.[256] Industrial Customers add that even if a resource has a natural gas invoice with a high price and provides it to the market monitor, this alone does not provide adequate consumer protection because the market monitor must investigate, understand, and accept the dynamics that led to that invoice.[257]

115. Citing CAISO's prior comments about practical implementation challenges associated with before-the-fact verification, Industrial Customers argue that the proposal in the NOPR may not be beneficial because pre-verification presents significant challenges given time constraints.[258] KEPCo/NCEMC states that RTOs/ISOs may not be in a position to verify cost-based incremental energy offers prior to market clearing without substantial investment in both new technology and significant changes to the existing RTO/ISO tariffs and business practice manuals.[259] KEPCo/NCEMC argues that the verification requirement involves substantial technological and regulatory costs for wholesale market participants, which KEPCo/NCEMC asserts are unwarranted given the limited nature of the problem with the current RTO/ISO offer caps.[260]

116. EEI maintains that the NOPR proposal is heavily dependent on having a verification process that is not so cumbersome as to prevent a resource's cost based incremental energy offer from being verified in time to be used in the LMP calculation. It argues that the use of make-whole payments would not serve the Commission's goal of having clearing prices that reflect the true marginal cost of production, taking into account all physical constraints.[261] NEI states that the manner in which the verification is performed is a key concern, and without a simple and efficient process, there is risk that the LMP will not reflect the true costs of operating the system because it will exclude offers above the cap. NEI maintains that an alternative approach would be warranted if market monitors cannot validate incremental energy offers in excess of $1,000/MWh quickly and efficiently.[262] Competitive Suppliers contend that the proposed verification requirement would result in cost-based offers above $1,000/MWh being unable to set the LMP because cost verification prior to the market clearing process is not possible.[263]

117. Competitive Suppliers argue that removing the offer cap entirely or increasing it significantly would alleviate any challenges inherent in a before-the-fact cost verification process.[264] Similarly, NEI states that instead of the verification requirement, the Commission should lift caps to a

[242] ISO–NE Market Monitor Comments at 8; PJM Market Monitor Comments at 6.

[243] ISO–NE Market Monitor Comments at 8; PJM Market Monitor Comments at 6; SPP Market Monitor Comments at 7.

[244] ISO–NE Market Monitor Comments at 7–8; PJM Market Monitor Comments at 6.

[245] SPP Market Monitor Comments at 7.

[246] EEI Comments at 6; Exelon Comments at 13–14; PJM Power Providers Comments at 3.

[247] Dominion Comments at 5; Exelon Comments at 13–14.

[248] NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 59, 73.

[249] *See infra* PP 126–127.

[250] Exelon Comments at 11; Industrial Customers Comments at 13–16; ISO–NE Market Monitor Comments at 9; Joseph Margolies Comments at 13; Potomac Economics Comments at 3–4; SPP Market Monitor Comments at 2, 7, 9.

[251] Potomac Economics Comments at 3–4.

[252] ISO–NE Market Monitor Comments at 9.

[253] PJM Market Monitor Comments at 7.

[254] SPP Market Monitor Comments at 2, 7, 9, 10–11.

[255] *Id.* at 9.

[256] Industrial Customers Comments at 14.

[257] Industrial Customers Comments at 19.

[258] *Id.* at 14–16 (citing CAISO Post-Technical Workshop Comments, Docket No. AD14–14–000, at 4–6 (Mar. 6, 2015)).

[259] KEPCo/NCEMC Comments at 5.

[260] *Id.*

[261] EEI Comments at 5.

[262] NEI Comments at 4.

[263] Competitive Suppliers Comments at 17–18.

[264] *Id.*

level that does not artificially constrain LMPs.[265]

118. Midcontinent Joint Consumer Advocates and TAPS argue that it is possible to perform the proposed cost verification prior to the market clearing process.[266] Midcontinent Joint Consumer Advocates state that the MISO Market Monitor has publicly confirmed its ability to verify offers prior to market clearing and that it currently tracks fuel prices that could be used to make adjustments to gas and fuel costs included in a MISO resource's cost-based incremental energy offer.[267] According to TAPS, MISO's current process for developing and updating cost-based incremental offers for resources is workable because the vast majority of resources will never experience cost levels close to $1,000/MWh, and the resources that are likely to reach such levels should have already provided the Market Monitoring Unit with up-to-date information about their heat rates, which will allow the Market Monitoring Unit to quickly calculate cost-based incremental energy offers for such resources.[268] TAPS states that MISO's current methodology for verification of cost-based incremental offers could be modified and adapted in all RTOs/ISOs.[269]

d. Uplift Payments

119. Several stakeholders commented on the after-the-fact review of costs in the event that the RTO/ISO or Market Monitoring Unit is unable to verify a resource's incremental energy offer above $1,000/MWh prior to the market clearing process.[270] MISO states that market participants should be required to consult with the Market Monitoring Unit before the submission of an offer in order for that market participant to be eligible for make-whole payments after-the-fact, and asserts that market participants should not be eligible for cost recovery above their offers just because in hindsight, their offers were below their actual costs.[271] PG&E states that if a cost-based incremental energy offer is verified after the market has run, energy cleared from such an offer should be compensated on an ''as bid'' basis.[272] PG&E maintains that if a cost-based incremental energy offer cannot be verified even after the market has run, then that resource's cleared energy should instead be compensated at the LMP.[273] PJM Power Providers and Competitive Suppliers assert that even after-the-fact verification of a resource's costs will be challenging, and, according to Competitive Suppliers, it will be particularly challenging for natural gas resources that have complex fuel supply arrangements.[274]

120. Competitive Suppliers state that in some instances, a resource may not be able to use the RTO's/ISO's verification process to set the market clearing price (for offers above $1,000/MWh) and in such rare cases, it may be necessary to compensate that resource through an uplift payment based on after-the-fact cost verification.[275] Competitive Suppliers assert that if a resource incurs justifiable and demonstrable short-run marginal costs, those costs should be recovered so that the resource does not operate at a loss and so that the resource is not discouraged from offering supply to the market.[276]

121. NEI states that, given that the Commission's price formation reforms are aimed at reducing the use of out-of-market payments, NEI is disappointed by the NOPR proposal to include uplift payments as a fall back if before-the-fact cost verification proves infeasible in practice.[277] However, Direct Energy states that if a resource's verified cost-based incremental energy offer exceeds the cap, that resource should be entitled to full cost recovery of RTO/ISO approved costs through uplift.[278]

e. Specific Proposals for the Verification Requirement

122. Given the concerns about verification of actual costs, several commenters, including RTOs/ISOs,[279] Market Monitoring Units,[280] and other stakeholders,[281] request that the Commission clarify that if it is not possible to verify a resource's actual costs prior to setting LMP, it will accept a process that verifies that a resource's incremental energy offer reasonably reflects that resource's expected costs.

123. Several commenters maintain that a prior-to-the-market-clearing verification process that requires cost-based offers be equal to actual costs will likely result in fewer incremental energy offers above $1,000/MWh that are eligible to set LMP.[282] For example, EEI states that its primary concern with the NOPR is the verification process and whether it is workable.[283] The ISO–NE Market Monitor and PJM/SPP state that there is a trade-off between the level of precision of the cost-based offer verification, the number of offers that will be eligible to set LMPs, and the level of uplift.[284]

124. Several commenters ask the Commission to indicate the types of verification processes it would accept.[285] ISO–NE., MISO, and NYISO state that their current process for developing and updating cost-based incremental energy offers, known as reference levels, could comply with the proposal as clarified to include estimated costs.[286]

125. CAISO states that the simplest method of verifying cost-based incremental energy offers would involve reviewing a broker quote or procurement invoice provided as evidence of a resource's costs, but CAISO questions whether such information would be sufficient.[287] CAISO predicts that incremental energy offers above $1,000/MWh are not likely to be eligible to set the clearing price in CAISO and that instead a resource with costs above $1,000/MWh would receive an uplift payment, assuming that the resource's costs were verified after-the-fact.[288]

126. PJM/SPP state that the principles outlined in the NOPR are sound, provided that the Final Rule allows RTOs/ISOs flexibility to design verification procedures that are consistent with current RTO/ISO rules.[289] PJM/SPP outline conceptual initial proposals for verification, but stress the need to provide RTOs/ISOs with latitude to develop the final verification process with stakeholders.[290] PJM presents a possible verification process that involves an automatic screen to filter out unreasonably high offers and to create a range of reasonableness based on an

[265] NEI Comments at 4.

[266] Midcontinent Joint Consumer Advocates Comments at 5; TAPS Comments at 13–15.

[267] Midcontinent Joint Consumer Advocates Comments at 5.

[268] TAPS Comments at 13–14.

[269] *Id.* at 14–15.

[270] Competitive Suppliers Comments at 19; MISO Comments at 10; PG&E Comments at 3; PJM Power Providers Comments at 4.

[271] MISO Comments at 10.

[272] PG&E Comments at 3.

[273] *Id.*

[274] Competitive Suppliers Comments at 19; PJM Power Providers Comments at 4.

[275] Competitive Suppliers Comments at 20–21.

[276] *Id.* at 21.

[277] NEI Comments at 4.

[278] Direct Energy Comments at 3.

[279] ISO–NE Comments at 4–7; NYISO Comments at 2; PJM/SPP Comments at 12–13.

[280] Potomac Economics Comments at 3–4; ISO–NE Market Monitor Comments at 4.

[281] EEI Comments at 6–7; Exelon Comments at 17.

[282] CEA Comments at 5; EEI Comments at 5.

[283] EEI Comments at 5.

[284] ISO–NE Market Monitor Comments at 5; PJM/SPP Comments at 13.

[285] CEA Comments at 6; IRC Comments at 2.

[286] ISO–NE Comments at 6; MISO Comments at 8; NYISO Comments at 2.

[287] CAISO Comments at 11.

[288] *Id.*

[289] PJM/SPP Comments at 2–3.

[290] *Id.* at 14–21.

index of natural gas prices, the bid/ask spread, and resource heat rates.[291] PJM states that the verification requirement could use a screening process that determines whether certain resources' incremental energy offers in a given area are within ten percent or $100/MWh of a benchmark offer based on a natural gas price index.[292] SPP states that it could develop additional rules that facilitate resources' submission of the fuel cost component of their cost-based incremental energy offers that is consistent with the resource's actual costs where possible, or that is a reasonably accurate representation of those costs. SPP states that given the need to approximate fuel costs that are difficult to verify, in most cases such a verification process could be subject to a reasonable margin of error.[293]

127. ISO–NE states that if its current cost verification process is acceptable to the Commission, then the offer cap proposal may be workable and would help improve price formation if high fuel prices cause generation costs to exceed $1,000/MWh.[294] MISO contends that its current process to establish and adjust cost-based offers can be used to verify incremental energy offers above $1,000/MWh.[295] NYISO also states that its current review process of a resource's incremental energy costs could be used to satisfy the proposed verification requirement.[296]

128. The ISO–NE Market Monitor states that the Commission should revise the proposed verification requirement to permit use of ISO–NE's current Commission-approved process where a resource can update its cost-based incremental energy offer, which occurs through a ''Fuel Price Adjustment.'' [297] The ISO–NE Market Monitor states that ISO–NE's Fuel Price Adjustment mechanism balances the desire to reflect resource costs in cost-based incremental energy offers, the limited information the ISO–NE Market Monitor has available to verify costs, and the need to deter abuse.[298] The ISO–NE Market Monitor explains that ISO–NE's market power mitigation software automatically calculates cost-based incremental energy offers for resources, which may be based on a day-ahead fuel price index.[299]

129. Potomac Economics states that MISO's current process for developing and updating reference levels would comply with a Final Rule which clarified that before-the-fact verification of a resource's expected costs is acceptable.[300] Potomac Economics explains that in MISO, cost-based offers are calculated on the day before every operating day based on next-day fuel price indices.[301] In real-time, the MISO Market Monitor (*i.e.,* Potomac Economics), reviews natural gas prices on ICE at various delivery points, and if natural gas prices rise significantly compared to the next-day fuel index, the MISO Market Monitor adjusts the cost-based incremental energy offers of any affected resources.[302] Potomac Economics adds that a MISO resource can also consult with the Market Monitor and request to raise its cost-based offer beyond this adjustment if the resource provides supporting information, which may or may not be approved.[303]

130. Potomac Economics explains that a NYISO resource may also request to update its cost-based incremental energy offer through a software process that automatically permits such an increase, provided the increase does not exceed a predetermined threshold.[304] Potomac Economics maintains that NYISO may need to adjust the validation threshold to account for periods of unusually high fuel price volatility, but that with such an adjustment, NYISO's current verification process could comply with the proposal.[305]

131. The PJM Market Monitor explains that resource owners in PJM are responsible for submitting their own cost-based offers and fuel cost policies, and that fuel costs are an essential part of the verification process.[306] The PJM Market Monitor states that it does not have the authority to tell a resource owner what its fuel cost is or what its offer should be, but it does have the authority to verify cost-based offers, to discuss cost issues with resource owners, and to refer resource owners to the Commission for rule violations and for the attempted or actual exercise of market power.[307] It states that it is essential that the Commission impose significant penalties for rule violations determined during the after-the-fact review. According to the PJM Market Monitor, a resource should be required to have in place a fuel cost policy that has been approved by both the PJM Market Monitor and PJM before the resource is able to submit an offer in excess of $1,000/MWh.[308] The PJM Market Monitor states that if a resource's cost-based incremental energy offer above $1,000/MWh is used in the market clearing process, the PJM Market Monitor would perform a timely after-the-fact review to determine whether a resource's offer was based upon the best information available at the time the resource submitted the cost-based incremental energy offer.[309] The PJM Market Monitor states that, in cases where an offer above $1,000/MWh is not permitted, the PJM Market Monitor would perform a timely after-the-fact review to determine the actual incurred costs of a resource, and uplift would be paid if the costs exceeded the market clearing price.[310] Any uplift payments for such offers would be based on the actual gas cost incurred. The PJM Market Monitor also recommends that the $1,000/MWh offer cap apply to a resource's ''operating rate,'' which is calculated by adding a resource's incremental offer to its no-load offer.[311]

132. The PJM Market Monitor also maintains that it is essential that any verification process include a rigorous and timely after-the-fact review and a requirement that a resource follows the cost-based offer submission rules and abides by its approved fuel cost policy. The PJM Market Monitor states that the verification process requires strong compliance incentives, and the Commission should impose significant penalties if a resource violates the cost-based incremental energy offer guidelines.[312]

133. Commenters representing generator and load interests also proposed verification processes. Competitive Suppliers and NEI state that lifting the offer cap to a level that does not artificially constrain LMPs is preferable to developing a verification process, as removing the cap allows the market price to convey accurate information of the state of the system even during high stress.[313]

[291] *Id.* at 15–16.

[292] *Id.* at 16–17.

[293] *Id.* at 19.

[294] ISO–NE Comments at 6.

[295] MISO Comments at 8.

[296] NYISO Comments at 3.

[297] ISO–NE Market Monitor Comments at 5–10.

[298] *Id.* at 5.

[299] *Id.* at 6.

[300] Potomac Economics Comments at 5.

[301] *Id.* at 4.

[302] *Id.* In MISO, cost-based offers are referred to as reference levels.

[303] *Id.* at 5.

[304] *Id.* NYISO states that a resource that updates the fuel type or fuel cost information associated with its cost-based incremental energy offer must make supporting documentation available for NYISO's review after-the-fact. *See* NYISO Comments at 4.

[305] Potomac Economics Comments at 6.

[306] PJM Market Monitor Comments at 4–5.

[307] *Id.* at 5.

[308] *Id.* at 6.

[309] *Id.* at 7–8.

[310] *Id.*

[311] *Id.* at 2.

[312] *Id.* at 7.

[313] Competitive Suppliers Comments at 18; NEI Comments at 4.

134. Competitive Suppliers prefer no verification requirement but contends that if the Commission requires that all cost-based incremental energy offers above $1,000/MWh be verified, the RTO/ISO and the generator should be able to identify a set of accepted criteria and data inputs such that resources can submit offers that can be accepted and thus eligible to set LMP.[314] Competitive Suppliers state that PJM's Cost Development Guidelines provide a means of verifying resource costs and may provide an alternative approach to the proposed verification requirement.[315]

135. Exelon proposes that the Commission require RTOs/ISOs to adopt tariff provisions that will permit timely review and approval of resources' cost-based offers based on a resource-specific ''safe harbor'' formula that is agreed upon in advance.[316] Exelon proposes that, at a minimum, the safe harbor formula should include a ten percent uncertainty component and a fuel cost component based on a daily natural gas index, natural gas adders, balancing costs, transportation costs, and a risk adder.[317]

136. Dominion supports a verification process that uses fuel estimates based on recent prices, historical prices during similar conditions, or a combination of both.[318] Dominion would support allowing market participants to submit cost-based offers within a reasonable range of a reference price that would be based on a historical fuel price index or an average of ask prices within a given fuel market, and that offers which fall in the range of that reference price and clear the market should be eligible to set LMP.[319]

137. The New Jersey and Pennsylvania Commissions and OPSI maintain that in order to implement the proposal in PJM, resources should be required to have a fuel cost policy approved by the Market Monitoring Unit prior to submission of cost-based incremental energy offers above $1,000/MWh.[320] The Pennsylvania Commission states that pre-approved resource fuel cost policies in PJM would speed up the verification process, foster market stability, and provide certainty to resources.[321] The New Jersey Commission and OPSI assert that resource fuel cost policies should be derived from a verifiable, algorithmic, and systematic approach consistent with the PJM Market Monitor's fuel cost policy guidelines.[322] The Delaware and Pennsylvania Commissions and OPSI argue that PJM should clarify the role of PJM and the PJM Market Monitor in the review and approval of fuel cost policies and assert that the PJM Market Monitor should have the authority to verify offers above $1,000/MWh.[323]

138. SCE argues that each RTO/ISO should utilize its own stakeholder processes to develop specific verification rules, which may reflect regional factors such as differences in market power mitigation processes and region-specific costs such as emissions and greenhouse gas costs.[324]

3. Determination

139. We adopt the NOPR proposal and clarify that each RTO/ISO or Market Monitoring Unit is required to verify that any incremental energy offer above $1,000/MWh reasonably reflects the associated resource's actual or expected costs prior to using that offer to calculate LMPs. We find that this verification requirement is necessary for incremental energy offers above $1,000/MWh because market power concerns are heightened when a resource's short-run marginal costs exceed $1,000/MWh.

140. Based on the record, it is not practical to require that RTOs/ISOs or Market Monitoring Units verify a resource's actual costs in all circumstances because a resource may not know its actual short-run marginal costs at the time it submits an incremental energy offer to the RTO/ISO for various reasons, including the timing of natural gas procurement. Accordingly, we clarify that an RTO/ISO or a Market Monitoring Unit must verify that cost-based incremental energy offers above $1,000/MWh reasonably reflect a resource's actual or expected costs. Under this requirement, the verification process for cost-based incremental offers above $1,000/MWh must ensure that a resource's cost-based incremental energy offer reasonably reflects that resource's actual or expected costs.

141. The RTO/ISO or Market Monitoring Unit, as prescribed in the RTO/ISO tariff and consistent with Order No. 719,[325] must verify the costs within a cost-based incremental energy offer above $1,000/MWh before that offer is used to calculate LMP, subject to the condition that such offers are capped at $2,000/MWh for purposes of calculating LMP.[326] To create such a verification process, we expect that the RTO/ISO would build on its existing mitigation processes for calculating or updating cost-based incremental energy offers.[327] However, we appreciate statements from RTOs/ISOs, market monitors, and others about potential verification processes for incremental energy offers above $1,000/MWh. We recognize that the verification process for incremental energy offers may be a fact-specific inquiry, and we have previously provided Market Monitoring Units with flexibility to make case-specific determinations.[328] Given the potential complexities involved in verifying incremental energy offers as well as the Commission's recognition of the need for proper mitigation methods in energy markets, we will require that RTOs/ISOs explain in their compliance filings what factors will be considered by the RTO/ISO or its Market Monitoring Unit in the verification process for cost-based incremental energy offers above $1,000/MWh and whether such factors are currently considered in existing market power mitigation provisions or whether new practices or tariff provisions are necessary given the verification requirement adopted in this Final Rule. Therefore, we disagree that the verification requirement is needlessly cumbersome because RTOs/ISOs may build on existing processes for market power mitigation.

142. Most RTOs/ISOs prohibit incremental energy offers above $1,000/MWh, a prohibition that some market

[314] Competitive Suppliers Comments at 19.

[315] *Id.*

[316] Exelon Comments at 11.

[317] *Id.* at 17–20 (citing Testimony of Leslie O. Dedrickson at 29–31).

[318] Dominion Comments at 5.

[319] *Id.*

[320] New Jersey Commission Comments at 12–13; Pennsylvania Commission Comments at 9; OPSI Comments at 7–9. This issue was also raised in comments in PJM's offer flexibility proposal in Docket No. ER16–372–000.

[321] Pennsylvania Commission Comments at 9.

[322] New Jersey Commission Comments at 13; OPSI Comments at 8 (citing Monitoring Analytics, Fuel Cost Policy Guidelines: Gas Replacement Cost (Sept. 24, 2015), *available at http://www.monitoringanalytics.com/reports/Market_Messages/Messages/IMM_Fuel_Cost_Policy_Guidelines_20150924.pdf*).

[323] Delaware Commission Comments at 12; OPSI Comments at 7–9.

[324] SCE Comments at 1–2.

[325] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281, at PP 370–375 (2008), *order on reh'g,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009). *See also* 18 CFR 35.28(g)(3)(iii)(B) (2016).

[326] Pursuant to 18 CFR 35.28(g)(3)(iii)(B), either the internal or external market monitor can ''provide the inputs required to conduct prospective mitigation . . . including, but not limited to reference levels, identification of system constraints, and cost calculations.'' 18 CFR 35.28(g)(3)(iii)(B) (2016). However, prospective mitigation may only be carried out by an internal market monitor if the RTO/ISO has a hybrid Market Monitoring Unit structure. 18 CFR 35.28(g)(3)(iii)(D) (2016).

[327] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 63.

[328] *See New England Power Generators Association, Inc.* v. *ISO New England Inc.,* 144 FERC ¶ 61,157, at P 62 (2015).

monitors characterize as a backstop market power mitigation measure.[329] The offer cap adopted in this Final Rule retains the backstop function that the current $1,000/MWh offer cap plays in existing RTO/ISO market power mitigation because it limits incremental energy offers that are not cost-based to $1,000/MWh. Under this Final Rule, incremental energy offers below $1,000/MWh will remain subject to existing market power mitigation measures. However, this Final Rule will require that all incremental energy offers equal to and above $1,000/MWh be cost-based, which essentially requires mitigation of all incremental energy offers above $1,000/MWh.

143. In this way, the verification requirement requires RTOs/ISOs to make only an incremental change to their existing market power mitigation procedures because the market power mitigation provisions that apply to incremental energy offers below $1,000/MWh will be unchanged. While in this Final Rule we increase the offer cap for cost-based incremental energy offers, we also subject offers above $1,000/MWh to additional market power mitigation in the form of the verification requirement. The verification requirement is designed to ensure that a cost-based incremental energy offer above $1,000/MWh is not an attempt by the associated resource to exercise market power. The verification requirement is part-and-parcel with the increase of the offer cap for cost-based incremental energy offers. We find that it would be inappropriate to raise the offer cap without imposing a verification requirement. The verification requirement thus serves as an additional backstop market power mitigation measure.[330]

144. Contrary to Potomac Economics' assertion that competition is not diminished when short-run marginal costs rise above $1,000/MWh, we find that market power concerns are heightened during such periods because short-run marginal costs in this range may indicate that very few resources are available to provide additional supply. Supply may be limited during such periods because of fuel supply limitations or the physical limitations of resources (*e.g.,* ramping constraints). Accordingly, resources with available supply during such periods likely face little competition, particularly in real-time, and may therefore be able to exercise market power. We find that the verification requirement reasonably addresses market power concerns associated with incremental energy offers above $1,000/MWh because such offers will be required to be cost-based, which should deter attempts by resources to exercise market power.

145. As discussed above, this Final Rule will require RTOs/ISOs to limit incremental energy offers to $2,000/MWh when calculating LMPs, which may be below the cost-based incremental energy offer of a resource. Thus, we revise the verification requirement proposed in the NOPR as indicated below and add new language (underlined below) to account for any uplift associated with the $2,000/MWh hard cap and adopt the following verification requirement:

> The costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's costs are verified after-the-fact. *A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds $2,000/MWh.*

146. We will retain the proposal in the NOPR which ensures that, if a resource's incremental energy offer above $1,000/MWh is not verified but that resource is nonetheless dispatched, that resource would be eligible to receive an uplift payment to recover its verified costs. The basis of the uplift payment would be the difference between a given resource's energy market revenues and that resource's actual short-run marginal costs of the MWs dispatched, as verified after-the-fact by the RTO/ISO or Market Monitoring Unit.[331] We find that such uplift payments are necessary given the challenges associated with the verification processes, to ensure that resources have an incentive to offer into RTO/ISO energy markets, and to ensure that resources are compensated for the service they provide.

147. This Final Rule will permit regional variation in the process for treating incremental energy offers above $1,000/MWh that the RTO/ISO or Market Monitoring Unit cannot verify prior to the start of the market clearing process. For example, the RTO/ISO could have procedures to change the incremental energy offer to $1,000/MWh or to mitigate that offer to a level below $1,000/MWh pursuant to other applicable market power mitigation provisions.

C. Resource Neutrality

1. NOPR Proposal

148. In the NOPR, the Commission proposed the following resource neutrality requirement:

> All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh.[332]

The Commission reasoned that this requirement would ensure that the eligibility to submit cost-based incremental energy offers in excess of $1,000/MWh would not be applied in an unduly discriminatory or unduly preferential manner.[333] The Commission also stated that the proposed resource neutrality requirement is consistent with prior orders related to the offer cap in PJM and MISO.[334]

2. Comments

149. Several commenters support the proposed resource neutrality requirement.[335] For example, MISO supports the resource neutrality requirement and notes that the MISO tariff currently allows any resource, regardless of type, to establish a cost-based reference level.[336] MISO adds that some resources could be constrained by the $1,000/MWh cap because they may be unable to provide evidence of high fuel costs.[337]

150. Commenters disagree about whether demand response resources should be able to submit incremental energy offers above $1,000/MWh. Some commenters argue that demand response resources should be treated the same as other physical generation resources that provide offers.[338]

[329] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 23.

[330] Moreover, existing Commission regulations establish that misrepresenting costs when submitting cost-based incremental energy offers as part of a supply offer may be in violation of 18 CFR 35.41(b) (2016) and 18 CFR 1c.2(a)(2) (2016).

[331] The Commission notes that the clarification regarding use of a resource's actual or expected short-run marginal costs during the verification process that occurs prior to the market clearing process is not applicable to such uplift payments. Any such uplift payment, which is paid after-the-fact, must be based on a resource's actual short-run marginal costs.

[332] NOPR, FERC Stats. & Regs, ¶ 32,714 at P 69.

[333] *Id.*

[334] *Id.* (citing MISO 2014/15 Offer Cap Order, 150 FERC ¶ 61,083 at P 16; PJM 2014/15 Offer Cap Order, 150 FERC ¶ 61,020 at P 39).

[335] EEI Comments at 1, 3; Ohio Commission Comments at 12; MISO Comments at 12.

[336] MISO Comments at 12 (citing MISO Tariff, Module D, 64.1.4.a, 64.3.a, and 64.1.4.h).

[337] *Id.*

[338] API Comments at 12–13; Competitive Suppliers Comments at 23–24; Exelon Comments at 23 (citing PJM Manual 11 2.3.3); Industrial Customers Comments at 28; PJM Market Monitor Comments at 12–13.

Additionally, MISO questions why a demand response resource should be prevented from submitting an offer at the same level (in $/MWh) as physical resources.[339]

151. However, other commenters argue that demand response should not be able to submit incremental energy offers above $1,000/MWh. PJM/SPP argue that the proposed offer cap revisions should not apply to demand response resources because demand response resource offers are intended to capture foregone commercial revenues, not the short-run marginal cost of reducing output.[340] ISO–NE asserts that a demand response resource's costs would be based on its marginal opportunity cost of foregone consumption, which could routinely exceed $1,000/MWh or $2,000/MWh, and that verifying such costs could not be accomplished on short notice. ISO–NE surmises that allowing demand resources to submit incremental energy offers above $1,000/MWh could create perverse incentives and may give physical resources the incentive to move behind the meter to exploit asymmetries in the application of the offer cap. Accordingly, ISO–NE requests that the Commission carefully consider its position on verification of the actual costs of demand response resources.[341]

152. The New Jersey Commission argues that in the absence of a comprehensive definition of short-run marginal costs for demand response resource offers, demand response resources should not be permitted to offer and set the market clearing price above the Commission's determined offer cap.[342] The Pennsylvania Commission asserts that demand response resources should not be eligible to set LMP and should be treated as price takers, asserting that such resources do not generally exhibit competitive behavior in energy markets because the energy revenues of such resources are *de minimis* relative to their capacity market revenues.[343]

153. Several commenters express concerns about whether RTOs/ISOs or Market Monitoring Units can verify the costs of demand response resources. For example, ISO–NE asserts that a demand response resource's costs would be based on that resource's marginal opportunity cost of foregone consumption and other information that is difficult to validate, particularly if the demand response resource's costs increase significantly from the prior day.[344] PJM/SPP state that it is not clear what demand response resource costs could be validated to justify an offer above the $1,000/MWh offer cap.[345] The Pennsylvania Commission states that with the limited exception of on-site backup generation costs, the incremental energy costs of demand response capacity resources are largely unknown.[346] ISO–NE urges the Commission to carefully consider whether the verification of actual costs should be imposed on a resource-neutral basis, and explains its concerns regarding its ability to timely verify the offers of demand response resources.[347] AEMA argues that it is impractical, if not impossible, to verify the costs of a demand response resource in the same manner as a physical generation resource, particularly before-the-fact.[348] AEMA also cites a prior Commission order on ISO–NE's Order No. 745 compliance where the Commission found that ''unlike with supply resources, it would be very difficult to develop a competitive offer or reference price to which to mitigate each demand response resource.'' [349] AEMA asserts that there is no need to create an additional verification requirement for demand response resources, because the Commission has recognized that comparability does not require identical treatment.[350]

154. AEMA requests that the Commission clarify that the offer cap proposed in the NOPR only impacts demand response resources that participate in energy markets and would not apply to demand resources that exclusively participate in capacity markets.[351] AEMA explains that demand response resources that participate exclusively in capacity markets do not make incremental energy offers. AEMA explains that capacity-only demand response resources are only dispatched on a reliability-based trigger that determines the price the demand resource is paid as opposed to an offer price-based trigger that does not represent the LMP at which the customer wishes to be dispatched, or the costs of the customer to curtail its load. AEMA asserts that forcing these resources to make ''incremental energy offers'' in the energy market would drive them away from participation.[352]

155. AEMA requests that the Commission continue to allow demand response resources to submit offers up to the offer cap in energy markets and not impose additional verification requirements on demand response resource energy market offers beyond what has already been accepted.[353] AEMA asserts that the Final Rule should not impact existing or proposed methods for monitoring and evaluating demand resource offers in energy markets or create additional verification hurdles for demand resource offers beyond those that currently exist.[354]

3. Determination

156. We adopt the NOPR proposal and find that resources with costs above $1,000/MWh should be able to submit cost-based incremental energy offers to recover their costs, regardless of the type of resource. Prohibiting a particular set of resources from submitting cost-based incremental energy offers above $1,000/MWh could preclude them from recovering their costs.

157. In the NOPR the term ''resource'' referred to all supply resources, including demand response resources, that offer incremental energy to RTO/ISO energy markets.[355] As such, a demand response resource that submits incremental energy offers to the energy market based on short-run marginal cost would be subject to the verification requirement if that incremental energy offer exceeds $1,000/MWh. For such a resource, the short-run marginal cost may equal its opportunity costs.

158. We recognize that the verification process for demand response resources will necessarily differ from the verification process for generation resources, as noted by ISO–NE and AEMA. The Commission has

[339] MISO Comments at 7.

[340] PJM/SPP Comments at 5.

[341] ISO–NE Comments at 7–8.

[342] New Jersey Commission Comments at 18.

[343] Pennsylvania Commission Comments at 14 (citing PJM, Demand Response Operations Market's Activity Report: February 2016 (Feb. 16, 2016), Fig. 23; Monitoring Analytics, LLC, State of the Markets Report for PJM, Vol. 1., Fig. 10 (Mar. 10, 2016)).

[344] ISO–NE Comments at 7–8.

[345] PJM/SPP Comments at 5.

[346] Pennsylvania Commission Comments at 14.

[347] ISO–NE Comments at 7–8.

[348] AEMA Comments at 7–8.

[349] *Id.* at 8 (citing *ISO New England Inc.,* 138 FERC ¶ 61,042, at P 138 (2012)).

[350] *Id.* at 8–9 (citing *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299, at P 216 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009); *Indep. Market Monitor for PJM* v. *PJM Interconnection, L.L.C.,* 155 FERC ¶ 61,059, at P 31 (2016) (''comparability does not require identical application to demand response resources and generation resources of PJM's offer cap and the must-offer requirement'')).

[351] *Id.* at 3.

[352] *Id.* at 3–5.

[353] *Id.* at 5–6.

[354] *Id.* at 2–3, 7–9.

[355] This is consistent with prior uses of the term. *See, e.g., Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 825, 81 FR 42,882 (June 30, 2015), FERC Stats. & Regs. ¶ 31,384, at P 98 (2016).

recognized that demand response resources should receive comparable, but not necessarily identical treatment to generation resources.[356] However, we decline AEMA's request to exempt demand response resources that submit incremental energy offers in RTO/ISO energy markets from any additional verification requirements associated with this Final Rule, because such an exemption does not constitute comparable treatment. However, as noted above,[357] this Final Rule does not prescribe how RTOs/ISOs should verify cost-based incremental energy offers above $1,000/MWh, including offers from demand response resources.

159. Finally, we find that the New Jersey and Pennsylvania Commissions' comments that demand response resources should not be able to set LMP are beyond the scope of this Final Rule, which only applies to incremental energy offers above $1,000/MWh, and not the general eligibility of demand response resources to set LMPs in RTO/ISO energy markets. We clarify, however, that reforms adopted in this Final Rule, which provide that resources are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh and require that those offers be verified, do not apply to capacity-only demand response resources that do not submit incremental energy offers in energy markets.

V. Other Issues

A. Virtual Transactions

160. Although the Commission preliminarily found in the NOPR that virtual supply offers and virtual demand bids (virtual transactions) could not provide a cost basis for offers above $1,000/MWh, it sought comment about whether prohibiting virtual transactions above $1,000/MWh could limit hedging opportunities, present opportunities for manipulation or gaming, create market inefficiencies, or have other undesirable consequences.[358]

1. Comments

161. CAISO states that virtual transactions do not face short-run marginal production costs and would thus be unable to justify costs above $1,000/MWh.[359] However, CAISO notes that if physical resources can submit incremental energy offers above $1,000/MWh, then virtual participants should also be able to bid above $1,000/MWh to arbitrage those physical offers.[360]

162. ISO–NE states that market participants should be able to submit virtual supply offers at levels as high as offers from physical resources to ensure that there is a liquid supply of offers that can compete with physical resources in the day-ahead market under all market conditions, which can reduce the potential exercise of market power during tight day-ahead conditions.[361] ISO–NE asserts that if the Commission adopts a new hard cap, there is no cost-basis or market power rationale to limit virtual supply offers below the level of any hard cap.[362]

163. PJM argues that virtual transactions should be permitted to exceed $1,000/MWh or be subject to a reasonableness screen because virtual transactions increase competition in the day-ahead markets and reduce market share, and thus reduce market power.[363] MISO states that prohibiting virtual transactions above $1,000/MWh could limit hedging opportunities which could increase the price differentials between the day-ahead and real-time energy markets.[364] MISO adds that revising the offer cap for virtual transactions could conceivably expose other market participants to high prices but notes that MISO already has mitigation measures in place for virtual transactions and that years of market experience have shown that such manipulation concerns are improbable.[365]

164. NYISO states that cost-based incremental energy offers, interchange transactions (*e.g.,* imports and exports), and virtual transactions should be capped at the level of the hard cap, which will allow market participants to continue to compete to the maximum extent practicable.[366] NYISO also argues that a hard cap is appropriate for virtual transactions because such transactions are based on price expectations as opposed to verifiable costs.[367] SPP states that it takes no position on the application of the proposed reforms to virtual transactions.[368]

165. Potomac Economics states that competitive virtual transactions should be permitted to exceed $1,000/MWh when real-time prices are expected to exceed $1,000/MWh.[369] Potomac Economics states that although virtual transactions do not have production costs, they do have marginal costs, and notes that the marginal cost of selling virtual energy in the day-ahead market is the expected cost of buying the energy in the real-time market.[370] Potomac Economics states that virtual transactions support the competitive performance of day-ahead markets and thus argues that it is important to structure the rules for virtual transactions in a manner that does not impede their participation in the market.[371]

166. Potomac Economics proposes that virtual transactions be permitted to exceed $1,000/MWh when real-time LMPs are expected to exceed $1,000/MWh for more than a specified period (*e.g.,* 30 minutes).[372] The PJM Market Monitor argues that market participants should not be permitted to submit virtual transactions above $1,000/MWh because increasing the offer cap on virtual transactions would create opportunities for the exercise of market power and manipulation of markets and permit resource owners to avoid the requirement that incremental energy offers above $1,000/MWh be cost-based.[373] The PJM Market Monitor states there is no evidence that virtual supply offers have increased competition or would increase competition in extreme circumstances.[374] The PJM Market Monitor recommends that if the Commission wishes to permit some virtual transactions to exceed $1,000/MWh, the Commission should: (1) Limit virtual transactions above $1,000/MWh to liquid trading hubs; (2) require market participants to explain why virtual offers or bids above $1,000/MWh are appropriate; and (3) subject such virtual transactions to a ''reasonableness screen'' and an after-the-fact review for whether they resulted in manipulation or market power.[375] The PJM Market Monitor states that the asserted benefits of virtuals with respect to hedging, competition, and price convergence have not been empirically established, and, thus, it is unnecessary to create

[356] *Demand Response Compensation in Organized Wholesale Energy Markets,* Order No. 745, FERC Stats. & Regs. ¶ 31,322, at P 66, *order on reh'g and clarification,* Order No. 745–A, 137 FERC ¶ 61,215 (2011) (''as a general matter demand response providers and generators should be subject to comparable rules that reflect the characteristics of the resource.'').

[357] *See supra* P 141.

[358] NOPR, FERC Stats. & Regs ¶ 32,714 at PP 64, 73.

[359] CAISO Comments at 13.

[360] *Id.*

[361] ISO–NE Comments at 8.

[362] *Id.* at 8–9.

[363] PJM/SPP Comments at 27.

[364] MISO Comments at 18; *see also* PJM/SPP Comments at 27–28.

[365] MISO Comments at 18.

[366] NYISO Comments at 7–8.

[367] *Id.* at 7.

[368] PJM/SPP Comments at 28.

[369] Potomac Economics Comments at 10.

[370] *Id.*

[371] *Id.*

[372] *Id.* at 9–10.

[373] PJM Market Monitor Comments at 11; PJM Market Monitor Answer at 6.

[374] PJM Market Monitor Answer at 5.

[375] PJM Market Monitor Comments at 11–12.

market power risks when revising the offer cap.[376]

167. Separately, the PJM Market Monitor recommends that up-to-congestion transactions in PJM be excluded from any offer cap reforms stating that because up-to-congestion transactions are spread bids between nodes there is no reason to relax the current rules that govern such transactions.[377]

168. Several commenters argue that the Commission should allow virtual transactions to exceed $1,000/MWh.[378] Some commenters focus on the use of virtual transactions to hedge physical transactions and argue that virtual transactions should thus be subject to the same offer caps as physical resources.[379] Dominion states that in extreme winter conditions, a physical resource that faces a start-up risk and is likely to receive a day-ahead award may submit a virtual demand bid to hedge against the potential outage in real-time.[380] Exelon also argues that hedging the risk of physical transactions through virtual transactions is especially important when the system is stressed, and that doing so may improve market performance by converging day-ahead and real-time prices.[381] Competitive Suppliers assert that the same argument articulated in the NOPR for having a uniform offer cap across regions demands similar treatment of virtual transactions, imports, and emergency demand response across regions.[382]

169. Dominion states that limiting the ability to submit virtual transactions above $1,000/MWh to physical resources with verified cost-based incremental energy offers above $1,000/MWh in order to allow such resources to hedge would minimize concerns about market manipulation.[383] The PJM Market Monitor responds that Dominion's proposal creates a significant risk of manipulation because Dominion does not propose to limit the virtual bids to the cost-based offer of the generator.[384]

170. Several other commenters argue that virtual transactions should be prohibited from submitting transactions above $1,000/MWh.[385] For example, several commenters argue that virtual transactions should not be permitted to exceed $1,000/MWh because allowing transactions in this range could raise clearing prices without a commensurate increase in short-run marginal production costs.[386] Six Cities argues that permitting virtual transactions to submit offers above the $1,000/MWh cap would be inconsistent with the Commission's goals of allowing recovery of actual production costs in excess of the cap and establishing LMPs consistent with actual production costs under extreme market conditions.[387] TAPS argues that the Commission does not need to allow virtual transactions to exceed $1,000/MWh to encourage price convergence between the day-ahead and real-time markets.[388]

171. Some commenters argue, as the PJM Market Monitor does, that allowing virtual transactions above the $1,000/MWh cap could lead to undesirable consequences, such as creating the opportunity for market manipulation and the exercise of market power.[389] For example, SCE cautions that allowing virtuals above $1,000/MWh would undermine the purpose of having a backstop for existing market power mitigation rules.[390] APPA, NRECA, and AMP state that although they oppose the idea, any proposal to allow virtual transactions above $1,000/MWh must be accompanied by an assurance that the RTO/ISO and/or Market Monitoring Unit will be able to address any gaming or anti-competitive conduct.[391] PG&E asks that the Commission direct market monitors to study the potential impacts and gaming opportunities associated with permitting virtual transactions above $1,000/MWh before revising any caps on virtual transactions.[392] Midcontinent Joint Consumer Advocates state that while it generally supports applying the same offer cap to physical and virtual transactions, the issue should be monitored to ensure that inappropriate virtual transactions do not affect real-time energy prices.[393] The Delaware Commission recommends that virtual transactions in PJM be limited to $400/MWh.[394]

2. Determination

172. In light of the comments received and our adoption of a $2,000/MWh hard cap, we find that it is just and reasonable to permit market participants to submit virtual transactions up to $2,000/MWh. We do not require that virtual transactions be subject to the cost verification described above. Allowing virtual transactions above $1,000/MWh could improve price convergence between day-ahead and real-time markets.[395] An offer cap that is lower for virtual transactions than for physical resources could increase divergence between day-ahead and real-time LMPs. This finding is consistent with prior Commission precedent, which finds it is reasonable to permit market participants to submit virtual transactions at levels commensurate with the levels that real-time LMPs can reach.[396]

173. We find that market participants should be allowed to submit virtual transactions up to the hard cap, as they can today. As such, this Final Rule is therefore less likely to result in unintended consequences associated with capping virtual transactions at a level below the hard cap. For example, capping virtual transactions at $1,000/MWh when the incremental energy offers used to calculate LMPs are capped at $2,000/MWh could encourage some market participants to place virtual demand bids at $1,000/MWh, a transaction that may be profitable if real-time prices exceed $1,000/MWh but would not contribute to day-ahead and real-time price convergence.

174. Under this Final Rule, LMPs may rise above $1,000/MWh. By permitting virtual transactions to exceed $1,000/MWh, we preserve a market participant's ability to use virtual

[376] PJM Market Monitor Answer at 5.

[377] PJM Market Monitor Comments at 11; PJM Market Monitor Answer at 6.

[378] Competitive Suppliers Comments at 23–24; Dominion Comments at 7; Exelon Comments at 23–24; ISO–NE Comments at 8; PJM/SPP Comments at 27; SPP Market Monitor Comments at 12; NY Department of State Comments at 6.

[379] SPP Market Monitor Comments at 12; Competitive Suppliers Comments at 23–24; NY Department of State Comments at 6; Dominion Comments at 7.

[380] Dominion Comments at 7.

[381] Exelon Comments at 23–24.

[382] Competitive Suppliers Comments at 23.

[383] Dominion Comments at 7.

[384] PJM Market Monitor Answer at 6.

[385] APPA, NRECA, and AMP Comments at 19; Industrial Customers Comments at 28–29; Ohio Commission Comments at 14; New Jersey Commission Comments at 17–18; Six Cities Comments at 3.

[386] Industrial Customers Comments at 28–29; New Jersey Commission Comments at 17–18; Six Cities Comments at 3; Ohio Commission Comments at 14; TAPS Comments at 20–21.

[387] Six Cities Comments at 4.

[388] TAPS Comments at 21.

[389] APPA, NRECA, and AMP Comments at 19; ODEC Comments at 1; KEPCo/NCEMC Comments at 5; New Jersey Commission Comments at 18; PJM Market Monitor Comments at 11–12; TAPS Comments at 21.

[390] SCE Comments at 2.

[391] APPA, NRECA, and AMP Comments at 19.

[392] PG&E Comments at 3–4.

[393] Midcontinent Joint Consumer Advocates Comments at 9.

[394] Delaware Commission Comments at 14. The Delaware Commission recommends that in PJM, virtual transactions and incremental energy offers that are not cost-based be limited to $400/MWh.

[395] *PJM Interconnection, L.L.C.,* 139 FERC ¶ 61,057 (2012).

[396] *Id.* PP 123–126. In that order, the Commission found that ''if virtual traders and demand cannot submit higher bids in the day-ahead market [commensurate with the $/MWh value that real-time LMPs can reach if shortage pricing is in effect], that market may not converge with prices in the real-time market during times when PJM experiences shortage conditions in the real-time market.'' *Id.* P 124.

transactions to hedge its exposure to real-time LMPs above $1,000/MWh. Otherwise, if virtual transactions are limited to $1,000/MWh, as proposed in the NOPR, a market participant would be barred from placing virtual transactions commensurate with its market risks.

175. We also find that allowing virtual transactions above $1,000/MWh may add liquidity to day-ahead markets. Permitting virtual transactions in the $1,000/MWh—$2,000/MWh range could result in additional demand bids and supply offers (*i.e.,* virtual demand bids and virtual supply offers) and will thus allow virtual transactions to continue to perform the functions that they do today by adding liquidity to the day-ahead market.

176. We recognize that virtual transactions, by their nature, cannot be subjected to the type of cost-verification discussed above. However, in response to comments arguing that virtual transactions above $1,000/MWh will raise LMPs above verifiable costs and/or result in market power abuse, we note that Market Monitoring Units currently monitor for anti-competitive behavior by market participants. While they are not required to do so, if RTOs/ISOs determine that additional measures are necessary to address any concerns that arise from permitting virtual transactions up to $2,000/MWh, RTOs/ISOs may propose such additional measures in a separate filing under section 205 of the Federal Power Act.

177. Dominion proposes to limit the ability to submit virtual transactions above $1,000/MWh to physical resources that have cost-based offers above $1,000/MWh. We find that Dominion's proposal to limit virtual transactions to certain market participants would be unduly discriminatory. Such a limitation would treat market participants differently depending on whether they owned physical generation assets, and would be unduly discriminatory because it would limit the benefits of virtual transactions above $1,000/MWh to those participants with physical assets. Further, such a limitation could limit the other potential benefits of virtual transactions above $1,000/MWh, such as increased liquidity and increased convergence between day-ahead and real-time LMPs. Additionally, we find that the PJM Market Monitor's and Potomac Economics' proposals to limit virtual transactions above $1,000/MWh to certain time periods or certain locations lack sufficient detail and record evidence to make a finding that either proposal is just and reasonable. Finally, we clarify that this Final Rule does not apply to up-to-congestion transactions in PJM, because such transactions are spread bids and not virtual supply offers or virtual demand bids.

B. External Transactions

178. In the NOPR, the Commission stated that external RTO/ISO resources (*i.e.,* imports) would not be eligible to submit cost-based incremental energy offers above $1,000/MWh because RTO/ISO processes to develop cost-based incremental energy offers for mitigation purposes typically only apply to internal RTO/ISO resources.[397] The Commission added, however, that it would consider RTO/ISO proposals to verify cost-based incremental energy offers from external transactions in their respective compliance filings.[398] The Commission also sought comment on whether the offer cap proposal should apply to imports and whether a cost verification process for import transactions is feasible.[399]

1. Comments

179. CAISO maintains that the consistent treatment of internal resources and external resources (*e.g.,* imports) is key to an efficient market and to avoid unintended consequences.[400] CAISO surmises that capping import offers to a level below the cap that internal resource incremental energy offers are subject to could reduce supply offers from imports during periods when natural gas prices in the West rise to a level that would justify LMPs above $1,000/MWh.[401]

180. ISO–NE states that it cannot verify the costs associated with energy import transactions in real-time.[402] ISO–NE explains that an importer's actual cost to import power into ISO–NE from an adjacent market is the adjacent market's real-time LMP, which is determined at the same time as ISO–NE's LMP. ISO–NE adds that, given the lack of organized markets in some control areas adjacent to ISO–NE., it is unclear how actual costs would be verified for import transactions from those areas. Accordingly, ISO–NE requests additional guidance from the Commission about the application of the proposed rule to imports and exports.[403]

181. PJM asserts that non-emergency imports should be allowed to submit offers above $1,000/MWh to ensure that economic import transactions occur even when PJM LMPs exceed $1,000/MWh because such purchases and sales will benefit the market and provide electric supplies by allowing the lowest cost energy to serve customers.[404] PJM adds that imports may also defer operational emergency procedures in extreme situations.[405]

182. PJM explains that under PJM's current rules, economic transactions are capped at the maximum energy price (absent congestion and losses) of $2,700/MWh while emergency import transactions are not. PJM states that the value of lost load may exceed this level and states that PJM is thus willing to pay more than $2,700/MWh to procure emergency energy to prevent load shedding.[406] PJM notes that the verification of import's cost would have to follow a different process than internal resources because the resource behind the import is frequently unknown.[407]

183. SPP states that verifying the costs of imports could be problematic because it is difficult to obtain cost information from resources outside of SPP.[408] SPP asks the Commission to allow regional flexibility for this issue, noting that it would investigate the issue further in response to any Final Rule issued in this proceeding.[409]

184. According to the PJM Market Monitor, 99.99 percent of PJM imports are price takers but imports that are not price takers should continue to be limited to $1,000/MWh offers.[410] Potomac Economics contends that external transactions should be eligible to submit offers above $1,000/MWh when prices in the real-time market exceed $1,000/MWh for more than a specified period of time (*e.g.,* 30 minutes). Potomac Economics also asserts that Coordinated Transaction Schedules should be exempt from the proposed reforms because they reflect a forecast of the price spread between RTO/ISO markets and thus would not set the LMP in either market.[411]

185. The SPP Market Monitor states that the proposed offer cap requirements should apply to imports because imports have the same potential impact on LMPs as internal resources. However, the SPP Market Monitor acknowledges that it is more challenging to verify the offers of

[397] NOPR, FERC Stats. & Regs ¶ 32,714 at P 63.

[398] *Id.*

[399] *Id.* PP 63, 73.

[400] CAISO Comments at 13.

[401] *Id.*

[402] ISO–NE Comments at 9.

[403] *Id.*

[404] PJM/SPP Comments at 25.

[405] *Id.*

[406] *Id.* at 26 (citing PJM, Intra-PJM Tariffs, OATT, Tariff Operating Agreement, Attachment K–Appendix, section 3.2.3.A).

[407] *Id.*

[408] *Id.* at 27.

[409] *Id.*

[410] PJM Market Monitor Comments at 10.

[411] Potomac Economics Comments at 9–10.

imports as compared to offers from internal SPP resources because the SPP market monitor may have limited access to the cost data of external resources.[412]

186. Several commenters assert that imports should be able to offer above $1,000/MWh provided the costs in their offers are verified beforehand,[413] and some commenters say it is possible to develop a workable solution for such verification.[414] For example, the New Jersey Commission argues that imports that clear the PJM capacity auctions, which are pseudo-tied, will have short-run marginal production costs that are available for the market monitor to review, and should thus be permitted to offer into the PJM energy market above $1,000/MWh when their costs exceed $1,000/MWh.[415] Midcontinent Joint Consumer Advocates explain that offers from imports are provided in the day-ahead market and then only scheduled in real-time, and imports cannot set real-time LMPs in MISO.[416] However, Midcontinent Joint Consumer Advocates state that if imports are the source of higher prices in MISO markets, then it would be important to verify the costs of imports and in such cases, Midcontinent Joint Consumer Advocates would support verification for imports so that all suppliers are treated equally.[417] The Delaware Commission supports the NOPR proposal to require verification of exchange transactions provided the process in an exporting region is not less objective or rigorous than the process in the importing region.[418]

187. Powerex asks the Commission to consider adopting a verification process for external resources that is distinct from the process used for internal resources because the two resource types differ.[419] Powerex states that verifying external resource costs is challenging in WECC because large hydroelectric storage facilities in the Pacific Northwest do not have easily calculable and verifiable short-run marginal costs, and because CAISO does not require that import offers be associated with a specific resource.[420] As an alternative, Powerex suggests that the Commission could direct the RTOs/ISOs to implement an offer cap tied to prevailing market prices, such as capping offers from external resources at the higher of $1,000/MWh or 120 percent of the highest market price index report in the region for the previous seven days.[421] TAPS and APPA, NRECA, and AMP assert that the Commission should give individual RTOs/ISOs the discretion to determine whether to allow imports to submit cost-based incremental energy offers over $1,000/MWh.[422]

188. Several commenters argue that limiting external resources to $1,000/MWh offers may dissuade them from offering electricity to the RTO/ISO in periods when it is most needed.[423] For example, CEA states that in light of the Commission's price formation proceeding, there is no compelling reason to adopt an asymmetrical offer cap for internal resources and imports and questions the wisdom of excluding external transactions when price signals indicate scarcity and extreme conditions.[424] Powerex states that the Western Interconnection has a robust market for energy and ancillary services outside of CAISO and that non-CAISO resources may make the economically rational choice to sell power to a non-CAISO customer if CAISO has a lower offer cap compared to the non-CAISO WECC bilateral market.[425]

189. NYISO and Competitive Power Providers state that all market transactions, including imports and virtual transactions, should be capped at the level of the hard cap, which will allow for a greater degree of competition.[426]

190. Some commenters discussed emergency imports. For example, PJM Power Providers agrees with PJM that the Commission should not apply the proposed offer requirements to emergency imports because an offer cap on emergency energy or emergency load reductions would limit PJM's ability to procure sufficient resources and could threaten reliability.[427]

191. However, the PJM Market Monitor argues that emergency imports above $1,000/MWh should be subject to cost verification before they are eligible to set LMP in PJM and asserts that such imports currently have an unmitigated opportunity to exercise market power in PJM markets.[428] The PJM Market Monitor states that the rules of competitive markets should apply, even during emergency conditions.[429] The PJM Market Monitor adds that verifying the costs of emergency imports is feasible because they occur infrequently.[430] PJM Market Monitor asserts that PJM/SPP offer no rationale for exempting emergency imports from the proposed offer cap requirements, which the PJM Market Monitor states are most critical during emergency situations.[431]

2. Determination

192. We find that it is just and reasonable to permit economic exchange transactions (*i.e.,* imports and exports) to offer up to the level of the $2,000/MWh hard cap. We do not require that import or export transactions above $1,000/MWh be subject to the verification requirement prior to the market clearing process.

193. While in the NOPR the Commission proposed to make imports ineligible to offer above $1,000/MWh, *i.e.,* to prohibit imports from making such offers, we now are persuaded that such a prohibition could discourage imports at times when they are most needed. Imports benefit the market because they offer additional supply and increase competition. A prohibition on imports above $1,000/MWh would discourage external resources with short-run marginal costs above $1,000/MWh from supplying energy to the RTO/ISO market, even though the market is willing to purchase that supply, and such a prohibition would thus put upward pressure on energy prices. We applied this rationale above in adopting the offer structure requirement and find that it applies equally to imports. Additionally, similar to the rationale outlined above for virtual transactions, allowing imports to offer up to $2,000/MWh without cost verification is generally consistent with the current market structures in RTOs/ISOs, which typically allow imports to offer up to the same offer cap that internal RTO/ISO resources are subject to. A similar logic applies to export transactions.

194. Further, prohibiting imports from offering above $1,000/MWh could result in uneconomic flows between RTOs/ISOs. For example, if the LMP in one

[412] SPP Market Monitor Comments at 11.

[413] Delaware Commission Comments at 13; Midcontinent Joint Consumer Advocates Comments at 8; Ohio Commission Comments at 13; Six Cities Comments at 3.

[414] Midcontinent Joint Consumer Advocates Comments at 8; Six Cities Comments at 3; CEA Comments at 7–8.

[415] New Jersey Commission Comments at 18.

[416] Midcontinent Joint Consumer Advocates Comments at 8.

[417] *Id.*

[418] Delaware Commission Comments at 13.

[419] Powerex Comments at 7–8.

[420] *Id.* at 8–9.

[421] *Id.* at 9.

[422] TAPS Comments at 19–20; APPA, NRECA, and AMP Comments at 18–19.

[423] NY Transmission Owners Comments at 5–6; CEA Comments at 7–8; NY Department of State Comments at 5; Powerex Comments at 7–8.

[424] CEA Comments at 7–8.

[425] Powerex Comments at 7–8.

[426] Competitive Suppliers Comments at 23–24; NYISO Comments at 7.

[427] PJM Power Providers Answer at 6–7.

[428] PJM Market Monitor Comments at 11; PJM Market Monitor Answer at 2–3.

[429] PJM Market Monitor Answer at 2.

[430] PJM Market Monitor Comments at 11; PJM Market Monitor Answer at 3.

[431] PJM Market Monitor Answer at 3.

RTO/ISO is $1,500/MWh and an external resource would like to offer an import at a price of $1,400/MWh, a prohibition on import offers above $1,000/MWh would restrict that transaction and result in inefficient flows across RTO/ISO boundaries.

195. Additionally, we will not require import offers above $1,000/MWh be cost-verified and find that imports are not similarly situated to internal generation resources. Unlike incremental energy offers from internal resources, import offers are often not resource-specific and, thus, it is difficult—some commenters say impossible—to ascertain the underlying costs of most import offers. This approach is consistent with current market power mitigation measures in RTOs/ISOs that apply to internal resources but do not typically apply to imports.

196. Additionally, RTO/ISO market participants can import energy from adjacent markets and sell that energy in the RTO/ISO energy market. Therefore, it is difficult for external resources in an adjacent market to withhold because internal RTO/ISO resources can import energy from that adjacent market. Additionally, provided the adjacent market is competitive, which is expected if the adjacent market is an RTO/ISO with market power mitigation, it would be difficult for an external resource to exercise market power in the importing RTO/ISO.

197. Though it is not required, the Commission would consider proposals by RTOs/ISOs to verify or otherwise review the costs of imports or exports and/or develop additional mitigation provisions for import and export transactions above $1,000/MWh. Such proposals should be submitted in a separate filing under section 205 of the Federal Power Act.

198. We clarify that this Final Rule will not apply to Coordinated Transactions Schedules, which are spread bids as opposed to energy offers. Additionally, the Final Rule will not apply to emergency purchases, which would go beyond the scope of this Final Rule because such transactions are administratively priced rather than based on short-run marginal cost.

VI. Other Comments

199. The Commission also sought comment on various aspects of the verification process and the types of costs that should be considered in the verification. Specifically, the Commission sought comment on (1) whether the Market Monitoring Unit or RTOs/ISOs may need additional information to ensure that all short-run marginal cost components that are difficult to quantify, such as certain opportunity costs, are accurately reflected in a resource's cost-based incremental energy offer, and (2) to the extent that RTOs/ISOs currently include an adder above cost in cost-based incremental energy offers, whether such an adder is appropriate for incremental energy offers above $1,000/MWh.[432] Commenters also discussed the impact that the proposed offer cap reforms could have on other market constructs, such as shortage pricing.

A. Verification Requirement Details

1. Comments

200. Commenters express differing views on whether opportunity costs are legitimate costs, and if so, whether it is appropriate to include them within cost-based incremental energy offers. The PJM Market Monitor states that it currently calculates opportunity costs at the request of PJM members and does not need additional information about the details of opportunity costs.[433] The SPP Market Monitor explains that SPP currently allows an opportunity cost adder above mitigated offers, which would still be appropriate to include if costs exceed $1,000/MWh.[434]

201. Midcontinent Joint Consumer Advocates and TAPS oppose opportunity cost adders in the verification methodology for cost-based incremental energy offers above $1,000/MWh.[435] Midcontinent Joint Consumer Advocates add that if the Commission finds that opportunity costs may be recoverable, then the Market Monitoring Unit should review such costs to ensure they are just and reasonable.[436]

202. Commenters expressed a range of opinions regarding whether it is appropriate to account for cost uncertainty or other risks through an adder in cost-based incremental energy offers above $1,000/MWh. SPP takes no position on the appropriateness of the adder but argues that the different RTOs/ISOs should be allowed to develop verification rules that are consistent with their existing rules, including adders.[437] PJM, MISO, the PJM Market Monitor, and Potomac Economics support an adder of up to ten percent to account for uncertainty and risk.[438] The ISO–NE Market Monitor states that the primary function of a ten percent adder is to provide for errors or under-estimation of a resource's marginal cost and contends that the Commission should not require such an adder unless it identifies specific and valid costs that are unique to days with abnormally high natural gas prices.[439]

203. Dominion, Exelon, ODEC, and PJM support the inclusion of a ten percent adder to cost-based incremental offers.[440] Dominion and Exelon contend that a ten percent adder to cost-based incremental offers is appropriate because the adder accounts for some of the uncertainty that accompanies fuel cost estimation as well as dispatch instructions.[441] ODEC maintains that the ten percent adder in cost-based incremental energy offers is both justified and necessary in PJM and should not be removed because it accounts for the fact that some costs are unknown when PJM resources compute their cost-based incremental energy offers.[442] APPA, NRECA, and AMP state that adders above cost are not necessary when a resource's costs can be accurately verified prior to the market clearing process.[443]

204. However, the New Jersey Commission, Direct Energy, PG&E, TAPS, and Industrial Customers oppose including a ten percent adder in cost-based incremental energy offers above $1,000/MWh.[444] The New Jersey Commission argues that such an adder would simply afford the generators an additional ten percent margin of profit above their costs that consumers would fund.[445] TAPS and Industrial Customers state that the ten percent adder should not be included in incremental energy offers above $1,000/MWh because the

[432] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 73.

[433] PJM Market Monitor Comments at 8.

[434] SPP Market Monitor Comments at 10. The SPP Market Monitor notes that resources can use forecasted LMPs and production costs to estimate price-cost margins for each hour of the day to determine the opportunity cost component of the mitigated offer.

[435] Midcontinent Joint Consumer Advocates Comments at 6–7; TAPS Comments at 16.

[436] Midcontinent Joint Consumer Advocates Comments at 6–7.

[437] PJM/SPP Comments at 24.

[438] *Id.* at 22–23; MISO Comments at 15; PJM Market Monitor Comments at 9; Potomac Economics Comments at 7.

[439] ISO–NE Market Monitor Comments at 12

[440] Dominion Comments at 6; Exelon Comments at 20 (citing Testimony of Kevin A. Libby at 8–9 (Libby Test.)); ODEC Comments at 5–6; PJM/SPP Comments at 22.

[441] Dominion Comments at 6; Exelon Comments at 20 (citing Libby Test. at 8–9).

[442] ODEC Comments at 6 (citing PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 30).

[443] APPA, NRECA, and AMP Comments at 17.

[444] Direct Energy Comments at 5; PG&E Comments at 3; New Jersey Commission Comments at 17; TAPS Comments at 16; Industrial Customers Comments at 25–26 (citing PJM Market Monitor Comments, Docket No. ER14–1144, at 2, n. 5 (filed Mar. 26, 2015)).

[445] New Jersey Commission Comments at 17.

adder does not constitute an actual cost.[446]

205. With respect to other short-run marginal cost components, the Pennsylvania Commission, CAISO, and Industrial Customers argue that a resource's permissible short-run marginal costs should not include unauthorized natural gas costs and natural gas pipeline penalties.[447] CAISO requests that the Commission convene a technical conference to discuss limitations in fuel markets and the appropriate parameters for determining prudently incurred costs.[448] Industrial Customers recount the Commission's reasoning that allowing recovery for costs and penalties of unauthorized gas consumption could jeopardize gas pipeline and transmission system reliability, and that generators would still have sufficient flexibility.[449]

206. The Commission also sought comment on whether the verification of physical offer components is necessary.[450] The ISO–NE Market Monitor states that ISO–NE's existing process to verify physical offer components takes significant time because such changes to physical offer parameters cannot be completed on the day that offers are due.[451] The ISO–NE Market Monitor advises the Commission to avoid imposing time limitations that interfere with the ISO–NE Market Monitor's ability to review and verify physical parameters before-the-fact.[452] The PJM Market Monitor requests that the Commission clarify that the cost-based offers contemplated in the NOPR include the same limits on offer parameters as all other cost-based offers.[453] Potomac Economics advises that any Final Rule not address physical parameters because additional verification of physical parameters is not needed, and the proposal only addressed incremental energy offers.[454] Midcontinent Joint Consumer Advocates note that physical offer components such as generation minimum and maximum levels are already known and reviewed by the Market Monitoring Unit, and therefore, there is no need for additional verification of physical offer components.[455]

2. Determination

207. Several commenters state that adders above costs should be included in cost-based offers to account for cost uncertainty or risk.[456] While we will not require RTOs/ISOs to include such an adder, if an RTO/ISO chooses to retain an adder above cost or proposes to include a new adder above cost in cost-based incremental energy offers above $1,000/MWh, such adders may not exceed $100/MWh. On balance, we find that limiting adders above cost to $100/MWh is just and reasonable because as clarified above, the verification process may involve reviewing a resource's expected, rather than actual, costs, which could involve the use of imperfect information. Given that practical reality, we find that it is necessary to place an upper bound on the level of adders above cost when incremental energy offers exceed $1,000/MWh in order to ensure that cost-based incremental energy offers above $1,000/MWh reasonably and accurately reflect actual or expected short-run marginal cost.[457] The Commission has previously found in PJM that adders above cost are unjust and unreasonable as applied to an after-the-fact review of documented costs because the costs are no longer uncertain.[458] Applying that same reasoning here, if a resource receives uplift after-the-fact because that resource's cost-based incremental energy offer above $1,000/MWh could not be verified prior to the market clearing process or because its cost-based incremental energy offer exceeded $2,000/MWh, the uplift payments that the resource receives should not include any adders above costs. As noted above, after-the-fact uplift would be based on a resource's actual costs.[459]

208. Based on the record before us, we will not require that additional information on short-run marginal cost components be provided to the RTO/ISO or Market Monitoring Unit. Furthermore, we will not prescribe the manner in which RTOs/ISOs or Market Monitoring Units verify cost-based incremental energy offers above $1,000/MWh. As indicated in the NOPR, RTOs/ISOs use different processes to develop and update the incremental energy offers used for mitigation and differ in how they define the components of cost-based incremental energy offers.[460] While we are taking no action at this time on these issues and comments, we do not prejudge what RTOs/ISOs may file with the Commission in the future. Accordingly, the Final Rule will not require verification of physical offer parameters or financial offer components other than the incremental energy offer.

B. Impact of Offer Cap Reforms on Other Market Elements

209. The Commission recognized in the NOPR that revising the offer cap may impact other RTO/ISO market elements that depend on the offer cap, such as shortage pricing levels or various penalty factors.[461]

1. Comments

210. Four RTOs/ISOs commented that RTO/ISO market elements other than the offer cap may need to be revised if the offer cap is revised. CAISO states that it will face significant implementation challenges if it changes its current $1,000/MWh offer cap because the administrative penalty prices CAISO uses in its market model to indicate that constraints have been relaxed, such as the power balance constraint, are based on the offer cap.[462]

211. PJM states that it would likely need to adjust shortage pricing rules in PJM in light of any Final Rule on offer caps.[463] SPP states that it would likely need to revise its scarcity prices and violation relaxation limits to prevent instances in which LMPs exceed scarcity values.[464] MISO states that it may need to revise its Operating Reserve Demand Curve, $3,500/MWh LMP cap, and Transmission Constraint Demand Curves if MISO's $1,000/MWh offer cap is revised.[465]

212. APPA, NRECA, and AMP and ODEC state that any Final Rule

[446] TAPS Comments at 16; Industrial Customers Comments at 25–26 (citing PJM Market Monitor Comments, Docket No. ER14–1144, at p. 2, n. 5 (filed Mar. 26, 2015)).

[447] Pennsylvania Commission Comments at 5, 10; CAISO Comments at 11–12; Industrial Customers Comments at 26.

[448] CAISO Comments at 12.

[449] Industrial Customers Comments at 26–27 (citing *N.Y. Indep. Sys. Operator, Inc.,* 154 FERC ¶ 61,111, at P 1 (2016)).

[450] NOPR, FERC Stats. & Regs. ¶ 32,714 at P 73.

[451] ISO–NE Market Monitor Comments at 10.

[452] *Id.* at 11.

[453] PJM Market Monitor Comments at 2–3.

[454] Potomac Economics Comments at 11 (citing Potomac Economics Post-Technical Workshop Comments. Docket No. AD14–14–000, at 5 (filed Feb. 24, 2015)).

[455] Midcontinent Joint Consumer Advocates Comments at 6.

[456] *See supra* P 203.

[457] The Commission notes that it previously accepted adders above costs in PJM that exceed $100/MWh. However, after reviewing the record before us in this proceeding, we find that it is just and reasonable to limit the adder to $100/MWh. *See* PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 31.

[458] PJM 2015 Offer Cap Order, 153 FERC ¶ 61,289 at P 31 (citing *PJM Interconnection, L.L.C.,* 149 FERC ¶ 61,059 at P 13).

[459] *See supra* P 146.

[460] NOPR, FERC Stats. & Regs. ¶ 32,714 at PP 61–62.

[461] *Id.* P 72.

[462] CAISO Comments at 14–17. CAISO requests that, prior to issuing the Final Rule, the Commission conduct a technical conference to better understand the challenges of implementation. CAISO Comments at 3, 17.

[463] PJM/SPP Comments at 28.

[464] *Id.* at 29.

[465] MISO Comments at 3–5.

regarding offer caps should be restricted to changing the offer cap and not address potentially associated issues such as scarcity pricing.[466] In contrast, PG&E recommends that before allowing the offer cap to rise above $1,000/MWh, the Commission and the individual RTOs/ISOs should determine all related changes to the markets that would be needed to ensure that the markets would function properly.[467]

2. Determination

213. An RTO/ISO may file, pursuant to section 205 of the Federal Power Act, to propose modifications to shortage prices or other market elements that require revision in light of the offer cap reforms adopted in this Final Rule. However, we do not require such modifications to comply with this Final Rule. We find that it is not appropriate to determine in this Final Rule the changes that individual RTOs/ISOs should make to market elements that are not the subject of these reforms.

VII. Requests Beyond the Scope of This Proceeding

A. Comments

214. Commenters raised issues that are not discussed above and that are outside the scope of this rulemaking. Several commenters argue that the focus of the recommendations in the NOPR is too narrow. API recommends that the Commission look for ways to encourage the appropriate integration of new technologies, including quickly ramping gas-fired generation technology, to meet rapidly changing grid-conditions and allow prices in real-time markets to better reflect the true state of grid reliability at a given moment while addressing any remaining concerns of market power abuse.[468] API further recommends that the Commission initiate an examination of opportunity costs and risk premiums, inclusive of a wider range of resources, in wholesale energy market offer pricing and how they may or may not be considered by various RTO/ISO market rules.[469]

215. The PJM Market Monitor argues that because gas is the only fuel likely to result in offers greater than $1,000/MWh, the removal of any cap on short run marginal cost therefore relies on the competitiveness of the gas markets.[470] The PJM Market Monitor suggests that a reconsideration of the structure and design of the gas market and the potential for a gas market RTO/ISO is a longer term solution to address issues of transparency and market power in the gas market.[471]

216. The Pennsylvania Commission states that the Commission should direct PJM and other RTO/ISO stakeholders to develop a ''circuit breaker'' provision to cap energy market revenue during uncontrollable and sustained outage events.[472] The Pennsylvania Commission states that during sustained outages, price signals in energy markets become irrelevant, and the main consideration is the time required to repair infrastructure as opposed to the economic theory behind energy markets.[473] The Pennsylvania Commission also recommends that the Commission direct PJM to introduce some level of aggregate market power mitigation or impose a screen for aggregate market power in the PJM day-ahead and real-time markets.[474] PJM Joint Consumer Advocates argue that shortage prices in PJM should be revised to represent customers' willingness to pay,[475] and the Ohio Commission states that scarcity pricing may no longer be necessary in light of this Final Rule.[476]

217. Industrial Customers argue that increases to the current $1,000/MWh offer cap should be explored simultaneously with the elimination of capacity markets, and that the Commission could act more methodically to explore ways to improve capacity market competitiveness and transparency.[477]

B. Determination

218. We appreciate the concerns raised by numerous commenters requesting that the Commission undertake various initiatives, as set forth above. However, we find that the requested initiatives go beyond the scope of this rulemaking, which only addresses incremental energy offers above $1,000/MWh. Accordingly, we will not address those concerns here.

VIII. Information Collection Statement

219. The Paperwork Reduction Act (PRA)[478] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB's regulations,[479] in turn, require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collection(s) of information unless the collection(s) of information display a valid OMB control number.

220. In this Final Rule, we are amending the Commission's regulations to improve the operation of organized wholesale electric power markets operated by RTOs/ISOs. We require that each RTO/ISO (1) cap each resource's incremental energy offer at the higher of $1,000/MWh or that resource's verified cost-based incremental energy offer; and (2) when calculating LMPs, RTOs/ISOs shall cap verified cost-based incremental energy offers at $2,000/MWh. The reforms required in this Final Rule would require a one-time tariff filing with the Commission due 75 days after the effective date of this Final Rule to implement these reforms. We anticipate the reforms required in this Final Rule, once implemented, would not significantly change currently existing burdens on an ongoing basis. With regard to those RTOs/ISOs that believe that they already comply with the reforms required in this Final Rule, they could demonstrate their compliance in the compliance filing required 75 days after the effective date of this Final Rule in this proceeding. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[480]

221. In the NOPR, the Commission sought comments on the accuracy of provided burden and cost estimates and any suggested methods for minimizing the respondents' burdens, including the use of automated information techniques. Specifically, the Commission sought detailed comments on the potential cost and time necessary to implement aspects of the reforms proposed in the NOPR, including (1) software and business processes changes, including market power mitigation; (2) increased time spent validating cost-based incremental energy offers; and (3) processes for RTOs/ISOs to vet proposed changes amongst their stakeholders. The Commission also stated that although it did not expect other entities to incur

[466] ODEC Comments at 1; APPA, NRECA, and AMP Comments at 20–21.

[467] PG&E Comments at 2.

[468] API Comments at 2–3.

[469] *Id.* at 8.

[470] PJM Market Monitor Comments at 4.

[471] *Id.* at 6.

[472] Pennsylvania Commission Comments at 5–7.

[473] *Id.* at 8.

[474] *Id.* at 13–14.

[475] PJM Joint Consumer Advocates Comments at 5–6.

[476] Ohio Commission Comments at 14–15.

[477] Industrial Customers Comments at 29–30.

[478] 44 U.S.C. 3501–3520.

[479] 5 CFR 1320 (2016).

[480] 44 U.S.C. 3507(d).

compliance costs as a result of the reforms proposed in the NOPR, it sought detailed comments on whether other entities, such as load-serving entities, would incur costs as a result of the reforms proposed in the NOPR. The Commission received no comments in response to these questions.

Burden Estimate and Information Collection Costs: The Commission believes that the burden estimates below are representative of the average burden on respondents, including necessary communications with stakeholders. The estimated burden and cost for the requirements contained in this rule follow.[481] The Commission notes that these cost estimates below do not include costs for software or hardware or for increased time spent validating cost-based incremental energy offers above $1,000/MWh.[482] Software or hardware upgrades may not be required.

FERC–516, AS MODIFIED BY FINAL RULE IN DOCKET RM16–5–000

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden (hours) & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)×(2)=(3)	(4)	(3)×(4)=(5)	(5)÷(1)
One-Time Tariff Filings (Year 1).	6	1	6	500 hrs.; $37,000[483]	3,000 hrs.; $222,000	$37,000

Cost to Comply: The Commission has projected the total cost of compliance, all within four months of a Final Rule plus initial implementation, to be $222,000. After Year 1, the reforms in this Final Rule, once implemented, would not significantly change existing burdens on an ongoing basis.

The Commission notes that these estimates do not include costs for software or hardware. Software or hardware upgrades may not be required.

Title: FERC–516C,[484] Electric Rate Schedules and Tariff Filings.

Action: Proposed revisions to an information collection.

OMB Control No. 1902–0287.

Respondents for this Rulemaking: RTOs/ISOs.

Frequency of Information: One-time.

Necessity of Information: The Federal Energy Regulatory Commission approves this rule to improve competitive wholesale electric markets in the RTO/ISO regions.

Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

222. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873. Comments concerning the collection of information and the associated burden estimate(s), may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–0710, fax (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include FERC–516C and OMB Control No. 1902–0287.

IX. Regulatory Flexibility Act Certification

223. The Regulatory Flexibility Act of 1980 (RFA)[485] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

224. This rule would apply to six RTOs/ISOs (all of which are transmission organizations). The average estimated annual cost to each of the RTOs/ISOs is $37,000, all in Year 1. This one-time cost of filing and implementing these changes is not significant.[486] Additionally, the RTOs/ISOs are not small entities, as defined by the RFA.[487] This is because the

[481] The RTOs/ISOs (CAISO, ISO–NE., MISO, NYISO, PJM, and SPP) are required to comply with the reforms in this Final Rule.

[482] The Commission expects that the validation of cost-based incremental energy offers above $1,000/MWh would be an infrequent occurrence. To the extent that the Market Monitoring Unit or the RTO/ISO spends time validating these offers, the Commission estimates such time to be *de minimis.*

[483] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2015 posted by the Bureau of Labor Statistics for the Utilities sector (*available at http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from June 2016 (*available at http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

Legal (code 23–0000), $128.94

Computer and mathematical (code 15–0000), $60.54

Information systems manager (code 11–3021), $91.63

IT security analyst (code 15–1122), $63.55

Auditing and accounting (code 13–2011), $53.78

Information and record clerk (code 43–4199), $37.69

Electrical Engineer (code 17–2071), $64.20

Economist (code 19–3011), $74.43

Management (code 11–0000), $88.94

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is $73.74. The Commission rounds it to $74 per hour.

[484] The RM16–5–000 Final Rule reporting requirements should be submitted to FERC–516 (OMB Control No. 1902–0096). Currently, that information collection is under review for an unrelated activity. The FERC–516C is a temporary information collection. The reporting requirements of the RM16–5–000 Final Rule are being submitted to FERC–516C to ensure timely submission to OMB.

[485] 5 U.S.C. 601–12.

[486] This estimate does not include costs for software or increased time spent validating cost-based incremental energy offers. As stated above, the Commission expects that the validation of cost-based incremental energy offers above $1,000/MWh would be an infrequent occurrence. To the extent that the Market Monitoring Unit or the RTO/ISO spends time validating these offers, the Commission expects such time to be *de minimis.*

[487] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Administrations' regulations at 13 CFR 121.201 define the threshold for a small Electric Bulk Power Transmission and Control

relevant threshold between small and large entities is 500 employees and the Commission understands that each RTO/ISO has more than 500 employees. Furthermore, because of their pivotal roles in wholesale electric power markets in their regions, none of the RTOs/ISOs meet the last criterion of the two-part RFA definition a small entity: ''not dominant in its field of operation.'' As a result, we certify that the reforms in this Final Rule would not have a significant economic impact on a substantial number of small entities.

X. Environmental Analysis

225. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[488] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the Federal Power Act relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[489]

XI. Document Availability

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

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

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

XII. Effective Date and Congressional Notification

229. These regulations are effective February 21, 2017. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Non-discriminatory open access transmission tariffs.

By the Commission.

Issued: November 17, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding paragraph (g)(9) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(9) A resource's incremental energy offer must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at $2,000/MWh. The costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds $2,000/MWh. All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh.

The following appendix will not appear in the *Code of Federal Regulations.*

APPENDIX—LIST OF SHORT NAMES/ACRONYMS OF COMMENTERS

Short name/acronym	Commenter
AEMA	Advanced Energy Management Alliance.
AF&PA	American Forest & Paper Association.
APPA, NRECA, and AMP	American Public Power Association, National Rural Electric Cooperative Association and American Municipal Power, Inc.
API	American Petroleum Institute.
CAISO	California Independent System Operator Corporation.
CEA	Canadian Electricity Association.
Competitive Suppliers	Electric Power Supply Association, Independent Energy Producers Association, Independent Power Producers of New York Inc., New England Power Generators Association Inc., Western Power Trading Forum.
Delaware Commission	Delaware Public Service Commission.

entity (NAICS code 221121) to be 500 employees. *See* 5 U.S.C. 601(3), citing to Section 3 of the Small Business Act, 15 U.S.C. 632.

[488] *Regulations Implementing the National Environmental Policy Act of 1989,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[489] 18 CFR 380.4(a)(15) (2016).

APPENDIX—LIST OF SHORT NAMES/ACRONYMS OF COMMENTERS—Continued

Short name/acronym	Commenter
Direct Energy	Direct Energy Business, LLC, on behalf of itself and its affiliate, Direct Energy Business Marketing, LLC.
Dominion	Dominion Resources Services, Inc.
EEI	Edison Electric Institute.
Exelon	Exelon Corporation.
Golden Spread	Golden Spread Electric Cooperative, Inc.
Industrial Customers	Electricity Consumers Resource Council, PJM Industrial Customer Coalition, Coalition of MISO Transmission Customers, American Chemistry Council, Association of Businesses Advocating Tariff Equity, Connecticut Industrial Energy Consumers, Illinois Industrial Energy Consumers, Indiana Industrial Energy Consumers, Inc., Louisiana Energy Users Group, Minnesota Large Industrial Group, Missouri Industrial Energy Consumers, Multiple Intervenors, New Jersey Large Energy Users Coalition, Wisconsin Industrial Energy Group, Inc.
Industrial Energy Consumers	Industrial Energy Consumers of America.
ISO–NE	ISO New England, Inc.
ISO–NE Market Monitor	ISO New England Inc. Internal Market Monitor.
IRC	ISO/RTO Council.
KEPCo/NCEMC	Kansas Electric Power Cooperative, Inc. and North Carolina Electric Membership Corporation.
Joseph Margolies	Joseph Margolies.
Midcontinent Joint Consumer Advocates.	Indiana Office of Utility Consumer Counselor, Iowa Office of Consumer Advocate, Michigan Citizens Against Rate Excess, Minnesota Department of Commerce, Minnesota Attorney General's Office.
MISO	Midcontinent Independent System Operator, Inc.
NEI	Nuclear Energy Institute.
NESCOE	New England States Committee on Electricity.
New Jersey Commission	New Jersey Board of Public Utilities.
NY Department of State	New York State Department of State Utility Intervention Unit.
NYISO	New York Independent System Operator, Inc.
New York Commission	New York State Public Service Commission.
NY Transmission Owners	New York Transmission Owners (Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Power Supply Long Island, Rochester Gas and Electric Corporation).
ODEC	Old Dominion Electric Cooperative.
OMS	Organization of MISO States.
OPSI	Organization of PJM States, Inc.
Pennsylvania Commission	Pennsylvania Public Utility Commission.
PG&E	Pacific Gas and Electric Company.
PJM/SPP	PJM Interconnection, L.L.C. and Southwest Power Pool, Inc. (Joint Comments).
PJM Joint Consumer Advocates	Delaware Division of the Public Advocate, Office of People's Counsel for the District of Columbia, Illinois Citizens Utility Board, Indiana Office of Utility Consumer Counselor, Kentucky Office of Rate Intervention, Office of Attorney General, Maryland Office of Peoples' Counsel, New Jersey Division of Rate Counsel, Pennsylvania Office of Consumer Advocate, Consumer Advocate Division of the Public Service Commission of West Virginia.
PJM Market Monitor	Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM.
PJM Power Providers	PJM Power Providers Group.
Potomac Economics	Potomac Economics, Ltd.
Powerex	Powerex Corp.
Ohio Commission	Public Utilities Commission of Ohio.
SCE	Southern California Edison Company.
Six Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.
SPP	Southwest Power Pool, Inc.
SPP Market Monitor	Southwest Power Pool, Inc. Market Monitoring Unit.
Steel Producers' Alliance	Steel Producers' Alliance.
TAPS	Transmission Access Policy Study Group.

[FR Doc. 2016–28320 Filed 12–2–16; 8:45 am]

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