AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 41 March 2, 2016

Pages 10755–11090

OFFICE OF THE FEDERAL REGISTER

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 65

[Document No. AMS–LPS–16–0002]

RIN 0581–AD29

Removal of Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground Beef, and Ground Pork

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Country of Origin Labeling (COOL) regulations to remove muscle cut beef and pork, and ground beef and pork from mandatory COOL requirements. The COOL regulations are issued pursuant to the Agricultural Marketing Act of 1946 (Act). The Agency is issuing this rule to conform with amendments to the Act contained in the Consolidated Appropriations Act, 2016.

DATES: This final rule is effective on March 2, 2016.

FOR FURTHER INFORMATION CONTACT: Julie Henderson, Director, COOL Division, AMS, USDA by telephone on 202/720–4486 or via email at *COOL@ams.usda.gov;* or Erin Morris, Associate Administrator, AMS, USDA, by telephone on 202/690–4024, or via email at: *erin.morris@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The Consolidated Appropriations Act, 2016 amended the Act to remove muscle cut beef and pork, and ground beef and pork from COOL requirements in order to bring the United States into compliance with its international trade obligations. The Agency is issuing this rule to conform to these amendments.

Background

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (Pub. L. 107–171), the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107–206), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities included muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published a final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009. On May 23, 2013, AMS issued a final rule to amend the country of origin labeling provisions for muscle cut covered commodities (78 FR 31367). The Consolidated Appropriations Act, 2016 (Pub. L. 114–113) amended the Act to remove mandatory COOL requirements for muscle cut beef and pork, and ground beef and pork. The Agency is issuing this rule to conform to these statutory amendments.

Summary of the Major Provisions of the Regulatory Action in Question

Under this final rule, beef and pork muscle cuts and ground beef and pork are removed from the list of covered commodities subject to the COOL regulation. Accordingly, changes have been made to the relevant Code of Federal Regulations (CFR) sections, including definitions, country of origin notification, and recordkeeping.

Costs and Benefits

The estimated economic benefits associated with this final rule, previously assessed as costs, are likely to be significant. The estimated benefits for producers, processors, wholesalers, and retailers of previously covered beef and pork products are difficult to assess, as they are essentially the converse of the costs attributed to the 2009/2013 rules.. However, the benefits from incremental cost savings are likely to be less than the cumulative impact of these rules, $1.8 billion, as affected firms have adjusted their operations to accommodate COOL requirements more efficiently since implementation of the initial COOL measure in 2009, and the amended measure in 2013. A complete discussion of the cost and benefits can be found under the Executive Order 12866 section.

Summary of Changes to the COOL Regulations

This rule removes certain mandatory COOL requirements from retailers (as defined by the law and regulations) and their suppliers. Retailers are no longer required by the rule to provide country of origin information for the beef and pork that they sell, and firms that supply beef and pork to these retailers no longer must provide them with this information. In addition, firms in the supply chain for beef and pork are also relieved from the requirements associated with mandatory COOL, from cattle and hogs downstream to muscle cut and ground beef and pork sold at covered retail establishments.

Definitions

The definitions of beef (§ 65.110), ground beef (§ 65.155), ground pork (§ 65.175), and pork (§ 65.215) are removed from the regulation. The definition of the term covered commodity (§ 65.135(a)(1) and (2)) is amended to remove references to beef, pork, ground beef, and ground pork. The definitions of production step (§ 65.230), raised (§ 65.235) and United States country of origin (§ 65.260(a)) are amended to remove references to beef and pork. In addition, the definition of a processed food item (§ 65.220) is amended to remove the example of teriyaki flavored pork loin.

Country of Origin Notification

Country of origin notification (§ 65.300(h)) is amended to remove references to ground beef and ground pork.

Recordkeeping

Responsibilities of suppliers (§ 65.500(b)(1)) is amended to remove references to beef, pork, and cattle.

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. The purpose of this rule is to amend the COOL regulation to remove beef and pork products from the list of covered commodities as required by the Consolidated Appropriations Act, 2016. As a result, the rulemaking represents a deregulatory action, and the logical approach for the economic analysis is to reverse the previous assessment for those portions of the analysis relating to beef and pork.

The estimated economic benefits associated with this final rule, previously assessed as costs, are likely to be significant. The estimated benefits for producers, processors, wholesalers, and retailers of previously covered beef and pork products are as much as $1.8 billion in cost avoidance. However, the benefits from incremental cost savings are likely to be less than this upper bound, as affected firms have adjusted their operations to accommodate COOL requirements more efficiently since implementation of the initial COOL measure in 2009, and the amended measure in 2013.

The costs of this rule are the loss in benefits to consumers who desired such country of origin information for muscle cut beef and pork, and ground beef and pork products sold at retail. As discussed in previous rulemakings, these costs are difficult to determine quantitatively. The original rulemaking did not estimate a quantitative value of these preferences but noted their existence. USDA found that the lack of voluntary country of origin labeling programs, including labeling for beef and pork products, was evidence that consumers did not have strong enough preferences to support price premiums sufficient for firms in the supply chain to recoup the costs of labeling.

Statement of Need

Justification for this final rule is to conform to changes made to COOL provisions by the Consolidated Appropriations Act, 2016. There are no alternatives to federal regulatory intervention for implementing this statutory directive.

The COOL provisions of the Act changed federal labeling requirements to remove muscle cuts of beef and pork and ground beef and ground pork from the list of covered commodities for the COOL regulation.

Analysis of Benefits and Costs

The baseline for this analysis is the present state of the affected industries with mandatory COOL.

Benefits: The benefits of the rule removing beef and pork products from mandatory COOL are the reduction in costs to those affected parties associated with meeting the rule requirements. This includes implementation costs related to capital, labor, and other inputs. Following the economic analysis from previous rulemaking (74 FR 2658; 78 FR 31367), the overall impact of the cost savings to directly affected firms will be an increase in economic activity resulting in an overall net benefit (benefits minus costs) from this rulemaking.

Number of firms and number of establishments affected: This rule is estimated to directly or indirectly affect approximately 1,027,204 establishments owned by approximately 992,781 firms. Table 1 provides estimates of the affected firms and establishments.

TABLE 1—NUMBER OF AFFECTED ENTITIES

Type	Firms	Operations
Beef and Pork		
Cattle and Calves [1]	913,246	913,246
Hogs and Pigs [2]	63,246	63,246
Stockyards, Dealers & Market Agencies [3]	4,723	4,723
Livestock Processing & Slaughtering [4]	2,629	2,862
Meat & Meat Product Wholesale [5]	2,162	2,405
General Line Grocery Wholesalers [6]	2,271	2,832
Retailers [7]	4,504	37,890
Totals		
Producers	976,492	976,492
Handlers, Processors, & Wholesalers	11,785	12,822
Retailers	4,504	37,890
Grand Total	992,781	1,027,204

It is assumed that all firms and establishments identified in Table 1 will be affected by the rule, although some may not produce or sell products within the scope of this rule. While this assumption likely overstates the number of affected firms and establishments, it is consistent with previous regulatory assessments of COOL. With the exception of retailers, the number of firms and operations has declined as compared to the 2009 final rule. Detailed data are not available on the number of entities categorized by the marketing channels in which they operate and the specific products that they sell. Such data would be needed to

[1] NASS, USDA. 2012 Census of Agriculture.

[2] Ibid.

[3] Grain Inspection, Packers and Stockyards Program, USDA. Market Agencies Buying on Commission and Dealers. December 2015. *http://gipsa.usda.gov/psp/regulated/dealersBOC_list.pdf.*: Grain Inspection, Packers and Stockyards Program, USDA. Registered and Bonded Market Agencies Selling Livestock on Commission. December 2015. *http://gipsa.usda.gov/psp/regulated/SOC_list.pdf.*

[4] NASS, USDA. Livestock Slaughter Annual Summary, April 2015.

[5] U.S. Census Bureau. 2012 Economic Census. Business and Industry Subject Series. Sales/Receipt Size of Establishment/Firm. EC1251SSSZ1. Issued October 2015.

[6] Ibid.

[7] AMS, USDA. Perishable Agricultural Commodities Act database.

refine the estimates of the entities directly affected by COOL.

Estimation of benefits: The process of determining estimates of what were previously costs, but are now considered to be benefits (costs avoided) of this rule have been detailed in both the economic analyses for the 2009 and 2013 final rules, as well as proposed and interim rulemaking actions associated with those rules. Details of the data, sources, and methods underlying the economic analyses are provided in the previous Final Regulatory Impact Analyses (FRIA), the Intermediate Regulatory Impact Analysis (IRIA), and the previous Preliminary Regulatory Impact Analysis (PRIA) under the sections relating to costs for the beef and pork industries. This section presents the revised benefits estimates and describes changes made for this final analysis.

In the 2009 final rule (74 FR 2658), the economic analysis provided estimates of first-year incremental outlays for directly affected firms. In addition, the results of a computable general equilibrium model were included to show the economic impact of the rule 10 years after the initial implementation. The longer term assessment was conducted to show that over time the impact of the rule will likely change as economic agents adapt to the rule. The longer term assessment also allowed for estimation of impacts of COOL across the U.S. economy.

Table 2 below presents results of the 2009 rule economic analysis for beef and pork, adjusted for inflation (2015 dollars).[8] All impacted entities in the supply chain are included in these values, from the producer to the processor, wholesaler and retailer. The second, third and fourth columns show the adjusted estimates of increased costs for the first year of the rule's implementation.

TABLE 2—ESTIMATED IMPLEMENTATION COSTS FOR THE 2009 COOL REGULATION, IN 2015 DOLLARS

	(Million $)		
	Beef	Pork	Total
Producers	$335.5	$115.5	$451.0
Intermediaries	410.3	111.1	521.4
Retailers	631.4	102.3	733.7
Total	1,377.2	328.9	1,706.1

The 2009 rule is now at the start of its seventh year of implementation. The economic analysis for the 2009 rule did not examine the costs of implementing COOL to affected entities beyond the initial year. However, it was acknowledged that the first year costs were likely to be higher than subsequent year costs due to changes in technology, development of more efficient practices, and greater familiarity with its implementation. While such cost reductions are likely, in the absence of detail on subsequent years of implementation we to assume that removal of beef and pork from COOL regulations results in a cost savings to affected entities of at most $1.377 billion for the beef sector, $328 million for the pork sector, and a total of $1.706 billion for both industries combined.

In 2013, an additional rule was promulgated that amended the requirements regarding labeling of muscle cuts of covered commodities to provide consumers with more specific information. The economic assessment for this rule determined the costs of implementation to be the figures reported in Table 3, adjusted to 2015 dollars. As Table 3 shows, the economic assessment presented low, high, and mid-point values for estimated outlays.

TABLE 3—ESTIMATED IMPLEMENTATION COSTS FOR THE 2013 COOL REGULATION, IN 2015 DOLLARS

	Low estimate	Mid-point estimate	High estimate
Labeling—Retail (million $)	17.3	33.5	48.2
Commingling—Beef (million $)	21.5	53.9	86.2
Commingling—Pork (million $)	15.3	38.4	61.5
Total (million $)	54.1	125.8	195.9

Again, these costs were estimated for the initial year of implementation, with the recognition that over time increased efficiencies would lead to reduced annual costs. However, as with the 2009 rule, the 2013 regulation did not provide cost estimates beyond the first year. For consistency, we again assume the cost savings for this third year of the 2013 rule's implementation is equivalent to the first year, recognizing that it is likely to be an upper limit value. Assuming the mid-point of the range, removing beef and pork products from the 2013 COOL regulation would save these industries a total of roughly $126 million per year in costs.

Withdrawing beef and pork products completely from both the 2009 and the 2013 COOL regulations therefore is expected to save these industries a combined $1.832 billion. Specifically, this translates into total cost savings for the industry as $799.7 million saved by beef producers and intermediaries, $265.0 million saved by pork producers, and $767.2 million saved by retailers for both beef and pork covered commodities.

The benefits per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments may see greater savings relative to small operations due to the volume of commodities that they handle

[8] Bureau of Labor Statistics. *http://www.bls.gov/data/inflation_calculator.htm.*

and the increased complexity of their operations. In addition, different types of businesses within each segment are likely to benefit differently. Thus, the range of benefits gained by individual businesses within each segment is expected to be large, with some firms seeing greater gains than others.[9]

Average benefits, in the form of cost savings per operation for each of the three types of operations is shown in Table 4. These values were calculated from Table 1, and total cost savings estimations of $451.0 million for producers, $613.7 million for intermediaries such as handlers, processors and wholesalers, and $767.2 million for retailers.

TABLE 4—NUMBER OF OPERATIONS AND AVERAGE COST SAVINGS PER AFFECTED ENTITY

Type	Operations	Average cost savings
Producers	976,492	$462
Intermediaries	12,822	47,863
Retailers	37,890	20,248

Net Effects on the Economy: As discussed in the 2009 final rule, the impacts described fall to those directly involved in the production, distribution, and marketing of covered commodities. However, they do not represent the net impacts to the United States economy.

In the 2009 rulemaking, the impact of the regulation on overall economy was examined using a Computable General Equilibrium (CGE) model developed by the USDA's Economic Research Service. Given that this is a deregulatory action that reduces costs and in the interest of expediency, the CGE model was not re-estimated with COOL compliance costs for beef and pork covered commodities removed as economic ''shocks'' to the model. However, reasonable assumptions can be applied to the earlier results to arrive at approximate estimates of the impact of this rulemaking action on the broader U.S. economy.

The 2009 economic impact analysis demonstrated that production and marketing cost increases associated with COOL regulations for covered commodities ultimately led to reduced output within the covered industries, in other industries, or both. As a result, the net impact on the general economy of regulations that increased supply-side costs for covered commodities was negative.

In the 2009 rule (74 FR 2658), it was determined that the overall impact on the U.S. economy from that rule (which also included lamb, chicken, fruits, vegetables, and other commodities) was $234.1 million in 2015 dollars. The assumptions used in developing this value were that consumers' preferences for the commodities would not change, and that the adjustments were made over a 10-year time period. This value represents the decline in consumer purchasing power as a result of the initial implementation costs filtering through the economy after 10 years of adjustment.

Because removal of beef and pork from COOL regulations should have the opposite effect, it is likely that the long-term impact on the overall economy from withdrawing beef and pork from COOL requirements would be a reduction in this loss of purchasing power. In the 2009 FRIA, 59 percent of the total initial implementation costs were attributable to beef and pork. If we assume the same proportion applies to the CGE model, the reduction in purchasing power to U.S. consumers attributable to cost increases for beef and pork would be approximately $138 million after 10 years of adjustment. Conversely, then, removal of COOL requirements for beef and pork through this rulemaking may result in an improvement of approximately $138 million in U.S. consumers' purchasing power after 10 years of adjustment.

Costs: As discussed in previous assessments of COOL regulation, the expected benefits from implementation of the rule (*i.e.,* the current regulations) were likely to be negligible and were difficult to quantify. With this rule removing beef and pork products from COOL, those consumers who had previously benefited from the information will now experience a reduction in economic welfare due to the loss of this information. This reduction in welfare is the cost of exempting beef and pork from COOL requirements.

COOL provides consumers with information about a credence attribute. Another credence attribute that consumers sometimes confuse with COOL is food safety. However, as noted in previous rulemaking actions, COOL is simply a labeling rule, not a food safety rule. As a result, there are no costs to consumers from removing COOL requirements for beef and pork products from a food safety perspective.

Alternatives considered: Section 759 of Division A of the Consolidated Appropriations Act, 2016 mandates the withdrawal of beef and pork muscle cuts, ground beef, and ground pork. This rule would implement the Act accordingly. The only effective means of achieving the results mandated by the Consolidated Appropriations Act, 2016, is through rule promulgation.

Regulatory Flexibility Analysis

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this rule will have a significant economic impact on a substantial number of small entities, but this impact will be in the form of removing regulatory burdens. The Agency has prepared the following final regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to section 604 of the Regulatory Flexibility Act.

The rule is the direct result of statutory obligations to implement Section 759 of Division A of the Consolidated Appropriations Act, 2016. The intent of this law is to remove muscle cut beef and pork, and ground beef and pork from a regulation that provides consumers with information on the country of origin of covered commodities at certain retail establishments. Specifically, the law withdraws these commodities from Federal country of origin labeling

[9] Some affected entities may not experience net savings. For example, although this rulemaking will reduce the cost of compliance activities conducted by firms in the beef and pork supply chain, the savings may, in some cases, be passed on to others in the supply chain or consumers.

requirements for products sold by retailers subject to COOL.

The objective of the current COOL regulation is to regulate the activities of covered retailers and their suppliers to enable retailers to fulfill their statutory and regulatory obligations. COOL requires retailers to provide country of origin information for all of the covered commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the rule because country of origin information needs to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered commodities consist of farms, processors, wholesalers, importers, and retailers. This rule withdraws muscle cut beef and pork, and ground beef and pork from the list of covered commodities, and subsequently withdraws all entities along the supply chain for these commodities from the requirements of COOL regulation.

Section 604 of the RFA requires the Agency to provide an estimate of the number of small entities to which the rule will apply. A listing of the number of entities in the supply chains for each of the covered commodities can be found in Table 1. However, in the case of this rule, these entities will benefit from reduced costs, rather than incur additional costs. Retailers covered by this rule must meet the definition of a retailer as defined by Perishable Agricultural Commodities Act of 1930 (PACA). In utilizing this definition, the number of retailers affected by this rule is considerably smaller than the total number of retailers nationwide.

Because of the removal from country of origin requirements, COOL information will no longer be required to be passed along the supply chain and made available to consumers at the retail level. As a result, each participant in the supply chain as identified in Table 1 will benefit from reductions in recordkeeping costs, as well as changes or modifications to their business practices. It is estimated that approximately 1,027,000 establishments owned by approximately 993,000 firms will be either directly or indirectly affected by this rule.

This rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain. On a total basis, the economic assessment estimated benefits in the form of cost savings of up to $451.0 million for producers, $613.7 million for intermediaries such as handlers, processors and wholesalers, and $767.2 million for retailers for a total of $1.832 billion.

On a per operation basis, the rule likely will have the largest benefit on intermediaries (handlers, processors, wholesalers, and importers) and retailers, while the impact on individual producers is likely to be relatively small. These impacts were shown in Table 6 of the economic impact analysis.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: Sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than $25 million in annual sales and specialty food stores with less than $6.5 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $25 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than $750,000 in annual sales. Of the other businesses potentially affected by the rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

Retailers: While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. The number of retailers subject to the COOL rule is considerably smaller than the number of food retailers nationwide. There are 4,504 retail firms as defined by PACA that would be subject to the rule. An estimated 88 percent (3,964 out of 4,504) of the retailers subject to the rule were reported to be small.

Retailer benefits under this rule are estimated at $767.2 million. Benefits are estimated at $170,337 per retail firm and $47,863 per retail establishment. Retailers will save on recordkeeping costs, costs associated with supplying country of origin information to consumers, and handling costs.

Wholesalers: Any establishment that supplies retailers with one or more of the covered commodities will no longer be required to provide country of origin information to retailers. Of wholesalers potentially affected by the rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be affected by the rule and are categorized as wholesalers in the data.

General-line wholesalers were assumed to handle at least one and possibly all of the covered commodities. As a result, the number of general-line wholesale businesses was included among entities affected by the rule. In 2012 there were 2,271 firms in total, and 2,108 firms had less than 100 employees. Therefore, approximately 93 percent of the general-line grocery wholesaler can be classified as small businesses.

In addition to general-line wholesalers, there are specialty wholesalers which deal in certain types of products. According to the 2012 Economic Census, there was a total of 2,162 meat and meat products wholesalers firms. Of these, 2,043 firms had less than 100 employees, meaning approximately 95 percent of meat wholesalers were considered small firms.

The 2012 Economic Census reports that 2,629 livestock processing and slaughtering firms were in operation. Almost 90 percent or 2,354 of these firms qualified as small businesses under the SBA definition.

The USDA's Packers and Stockyards Program provides regularly updated data on the number of livestock buyers, dealers and auction markets. While this information does not include sales and/or employment data, it is expected that the large majority of these entities are small businesses.

It is estimated that intermediaries (importers and domestic wholesalers, handlers, and processors) would benefit from cost savings under the rule by approximately $613.7 million, or $52,075 per intermediary firm and $47,863 per establishment. Wholesalers will save recordkeeping costs, costs associated with supplying country of origin and method of production information to retailers, costs associated with segmenting products by country of origin and method of production, and additional handling costs.

Producers: Producers of cattle and hogs will be affected because covered meat commodities are produced from livestock. SBA defines a small agricultural producer as having annual receipts less than $750,000. According to the 2012 Census of Agriculture, there were 913,246 farms that raised beef cows, and roughly 45,000 were estimated to have annual receipts greater than $750,000. Thus, about 95 percent of these beef cattle farms were classified as small businesses according to the SBA definition. Similarly, an estimated 80 percent of hog farms were considered small.

At the production level, agricultural producers maintained records to

establish country of origin information. This information was conveyed as the animals and products derived from them moved through the supply chains. Producer costs included the cost of establishing and maintaining a recordkeeping system for the country of origin information, animal or product identification, and labor and training. The savings benefits for producers are expected to be $451.0 million, or an estimated $462 per firm.[10]

Additional alternatives considered: Section 604 of the RFA requires the Agency to describe the steps taken to minimize the significant economic impact on small entities including a discussion of alternatives considered. As the effect of this rule is reduced burdens rather than increased costs on firms, and because there were no alternatives for implementing the legislation, no alternatives to lessen the burden of this rule on small businesses were considered.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C 3501–3520) the information collection provisions contained in this rule were previously approved by OMB and assigned OMB Control Number 0581–0250. AMS is publishing a notice and request for comment seeking OMB approval to revise this information collection in this edition of the **Federal Register**.

Executive Order 13175

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

The Agricultural Marketing Service (AMS) has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and this regulation. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This program is required by the 2002 Farm Bill, as amended by the 2008 Farm Bill and the Consolidated Appropriations Act, 2016.

In the January 15, 2009, final rule, the Federalism analysis stated that to the extent that State country of origin labeling programs encompass commodities that are not governed by the COOL program, the States may continue to operate them. It also contained a preemption for those State country of origin labeling programs that encompass commodities that are governed by the COOL program. This final rule does not change the preemption. With regard to consultation with States, as directed by the Executive Order 13132, AMS previously consulted with the States that have country of origin labeling programs. AMS has cooperative agreements with all 50 States to assist in the enforcement of the COOL program and has communications with the States on a regular basis.

It is found and determined that good cause exists under 5 U.S.C. 553(b)(3) for implementing this final rule on March 2, 2016 without prior notice and opportunity for comment. This rule has been determined to be a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*); however, the Agency finds that under 5 U.S.C. 808(2) good cause exists to waive the 60-day delay in the effective date. The Consolidated Appropriations Act, 2016 amended the Act to remove the requirements for labeling beef and pork to bring the United States into compliance with its international trade obligations. Providing notice and seeking comment are impractical, unnecessary, and contrary to public interest because AMS has no discretion in implementing the statutory provisions that remove beef and pork from the COOL regulations. Additionally, on December 7, 2015, the World Trade Organization (''WTO'') Arbitrators set the maximum permissible levels of suspension of concessions at Canadian $1.05 billion (US $781 million) annually for Canada and US $228 million annually for Mexico. The WTO granted Canada and Mexico authorization to suspend concessions on December 21, 2015. For these same reasons, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists to exempt this rule from the requirement to delay the effective date. Accordingly, this rule will be effective on March 2, 2016.

List of Subjects in 7 CFR Part 65

Agricultural commodities, Food labeling, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 65 is amended as follows:

[10] As noted in more detail above, these savings may be shifted to others in the supply chain or consumers.

PART 65—COUNTRY OF ORIGIN LABELING OF LAMB, CHICKEN, AND GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, PECANS, PEANUTS, AND GINSENG

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Revise the heading for part 65 to read as set forth above.

§§ 65.110, 65.155, 65.175, and 65.215 [Removed]

■ 3. Remove §§ 65.110, 65.155, 65.175, and 65.215.

■ 4. Amend § 65.135 by revising paragraphs (a)(1) and (2) to read as follows:

§ 65.135 Covered commodity.

(a) * * *

(1) Muscle cuts of lamb, chicken, and goat;

(2) Ground lamb, ground chicken, and ground goat;

* * * * *

■ 5. Revise § 65.220 to read as follows:

§ 65.220 Processed food item.

Processed food item means a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (*e.g.,* chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (*e.g.,* frying, broiling, grilling, boiling, steaming, baking, roasting), curing (*e.g.,* salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (*e.g.,* emulsifying and extruding). Examples of items excluded include roasted peanuts, breaded chicken tenders, and fruit medley.

■ 6. Amend § 65.300 by revising paragraph (h) to read as follows:

§ 65.300 Country of origin notification.

* * * * *

(h) *Labeling ground lamb, ground goat, and ground chicken.* The declaration for ground lamb, ground goat, and ground chicken covered commodities shall list all countries of origin contained therein or that may be reasonably contained therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin.

* * * * *

■ 7. Amend § 65.500 by revising paragraph (b)(1) to read as follows:

§ 65.500 Recordkeeping requirements.

* * * * *

(b) *Responsibilities of suppliers.* (1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of lamb, chicken, and goat, is the slaughter facility, must possess records that are necessary to substantiate that claim for a period of 1 year from the date of the transaction. For that purpose, packers that slaughter animals that are tagged with an 840 Animal Identification Number device without the presence of any additional accompanying marking (*i.e.,* ''CAN'' or ''M'') may use that information as a basis for a U.S. origin claim. Packers that slaughter animals that are part of another country's recognized official system (*e.g.* Canadian official system, Mexico official system) may also rely on the presence of an official ear tag or other approved device on which to base their origin claims. Producer affidavits shall also be considered acceptable records that suppliers may utilize to initiate origin claims, provided it is made by someone having first-hand knowledge of the origin of the covered commodity and identifies the covered commodity unique to the transaction.

* * * * *

Dated: February 26, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–04609 Filed 3–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2014–0001; Amdt. No. 25–142]

RIN 2120–AK29

Harmonization of Airworthiness Standards—Fire Extinguishers and Class B and F Cargo Compartments; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published on February 16, 2016. In that rule, the FAA amended certain airworthiness regulations for transport category airplanes by upgrading fire safety standards for Class B cargo compartments; establishing fire safety standards for a new type of cargo compartment, Class F; and updating related standards for fire extinguishers. This amendment eliminated certain regulatory differences between the airworthiness standards of the FAA and the European Aviation Safety Agency (EASA), without affecting current industry design practices. However, in that document, the amendment number for the final rule was incorrect, and this document now posts the correct amendment number.

DATES: This correction is effective on March 2, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Stephen M. Happenny, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055–4056; telephone (425) 227–2147; facsimile (425) 227 1232; email: *stephen.happenny@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2016 (81 FR 7698), the FAA published a final rule entitled, ''Harmonization of Airworthiness Standards—Fire Extinguishers and Class B and F Cargo Compartments'' (81 FR 7698).

This rule amended certain airworthiness regulations for transport category airplanes by upgrading fire safety standards for Class B cargo compartments; establishing fire safety standards for a new type of cargo compartment, Class F; and updating

related standards for fire extinguishers. The rule was based on recommendations from the Aviation Rulemaking Advisory Committee (ARAC) and the National Transportation Safety Board (NTSB), and the changes addressed designs for which airworthiness directives (ADs) have been issued by both the FAA and the French civil aviation authority, Direction Générale de l'Aviation Civile (DGAC). It eliminated certain regulatory differences between the airworthiness standards of the FAA and EASA, without affecting current industry design practices. These changes ensured an acceptable level of safety for these types of cargo compartments by standardizing certain requirements and procedures.

However, the rule was published with an incorrect amendment number, ''25–141,'' which is the same amendment number as the rule entitled ''Harmonization of Airworthiness Standards—Gust and Maneuver Load Requirements'' (79 FR 73462), published on December 11, 2014. The correct amendment number for this rule should be ''25–142.''

Correction

In FR Doc. 2016–03000, beginning on page 7698 in the **Federal Register** of February 16, 2016, make the following correction:

Correction

1. On page 7698, in the third column, correct the 4th header paragraph from ''[Docket No.: FAA–2014–0001; Amdt. No. 25–141]'' to read as ''[Docket No.: FAA–2014–0001; Amdt. No. 25–142]''.

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on February 24, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–04508 Filed 3–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0100]

RIN 1625–AA00

Safety Zone; Newtown Creek, Queens, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Newtown Creek between the Greenpoint Avenue Bridge (mile 1.3) and the entrance to Dutch Kills. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a sunken vessel adjacent to the Federal navigation channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

DATES: This rule is effective without actual notice from March 2, 2016 through March 5, 2016. For the purposes of enforcement, actual notice will be used from February 3, 2016 through March 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0100 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718–354–4195, email *jeff.m.yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because a vessel sank adjacent to the Federal navigation channel at the Sims Hugo Neu facility on Newtown Creek and immediate action is needed to respond to the potential safety hazards associated with removing cargo from the vessel and refloating the vessel. It is impracticable to publish an NPRM because we must establish this safety zone by February 3, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with removing cargo from the vessel and refloating the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with refloating a sunken barge adjacent to the Federal navigation channel starting February 4, 2016 will be a safety concern for anyone between the Greenpoint Avenue Bridge (mile 1.3) and the confluence of Newtown Creek and Dutch Kills during this process. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while cargo is removed from the vessel and the vessel is refloated. Therefore, this rule will remain in effect for the time stated herein but will be cancelled if response activities are finished cease before March 5, 2016. The preliminary estimate for completion of the cargo removal and refloating the vessel is February 6, 2016. This TFR provides for an extended enforcement period in case of unforeseen circumstances that prevent the contractors from completing the work within their initial estimated timeline.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on Wednesday, February 3, 2016 through 11:59 p.m. on Saturday, March 5, 2016. The safety zone will cover all navigable waters between the Greenpoint Avenue Bridge (mile 1.3) and the confluence of Newtown Creek and Dutch Kills. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the vessel is being refloated. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit through this safety zone which will impact a small designated area of Newtown Creek in Queens, NY after making passing arrangements with the work vessels while cargo is being removed from the sunken barge during daylight hours on February 3, 2016. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 31 days that will prohibit entry between the Greenpoint Avenue Bridge (mile 1.3) and the entrance to Dutch Kills on Newtown Creek being used by personnel to remove cargo from a sunken vessel and to refloat the vessel. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0100 to read as follows:

§ 165.T01–0100 Safety Zone: Newtown Creek, Queens, NY

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of Newtown Creek between the Greenpoint Avenue Bridge (mile 1.3) and the entrance to Dutch Kills

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from February 3, 2016 until March 5, 2016, unless terminated sooner by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on scene representative.

(3) A ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(4) Vessel operators must contact the COTP via the Command Center to obtain permission to enter or operate within the safety zone. The COTP may be contacted via VHF Channel 16 or at (718) 354–4353. Vessel operators given permission to enter or operate within the safety zone must comply with all directions given to them by the COTP, via the Command Center or an on-scene representative.

Dated: Februrary 3, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2016–04474 Filed 3–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP21

Vet Centers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final an interim final rule that amends its medical regulation that governs Vet Center services. The National Defense Authorization Act for Fiscal Year 2013 (the 2013 Act) requires Vet Centers to provide readjustment counseling services to broader groups of veterans, members of the Armed Forces, including a member of a reserve component of the Armed Forces, and family members of such veterans and members. This final rule adopts as final the regulatory criteria to conform to the 2013 Act, to include new and revised definitions.

DATES: *Effective date:* March 2, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Fisher, Readjustment Counseling Service (10RCS), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–6525. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 2015, VA published in the **Federal Register** an interim final rule that implemented the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239 (Jan. 2, 2013) (the 2013 Act). 80 FR 46197. VA invited interested persons to submit comments on the interim final rule on or before October 5, 2015, and we received one comment. The commenter questioned why the rulemaking is including individuals who remotely control unmanned aerial vehicles as individuals who are entitled to receive readjustment counseling services and how has VA and the Department of Defense assessed the need for such services for this group of individuals. The requirement to provide readjustment counseling to individuals who remotely control unmanned aerial vehicles is mandated by Public Law 112–239, which is implemented by this rulemaking. We do not make any changes based on this comment.

Finally, we make a technical edit to paragraphs (b) and (e) to ensure that these provisions are easier to understand. As amended in the interim final rule, the first sentence of the introductory paragraph to paragraph (b) read ''With the veteran's or member's of the Armed Forces, including a member of a reserve component of the Armed Forces, consent, VA will assist in obtaining proof of eligibility.'' We determined that this amendatory language was grammatically incorrect. We are now amending this sentence to read ''With the consent of the veteran or member of the Armed Forces, including a member of a reserve component of the Armed Forces, VA will assist in obtaining proof of eligibility.'' The first sentence of paragraph (e) was similarly incorrect and read ''Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without either the veteran's or member's of the Armed Forces, including a member of a reserve component of the Armed Forces, voluntary, signed authorization, or a specific exception permitting their release.'' This sentence now reads ''Benefits under this section are furnished solely by VA Vet Centers, which maintain confidential records independent from any other VA or Department of Defense medical records and which will not disclose such records without the voluntary signed authorization of the veteran or member of the Armed Forces (including a member of a reserve component of the Armed Forces), or where a specific exception permits disclosure.''

Based on the rationale set forth in the interim final rule and in this document, VA is adopting the provisions of the interim final rule as a final rule making only technical edits.

Administrative Procedure Act

In accordance with U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. This final rule incorporates a specific program requirement mandated by Congress in Public Law 112–239. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. This rule will increase the pool of individuals who are eligible to receive mental health care at Vet Centers. This rule will also increase access to much needed mental health care services in Vet Centers. For the above reason, the Secretary, through this rulemaking, adopts as final an interim final rule in which we provided prior notice and opportunity for the public to comment.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information, at 38 CFR 17.2000, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for § 17.2000 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0787.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.009, Veterans Medical Care Benefits; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on February 25, 2016, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Drug abuse, Health care, Health facilities, Homeless, Mental health programs, Veterans.

Dated: February 26, 2016.

William F. Russo,

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

For the reasons stated in the preamble, the interim rule published August 4, 2015, at 80 FR 46197, is adopted as final without change.

[FR Doc. 2016–04552 Filed 3–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AO95

Applicants for VA Memorialization Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations defining who may apply for a headstone or marker. The rule expands the types of individuals who may request headstones and markers on behalf of decedents.

DATES: The final rule is effective April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Eric Powell, Deputy Director, Memorial Programs Service (41B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 501–3060. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 1, 2014 (79 FR 59176), VA proposed revising its regulations regarding applicants for headstones and markers. The rule expanded the definition of applicant to allow more individuals to request that VA provide a burial headstone or marker for unmarked graves or a memorial headstone or marker if remains are not available for burial. Interested person were invited to submit comments on the proposed rule on or before December 1, 2014. VA received a total of 387 comments from interested stakeholders, including members of Congress, state and local officials, as well as members of genealogical, historical, and veterans service organizations. Because of the number of comments, both positive and negative, we have grouped them together by issue or content, and will address each group below. For the reasons set forth below and in the proposed rule, we adopt the proposed rule as final, with the changes explained below. To address some of these

comments, VA added a new 38 CFR 38.600(a)(1)(iv) and re-designated proposed paragraphs (a)(1)(iv) and (a)(1)(v) as paragraphs (a)(1)(v) and (a)(1)(vi), respectively.

Supportive Comments

Of the 387 comments, more than half expressed support for an agreement with the proposed amendment to the headstone and marker applicant definition. Many of the supportive commenters urged VA's prompt implementation of the proposed expanded applicant definition and praised VA for broadening the applicant standard because it would result in marking veteran gravesites that would otherwise remain unmarked, particularly for veterans who served prior to World War I (WWI). Although most commenters did not specifically comment on any particular provision of the rule, several commenters provided information about specific claims they had made previously that had been denied or that they feel now would be allowed under the revised rule. Others merely stated that their ancestors' graves are unmarked without indicating whether they had previously attempted to obtain a VA headstone or marker. VA's intent is that the expanded applicant definition will encourage more people to present memorialization claims. However, as one individual accurately pointed out, the public comment forum is not an appropriate means to present a claim for a headstone or marker. VA considers any information in these comments that refers to specific claims to be outside the scope of the proposed rule. To the extent that this final rule discusses any of these comments, such discussion should not be construed as a determination on such purported claims. However, we encourage those individuals whose memorialization claims were denied under the previously more restrictive applicant definition to resubmit their requests, which VA will review on a de novo basis. Because none of these commenters raised specific objections to the rule, and because the rule will allow for many more individuals to apply for memorialization of their ancestors, we interpret these comments to be supportive of the regulation itself, as proposed. VA appreciates the efforts of all those who took the time to review the proposed rule and provide their comments. Because these commenters suggested no changes to the rule, we make no changes to the rule as proposed, based on these comments.

Inclusion of Other Groups as Applicants

We received multiple comments from individuals who suggested that various entities, such as historical societies, genealogical societies, cemetery associations, or other similar entities, be listed as separate categories of applicants in the regulation so that they may request headstones or markers for the graves of veterans. Along these same lines, we received numerous suggestions to include, or requests that we clarify whether the rule includes, specifically-named groups or organizations. Commenters listed the Daughters of the American Revolution, Sons of the American Revolution, General Society of the War of 1812, Sons of Union Veterans of the Civil War, and Sons of Confederate Veterans, and other similar entities, which may be generally categorized as ''lineage societies,'' as groups they desired to see added to the regulation.

We do not believe that the regulation must be changed to include those additional categories or to allow these specifically-named groups to apply for headstones and markers. We understand commenters' desire to have explicit authority for a particular entity that they support or to which they belong, but it is not practical to list every entity that may apply under the regulation. This is why we created broad categories to describe who may apply for a headstone or marker. The entities listed above all appear, by their names or descriptions, to have an interest in veterans whose service ended prior to April 6, 1917, the date on which the United States entered WWI. To the extent that commenters belong to such groups and seek to apply for headstones and markers for veterans with such service, and the comments that they made indicate this to be the case, they may do so under proposed § 38.600(a)(1)(v), now re-designated as § 38.600(a)(1)(vi), which allows for ''any individual'' to apply for a headstone or marker for veterans whose service ended prior to April 6, 1917, or for an individual whose eligibility is based on such service. We make no changes based on these comments.

We received eight comments from individuals requesting the addition of county veterans service officers (CVSOs) to the list of applicants in § 38.600(a)(1)(iii), which, as proposed, only included representatives of Congressionally-chartered veterans service organizations (VSOs). One commenter equated the work of CVSOs to that of Congressionally-chartered VSO representatives who assist with and represent veterans and their families in their VA benefit claims. Other commenters noted that CVSOs work collaboratively with VA and other national VSOs, as well as funeral homes and cemetery caretakers on behalf of homeless and unclaimed veterans. We agree that VA should accept memorialization claims from CVSOs, in much the same manner as we will accept claims from Congressionally-chartered VSO representatives. We acknowledge the valuable work that CVSOs do on behalf of veterans and the collaborative nature of their relationship with VA and VA's National Cemetery Administration. However, we believe that merely adding CVSOs to our applicant definition will not be sufficient, as it fails to recognize other individuals, employed by government entities other than counties, whose vocation also is to serve and assist veterans and their families in a variety of ways. For this reason, we are adding a new § 38.600(a)(1)(iv), which adds, to the definition of applicant, an individual employed by the relevant state or local government if that individual's official responsibilities include serving veterans and families of veterans. We include the phrase ''such as a state or county veterans service officer'' to assist readers in understanding the type of individual we are recognizing. We thank the commenters for bringing this additional category to our attention and for their ongoing service to our nation's veterans.

VA received nine comments from members of state-authorized cemetery commissions and other locally-based entities authorized under state or local laws to maintain local, possibly historic cemeteries, requesting that VA include them on the list of applicants for VA memorialization benefits. Most of these comments were from representatives of Iowa Pioneer Cemetery Commissions from various counties in Iowa. We found that Iowa Code § 331.325, ''Control and maintenance of pioneer cemeteries—cemetery commission,'' authorizes county boards to assume jurisdiction and control of pioneer cemeteries, defined in the state law as those in which there have been twelve or fewer burials in the past fifty years. Because comments were received from individuals representing similar entities in at least two other states, we believe that other states also may authorize commissions, counties, townships, and other local entities to be responsible for the maintenance, repair, and improvement of cemeteries, including pioneer cemeteries. However, we do not believe that the regulation must be revised to recognize these entities as

proper applicants for a VA burial headstone or marker. Proposed § 38.600(a)(1)(iv), now re-designated as § 38.600(a)(1)(v), provides that individuals responsible under state or local laws for the disposition of unclaimed remains or other matters relating to a decedent's interment or memorialization may apply for headstones or markers. As we explained in the proposed rule, this would include ''those responsible for the operation and maintenance of a cemetery, because their activities are regulated by state or local laws.'' 79 FR at 59177. Entities such as the Iowa Pioneer Cemetery Commissions would have such authority. As with the historical and genealogical societies discussed above, we cannot list every type of entity responsible under state or local law for the disposition of unclaimed remains or matters relating to interment or memorialization. However, we clarify that VA will accept burial headstone or marker requests from members of the Iowa Pioneer Cemetery Commissions and from applicants who are similarly situated. When presented with a burial headstone or marker claim from an applicant who indicates that they are responsible under state or local law to handle a decedent's burial or memorialization needs, VA may ask the applicant to provide information about the authorizing statute to ensure the applicant's standing. Because we believe these entities are provided for in the rule, we make no changes based on these comments.

Revert to Previous Applicant Standard

VA received three comments suggesting that we revert to the applicant standard that was in effect prior to implementation of the 2009 applicant definition. One commenter asserted that, prior to 2009, there was no definition. While it is true that there was no definition of applicant in our regulations, VA's policy was to accept memorialization requests from VSOs, landowners, and anyone with knowledge of the decedent. The final rule explicitly allows for application by a representative of a Congressionally-chartered VSO (and, with the amendments discussed above, an individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans). Depending on specific circumstances, owners of land containing the burial site of an individual eligible for a VA-furnished headstone or marker may be determined to be ''responsible . . . for other matters relating to the interment or memorialization of the decedent'' under proposed § 38.600(a)(1)(iv), now redesignated as § 38.600(a)(1)(v), and so may also apply. Re-designated § 38.600(a)(1)(vi) will allow for any individual to apply for a burial headstone or marker if the relevant dates of service of the veteran ended prior to April 6, 1917. This last revision is the only significant difference between the applicant standard that was in place prior to the 2009 amendment and the final rule. As discussed elsewhere in this rulemaking, we believe the April 6, 1917, date is appropriate to ensure that we do not inappropriately deny families the opportunity to determine how and whether to mark the grave of their decedent.

Inclusion of Domestic Partners and Individuals in Loco Parentis

We received one comment from a private advocacy organization for lesbian, gay, bisexual, transgender, and queer (LGBTQ) families requesting that we include domestic partners and those standing *in loco parentis* to a deceased veteran in the definition of ''family member'' in § 38.600(a)(1) and (a)(2) for burial headstones and markers and memorial headstones and markers, respectively. The commenter stated that the existing definition of ''personal representative'' in § 38.600(b) unfairly requires family members to pay for burial or memorialization costs that would disqualify those who may not have the means to fund a decedent's burial services. We clarify that a personal representative need only identify themselves to VA as an individual ''responsible for making decisions'' concerning burial or memorialization. 38 CFR 38.600(b). There is no financial requirement associated with a memorialization request from a personal representative or any other headstone or marker applicant.

Additionally, this commenter suggested VA include in § 38.600(a)(1)(i) and (a)(2) the domestic partner of a veteran, a child for whom a veteran stood *in loco parentis,* and a parent who stood *in loco parentis* for a veteran. Although the proposed expanded list of ''a decedent's family member'' or ''a member of the decedent's family'' for headstone and marker applicants in § 38.600(a)(1) and (a)(2), respectively, is broadly defined to include almost every possible family relationship, we agree that the language ''decedent's spouse'' would not include an individual in a legal union with a veteran if that legal union did not meet the legal requirements of a marriage. VA defined memorialization applicants to include others who are not in marital relationships, and in keeping with other VA efforts to recognize a veteran's domestic partnership, civil union, and other formal relationship in certain circumstances, we will insert in § 38.600(a)(1) and (a)(2) the language ''individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent.'' We note that VA's burial benefits regulation, finalized last year (79 FR 32653, June 6, 2014), defined the term ''legal union'' in 38 CFR 3.1702(b)(1)(ii) to mean a formal relationship between the decedent and the survivor that existed on the date of the veteran's death, was recognized under the law of the state in which the couple formalized the relationship, and was evidenced by the state's issuance of documentation memorializing the relationship.

We do not believe it is necessary to include the commenter's *in loco parentis* language because an applicant who is either an individual who stood *in loco parentis* for a veteran or a child for whom a veteran stood *in loco parentis* will be included in the ''personal representative'' definition in § 38.600(b). Under that provision, VA will accept a headstone or marker request from an individual who stood in the relationship of a family member, as suggested by the commenter, and as such we will make no further changes based on this comment.

Replacement Headstones and Markers

VA received fourteen comments that discussed replacing headstones and markers that have become unreadable, are damaged or do not properly mark a veteran's gravesite. Commenters suggested VA allow historical preservationists and cemetery organizations to request replacement markers, particularly for Civil War gravesites where no family member was likely to exist. One commenter suggested VA make an exception to or consider further expansion of the applicant definition to include individuals or groups seeking to rehabilitate or replace markers that were, in their view, improperly marked. Another commenter suggested we revise VA Form 40–1330 to include requests for replacement markers. This regulation on applicant definition applies to requests to replace existing markers that may have become damaged or so worn that they are no longer readable, a condition we refer to as ''unserviceable,'' as well as to requests to mark an unmarked grave. The definition of applicant is equally applicable, irrespective of whether the request is for a new or a replacement

headstone or marker. We note, however, that these individuals may be citing difficulties they may have had not in applying for the replacement, but in providing sufficient documentation to support the request. To the extent that these comments are regarding the latter, they are outside the scope of this rulemaking, which only establishes who may apply for a headstone or marker, not whether VA may approve a request. We make no change to the rule based on these comments but we do clarify that individuals identified in this regulation will be recognized applicants for original burial or memorial headstones or markers or for replacement for an unserviceable burial or memorial headstones or markers.

Line of Succession for Family Members

Two commenters suggested VA clarify a decedent's family member lineage by establishing a line of succession or imposing other requirements to ensure a decedent has an appropriate applicant. One commenter suggested changes to the headstone or marker request form (VA Form 40–1330) to establish an applicant's relationship to a decedent. The commenter indicated that if a next of kin is not available, VA should allow claims from descendants who demonstrate a relationship to the decedent based on notarized death certificates and statements from physicians. In adopting a new definition of ''family member,'' VA is moving away from the use of ''next of kin,'' so the comment is somewhat outside the scope of this rulemaking. We will be requesting information regarding the relationship of the applicant, but that, too, is beyond the scope of this rule, which is only to establish the definition of applicant.

Another commenter suggested VA clarify the order of priority that will be used in applying the applicant definition for memorial headstone or marker requests in § 38.600(a)(2), which requires an applicant to be a member of the decedent's family, which includes the decedent's spouse (or, with the amendment discussed above, individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent), a child, parent, or sibling, whether biological, adopted, or step relation, and any lineal or collateral descendant of the decedent. Establishing an order of priority is a substantive standard that requires notice and comment. Because this rulemaking only provided notice and sought comment on the definition of applicant, we do not here establish an order of priority that must be followed when we receive a claim from ''family members'' under either § 38.600(a)(1)(i) or § 38.600(a)(2).

Eliminate Applicant Definition

Several commenters suggested that VA eliminate any definition of applicant for a headstone or marker. In general, these comments express the view that ''anyone'' can apply for benefits and have their standing to do so adjudicated along with the merits of their request. However, we believe that memorialization benefits are in some ways unique among the benefits that VA provides and require this additional step because, for most other VA benefits, the applicant is requesting benefits for himself or herself. In the case of headstones or markers, the benefit is being requested by a third party on behalf of the individual who is entitled to it. While we have drafted this regulation to broaden the pool of potential applicants, we do not agree that we should eliminate entirely the requirement that a particular applicant must request memorialization on behalf of a veteran or other eligible decedent. First, the authorizing statute, 38 U.S.C. 2306, requires that we provide a headstone or marker ''when requested'' but does not indicate from whom we should accept such requests. It is generally accepted that an agency may, through regulation, fill a gap such as this. Second, as we have discussed elsewhere in this final rule and in the proposed rule, our intent, as much as possible, is to reserve to the family of the decedent decisions regarding memorialization. This includes the decision not to obtain a government-furnished headstone or marker—or any marker at all, if that is their decision. VA cannot force individuals to apply for or accept the benefits that we provide. In addition to broadening the definition of family beyond the previously more restrictive ''next-of-kin'' standard, we have provided five additional categories of applicants who may request a burial headstone or marker. We believe that the new rule sufficiently allows for a very broad applicant pool to request burial headstones or markers for decedents who bear no relation to them, while balancing the need to respect family decisions to memorialize their loved ones, including the decision to leave a gravesite unmarked. We make no changes based on these comments.

Eliminate Date Restrictions

VA received twenty-four comments that objected to VA's use of April 6, 1917, as a limiting date in proposed § 38.600(a)(1)(v), now redesignated as § 38.600(a)(1)(vi). In that paragraph, we state that any individual may apply for a burial headstone or marker for a veteran whose service ended prior to that date, or for an individual whose eligibility for memorialization derives from a veteran whose service ended prior to that date. Several commenters suggested VA either eliminate the date restriction or use a rolling date rather than a specific date. A few commenters suggested use of a different time limit, such as 100 years from dates of the end of WWI (1918) or the end of World War II (1945). Generally, these commenters asserted that use of the 1917 ''date-certain'' for burial marker requests would only result in VA needing to revisit in the future the same issues we are addressing now that were caused by a restrictive applicant standard. Two commenters suggested VA adopt the applicant standard proposed in legislation introduced in 2013 and 2014, which would allow any person to request a marker if the deceased veteran served more than 62 or 75 years before the date of the memorialization request. As stated in the proposed rule, we chose to include a date after which we felt it will be more likely that living family members could be located and could provide input into the marking of a grave. Further, for those whose service ended after 1917 and who have no living family member, VA provides ample alternatives for non-relative applicants to request a headstone or marker for those decedents. We considered use of a rolling time frame for applicants requesting memorialization and found that implementation of such a process would likely be more complex than would be required when using a date certain. The rolling date actually equates to a date certain, but a constantly changing one. Adopting an ever-changing standard introduces increased risk of human error in determining whether the service was or was not within the defined time frame. In addition, it may require annual updates to the computer system to recognize the newly calculated year. As indicated in the proposed rule, the 1917 date was established based on the objective likelihood that those decedents will not have living family members to request a headstone or marker.

Allow Non-Relative Memorial Marker Applicants

VA received three comments objecting to § 38.600(a)(2), in which we require that applicants for memorial headstones and markers to be members of a decedent's family, including collateral and lineal descendants. Commenters suggested VA include non-relative applicants, such as historians,

personal representatives, VSOs, townships and counties, in the definition of applicant for memorial headstone and marker requests. As explained in the proposed rule, memorial headstones and markers, as authorized under 38 U.S.C. 2306(b), are distinguished from burial headstones and markers because they are intended to commemorate an eligible individual whose remains are unavailable for burial to provide a family with a physical site to gather to mourn and remember their loved one, similar to that provided by a burial headstone or marker when remains are available for burial. As such, VA has determined that requests for memorial headstones and markers should be made by family members who are likely to want to memorialize someone whose life had specific meaning to them. The commenters offered no justification on which we would consider changing this previously stated position, therefore, we make no changes to the applicant definition based on these comments.

Various Comments Outside the Scope of the Proposed Rule

VA received ten comments that do not fit in any of the other categories of comments discussed above and that VA finds to be outside the scope of the proposed expansion of the applicant definition. One commenter suggested the language of the proposed rule was too difficult for ordinary citizens to decipher. VA tries to make the regulations as accessible as possible for the general public. Most commenters seemed to understand the proposed rule because their comments were clearly related to concepts expressed in the rule, so we do not believe the rule was unnecessarily difficult. Several other commenters made suggestions regarding considerations VA should make in approving requests for headstones and markers. For example, one commenter suggested using DNA, archival, and other technologies and assembling a volunteer veteran panel to verify the identity of an interred veteran to determine the appropriate memorialization. Another commenter advised VA to exercise caution to ensure that headstone or marker inscriptions, including emblems of belief and service information (*e.g.,* Medal of Honor) be valid and appropriate, and another advised checking for the ''reasonableness'' of a request to ensure we do not mark a grave for the same individual multiple times. Another commenter suggested VA impose penalties for the destruction of a Government-furnished headstone or marker. Two commenters referred to procedures relating to memorialization of veterans interred in foreign countries. Two commenters expressed concerns about the limitation of headstones and markers for decedents who die prior to the November 1, 1990, date, which applies to eligibility for a second marker under 38 U.S.C. 2306(d)(4). Another commenter appeared to assert that VA requires proof of burial in requests for a memorial headstone or marker and expressed disagreement with such a requirement. One commenter suggested VA create bronze or metal emblems to be affixed to non-VA headstones and markers. All of these comments are in regard to aspects of the headstone and marker program that are unrelated to the proposed amendment of the applicant definition. It would be inappropriate to address these issues in this final rule, and there are no changes we can make to the rule on the definition of applicant that would address these comments.

Proposed Rule Vulnerabilities

One commenter noted the proposed expansion of the applicant definition would be problematic because it would increase costs beyond what was estimated in the economic impact analysis and could be abused by interested third parties. Allowing non-relatives to request memorialization for veterans who have long been deceased could potentially conflict with what the commenter believes is a family's responsibility to mark a gravesite or leave the gravesite unmarked in accordance with veteran's family's wishes at the time of burial. The commenter remarked that unaffiliated individuals and special interest organizations should not be allowed to further their own goals by manipulating another person's gravesite, particularly a veteran's. The commenter also expressed concern that VA did not require non-relative applicants for veterans post-WWI to document that an attempt was made to locate the decedent's family members. We appreciate the commenter's well-reasoned response to our rulemaking, and we assure the commenter that we did consider these issues prior to issuing the proposed rule. However, the intention of the rule was to increase the ability of these interested parties to apply for headstones and markers because VA shares their goal of ensuring that graves of those who have served our country are appropriately marked. We believe our approach strikes an appropriate balance between protecting the interests of a decedent's family and ensuring the appropriate memorialization of veterans. We note again that implementing an expanded applicant standard is not a guarantee that VA will issue the requested headstone or marker, so we believe that our estimate of costs is reasonable. To the extent that the commenter's other statements are in regard to approval of an application and not who may apply, we find the comments outside the scope of this rulemaking.

Single Commenter

VA received seventeen separate comments from a single commenter whose remarks about the proposed rule primarily relate back to his efforts to mark the gravesites of veterans who perished in a 1935 hurricane while on a Federal work detail, some of whom are interred in individual gravesites in a private cemetery in Florida, and some whose remains are commingled in a monument located on public land in Florida. We note that we have communicated with this commenter several times on the hurricane veteran memorialization requests (some of his comments included excerpts from that correspondence) and do not address that issue here because it is outside the scope of this rulemaking. Some issues raised by this commenter were raised by other commenters as well, including the estimated costs of the rule, the need to define applicant at all, and eliminating the 1917 limiting date, which are addressed elsewhere in this rulemaking. We address here only the remaining comments provided by this individual as they relate to the proposed rule on the definition of applicant.

The commenter stated that the rule, as proposed, would restrict applications for those who served after WWI and would disenfranchise any such veteran who lacks a next of kin to present a memorialization request. These statements incorrectly interpret the provisions of the rule, as we provide that family members (which is itself defined more broadly than just ''next of kin''), VSOs (and individuals employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, as added in this final rule), and others appropriately situated may apply for burial headstones and markers for those who served in WWI and later, and their eligible dependents. The commenter suggested we merely adopt the provisions of either of two bills introduced in the 113th Congress instead of our proposed rule. We decline to make that change because the rule as proposed by VA will allow more individuals to apply for headstones and markers than either of the introduced bills would have allowed, again because of our use of an expansive definition of

family member, rather than the limited term ''next of kin.'' The commenter also suggested VA allow our Congressional oversight committees and the sponsors of two bills time to submit comments on the proposed rule for the record. Given that VA received comments from Congressional members within the designated comment period, we make no changes based on this comment. In another comment, the individual notes that the authorizing statute, 38 U.S.C. 2306, states that VA shall provide a headstone or marker upon request but the statute does not limit who may make the request. He suggests that VA itself should make the request. As discussed previously, it is incumbent on executive branch agencies to provide regulations where statutory authority has gaps. This is what VA has done. Also as discussed previously, VA cannot force individuals to apply for or accept the benefits we provide. To make the ''application'' ourselves would be to do just that. The commenter proposed language to VA regulations regarding disinterment, the headstone and marker application process, and group memorial monuments, which fall outside the scope of the proposed rule to amend the applicant definition.

For all the reasons stated in the proposed rule and noted above, VA is adopting the proposed rule as final with the above noted changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible, or if not possible, such guidance is superseded by this rulemaking.

Regulatory Flexibility Act

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

Unfunded Mandates

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

Paperwork Reduction Act

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on February 22, 2016 for publication.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

Dated: February 26, 2016.

William F. Russo,

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

For the reasons set out in the preamble, VA amends 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

■ 2. Amend § 38.600 as follows:
■ a. Add paragraph (a);
■ b. In paragraph (b) introductory text remove ''§§ 38.617 and 38.618'' and add in its place ''part 38''; and
■ c. In paragraph (b) amend the definition of ''personal representative'' by removing ''cemetery director''.

The addition reads as follows:

§ 38.600 Definitions.

(a)(1) *Applicant defined—burial headstones and markers.* An applicant for a headstone or marker that will mark the gravesite or burial site of an eligible deceased individual may be:

(i) A decedent's family member, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with

the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent;

(ii) A personal representative, as defined in paragraph (b) of this section;

(iii) A representative of a Congressionally-chartered Veterans Service Organization;

(iv) An individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, such as a state or county veterans service officer;

(v) Any individual who is responsible, under the laws of the relevant state or locality, for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent; or

(vi) Any individual, if the dates of service of the veteran to be memorialized, or on whose service the eligibility of another individual for memorialization is based, ended prior to April 6, 1917.

(2) *Applicant defined—memorial headstones and markers.* An applicant for a memorial headstone or marker to commemorate an eligible individual must be a member of the decedent's family, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent.

* * * * *

§ 38.632 [Amended]

■ 3. Amend § 38.632(b)(1) by removing ''a Government-furnished headstone or marker and, in appropriate instances,''.

[FR Doc. 2016–04553 Filed 3–1–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0879; FRL–9940–36]

Penoxsulam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of penoxsulam in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances associated with pesticide petition number (PP#) 4E8330, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 2, 2016. Objections and requests for hearings must be received on or before May 2, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0879, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0879 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 May 2, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0879, 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 March 4, 2015 (80 FR 11611) (FRL–9922–68), 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#) 4E8330 by Interregional Research Project Number 4 (IR–4), 500 College Road East, Princeton, NJ 08540. The petition requested that 40 CFR 180.605 be amended by establishing tolerances for residues of the herbicide penoxsulam, (2-(2,2-difluoroethoxy)-*N*-(5,8-dimethoxy[1,2,4] triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide), in or on fruit, pome, group 11–10 at 0.01 parts per million (ppm); fruit, stone, group 12–12 at 0.01 ppm; fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit at 0.01 ppm; nut, tree, group 14–12 at 0.01 ppm; olive at 0.01 ppm; and pomegranate at 0.01 ppm. In addition, the petitioner proposed removal of existing tolerances on grape; nut, tree, group 14; and pistachio as they are superseded by this rule. That document referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences LLC, the registrant, which is available in the docket EPA–HQ–OPP–2014–0879 at *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), 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 penoxsulam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with penoxsulam 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 subchronic and chronic feeding studies in rats and dogs, the kidney was the most sensitive target organ. Hyperplasia of the renal pelvic epithelium was observed in both species, and in the rat, effects on renal function and increased severity of chronic glomerulonephropathy were also observed following chronic exposure. Effects on the liver, hematological parameters, and body weight were observed sporadically in some studies. In subchronic and chronic feeding studies in mice, no effects of toxicological significance were observed.

There was no evidence of increased quantitative or qualitative susceptibility of fetuses or offspring, as compared to adults. In developmental toxicity studies in rats and rabbits, no developmental toxicity was observed at maternally toxic dose levels. In a 2-generation reproduction study in rats, delays in preputial separation were noted in the presence of parental toxicity. No treatment-related neurotoxicity or immunotoxicity were observed in any of the available studies on penoxsulam. No systemic or dermal toxicity was noted in a 28-day dermal toxicity study in rats.

Although an increased incidence of mononuclear cell leukemia (MNCL) was observed in a chronic toxicity/carcinogenicity study in Fisher 344 rats, EPA determined that human cancer risk is likely to be minimal and is not conducting a separate quantitative cancer assessment for the following reasons: (1) Lack of a dose-response, suggesting that the tumor may not be treatment-related; (2) the tumors were found in only one gender and one species (they were not found in female rats or mice); (3) the tumors are of questionable relevance to humans since there is no similar tumor occurring in humans; (4) penoxsulam is negative for mutagenicity; and (5) MNCL is not associated with exposure to other triazolopyrimidines, which is the chemical class of herbicides to which penoxsulam belongs. Therefore, based on the current (2005) Agency guidelines for cancer assessment, EPA has determined that the chronic assessment will be protective of any potential cancer risks.

Specific information on the studies received and the nature of the adverse effects caused by penoxsulam 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, ''Penoxsulam. Human Health New Use Risk Assessment to Support the Registration of Proposed Use on Pome Fruit, Stone Fruit, Olive, Pomegranate, and Fruit, Small, Vine Climbing (Subgroup 13–07F, Except Fuzzy Kiwifruit); and Crop Group Conversion for Tree Nuts'' on pages 10–16 in docket ID number EPA–HQ–OPP–2014–0879.

B. Toxicological Points of Departure/Levels of Concern

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

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

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations, including Infants and Children and Females 13–49 years of age).	No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on penoxsulam. This exposure scenario was therefore not assessed for human health risk.		
Chronic dietary (All populations).	NOAEL = 14.7 mg/kg/day UF_A = 10 × UF_H = 10 × FQPA SF = 1x	Chronic RfD = 0.147 mg/kg/day cPAD = 0.147 mg/kg/day	1 Year Chronic Feeding Study in Dogs. LOAEL = 46.2 mg/kg/day based on multifocal hyperplasia of the renal pelvic epithelium.
Incidental oral short-term (1 to 30 days).	NOAEL= 17.8 mg/kg/day UF_A = 10 × UF_H = 10 × FQPA SF = 1x	LOC for MOE = 100	13-Week Feeding Study in Dogs. LOAEL = 49.4 mg/kg/day based on multifocal hyperplasia of the renal pelvic epithelium and crystals in the renal pelvis and collecting ducts.
Dermal (All Durations).	An endpoint for systemic toxicity was not identified in the rat 28-day dermal study and there were no neurotoxic, developmental, or immunotoxic effects observed for penoxsulam. This exposure scenario was not assessed for human health risk.		
Inhalation Short-Term (1 to 30 days) and Intermediate-Term (1 to 6 months).	NOAEL= 17.8 mg/kg/day UF_A = 10 × UF_H = 10 × FQPA SF = 1×	LOC for MOE = 100	13-Week Feeding Study in Dogs. LOAEL = 49.4 mg/kg/day based on multifocal hyperplasia of the renal pelvic epithelium and crystals in the renal pelvis and collecting ducts.
Cancer (Oral, dermal, inhalation).	Classification: A separate quantitative cancer assessment is not being conducted as the cRfD is considered protective of potential carcinogenic effects.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to penoxsulam, EPA considered exposure under the petitioned-for tolerances as well as all existing penoxsulam tolerances in 40 CFR 180.605. EPA assessed dietary exposures from penoxsulam in food as follows:

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

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA tolerance-level residues, 100 percent crop treated (PCT) for all commodities, and DEEM (Version 7.81) default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that the chronic assessment for penoxsulam is considered protective of potential cancer risks. Therefore, a separate dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for penoxsulam. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* In drinking water, the residues of concern include penoxsulam parent, along with the following degradates: BSTCA; 2-amino TCA; 5–OH-penoxsulam; SFA; sulfonamide; and 5,8-diOH. The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for penoxsulam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of penoxsulam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Penoxsulam is registered for control of aquatic weeds. For that use pattern, the maximum application rate is 150 parts per billion (ppb) in the water column. For chronic dietary risk assessment, the water concentration value of 150 ppb was used to assess the contribution to drinking water.

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

Penoxsulam is currently registered for the following uses that could result in residential exposures: Residential and commercial turf (lawns and golf courses) and aquatic use sites. EPA assessed residential exposure using the following assumptions: For handlers, it is assumed that residential use will result in short-term (1 to 30 days) duration dermal and inhalation exposures. Residential post-application exposure is also assumed to be short-term (1–30 days) in duration, resulting from the following exposure scenarios:

- Physical activities on turf: Adults (dermal) and children 1–2 years old (dermal and incidental oral);
- mowing turf: Adults (dermal) and children 11 to <16 years old (dermal);
- exposure to golf courses during golfing: Adults (dermal), children 11 to <16 years old (dermal), and children 6 to <11 years old (dermal); and
- exposure during aquatic activities (*e.g.* swimming): Adults (dermal, inhalation, ingestion) and children 3 to <6 years old (dermal, inhalation, ingestion).

Due to the lack of a dermal endpoint, EPA did not quantify exposure and risk estimates from dermal exposure scenarios. EPA did not combine exposure resulting from adult handler and post-application exposure resulting from treated gardens, lawns, golfing, and/or aquatic areas in residential settings because of the conservative assumptions and inputs within each estimated exposure scenario. The Agency believes that combining exposures resulting from handler and post-application activities would result in an overestimate of adult exposure. EPA selected the most conservative adult residential scenario (adult handler inhalation exposure from backpack sprayer applications to lawns/turf) as the contributing source of residential exposure to be combined with the dietary exposure for the aggregate assessment. The children's 3 to <6 oral exposure is based on post-application ingestion exposures during aquatic activities. The children's 1 to <2 oral exposure is based on post-application hand-to-mouth exposures from applications to lawns/turf. To include exposure from object-to-mouth and soil ingestion in addition to hand-to-mouth would overestimate the potential for oral exposure. 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 penoxsulam to share a common mechanism of toxicity with any other substances, and penoxsulam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that penoxsulam does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of quantitative or qualitative increased susceptibility, as compared to adults, of rat fetuses to *in utero* or postnatal exposure was observed in developmental toxicity studies in rats or rabbits or a reproduction study in rats. Developmental toxicity was not observed in the rat or rabbit up to doses resulting in maternal toxicity. In the rat reproductive toxicity study, slightly increased time to preputial separation in F1 males and decreased pup weight gain were observed in the presence of parental toxicity (kidney lesions in females).

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

i. The toxicity database for penoxsulam is complete.

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

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

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

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to penoxsulam from food and water will utilize 6% of the cPAD for all infants <1 year old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of penoxsulam is not expected.

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 5,400 for adults and 2,100 for children 1–2 years old, the two population subgroups receiving the greatest combined dietary and non-dietary exposure. Because EPA's level of concern for penoxsulam is a MOE of 100 or below, these MOEs are not of concern.

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

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA determined that the chronic assessment is protective of the potential cancer risks. Based on the chronic assessment, there is no concern for an aggregate cancer risk from exposure to penoxsulam.

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 penoxsulam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, high performance liquid chromatography (HPLC) methods with positive-ion electro spray interface (ESI) and tandem mass spectroscopy-mass spectroscopy detector (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. There are currently no established Codex MRLs for the residues of penoxsulam.

C. Revisions to Petitioned-For Tolerances

EPA has revised the tolerance expression to clarify first, that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of penoxsulam not specifically mentioned; and second, 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, tolerances are established for residues of penoxsulam, (2-(2,2-difluoroethoxy)-*N*-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide), in or on fruit, pome, group 11–10 at 0.01 ppm; fruit, small, vine climbing subgroup 13–07F, except fuzzy kiwifruit at 0.01 ppm; fruit, stone, group 12–12 at 0.01 ppm; nut, tree, group 14–12 at 0.01 ppm; olive at 0.01 ppm; and pomegranate at 0.01 ppm. Additionally, the existing tolerances for grape; nut, tree, group 14; and pistachio are removed.

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: February 23, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.605, paragraph (a) is revised to read as follows:

§ 180.605 Penoxsulam; tolerances for residues.

(a) *General.* Tolerances are established for residues of penoxsulam, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only penoxsulam 2-(2,2-difluoroethoxy)-*N*-(5,8-dimethoxy[1,2,4]triazolo[1,5-c] pyrimidin-2-yl)-6-(trifluoromethyl) benzenesulfonamide, in or on the commodity.

Commodity	Parts per million
Almond, hulls	0.01
Fish	0.01
Fish, shellfish, crustacean	0.01
Fish, shellfish, mollusc	0.02
Fruit, pome, group 11–10	0.01
Fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit	0.01
Fruit, stone, group 12–12	0.01
Nut, tree, group 14–12	0.01
Olive	0.01
Pomegranate	0.01
Rice, grain	0.02
Rice, straw	0.50

* * * * *

[FR Doc. 2016–04598 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0485; FRL–9942–48]

Alpha-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Alpha-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles, when used as an inert ingredient in a pesticide formulation. Stepan Co. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Alpha-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles, on food or feed commodities.

DATES: This regulation is effective March 2, 2016. Objections and requests for hearings must be received on or before May 2, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0485, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 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. 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–2015–0485 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 May 2, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket.

Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0485, by one of the following methods.

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

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

II. Background and Statutory Findings

In the **Federal Register** of Wednesday, August 26, 2015 (80 FR 51763) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10837) filed by Stepan Company, 22 West Frontage Road, Northfield, IL 60093. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of Alpha-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles; CAS No. 70880–56–7. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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 use 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 an exemption from the requirement of 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 . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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 case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). The polymer conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers:

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average MW (in amu) of 1,500 is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, the polymer meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to the polymer.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that the polymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of the polymer is 1,500 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since the polymer conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. 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 the polymer to share a common mechanism of toxicity with any other substances, and the polymer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the polymer 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://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold 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 data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of the polymer, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of the polymer.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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 Alpha-[2,4,6–Tris[1–(phenyl)ethyl]phenyl]–Omega–hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles.

IX. Conclusion

Accordingly, EPA finds that exempting residues of the polymer from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance 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).

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 24, 2016.

Susan Lewis,

Director Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960, add alphabetically the following entry in the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Alpha–[2,4,6–Tris[1–(phenyl)ethyl]phenyl]–Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles. Minimum number-average molecular weight (in amu) of 1,500	70880–56–7
* * * * * * *	

[FR Doc. 2016–04599 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 41
Wednesday, March 2, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2012–0059]

RIN 3150–AJ13

Approval of American Society of Mechanical Engineers' Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference proposed revisions of three regulatory guides (RGs) which would approve new, revised, and reaffirmed Code Cases published by the American Society of Mechanical Engineers (ASME). This proposed action would allow nuclear power plant licensees, and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals and manufacturing licenses, to use the Code Cases listed in these draft RGs as alternatives to engineering standards for the construction, inservice inspection, and inservice testing of nuclear power plant components. These engineering standards are set forth in ASME Boiler and Pressure Vessel Codes and ASME Operations and Maintenance Codes, which are currently incorporated by reference into the NRC's regulations. The NRC is requesting comments on this proposed rule and on the draft versions of the three RGs proposed to be incorporated by reference. The NRC is also making available a related draft RG that lists Code Cases that the NRC has not approved for use. This draft RG will not be incorporated by reference into the NRC's regulations.

DATES: Submit comments on the proposed rule and related guidance by May 16, 2016. Submit comments specific to the information collections aspects of this rule by April 1, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only of comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0059. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Tobin, Office of Nuclear Reactor Regulation, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov*; and Anthony Cinson, Office of Nuclear Regulatory Research, telephone: 301–415–2393; email: *Anthony.Cinson@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to incorporate by reference into the NRC regulations the latest revisions of three RGs (currently in draft form for comment). The three draft RGs identify new, revised, and reaffirmed Code Cases published by the ASME, which the NRC has determined are acceptable for use as alternatives to compliance with certain provisions of the ASME Boiler and Pressure Vessel Codes and ASME Operations and Maintenance Codes currently incorporated by reference into the NRC's regulations. The three draft RGs that the NRC proposes to incorporate by reference are RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 37 (Draft Regulatory Guide (DG)-1295); RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 18 (DG–1296); and RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 2 (DG–1297). This proposed action would allow nuclear power plant licensees and applicants for construction permits (CPs), operating licenses (OLs), combined licenses (COLs), standard design certifications, standard design approvals, and manufacturing licenses, to use the Code Cases newly listed in these revised RGs as alternatives to engineering standards for the construction, inservice inspection (ISI), and inservice testing (IST) of nuclear power plant components. The NRC also notes the availability of a proposed version of RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 5 (DG–1298). This document lists Code Cases that the NRC has not approved for generic use, and will not be incorporated by reference into the NRC's regulations. The NRC is not requesting comment on RG 1.193.

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of the proposed rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that the proposed rule would result in net savings to the industry and the NRC. As shown in the following table, the estimated total net benefit relative to the regulatory baseline, the quantitative benefits outweigh the costs by a range from approximately $5,504,000 (7-percent NPV) to $6,520,000 (3-percent NPV).

Attribute	Total averted costs (Costs)		
	Undiscounted	7% NPV	3% NPV
Industry Implementation	($1,933,000)	($1,933,000)	($1,933,000)
Industry Operation	$7,771,000	$6,375,000	$7,124,000
Total Industry Costs	$4,517,000	$3,353,000	$3,978,000
.....	.....	.....	.....
NRC Implementation	($294,000)	($294,000)	($294,000)
NRC Operation	$3,190,000	$2,444,000	$2,836,000
Total NRC Cost	$2,896,000	$2,151,000	$2,543,000
.....	.....	.....	.....
Net	$7,413,000	$5,504,000	$6,520,000

The regulatory analysis also considered the following nonquantifiable benefits for industry and the NRC: (1) Would provide licensees with flexibility and would decrease licensee's uncertainty when making modifications or preparing to perform ISI or IST; (2) consistency with the provisions of the National Technology Transfer and Advancement Act of 1995 (NTTAA), which encourages Federal regulatory agencies to consider adopting voluntary consensus standards as an alternative to *de novo* agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The draft regulatory analysis concludes that the proposed rule should be adopted because it is justified when integrating the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the regulatory analysis (ADAMS Accession No. ML15041A816).

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2012–0059 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0059.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0059 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The ASME develops and publishes the ASME Boiler and Pressure Vessel Code (BPV Code), which contains requirements for the design, construction, and ISI and examination of nuclear power plant components, and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) [1], which contains requirements for IST of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops Code Cases that provide alternatives to BPV and OM Code requirements under special circumstances.

[1] The editions and addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants have had different titles from 2005 to 2012, and are referred to collectively in this rule as the ''OM Code.''

The NRC approves and can mandate the use of the ASME BPV and OM Codes in § 50.55a, ''Codes and standards,'' of title 10 of the *Code of Federal Regulations* (10 CFR) through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into, and mandated by § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted previously, ASME Code Cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference NRC RGs listing approved ASME Code Cases that may be used as alternatives to the BPV and OM Codes.[2]

This rulemaking is the latest in a series of rulemakings that incorporate by reference new versions of several RGs identifying new, revised, and reaffirmed,[3] and unconditionally or conditionally acceptable ASME Code Cases that the NRC approves for use. In developing these RGs, the NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in the RGs. The RGs are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into § 50.55a. Currently, NRC RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 36; RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 17; and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 1, are incorporated into the NRC's regulations in § 50.55a.

III. Discussion

This proposed rule would incorporate by reference the latest revisions of the NRC RGs that list ASME BPV and OM Code Cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions (''conditionally acceptable''). Regulatory Guide 1.84 (DG–1295, Revision 37) would supersede Revision 36; RG 1.147 (DG–1296, Revision 18) would supersede Revision 17; and RG 1.192 (DG–1297, Revision 2) would supersede Revision 1. The NRC also publishes a document (RG 1.193, ''ASME Code Cases Not Approved for Use'') that lists Code Cases that the NRC has not approved for generic use.

RG 1.193 is not incorporated by reference into the NRC's regulations; however, NRC notes the availability of a proposed version of RG 1.193, Revision 5 (DG–1298). The NRC is not requesting comment on DG–1298.

The ASME Code Cases that are the subject of this rulemaking are the new, revised, and reaffirmed Section III and Section XI Code Cases listed in Supplement 11 to the 2007 BPV Code through Supplement 10 to the 2010 BPV Code, and the OM Code Cases published with the 2009 Edition through the 2012 Edition.

The latest editions and addenda of the ASME BPV and OM Codes that the NRC has approved for use are referenced in § 50.55a. The ASME also publishes Code Cases that provide alternatives to existing Code requirements that the ASME developed and approved. The proposed rule would incorporate by reference RGs 1.84, 1.147, and 1.192, allowing nuclear power plant licensees, and applicants for CPs, OLs, COLs, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications to use the Code Cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, ISI, and IST of nuclear power plant components. This action would be consistent with the provisions of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, which encourages Federal regulatory agencies to consider adopting industry consensus standards as an alternative to *de novo* agency development of standards affecting an industry. This action would also be consistent with the NRC policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations or regulatory guides.

The NRC follows a three-step process to determine acceptability of new, revised, and reaffirmed Code Cases, and the need for regulatory positions on the uses of these Code Cases. This process was employed in the review of the Code Cases in Supplement 11 to the 2007 Edition through Supplement 10 to the 2010 Edition of the BPV Code and the 2009 Edition through the 2012 Edition of the OM Code. The Code Cases in these supplements and OM Editions and Addenda are the subject of this proposed rule. First, the ASME develops Code Cases through a consensus development process, as administered by the American National Standards Institute (ANSI), which ensures that the various technical interests (*e.g.,* utility, manufacturing, insurance, regulatory) are represented on standards development committees and that their view points are addressed fairly. The NRC staff actively participates through full involvement in discussions and technical debates of the task groups, working groups, subgroups, and standards committee regarding the development of new and revised standards. The Code Case process includes development of a technical justification in support of each new or revised Code Case. The ASME committee meetings are open to the public and attendees are encouraged to participate. Task groups, working groups, and subgroups report to a standards committee. The standards committee is the decisive consensus committee in that it ensures that the development process fully complies with the ANSI consensus process.

Second, the standards committee transmits a first consideration letter ballot to every member of the standards committee requesting comment or approval of new and revised Code Cases. Code Cases are approved by the standards committee from the first consideration letter ballot when at least two thirds of the eligible consensus committee membership vote approved, there are no disapprovals from the standards committee, and no substantive comments are received from the ASME oversight committees such as the Technical Oversight Management Committee (TOMC). The TOMC's duties, in part, are to oversee various standards committees to ensure technical adequacy and to provide recommendations in the development of codes and standards, as required. Code Cases that were disapproved or received substantive comments from the first consideration ballot are reviewed by the working level group(s) responsible for their development to consider the comments received. These Code Cases are approved by the standards committee on second consideration when at least two thirds of the eligible consensus committee membership vote approved, and there are no more than three disapprovals from the consensus committee.

[2] See ''Incorporation by Reference of ASME BPV and OM Code Cases'' (68 FR 40469; July 8, 2003).

[3] Code Cases are categorized by ASME as one of three types: New, revised, or reaffirmed. A new Code Case provides for a new alternative to specific ASME Code provisions or addresses a new need. The ASME defines a revised Code Case to be a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the RGs that have been incorporated by reference into § 50.55a. The ASME defines ''reaffirmed'' as an OM Code Case to be one that does not have any change to technical content, but includes editorial changes.

Third, the NRC reviews new, revised, and reaffirmed Code Cases to determine their acceptability for incorporation by reference in § 50.55a through the subject RGs. This rulemaking process, when considered together with the ANSI process for developing and approving the ASME codes and standards, and Code Cases, constitutes the NRC's basis that the Code Cases (with conditions as necessary) provide reasonable assurance of adequate protection to public health and safety.

The NRC reviewed the new, revised, and reaffirmed Code Cases identified in the three draft regulatory guides proposed to be incorporated by reference into § 50.55a in this rulemaking. The NRC proposes to conclude, in accordance with the process described, that the Code Cases are technically adequate (with conditions as necessary) and consistent with current NRC regulations, and referencing these Code Cases in the applicable RGs, thereby approving them for use subject to the specified conditions.

A. Code Cases Proposed To Be Approved for Unconditional Use

The Code Cases that are discussed in TABLE I are new, revised or reaffirmed Code Cases in which the NRC is not proposing any conditions. The NRC concludes, in accordance with the process described for review of ASME Code Cases, that each of the ASME Code Cases listed in TABLE I are acceptable for use without conditions. Therefore, the NRC proposes to approve for unconditional use the Code Cases listed in TABLE I. This table identifies the draft regulatory guide listing the applicable Code Case that the NRC proposes to approve for use.

TABLE I—CODE CASES PROPOSED FOR UNCONDITIONAL USE

Code Case No.	Supplement	Title
Boiler and Pressure Vessel Code Section III (addressed in DG–1295, Table 1)		
N–284–3	7 (10 Edition)	Metal Containment Shell Buckling Design Methods, Class MC, TC, and SC Construction, Section III, Divisions 1 and 3.
N–500–4	8 (10 Edition)	Alternative Rules for Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1.
N–520–5	10 (10 Edition)	Alternative Rules for Renewal of Active or Expired N-type Certificates for Plants Not in Active Construction, Section III, Division 1.
N–594–1	8 (10 Edition)	Repairs to P–4 and P–5A Castings without Postweld Heat Treatment Class 1, 2, and 3 Construction, Section III, Division 1.
N–637–1	3 (10 Edition)	Use of 44Fe-25Ni-21Cr-Mo (Alloy UNS N08904) Plate, Bar, Fittings, Welded Pipe, and Welded Tube, Classes 2 and 3, Section III, Division 1.
N–655–2	4 (10 Edition)	Use of SA–738, Grade B, for Metal Containment Vessels, Class MC, Section III, Division 1.
N–763	2 (10 Edition)	ASTM A 709–06, Grade HPS 70W (HPS 485W) Plate Material Without Postweld Heat Treatment as Containment Liner Material or Structural Attachments to the Containment Liner, Section III, Division 2.
N–777	4 (10 Edition)	Calibration of C_v Impact Test Machines, Section III, Divisions 1, 2, and 3.
N–785	11 (07 Edition)	Use of SA–479/SA–479M, UNS S41500 for Class 1 Welded Construction, Section III, Division 1.
N–811	7 (10 Edition)	Alternative Qualification Requirements for Concrete Level III Inspection Personnel, Section III, Division 2.
N–815	8 (10 Edition).	Use of SA–358/SA–358M Grades Fabricated as Class 3 or Class 4 Welded Pipe, Class CS Core Support Construction, Section III, Division 1.
N–816	8 (10 Edition)	Use of Temper Bead Weld Repair Rules Adopted in 2010 Edition and Earlier Editions, Section III, Division 1.
N–817	8 (10 Edition).	Use of Die Forgings, SB–247, UNS A96061 Class T6, With Thickness ≤4.000 in. Material, Class 2 Construction (1992 Edition or Later), Section III, Division 1.
N–819	8 (10 Edition)	Use of Die Forgings, SB–247, UNS A96061 Class T6, With Thickness ≤4.000 in. Material, Class 2 Construction (1989 Edition with the 1991 Addenda or Earlier), Section III, Division 1.
N–822	8 (10 Edition)	Application of the ASME Certification Mark, Section III, Divisions 1, 2, 3, and 5.
Boiler and Pressure Vessel Code Section XI (addressed in DG–1296, Table 1)		
N–609–1	3 (10 Edition)	Alternative Requirements to Stress-Based Selection Criteria for Category B–J Welds, Section XI, Division 1.
N–613–2	4 (10 Edition)	Ultrasonic Examination of Full Penetration Nozzles in Vessels, Examination Category B–D, Reactor Nozzle-To-Vessel Welds, and Nozzle Inside Radius Section Figs. IWB–2500–7(a), (b), (c), and (d), Section XI, Division 1.
N–652–2	9 (10 Edition)	Alternative Requirements to Categorize B–G–1, B–G–2, and C–D Bolting Examination Methods and Selection Criteria, Section XI, Division 1.

TABLE I—CODE CASES PROPOSED FOR UNCONDITIONAL USE—Continued

Code Case No.	Supplement	Title
N–653–1	9 (10 Edition)	Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds, Section XI, Division 1.
N–694–2 [4]	1 (13 Edition)	Evaluation Procedure and Acceptance Criteria for [pressurized water reactors] (PWR) Reactor Vessel Head Penetration Nozzles, Section XI, Division 1.
N–730–1	10 (10 Edition)	Roll Expansion of Class 1 Control Rod Drive Bottom Head Penetrations in [boiling water reactors] BWRs, Section XI, Division 1.
N–769–2	10 (10 Edition)	Roll Expansion of Class 1 In-Core Housing Bottom Head Penetrations in BWRs, Section XI, Division 1.
N–771	7 (10 Edition)	Alternative Requirements for Additional Examinations of Class 2 or 3 Items, Section XI, Division 1.
N–775	2 (10 Edition)	Alternative Requirements for Bolting Affected by Borated Water Leakage, Section XI, Division 1.
N–776	1 (10 Edition)	Alternative to IWA–5244 Requirements for Buried Piping, Section XI, Division 1.
N–786	5 (10 Edition)	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate-Energy Carbon Steel Piping, Section XI, Division 1.
N–798	4 (10 Edition)	Alternative Pressure Testing Requirements for Class 1 Piping Between the First and Second Vent, Drain, and Test Isolation Devices, Section XI, Division 1.
N–800	4 (10 Edition)	Alternative Pressure Testing Requirements for Class 1 Piping Between the First and Second Injection Valves, Section XI, Division 1.
N–803	5 (10 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.
N–805	6 (10 Edition)	Alternative to Class 1 Extended Boundary End of Interval or Class 2 System Leakage Testing of the Reactor Vessel Head Flange O-Ring Leak-Detection System, Section XI, Division 1.
N–823	9 (10 Edition)	Visual Examination, Section XI, Division 1.
N–825 [5]	3 (13 Edition)	Alternative Requirements for Examination of Control Rod Drive Housing Welds, Section XI, Division 1.
N–845 [6]	6 (13 Edition)	Qualification Requirements for Bolts and Studs, Section XI, Division 1.

Code for Operations and Maintenance (OM)
(addressed in DG–1297, Table 1)

Code Case No.	Edition	Title
OMN–2	2012 Edition	Thermal Relief Valve Code Case, OM Code-1995, Appendix I
OMN–5	2012 Edition	Testing of Liquid Service Relief Valves without Insulation.
OMN–6	2012 Edition	Alternative Rules for Digital Instruments.
OMN–7	2012 Edition	Alternative Requirements for Pump Testing.
OMN–8	2012 Edition	Alternative Rules for Preservice and Inservice Testing of Power-Operated Valves That Are Used for System Control and Have a Safety Function per OM–10, ISTC–1.1, or ISTA-1100.
OMN–13, Revision 2	2012 Edition	Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at [light water reactor] (LWR) Power Plants.
OMN–14	2012 Edition	Alternative Rules for Valve Testing Operations and Maintenance, Appendix I: BWR [control rod drive] CRD Rupture Disk Exclusion.
OMN–15, Revision 2	2012 Edition	Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.
OMN–17	2012 Edition	Alternative Rules for Testing ASME Class 1 Pressure Relief/Safety Valves.
OMN–20	2012 Edition	Inservice Test Frequency.

[4] Code Case published in Supplement 1 to the 2013 Edition; included at the request of ASME.
[5] Code Case published in Supplement 3 to the 2013 Edition; included at the request of ASME.
[6] Code Case published in Supplement 6 to the 2013 Edition; included at the request of ASME.

B. Code Cases Proposed To Be Approved for Use With Conditions

The Code Cases that are discussed in TABLE II are new, revised or reaffirmed Code Cases in which the NRC is proposing conditions. The NRC has determined that certain Code Cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those Code Cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC proposes to impose conditions on the use of these Code Cases to modify, limit or clarify their requirements. The conditions would specify, for each applicable Code Case, the additional activities that must be performed, the limits on the activities specified in the Code Case, and/or the supplemental information needed to provide clarity. These ASME Code Cases with conditions are included in Table 2 of DG–1295 (RG 1.84), DG–1296 (RG 1.147), and DG–1297 (RG 1.192). No new ASME Code Cases with conditions

are proposed to be listed in Table 2 of DG–1295 (RG 1.84).

TABLE II—CODE CASES PROPOSED FOR CONDITIONAL USE

Code Case No.	Supplement	Title
Boiler and Pressure Vessel Code Section III (addressed in DG–1295, Table 2)		
No ASME Section III Code Cases are proposed for Conditional Approval in this Rulemaking		
Boiler and Pressure Vessel Code Section XI (addressed in DG–1296, Table 2)		
N–552–1	10 (10 Edition)	Alternative Methods—Qualification for Nozzle Inside Radius Section from the Outside Surface, Section XI, Division 1.
N–576–2	9 (10 Edition)	Repair of Class 1 and 2 SB–163, UNS N06600 Steam Generator Tubing, Section XI, Division 1.
N–593–2	8 (10 Edition)	Examination Requirements for Steam Generator Nozzle-to-Vessel Welds, Section XI, Division 1.
N–638–6	6 (10 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–662–1	6 (10 Edition)	Alternative Repair/Replacement Requirements for Items Classified in Accordance with Risk-Informed Processes, Section XI, Division 1.
N–666–1	9 (10 Edition)	Weld Overlay of Classes 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.
N–749	9 (10 Edition)	Alternative Acceptance Criteria for Flaws in Ferritic Steel Components Operating in the Upper Shelf Temperature Range, Section XI, Division 1.
N–754	6 (10 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.
N–778	6 (10 Edition)	Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Summary Reports, Section XI, Division 1.
N–789	6 (10 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–795	3 (10 Edition)	Alternative Requirements for BWR Class 1 System Leakage Test Pressure Following Repair/Replacement Activities, Section XI, Division 1.
N–799	4 (10 Edition)	Dissimilar Metal Welds Joining Vessel Nozzles to Components, Section XI, Division 1.

Code for Operations and Maintenance (OM)
(addressed in DG–1297, Table 2)

Code Case No.	Edition	Title
OMN–1 Revision 1	2012 Edition	Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.
OMN–3	2012 Edition	Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.
OMN–4	2012 Edition	Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.
OMN–9	2012 Edition	Use of a Pump Curve for Testing.
OMN–12	2012 Edition	Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM-Code 1998, Subsection ISTC).
OMN–16	2012 Edition	Use of a Pump Curve for Testing.
OMN–18	2012 Edition	Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.
OMN–19	2012 Edition	Alternative Upper Limit for the Comprehensive Pump Test.

The NRC's evaluation of the Code Cases and the reasons for the NRC's proposed conditions are discussed in the following paragraphs. The NRC requests public comment on these Code Cases and the proposed conditions. Notations have been made to indicate the conditions duplicated from previous versions of the RG.

ASME BPV Code, Section III Code Cases (DG–1295/RG 1.84)

There are no new or revised Section III Code Cases in Supplement 11 to the 2007 Edition through Supplement 10 to the 2010 Edition that the NRC proposes to conditionally approve in draft Revision 37 of RG 1.84.

ASME BPV Code, Section XI Code Cases (DG–1296/RG 1.147)

Code Case N–552–1 [Supplement 10, 2010 Edition]

Type: Revised.

Title: *Alternative Methods—Qualification for Nozzle Inside Radius Section from the Outside Surface, Section XI, Division 1.*

The proposed conditions on Code Case N–552–1 are identical to the conditions on N–552 that were approved by the NRC in Revision 16 of RG 1.147 in October 2010.

The reasons for imposing these conditions are not addressed by Code Case N–552–1 and, therefore, these conditions would be retained in proposed Revision 18 of RG 1.147 (DG–1296).

Code Case N–576–2 [Supplement 9, 2010 Edition]

Type: Revised.

Title: *Repair of Class 1 and 2 SB–163, UNS N06600 Steam Generator Tubing, Section XI, Division 1.*

The proposed conditions on Code Case N–576–2 are identical to the conditions on N–576–1 that were approved by the NRC in Revision 17 of RG 1.147 in October 2014. The reasons for imposing these conditions are not addressed by Code Case N–552–2 and, therefore, these conditions would be retained in proposed Revision 18 of RG 1.147 (DG–1296).

Code Case N–593–2 [Supplement 8, 2010 Edition]

Type: Revised.

Title: *Examination Requirements for Steam Generator Nozzle-to-Vessel Welds, Section XI, Division 1.*

The first condition on Code Case N–593–2 is identical to the condition on Code Case N–593 that was first approved by the NRC in Revision 13 of RG 1.147 in June 2003. The condition stated that, ''Essentially 100 percent (not less than 90 percent) of the examination volume A–B–C–D–E–F–G–H [in Figure 1 of the Code Case] must be examined.'' The reasons for imposing this condition in Code Case N–593 continue to apply to Code Case N–593–2. Therefore, this condition would be retained for this Code Case in Revision 18 of RG 1.147.

The second condition on Code Case N–593–2 is new. Revision 2 of the Code Case reduces the weld examination volume by reducing the width examined on either side of the weld from $t_s/2$ to ½ in. The basis for this change in inspection volume is to make the examination volume for steam generator nozzle-to-vessel welds (under Code Case N–593–2) consistent with that specified in Code Case N–613–1 for similar vessel nozzles.

The NRC identified an issue with respect to Code Case N–593–2 with respect to its inconsistency with Code Case N–613–1. Code Case N–593–2 and Code Case N–613–1 address certain types of nozzle-to-vessel welds. Code Case N–613–1 states that ''. . .Category B–D nozzle-to-vessel welds previously ultrasonically examined using the examination volumes of Figs. IWB–2500–7(a), (b), and (c) may be examined using the reduced examination volume (A–B–C–D–E–F–G–H) of Figs. 1, 2, and 3.'' The keywords are ''previously examined.'' Code Case N–613–1 requires the larger volume to have been previously examined before examinations using the reduced volume can be performed. This ensures that there are no detrimental flaws in the component adjacent to the weld that would be missed if the inspection was performed only on the reduced volume. However, Code Case N–593–2 allows a licensee to immediately implement the reduced volume. Accordingly, the NRC is proposing to condition Code Case N–593–2 to require that the examination volume specified in Section XI, Table IWB–2500–1, Examination Category B–D, be used for the examination of steam generator nozzle-to-vessel welds at least once prior to use of the reduced volume allowed by the Code Case.

Code Case N–638–6 [Supplement 6, 2010 Edition]

Type: Revised.

Title: *Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.*

Code Case N–638–6 allows the use of the automatic or machine gas-tungsten arc welding (GTAW) temper bead technique. The GTAW is a proven method that can produce high-quality welds because it affords greater control over the weld area than many other welding processes.

The NRC first approved Code Case N–638 (Revision 0) in 2003 (Revision 13 of Regulatory Guide 1.147). Code Case N–638–4 was approved by the NRC in Revision 16 of RG 1.147 with two conditions. Code Case N–638–5 was not approved in RG 1.147 for generic use but has been approved through requests for an alternative to § 50.55a. Code Case N–638–6 address one of the NRC's concerns that were raised when Code Case N–638–4 was considered for approval and, therefore, the NRC is proposing to delete that condition from RG 1.147.

Many of the provisions for developing and qualifying welding procedure specifications for the temper bead technique that were contained in earlier versions of the Code Case have been incorporated into ASME Section IX, ''Welding and Brazing Qualifications,'' QW–290, ''Temper Bead Welding.'' Code Case N–638–6 retains the provisions not addressed by QW–290 and references QW–290 in lieu of specifying them directly in the Code Case.

In addition to retaining one of the two conditions on Code Case N–638–4, the NRC is proposing to add a new condition to address technical issues raised by certain provisions of Code Case N–638–6.

The retained condition on Code Case N–638–6 pertains to the qualification of NDE and is identical to the condition on N–638–4 that was approved by the NRC in Revision 17 of RG 1.147 in October 2014. The reasons for imposing this condition is not addressed by Code Case N–638–6 and, therefore, this condition would be retained in proposed Revision 18 of RG 1.147 (DG–1296).

The new proposed condition is that section 1(b)(1) of the Code Case shall not be used. Section 1(b)(1) would allow through-wall circumferential repair welds to be made using the temper bead technique without heat treatment. Revisions 1 through 5 of N–638 limited the depth of the weld to one-half of the ferritic base metal thickness and the previously stated condition will limit repairs to this previously approved value. Repairs exceeding one-half of the ferritic base metal thickness may represent significant repairs (*e.g.,* replacement of an entire portion of the reactor coolant loop). Until the NRC has more experience with such repairs, the NRC is imposing this condition so that prior NRC approval is necessary. Once significant experience is obtained demonstrating such major repairs can be performed safely, the NRC will consider relaxing this condition.

Code Case N–662–1 [Supplement 6, 2010 Edition]

Type: Revised.

Title: *Alternative Repair/Replacement Requirements for Items Classified in Accordance with Risk-Informed Processes, Section XI, Division 1.*

The proposed condition on Code Case N–662–1 is identical to the condition on N–662 that was approved by the NRC in Revision 16 of RG 1.147 in October 2010. The reasons for imposing this condition are not addressed by Code Case N–662–1 and, therefore, this condition would be retained in DG–1296/proposed Revision 18 of RG 1.147.

Code Case N–666–1 [Supplement 9, 2010 Edition]

Type: Revised.

Title: *Weld Overlay of Classes 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.*

Code Case N–666 was unconditionally approved in Revision 17 of RG 1.147. The NRC proposes to approve Code Case N–666–1 with two conditions.

The first proposed condition is that a surface examination must be performed on the completed weld overlay for Class 1 and Class 2 piping socket welds. Code Case N–666–1 contains provisions for the design, installation, evaluation, pressure testing, and examination of the weld overlays on Class 1, 2, and 3 socket welds. Section 5(a)(1) of the Code Case requires nondestructive examination (NDE) of the completed weld overlay in accordance with the Construction Code. However, various Construction Codes have been used in the design and fabrication of the nuclear power plant fleet. The requirements for NDE have changed over the years as more effective and reliable methods and techniques have been developed. In addition, Construction Code practices have evolved based on design and construction experience. The NRC is concerned that some of the Construction Codes would not require a surface examination of the weld overlay and would therefore be inadequate for NDE of the completed weld overlay. The NRC believes that a VT–1 examination alone would not be adequate and that a surface or volumetric examination must be performed on the completed weld overlay for Class 1 and Class 2 piping socket welds. Fabrication defects, must be dispositioned using the surface or volumetric examination criteria of the Construction Code identified in the Repair/Replacement Plan.

The second proposed condition would require that a surface or volumetric examination be performed if required by the plant-specific Construction Code, or that a VT–1 examination be performed after completion of the weld overlay. Paragraph 5(a) of the Code Case requires ''visual and nondestructive examination of the final structural overlay weld.'' In accordance with the requirement in paragraph 5(a), a surface or volumetric examination of the completed Class 3 piping socket weld overlay shall be performed if required by the plant-specific Construction Code. However, where the plant-specific Construction Code does not require a surface or volumetric examination of the Class 3 piping socket weld, it would be acceptable to only perform a VT–1 examination of the completed weld overlay.

Code Case N–749 [Supplement 9, 2010 Edition]

Type: New.

Title: *Alternative Acceptance Criteria for Flaws in Ferritic Steel Components Operating in the Upper Shelf Temperature Range, Section XI, Division 1.*

The NRC proposes that instead of the upper shelf transition temperature, T_c, as defined in the Code Case, the following shall be used:

$T_c = 154.8\ °F + 0.82 \times RT_{NDT}$ (in U.S Customary Units), and

$T_c = 82.8\ °C + 0.82 \times RT_{NDT}$ (in International System (SI) Units).

T_c is the temperature above which the elastic plastic fracture mechanics (EPFM) method must be applied. Additionally, the NRC defines temperature T_{c1} below which the linear elastic fracture mechanics (LEFM) method must be applied:

$T_{c1} = 95.36\ °F + 0.703 \times RT_{NDT}$ (in U.S Customary Units), and

$T_{c1} = 47.7\ °C + 0.703 \times RT_{NDT}$ (in International System (SI) Units).

Between T_{c1} and T_c, while the fracture mode is in transition from LEFM to EPFM, users should consider whether or not it is appropriate to apply the EPFM method. Alternatively, the licensee may use a different T_c value if it can be justified by plant-specific Charpy Curves.

Code Case N–749 provides acceptance criteria for flaws in ferritic components for conditions when the material fracture resistance will be controlled by upper-shelf toughness behavior. These procedures may be used to accept a flaw in lieu of the requirements in Section XI, paragraphs IWB–3610 and IWB–3620 (which use LEFM to evaluate flaws that exceed limits of Section XI, paragraph IWB–3500). Code Case N–749 employs EPFM methods (J-integral) and is patterned after the fracture methodology and acceptance criteria that currently exist in Section XI, paragraph IWB–3730(b), and Section XI, Nonmandatory Appendix K, ''Assessment of Reactor Vessels with Upper Shelf Charpy Impact Energy Levels.'' The Code Case states that the proposed methodology is applicable if the metal temperature of the component exceeds the upper shelf transition temperature, T_c, which is defined as nil-ductility reference temperature (RT_{NDT}) plus 105 °F. The justification for this, as documented in the underlying White Paper, PVP2012–78190, ''Alternative Acceptance Criteria for Flaws in Ferritic Steel Components Operating in the Upper Shelf Temperature Range,'' is that the ASME Code, Section XI, K_{1c} curve will give a (T- RT_{NDT}) value of 105 °F at K_{1c} of 200 ksi$\sqrt{}$inch.

Defining an upper shelf transition temperature purely based on LEFM data is not convincing because it ignores EPFM data and Charpy data and their relationship to the LEFM data. The NRC staff performed calculations on several randomly selected reactor pressure vessel surveillance materials with high upper-shelf energy values and low RT_{NDT} values from three plants and found that using T_c, as defined in the Code case, is nonconservative because at the temperature of RT_{NDT} + 105 °F, the Charpy curves show that most of the materials will not reach their respective upper-shelf levels. The NRC staff's condition is based on a 2015 ASME Pressure Vessels and Piping Conference paper (PVP2015–45307) by Mark Kirk, Gary Stevens, Marjorie Erickson, William Server, and Hal Gustin entitled ''Options for Defining the Upper Shelf Transition Temperature (Tc) for Ferritic Pressure Vessel Steels,'' where T_c and T_{c1} are defined as the intersections of specific toughness curves of LEFM data and EPFM data as shown in that paper. Using the model in the 2015 PVP paper is justified because, in addition to its theoretically motivated approach applying the temperature-dependent flow behavior of body-centered cubic materials, the model is also supported by numerous LEFM data and 809 EPFM data in the upper shelf region.

While the T_c proposed in Code Case N–749 is conservative based on the intersection of the mean curves of the two sets of data, the NRC believes that actual or bounding properties (on the conservative side) should be used instead of mean material properties for evaluating flaws detected in a ferritic component using the EPFM approach. Further, the NRC's approach considers the temperature range for fracture mode transition between LEFM and EPFM. Based on the previous discussion, the NRC proposes to impose a condition on the use of Code Case N–749 that (1) the two equations for T_c be used instead of T_c as proposed in the Code Case for requiring EPFM application when temperature is above T_c, and (2) the two equations for T_{c1} be used for requiring LEFM application when temperature is below $T_{c1.}$ Between T_{c1} and T_c, while the fracture mode is in transition between LEFM and EPFM, users should consider whether or not it is appropriate to apply the EPFM method.

Alternatively, the licensee may use a different T_c value if it can be justified by plant-specific Charpy Curves.

Code Case N–754 [Supplement 6, 2010 Edition]

Type: New.

Title: *Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.*

The NRC proposes to approve Code Case N–754 with three conditions. Code Case N–754 provides requirements for installing optimized structural weld overlays (OWOL) on the outside surface of ASME Class 1 heavy-wall, large-diameter piping composed of ferritic, austenitic stainless steel, and nickel base alloy materials in PWRs as a mitigation measure where no known defect exists or the defect depth is limited to 50 percent through wall. The upper 25 percent of the original pipe wall thickness is credited as a part of the OWOL design in the analyses performed in support of these repairs. The technical basis supporting the use of OWOLs is provided in the Electric Power Research Institute (EPRI) Materials Reliability Project (MRP) Report MRP–169, Revision 1–A entitled, ''Technical Basis for Preemptive Weld Overlays for Alloy 82/182 Butt Welds in PWRs.'' By letter dated August 9, 2010 (ADAMS Accession No. ML101620010), the NRC advised the Nuclear Energy Institute (NEI) that the NRC staff found that MRP–169, Revision 1, as revised by letter dated February 3, 2010, adequately described: Methods for the weld overlay design; the supporting analyses of the design; the experiments that verified the analyses; and the inspection requirements of the dissimilar metal welds to be overlaid.

The first proposed condition would require that the conditions imposed on the use of OWOLs contained in the NRC final safety evaluation for MRP–169, Revision 1–A, must be satisfied. Eighteen limitations and conditions are described in the final safety evaluation addressing issues such as fatigue crack growth rates, piping loads, design life of the weld overlay, and reexamination frequencies. The imposition of the conditions in the safety evaluation will provide reasonable assurance that the structural integrity of pipes repaired through the use of weld overlays will be maintained.

Code Case N–754 references Code Case N–770–2, ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated With UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities, Section XI, Division 1,'' in order to provide ASME requirements for the performance of the preservice and inservice examinations of OWOLs, with additional requirements if the ultrasonic examination is qualified for axial flaws. The NRC has not yet approved Code Case N–770–2 in the regulations. However, the NRC has approved Code Case N–770–1 with conditions in § 50.55a(g)(6)(ii)(F). Accordingly, the second proposed condition on the use of Code Case N–754 is that the preservice and inservice inspections of OWOLs must satisfy § 50.55a(g)(6)(ii)(F), *i.e.,* meet the provisions of Code Case N–770–1.

The third proposed condition addresses a potential implementation issue in Code Case N–754 with respect to the deposition of the first layer of weld metal. The second sentence in paragraph 1.2(f)(2) states that ''The first layer of weld metal deposited may not be credited toward the required thickness, but the presence of this layer shall be considered in the design analysis requirements in 2(b).'' The NRC has found that among licensees there can be various interpretations of the words used in the ASME Code and Code Cases. In this instance, the NRC felt the word ''may'' needed to be changed to ''shall'' in the second sentence in paragraph 1.2(f)(2) as a condition for use of this Code Case. Accordingly, the NRC is proposing a third condition to clarify that the first layer shall not be credited toward the required OWOL thickness unless the chromium content of the first layer is at least 24 percent.

Code Case N–778 [Supplement 0, 2010 Edition]

Type: New.

Title: *Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Summary Reports, Section XI, Division 1.*

The NRC is proposing to approve Code Case N–778 with two conditions. Section XI, paragraph IWA–1400(d), in the editions and addenda currently used by the operating fleet, require licensees to submit plans, schedules, and preservice and ISI summary reports to the enforcement and regulatory authorities having jurisdiction at the plant site. In licensees' pursuit to decrease burden, they have alluded to the resources associated with the requirement to submit the items previously listed. Code Case N–778 was developed to provide an alternative to the requirements in the BPV Code in that the items previously listed would only have to be submitted if specifically required by the regulatory and enforcement authorities.

The NRC reviewed its needs with respect to the submittal of the subject plans, schedules, and reports, and determined that it is not necessary to require the submittal of plans and schedules as the latest up-to-date plans and schedules are available at the plant site and can be requested by the NRC at any time. However, the NRC determined that summary reports still need to be submitted. Summary reports provide valuable information regarding examinations that have been performed, conditions noted during the examinations, the corrective actions performed, and the status of the implementation of the ISI program. Accordingly, the NRC is proposing to conditionally approve Code Case N–778 to require that licensees continue to submit summary reports in accordance with paragraph IWA–6240 of the 2009 Addenda of ASME Section XI.

The two conditions proposed are modeled on the requirements currently in paragraph IWA–6240 of the 2009 Addenda, Section XI. The requirements in Section XI do not specify when the reports are to be submitted to the regulatory authority; rather, the requirements state only that the reports shall be completed. The first proposed condition would require that the preservice inspection summary report be submitted before the date of placement of the unit into commercial service. The second proposed condition would require that the inservice inspection summary report be submitted within 90 calendar days of the completion of each refueling outage. The proposed conditions rely on the date of commercial service and the completion of a refueling outage to determine when the reports needed to be submitted to the regulatory authority.

Code Case N–789 [Supplement 6, 2010 Edition]

Type: New.

Title: *Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate-Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.*

The NRC is proposing to approve Code Case N–789 with two conditions. For certain types of degradation, the Code Case provides requirements for the temporary repair of degraded moderate energy Class 2 and Class 3 piping systems by external application of welded reinforcement pads. The Code Case does not require inservice monitoring for the pressure pad. However, the NRC believes that it is unacceptable not to monitor the pressure pad because there may be instances where an unexpected

corrosion rate may cause the degraded area in the pipe to expand beyond the area that is covered by the pressure pad. This could lead to the pipe leaking and may challenge the structural integrity of the repaired pipe. Therefore, the NRC is proposing to approve Code Case N–789 with a condition to require a monthly visual examination of the installed pressure pad for evidence of leakage.

The NRC is concerned that the corrosion rate specified in paragraph 3.1(1) of the Code Case may not address certain scenarios. That paragraph would allow either a corrosion rate of two times the actual measured corrosion rate at the reinforcement pad installation location or four times the estimated maximum corrosion rate for the system. To ensure that a conservative corrosion rate is used to provide sufficient margin, the NRC is proposing a second condition that would require that the design of the pressure pad use the higher of the two corrosion rates calculated based on the same degradation mechanism as the degraded location.

Code Case N–795 [Supplement 3, 2010 Edition]

Type: New.

Title: *Alternative Requirements for BWR Class 1 System Leakage Test Pressure Following Repair/Replacement Activities, Section XI, Division 1.*

The NRC is proposing to approve Code Case N–795 with two conditions. The first condition addresses a prohibition against the production of heat through the use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the reactor coolant pressure boundary (RCPB) (sometimes referred to as nuclear heat). The second condition addresses the duration of the hold time when testing non-insulated components to allow potential leakage to manifest itself during the performance of system leakage tests.

Code Case N–795 was intended to address concerns that the ASME-required pressure test for boiling water reactors (BWRs) that places the unit in a position of significantly reduced margin, approaching the fracture toughness limits defined in the Technical Specification Pressure-Temperature (P–T) curves, and does not allow the setpoint to approach the 100-percent pressure value. The alternative test provided by Code Case N–795 would be performed at slightly reduced pressures and normal plant conditions, which the NRC believes will constitute an adequate leak examination and would reduce the risk associated with abnormal plant conditions and alignments.

However, the NRC has a long-standing prohibition against the production of heat through the use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the RCPB. A letter dated February 2, 1990, from James M. Taylor, Executive Director for Operations, NRC, to Messrs. Nicholas S. Reynolds and Daniel F. Stenger, Nuclear Utility Backfitting and Reform Group (ADAMS Accession No. ML14273A002), established the NRC position with respect to use of a critical reactor core to raise the temperature of the reactor coolant and pressurize the RCPB. In summary, the NRC's position is that testing under these conditions involves serious impediments to careful and complete inspections, and therefore, inherent uncertainty with regard to assuring the integrity of the reactor coolant pressure boundary. Further, the practice is not consistent with basic defense-in-depth safety principles.

The NRC's position established in 1990 was reaffirmed in Information Notice No. 98–13, ''Post-Refueling Outage Reactor Pressure Vessel Leakage Testing Before Core Criticality,'' dated April 20, 1998. The Information Notice was issued in response to a licensee that had conducted an ASME Code, Section XI, leakage test of the reactor pressure vessel and subsequently discovered that it had violated 10 CFR part 50, appendix G, that pressure and leak testing before the core is taken critical. The Information Notice references NRC Inspection Report 50–254/97–27, (ADAMS Accession No. ML15216A276) which documents that licensee personnel performing VT–2 examinations of drywell at one BWR plant covered 50 examination areas in 12 minutes, calling into question the adequacy of the VT–2 examinations.

The bases for the NRC's position on the first condition are as follows:

1. Nuclear operation of a plant should not commence before completion of system hydrostatic and leakage testing to verify the basic integrity of the RCPB, a principal defense-in-depth barrier to the accidental release of fission products. In accordance with the defense-in-depth safety precept, nuclear power plant design provides multiple barriers to the accidental release of fission products from the reactor. The RCPB is one of the principal fission product barriers. Consistent with this conservative approach to the protection of public health and safety, and the critical importance of the RCPB in preventing accidental release of fission products, the NRC has always maintained the view that verification of the integrity of the RCPB is a necessary prerequisite to any nuclear operation of the reactor.

2. Hydrotesting must be done essentially water solid so that stored energy in the reactor coolant is minimized during a hydrotest or leaktest.

3. The elevated reactor coolant temperatures associated with critical operation result in a severely uncomfortable and difficult working environment in plant spaces where the system leakage inspections must be conducted. The greatly increased stored energy in the reactor coolant when the reactor is critical increases the hazard to personnel and equipment in the event of a leak, and the elevated temperatures contribute to increased concerns for personnel safety due to burn hazards, even if there is no leakage. As a result, the ability for plant workers to perform a comprehensive and careful inspection becomes greatly diminished.

With respect to the second condition and adequate pressure test hold time, the technical analysis supporting Code Case N–795 indicates that the lower test pressure provides more than 90 percent of the flow that would result from the pressure corresponding to 100 percent power. However, a reduced pressure means a lower leakage rate so additional time is required in order for there to be sufficient leakage to be observed by inspection personnel. Section XI, paragraph IWA–5213, ''Test Condition Holding Time,'' does not require a holding time for Class 1 components once test pressure is obtained. To account for the reduced pressure, Code Case N–795 would require a 15-minute hold time for non-insulated components. The NRC is proposing a one-hour hold time for non-insulated components. The NRC does not believe that 15 minutes allows for an adequate examination.

The NRC is interested in receiving stakeholder feedback on the first condition of Code Case N–795. What are the impacts of this proposed condition on the regulated community? Should the condition be modified and, if so, please provide the basis for such modifications.

Code Case N–799 [Supplement 4, 2010 Edition]

Type: New.

Title: *Dissimilar Metal Welds Joining Vessel Nozzles to Components, Section XI, Division 1.*

The NRC proposes to approve Code Case N–799 with six conditions. Code Case N–799 is a new Code Case developed to provide examination

requirements for the steam generator primary nozzle to pump casing attachment weld for AP–1000 plants and dissimilar metal welds joining vessel nozzles to pumps used in recent reactor designs (*e.g.,* AP–1000, Advanced BWR). Nuclear power plant pump casings are typically manufactured from cast austenitic stainless steel (CASS) materials. The NRC is proposing to condition the Code Case to address the shortcomings in the Code Case with respect to requirements for ultrasonic examination.

The CASS is an anisotropic and inhomogeneous material. The manufacturing process can result in varied and mixed structures. The large size of the anisotropic grains affects the propagation of ultrasound by causing severe attenuation, changes in velocity, and scattering of ultrasonic energy. Refraction and reflection of the sound beam occurs at the grain boundaries which can result in specific volumes of material not being examined, or defects being missed or mischaracterized. The grain structure of the associated weldments also impacts the effectiveness and reliability of the examinations. Accordingly, it is paramount that robust examination techniques be used.

Research has been conducted by several domestic and international organizations attempting to address the shortcomings associated with the use of conventional methods for the inspection of CASS materials. The results of a study at Pacific Northwest National Laboratory (PNNL) were published in NUREG/CR–6933, ''Assessment of Crack Detection in Heavy-Walled Cast Stainless Steel Piping Welds Using Advanced Low-Frequency Ultrasonic Methods'' (ADAMS Accession No. ML071020409). The study demonstrated that additional measures were required to reliably detect and characterize flaws in CASS materials and their associated weldments.

Performance demonstration requirements for CASS components and associated weldments have not yet been developed by the industry. To ensure that effective and reliable examinations are performed, the NRC is proposing the following six conditions on the Code Case.

The first proposed condition addresses the gap between the probe and component surface. Industry experience shows that effective ultrasonic examinations depend to a great extent on limiting the gap between the probe and component surface to less than 0.032-inch. The BPV Code does not have any requirements with respect to surface smoothness and waviness. It has been demonstrated that reduced coupling and probe lift-off on ''rough'' surfaces have the potential to present a scattering effect at an interface where an acoustic beam impinges, to redirect and mode convert some energy which when returned to the probe can be the source of spurious signals, or cause flaws to be mis-characterized or missed altogether. Accordingly, the first proposed condition would require that the scanning surfaces have a gap less than 0.032-inch beneath the ultrasonic testing probe. Gaps greater than 0.032-inch must be considered to be unexamined unless it can be demonstrated on representative mockups that a Section XI, Appendix VIII, Supplement 10, demonstration can be passed.

The second proposed condition (No. 2a in the draft RG) is that the examination requirements of Section XI, Mandatory Appendix I, paragraph I–3200(c) must be applied. Code Case N–799 does not contain specific requirements regarding examination techniques. Paragraph I–3200(c) contains specific requirements that can be applied.

The third proposed condition (No. 2b in the draft RG) is that the examination of the dissimilar metal welds between reactor vessel nozzles and components, and between steam generator nozzles and pumps must be full volume. As described, the examination of coarse-grained materials is problematic due to effects such as sound beam redirection and scattering, and therefore robust techniques must be used on the full volume to ensure that flaws are detected.

The fourth proposed condition (No. 2c in the draft RG) is that ultrasonic depth and sizing qualifications for CASS components must use the ASME Code requirements in Section XI, Appendix VIII, Supplement 10. Supplement 10 contains qualification requirements for dissimilar metal welds, and the use of these requirements will ensure that robust techniques are applied.

The fifth proposed condition (No. 2d in the draft RG) addresses the examination of thick-walled components with wall thicknesses beyond the crack detection and sizing capabilities of a through-wall ultrasonic performance-based qualification. As previously indicated, ASME Code rules have not yet been developed for the performance demonstration for CASS components and associated weldments. Accordingly, the fifth proposed condition will require the examination's acceptability to be based on an ultrasonic examination of the qualified volume and a flaw evaluation of the largest hypothetical crack that could exist in the volume not qualified for ultrasonic examination.

The sixth proposed condition (No. 2e in the draft RG) is that cracks that are detected but cannot be depth-sized with performance-based procedures, equipment, and personnel qualifications consistent with Section XI, Appendix VIII, shall be repaired or removed.

OM Code Cases (DG–1297/RG 1.192)

Code Case OMN–1, Revision 1 [2012 Edition]

Type: Revised.

Title: *Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.*

The proposed conditions on Code Case OMN–1, Revision 1 [2012 Edition] are identical to the conditions on OMN–1 [2006 Addenda] that were approved by the NRC in Revision 1 of RG 1.192 in October 2014. The reasons for imposing these conditions are not addressed by Code Case OMN–1, Revision 1 [2012 Edition] and, therefore, these conditions would be retained in DG–1297/proposed Revision 2 of RG 1.192.

Code Case OMN–3 [2012 Edition]

Type: Reaffirmed.

Title: *Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.*

The proposed conditions on Code Case OMN–3 [2012 Edition] are identical to the conditions on OMN–3 [2004 Edition] that were approved by the NRC in Revision 1 of RG 1.192 in October 2014. The reasons for imposing these conditions are not addressed by Code Case OMN–3 [2012 Edition] and, therefore, these conditions would be retained in DG–1297/proposed Revision 2 of RG 1.192.

Code Case OMN–4 [2012 Edition]

Type: Reaffirmed.

Title: *Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.*

The proposed conditions on Code Case OMN–4 [2012 Edition] are identical to the conditions on OMN–4 [2004 Edition] that were approved by the NRC in Revision 1 of RG 1.192 in October 2014. The reasons for imposing these conditions are not addressed by Code Case OMN–4 [2012 Edition] and, therefore, these conditions would be retained in DG–1297/proposed Revision 2 of RG 1.192.

Code Case OMN–9 [2012 Edition]

Type: Reaffirmed.

Title: *Use of a Pump Curve for Testing.*

The proposed conditions on Code Case OMN–9 [2012 Edition] are identical to the conditions on OMN–9 [2004 Edition] that were approved by the NRC in Revision 1 of RG 1.192 in October 2014. The reasons for imposing these conditions are not addressed by Code Case OMN–9 [2012 Edition] and, therefore, these conditions would be retained in DG–1297/proposed Revision 2 of RG 1.192.

Code Case OMN–12 [2012 Edition]

Type: Reaffirmed.

Title: *Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM–Code 1998, Subsection ISTC).*

The proposed conditions on Code Case OMN–12 [2012 Edition] are identical to the conditions on OMN–12 [2004 Edition] that were approved by the NRC in Revision 1 of RG 1.192 in October 2014. The reasons for imposing these conditions are not addressed by Code Case OMN–12 [2012 Edition] and, therefore, these conditions would be retained in DG–1297/proposed Revision 2 of RG 1.192.

Code Case OMN–16, Revision 1 [2012 Edition]

Type: Revised.

Title: *Use of a Pump Curve for Testing.*

Code Case OMN–16, 2006 Addenda, was approved by the NRC in Regulatory Guide 1.192, Revision 1. With respect to Code Case OMN–16, Revision 1, 2012 Edition, there was an editorial error in the publishing of this Code Case and Figure 1 from the original Code Case (*i.e.,* Rev. 0, 2006 Addenda) was omitted. Accordingly, the NRC proposes to conditionally approve OMN–16, Revision 1, to require that Figure 1 from the original Code Case be used when implementing OMN–16, Revision 1.

Code Case OMN–18 [2012 Edition]

Type: Reaffirmed.

Title: *Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.*

The ASME OM Code defines Group A pumps as those pumps that are operated continuously or routinely during normal operation, cold shutdown, or refueling operations. The OM Code specifies that each Group A pump undergo a Group A test quarterly and comprehensive test biennially. The OM Code requires that the reference value for a comprehensive test to be within 20 percent of pump design flow, while the reference value for a Group A test needs to be within 20 percent of the pump design flow if practicable. The biennial comprehensive test was developed (first appeared in the 1995 Edition of the OM Code) because pump performance concerns demonstrated that more stringent periodic testing was needed at a flow rate within a more reasonable range of the pump design flow rate than typically performed during pump inservice testing in the past.

Currently when performing either the quarterly Group A test or the biennial comprehensive pump test, licensees must comply with certain limits for the flow Acceptable Range, the flow Required Action Range, the differential pressure (or discharge pressure) Acceptable Range, and the differential pressure (or discharge pressure) Required Action Range. The limits for the quarterly Group A test are obtained by using a factor of 1.10 times the flow reference value (Q_r) or the differential or discharge pressure reference value (ΔP_r or P_r) as applicable to the pump type. The limits for the biennial comprehensive pump test are obtained by using the factor of 1.03 times Q_r or ΔP_r (or P_r) as applicable to the pump type, providing more restrictive test ranges and higher quality data.

Code Case OMN–18, 2012 Edition, would remove the Code requirement to perform biennial comprehensive pump where the quarterly Group A pump test is performed within ±20 percent of the pump design flow rate with instruments having the ability to obtain the accuracies required for the comprehensive pump test. The NRC considers the performance of a quarterly Group A pump test at flow within ±20 percent of the pump design flow rate to satisfy the intent of the biennial comprehensive pump test with the exception that the test acceptable ranges and required action ranges are less precise than required for the comprehensive test. Therefore, the NRC is proposing to conditionally approve Code Case OMN–18, 2012 Edition, to specify the use of a factor of 1.06 for the Group A test parameters. The NRC considers that the factor of 1.06 will provide a reasonable test range when applying Code Case OMN–18 to Group A pumps tested quarterly within ±20 percent of the pump design flow rate that is not as restrictive as the test ranges specified in the ASME OM Code for the comprehensive test. The NRC believes that the quarterly Group A test for pumps within ±20 percent of the pump design flow rate combined with the provisions in the Code Case OMN–18 for the pump instrumentation and the conditions in RG 1.192 for the test ranges will provide reasonable assurance of the operational readiness of these pumps as an acceptable alternative to the comprehensive pump test provisions in the ASME OM Code.

Code Case OMN–19 [2012 Edition]

Type: Reaffirmed.

Title: *Alternative Upper Limit for the Comprehensive Pump Test.*

A requirement for a periodic pump verification test was added in Mandatory Appendix V, ''Pump Periodic Verification Test Program,'' to the 2012 Edition of the OM Code. The mandatory appendix is based on the determination by the ASME that a pump periodic verification test is needed to verify that a pump can meet the required (differential or discharge) pressure as applicable, at its highest design basis accident flow rate. Code Case OMN–19, 2012 Edition, would allow an applicant or licensee to use a multiplier of 1.06 times the reference value in lieu of the 1.03 multiplier for the comprehensive pump test's upper ''Acceptable Range'' criteria and ''Required Action Range, High'' criteria reference in the ISTB test acceptance criteria tables. The NRC is concerned that Code Case OMN–19 does not address the periodic pump verification test. Therefore, the NRC proposes to approve Code Case OMN–19, 2012 Edition, with the condition that the provisions in paragraph ISTB–1400 and Mandatory Appendix V be applied when implementing the Code Case.

C. ASME Code Cases Not Approved for Use (DG–1298/RG 1.193)

The ASME Code Cases that are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, ''ASME Code Cases not Approved for Use.'' In addition to ASME Code Cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes Code Cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. Regulatory Guide 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not proposing to adopt any of the Code Cases listed in RG 1.193. Comments have been submitted in the past, however, on certain Code Cases listed in RG 1.193 where the commenter believed that additional technical information was available that might not

have been considered by the NRC in its determination not to approve the use of these Code Cases. While the NRC will consider those comments, NRC is not requesting comment on RG 1.193 at this time. Any changes in the NRC's non-approval of such Code Cases will be the subject of an additional opportunity for public comment.

IV. Section-by-Section Analysis

The following paragraphs in § 50.55a, which list the three RGs that would be incorporated by reference, would be revised as follows:

Paragraphs (a)(3)(i): The reference to ''*NRC Regulatory Guide 1.84, Revision 36,''* would be amended to remove ''Revision 36'' and add in its place ''Revision 37.''

Paragraphs (a)(3)(ii): The reference to ''*NRC Regulatory Guide 1.147, Revision 17,''* would be amended to remove ''Revision 17'' and add in its place ''Revision 18.''

Paragraphs (a)(3)(iii): The reference to ''*NRC Regulatory Guide 1.192, Revision 1,''* would be amended to remove ''Revision 1'' and add in its place ''Revision 2.''

Cross-references to the aforementioned Regulatory Guides, which are listed within § 50.55a, are being revised in a proposed rule entitled, ''Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases'' (RIN 3150–AI97; NRC–2011–0088); anticipated to become effective before this rule, if enacted.

This proposed administrative change would simplify cross-referencing the Regulatory Guides incorporated by reference in § 50.55a.

Overall Considerations on the Use of ASME Code Cases

This rulemaking would amend § 50.55a to incorporate by reference RG 1.84, Revision 37, which would supersede Revision 36; RG 1.147, Revision 18, which would supersede Revision 17; and RG 1.192, Revision 2, which would supersede Revision 1. The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this rulemaking.

The approval of a Code Case in the NRC RGs constitutes acceptance of its technical position for applications that are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant and/or licensee are responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Cases. If the RG states an NRC condition on the use of a Code Case, then the NRC condition supplements and does not supersede any condition(s) specified in the Code Case, unless otherwise stated in the NRC condition.

The ASME Code Cases may be revised for many reasons (*e.g.,* to incorporate operational examination and testing experience and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when an applicant or a licensee initially implements a Code Case, § 50.55a requires that the applicant or the licensee implement the most recent version of that Code Case as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies only to new construction (*i.e.,* the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III Code Case is implemented by an applicant or a licensee and a later version of the Code Case is incorporated by reference into § 50.55a and listed in the RGs, the applicant or the licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis (*e.g.,* § 50.59)).

A licensee's ISI and IST programs must be updated every 10 years to the latest edition and addenda of Section XI and the OM Code, respectively, that were incorporated by reference into § 50.55a and in effect 12 months prior to the start of the next inspection and testing interval. Licensees who were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a Code Case is revised by the ASME and approved for use by the NRC. Code Cases apply to specific editions and addenda, and Code Cases may be revised if they are no longer accurate or adequate, so licensees choosing to continue using a Code Case during the subsequent ISI or IST interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. If an applicant or a licensee applied a Code Case before it was listed as annulled, the applicant or the licensee may continue to use the Code Case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI or IST update interval expires, after which the continued use of the Code Case is prohibited unless NRC authorization is given under § 50.55a(z). If a Code Case is incorporated by reference into § 50.55a and later annulled by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate, the NRC will amend § 50.55a and the relevant RG to remove the approval of the annulled Code Case. Applicants and licensees should not begin to implement such annulled Code Cases in advance of the rulemaking.

A Code Case may be revised, for example, to incorporate user experience. The older or superseded version of the Code Case cannot be applied by the licensee or applicant for the first time.

If an applicant or a licensee applied a Code Case before it was listed as superseded, the applicant or the licensee may continue to use the Code Case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI or IST update interval expires, after which the continued use of the Code Case is prohibited unless NRC authorization is given under § 50.55a(z). If a Code Case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate; the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded Code Case. Applicants and licensees should not begin to implement such superseded Code Cases in advance of the rulemaking.

V. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed

rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VI. Regulatory Analysis

The ASME Code Cases listed in the RGs to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV and OM Codes for design, construction, ISI, and IST of specific structures, systems, and components used in nuclear power plants. Implementation of these Code Cases is not required. Licensees and applicants use NRC-approved ASME Code Cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code Case publication process without expending considerable additional resources.

The NRC has prepared a draft regulatory analysis addressing the quantitative and qualitative benefits of the alternatives considered in this proposed rulemaking and comparing the costs associated with each alternative. The draft regulatory analysis can be found in ADAMS under accession No. ML15041A816 and at *www.regulations.gov* under Docket ID NRC–2012–0059. The NRC invites public comment on this draft regulatory analysis.

In addition to the general opportunity to submit comments on the proposed rule, the NRC also requests comments on the NRC's cost and benefit estimates as shown in the draft regulatory analysis.

VII. Backfitting and Issue Finality

The provisions in this proposed rule would allow licensees and applicants to voluntarily apply NRC-approved Code Cases, sometimes with NRC-specified conditions. The approved Code Cases are listed in three RGs that are proposed to be incorporated by reference into § 50.55a.

An applicant's or a licensee's voluntary application of an approved Code Case does not constitute backfitting, inasmuch as there is no imposition of a new requirement or new position. Similarly, voluntary application of an approved Code Case by a 10 CFR part 52 applicant or licensee does not represent NRC imposition of a requirement or action, which is inconsistent with any issue finality provision in 10 CFR part 52. For these reasons, the NRC finds that this proposed rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the issue finality criteria in 10 CFR part 52 are met.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

IX. Incorporation by Reference—Reasonable Availability to Interested Parties

The NRC proposes to incorporate by reference three NRC Regulatory Guides that list new and revised ASME Code Cases that NRC has approved as alternatives to certain provisions of NRC-required Editions and Addenda of the ASME BPV Code and the ASME OM Code. The draft regulatory guides DG–1295, DG–1296, and DG–1297 will correspond to final Regulatory Guide (RG) 1.84, Revision 37; RG 1.147, Revision 18; and RG 1.192, Revision 2, respectively.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the considerations for determining ''reasonable availability'' vary by class of interested parties. The NRC identifies six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, ''small entities'' has the same meaning as set out in § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a ''large entity'' is one which does not qualify as a ''small entity'' under § 2.810.
- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, states, local governmental bodies (within the meaning of § 2.315(c)).
- Federally-recognized and State-recognized Indian tribes.
- Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) and who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The three draft regulatory guides that the NRC proposes to incorporate by reference in this proposed rule, are available without cost and can be read online, downloaded, or viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov.* The final regulatory guides, if approved by the OFR for incorporation by reference, will also be available for inspection at the OFR, as described in § 50.55a(a).

Because access to the three draft regulatory guides, and eventually, the final regulatory guides, are available in various forms and no cost, the NRC determines that the three draft regulatory guides, DG–1295, DG–1296, and DG–1297, and final regulatory guides 1.84, Revision 37; RG 1.147, Revision 18; and RG 1.192, Revision 2, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

X. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Interested parties should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** section.

As alternatives to the ASME Code, NRC-approved Code Cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action.

XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: Domestic Licensing of Production and Utilization.

Facilities: Updates to Incorporation by Reference and Regulatory Guides.

The form number if applicable: Not applicable.

How often the collection is required: On occasion.

Who will be required or asked to report: Operating power reactor licensees and applicants for power reactors under construction.

An estimate of the number of annual responses: −38.

The estimated number of annual respondents: 38.

An estimate of the total number of hours needed annually to complete the requirement or request: −14,440 hours (reduction of reporting hours.)

Abstract: This proposed rule is the latest in a series of rulemakings that incorporate by reference the latest versions of several Regulatory Guides identifying new and revised unconditionally or conditionally acceptable ASME Code Cases that are approved for use. The incorporation by reference of these Code Cases will reduce the number of alternative requests submitted by licensees under § 50.55a(z) by an estimated 38 requests annually.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of the burden of the proposed information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML15041A817 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0059.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the four issues, by the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0059.
- *Mail comments to:* FOIA, Privacy, and Information Collections Branch, Office of Information Services, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

Submit comments by April 1, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use ASME BPV and OM Code Cases, which are ASME-approved alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME Code Cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 37; RG 1.147, Revision 18; and RG 1.192, Revision 2. These RGs list the ASME Code Cases that the NRC has approved for use. The ASME Code Cases are national consensus standards as defined in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119. The ASME Code Cases constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

TABLE III—RULEMAKING RELATED DOCUMENTS

Document title	ADAMS Accession No./**Federal Register** citation/web link
Federal Register Document—''Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases,'' September 18, 2015.	80 FR 56820.
Federal Register Document—''Incorporation by Reference of ASME BPV and OM Code Cases,'' July 8, 2003.	68 FR 40469.
Federal Register Document—''Fracture Toughness Requirements for Light Water Reactor Pressure Vessels,'' December 19, 1995.	60 FR 65456.
Information Notice No. 98–13, ''Post-Refueling Outage Reactor Pressure Vessel Leakage Testing Before Core Criticality, April 20, 1998.	ML031050237.
Inspection Report 50–254/97–27	ML15216A276.
Letter from James M. Taylor, Executive Director for Operations, NRC, to Messrs. Nicholas S. Reynolds and Daniel F. Stenger, Nuclear Utility Backfitting and Reform Group, February 2, 1990.	ML14273A002.
Materials Reliability Project Report MRP–169 Technical Basis for Preemptive Weld Overlays for Alloy 82/182 Butt Welds in PWRs, EPRI, Palo Alto, CA: 2012. 1025295.	ML101620010.
NUREG/CR–6933, ''Assessment of Crack Detection in Heavy-Walled Cast Stainless Steel Piping Welds Using Advanced Low-Frequency Ultrasonic Methods''.	ML071020409.
Proposed Rule—**Federal Register** Document	ML15041A813.
Proposed Rule—Regulatory Analysis	ML15041A816.
RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 5. (DG–1298)	ML15028A003.
White Paper, PVP2012–78190, ''Alternative Acceptance Criteria for Flaws in Ferritic Steel Components Operating in the Upper Shelf Temperature Range,'' 2012.	*http://proceedings.asmedigitalcollection.asme.org/proceeding.aspx?articleid=1723450.*
White Paper PVP 2015–45307, ''Options for Defining the Upper Shelf Transition Temperature (Tc) for Ferritic Pressure Vessel Steels,'' 2015.	*http://proceedings.asmedigitalcollection.asme.org/solr/searchresults.aspx?q=Options%20for%20Defining%20the%20Upper%20Shelf%20Transition%20Temperature%20(Tc)%20for%20Ferritic%20Pressure%20Vessel%.*

Documents Proposed To Be Incorporated by Reference

You may submit comments on the draft regulatory guidance by the methods described in the **ADDRESSES** section of this document.

TABLE IV—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55A

Document title	ADAMS Accession No.
RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 37. (DG–1295)	ML15027A002.
RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 18. (DG–1296)	ML15027A202.
RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 2. (DG–1297)	ML15027A330.

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking Web site at: *http://www.regulations.gov* under Docket ID NRC–2012–0059. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2012–0059); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Code Cases for Approval in This Proposed Rulemaking

The ASME BPV Code Cases: Nuclear Components that the NRC is proposing to approve as alternatives to certain provisions of the ASME BPV Code, as set forth in TABLE V, are being made available by the ASME for read-only access during the public comment period at the ASME Web site *http://go.asme.org/NRC.*

The ASME OM Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME OM Code, as set forth in TABLE V, are being made available for read-only access during the public comment period by the ASME at the Web site *http://go.asme.org/NRC.*

The ASME is making the Code Cases listed in TABLE V available for limited, read-only access at the request of the NRC. The NRC believes that stakeholders need to be able to read these Code Cases in order to provide meaningful comment on the three regulatory guides that the NRC is proposing to incorporate by reference into § 50.55a. It is the NRC's position that the listed Code Cases, as modified by any conditions contained in the three RGs and therefore serving as alternatives to requirements in § 50.55a, are legally-binding regulatory requirements. The listed Code Case and any conditions must be complied with if the applicant or licensee is to be within the scope of the NRC's approval of the Code Case as a voluntary alternative for use. These requirements cannot be fully understood without knowledge of the Code Case to which the proposed condition applies, and to this end, the NRC has requested that ASME provide limited, read-only access to the Code Cases in order to facilitate meaningful public comment.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL

Code Case No.	Supplement	Title
Boiler and Pressure Vessel Code Section III		
N–284–3	7 (10 Edition)	Metal Containment Shell Buckling Design Methods, Class MC, TC, and SC Construction, Section III, Divisions 1 and 3.
N–500–4	8 (10 Edition)	Alternative Rules for Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1.
N–520–5	10 (10 Edition)	Alternative Rules for Renewal of Active or Expired N-type Certificates for Plants Not in Active Construction, Section III, Division 1.
N–594–1	8 (10 Edition)	Repairs to P–4 and P–5A Castings without Postweld Heat Treatment Class 1, 2, and 3 Construction, Section III, Division 1.
N–637–1	3 (10 Edition)	Use of 44Fe-25Ni-21Cr-Mo (Alloy UNS N08904) Plate, Bar, Fittings, Welded Pipe, and Welded Tube, Classes 2 and 3, Section III, Division 1.
N–655–2	4 (10 Edition)	Use of SA–738, Grade B, for Metal Containment Vessels, Class MC, Section III, Division 1.
N–763	2 (10 Edition)	ASTM A 709–06, Grade HPS 70W (HPS 485W) Plate Material Without Postweld Heat Treatment as Containment Liner Material or Structural Attachments to the Containment Liner, Section III, Division 2.
N–777	4 (10 Edition)	Calibration of C_v Impact Test Machines, Section III, Divisions 1, 2, and 3.
N–785	11 (07 Edition)	Use of SA–479/SA–479M, UNS S41500 for Class 1 Welded Construction, Section III, Division 1.
N–811	7 (10 Edition)	Alternative Qualification Requirements for Concrete Level III Inspection Personnel, Section III, Division 2.
N–815	8 (10 Edition)	Use of SA–358/SA–358M Grades Fabricated as Class 3 or Class 4 Welded Pipe, Class CS Core Support Construction, Section III, Division 1.
N–816	8 (10 Edition)	Use of Temper Bead Weld Repair Rules Adopted in 2010 Edition and Earlier Editions, Section III, Division 1.
N–817	8 (10 Edition)	Use of Die Forgings, SB–247, UNS A96061 Class T6, With Thickness ≤ 4.000 in. Material, Class 2 Construction (1992 Edition or Later), Section III, Division 1.
N–819	8 (10 Edition)	Use of Die Forgings, SB–247, UNS A96061 Class T6, With Thickness ≤ 4.000 in. Material, Class 2 Construction (1989 Edition with the 1991 Addenda or Earlier), Section III, Division 1.
N–822	8 (10 Edition)	Application of the ASME Certification Mark, Section III, Divisions 1, 2, 3, and 5.
Boiler and Pressure Vessel Code Section XI		
N–552–1	10 (10 Edition)	Alternative Methods—Qualification for Nozzle Inside Radius Section from the Outside Surface, Section XI, Division 1.
N–576–2	9 (10 Edition)	Repair of Class 1 and 2 SB–163, UNS N06600 Steam Generator Tubing, Section XI, Division 1.
N–593–2	8 (10 Edition)	Examination Requirements for Steam Generator Nozzle-to-Vessel Welds, Section XI, Division 1.
N–609–1	3 (10 Edition)	Alternative Requirements to Stress-Based Selection Criteria for Category B–J Welds, Section XI, Division 1.
N–613–2	4 (10 Edition)	Ultrasonic Examination of Full Penetration Nozzles in Vessels, Examination Category B–D, Reactor Nozzle-To-Vessel Welds, and Nozzle Inside Radius Section Figs. IWB–2500–7(a), (b), (c), and (d), Section XI, Division 1.
N–638–6	6 (10 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.
N–652–2	9 (10 Edition)	Alternative Requirements to Categorize B–G–1, B–G–2, and C–D Bolting Examination Methods and Selection Criteria, Section XI, Division 1.
N–653–1	9 (10 Edition)	Qualification Requirements for Full Structural Overlaid Wrought Austenitic Piping Welds, Section XI, Division 1.
N–662–1	6 (10 Edition)	Alternative Repair/Replacement Requirements for Items Classified in Accordance with Risk-Informed Processes, Section XI, Division 1.
N–666–1	9 (10 Edition)	Weld Overlay of Classes 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.
N–694–2[7]	1 (13 Edition)	Evaluation Procedure and Acceptance Criteria for [pressurized water reactors] (PWR) Reactor Vessel Head Penetration Nozzles, Section XI, Division 1.
N–730–1	10 (10 Edition)	Roll Expansion of Class 1 Control Rod Drive Bottom Head Penetrations in BWRs, Section XI, Division 1.
N–749	9 (10 Edition)	Alternative Acceptance Criteria for Flaws in Ferritic Steel Components Operating in the Upper Shelf Temperature Range, Section XI, Division 1.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL—Continued

Code Case No.	Supplement	Title
N–754	6 (10 Edition)	Optimized Structural Dissimilar Metal Weld Overlay for Mitigation of PWR Class 1 Items, Section XI, Division 1.
N–769–2	10 (10 Edition)	Roll Expansion of Class 1 In-Core Housing Bottom Head Penetrations in BWRs, Section XI, Division 1.
N–771	7 (10 Edition)	Alternative Requirements for Additional Examinations of Class 2 or 3 Items, Section XI, Division 1.
N–775	2 (10 Edition)	Alternative Requirements for Bolting Affected by Borated Water Leakage, Section XI, Division 1.
N–776	1 (10 Edition)	Alternative to IWA–5244 Requirements for Buried Piping, Section XI, Division 1.
N–778	6 (10 Edition)	Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Summary Reports, Section XI, Division 1.
N–786	5 (10 Edition)	Alternative Requirements for Sleeve Reinforcement of Class 2 and 3 Moderate-Energy Carbon Steel Piping, Section XI, Division 1.
N–789	6 (10 Edition)	Alternative Requirements for Pad Reinforcement of Class 2 and 3 Moderate Energy Carbon Steel Piping for Raw Water Service, Section XI, Division 1.
N–795	3 (10 Edition)	Alternative Requirements for BWR Class 1 System Leakage Test Pressure Following Repair/Replacement Activities, Section XI, Division 1.
N–798	4 (10 Edition)	Alternative Pressure Testing Requirements for Class 1 Piping Between the First and Second Vent, Drain, and Test Isolation Devices, Section XI, Division 1.
N–799	4 (10 Edition)	Dissimilar Metal Welds Joining Vessel Nozzles to Components, Section XI, Division 1.
N–800	4 (10 Edition)	Alternative Pressure Testing Requirements for Class 1 Piping Between the First and Second Injection Valves, Section XI, Division 1.
N–803	5 (10 Edition)	Similar and Dissimilar Metal Welding Using Ambient Temperature Automatic or Machine Dry Underwater Laser Beam Welding (ULBW) Temper Bead Technique, Section XI, Division 1.
N–805	6 (10 Edition)	Alternative to Class 1 Extended Boundary End of Interval or Class 2 System Leakage Testing of the Reactor Vessel Head Flange O-Ring Leak-Detection System, Section XI, Division 1.
N–823	9 (10 Edition)	Visual Examination, Section XI, Division 1.
N–825[8]	3 (13 Edition)	Alternative Requirements for Examination of Control Rod Drive Housing Welds, Section XI, Division 1.
N–845[9]	6 (13 Edition)	Qualification Requirements for Bolts and Studs, Section XI, Division 1.
Code for Operations and Maintenance (OM)		
OMN–1, Revision 1	2012 Edition	Alternative Rules for Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Light-Water Reactor Power Plants.
OMN–2	2012 Edition	Thermal Relief Valve Code Case, OM Code-1995, Appendix I.
OMN–3	2012 Edition	Requirements for Safety Significance Categorization of Components Using Risk Insights for Inservice Testing of LWR Power Plants.
OMN–4	2012 Edition	Requirements for Risk Insights for Inservice Testing of Check Valves at LWR Power Plants.
OMN–5	2012 Edition	Testing of Liquid Service Relief Valves without Insulation.
OMN–6	2012 Edition	Alternative Rules for Digital Instruments.
OMN–7	2012 Edition	Alternative Requirements for Pump Testing.
OMN–8	2012 Edition	Alternative Rules for Preservice and Inservice Testing of Power-Operated Valves That Are Used for System Control and Have a Safety Function per OM–10, ISTC–1.1, or ISTA-1100.
OMN–9	2012 Edition	Use of a Pump Curve for Testing.
OMN–12	2012 Edition	Alternative Requirements for Inservice Testing Using Risk Insights for Pneumatically and Hydraulically Operated Valve Assemblies in Light-Water Reactor Power Plants (OM–Code 1998, Subsection ISTC).
OMN–13, Revision 2	2012 Edition	Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at [light water reactor] (LWR) Power Plants.
OMN–14	2012 Edition	Alternative Rules for Valve Testing Operations and Maintenance, Appendix I: BWR [control rod drive] CRD Rupture Disk Exclusion.
OMN–15, Revision 2	2012 Edition	Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.
OMN–16	2012 Edition	Use of a Pump Curve for Testing.
OMN–17	2012 Edition	Alternative Rules for Testing ASME Class 1 Pressure Relief/Safety Valves.

TABLE V—ASME CODE CASES PROPOSED FOR NRC APPROVAL—Continued

Code Case No.	Supplement	Title
OMN–18	2012 Edition	Alternate Testing Requirements for Pumps Tested Quarterly Within ±20% of Design Flow.
OMN–19	2012 Edition	Alternative Upper Limit for the Comprehensive Pump Test.
OMN–20	2012 Edition	Inservice Test Frequency.

[7] Code Case published in Supplement 1 to the 2013 Edition; included at the request of ASME.
[8] Code Case published in Supplement 3 to the 2013 Edition; included at the request of ASME.
[9] Code Case published in Supplement 6 to the 2013 Edition; included at the request of ASME.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a, revise paragraph (a)(3)(i) through (iii) to read as follows:

§ 50.55a Codes and standards.

(a) * * *

(3) * * *

(i) *NRC Regulatory Guide 1.84, Revision 37.* NRC Regulatory Guide 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 37, dated [DATE OF FINAL RULE PUBLICATION IN THE **Federal Register**], with the requirements in paragraph (b)(4) of this section.

(ii) *NRC Regulatory Guide 1.147, Revision 18.* NRC Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 18, dated [DATE OF FINAL RULE PUBLICATION IN THE **Federal Register**], which lists ASME Code Cases that the NRC has approved in accordance with the requirements in paragraph (b)(5) of this section.

(iii) *NRC Regulatory Guide 1.192, Revision 2.* NRC Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 2, dated [DATE OF FINAL RULE PUBLICATION IN THE **Federal Register**], which lists ASME Code Cases that the NRC has approved in accordance with the requirements in paragraph (b)(6) of this section.

* * * * *

Dated at Rockville, Maryland, this 5th day of February, 2016.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–04355 Filed 3–1–16; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AE39

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 302

RIN 3235–AL51

[Release No. 34–77157; File No. S7–02–16]

Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Federal Deposit Insurance Corporation (''FDIC'' or ''Corporation''); Securities and Exchange Commission (''SEC'' or ''Commission'' and, collectively with the FDIC, the ''Agencies'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agencies, in accordance with section 205(h) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), are jointly proposing a rule to implement provisions applicable to the orderly liquidation of covered brokers and dealers under Title II of the Dodd-Frank Act (''Title II'').

DATES: Comments should be received on or before May 2, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

FDIC

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the FDIC Web site.
- *FDIC email: Comments@FDIC.gov.* Include ''RIN 3064–AE39'' in the subject line of the message.
- *FDIC mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand delivery/courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (Eastern Time).
- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

SEC

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–02–16 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–02–16. 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 Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are 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. 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 publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT:

FDIC

Peter Miller, Assistant Director, Division of Resolutions and Receiverships, at (917) 320–2589; John Oravec, Senior Resolution Advisor, Office of Complex Financial Institutions, at (202) 898–6612; Elizabeth Falloon, Supervisory Counsel, Legal Division, at (703) 562–6148; Pauline Calande, Senior Counsel, Legal Division, at (202) 898–6744.

SEC

Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; Jane D. Wetterau, Attorney Advisor, at (202) 551–4483, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Dodd-Frank Act [1] provides an alternative insolvency regime for the orderly liquidation of large financial companies that meet specified criteria.[2] Section 205 of Title II sets forth certain provisions specific to the orderly liquidation of certain large broker-dealers, and paragraph (h) of section 205 requires the Agencies, in consultation with the Securities Investor Protection Corporation (''SIPC''), jointly to issue rules to implement section 205.[3]

In the case of a broker-dealer, or in which the largest U.S. subsidiary of a *financial company* [4] is a broker-dealer, the Board of Governors of the Federal Reserve (''Board'') and the Commission are authorized jointly to issue a written orderly liquidation recommendation to the U.S. Treasury Secretary (''Secretary''). The FDIC must be consulted in such a case.

The recommendation, which may be *sua sponte* or at the request of the Secretary, must contain a discussion regarding eight criteria enumerated in section 203(a)(2) [5] and be approved by a vote of not fewer than a two-thirds majority of each agency's governing body then serving.[6] Based on similar but not identical criteria enumerated in section 203(b), the Secretary would consider the recommendation and (in consultation with the President) determine whether the financial company poses a systemic risk meriting liquidation under Title II.[7]

Title II also provides that in any case in which the Corporation is appointed receiver for a *covered financial company,*[8] the Corporation may appoint itself as receiver for any *covered subsidiary* [9] if the Corporation and the Secretary make the requisite joint determination specified in section 210.[10]

A company that is the subject of an affirmative section 203(b) or section 210(a)(1)(E) determination would be considered a *covered financial company* for purposes of Title II.[11] As discussed below, a *covered broker or dealer* is a covered financial company that is registered with the Commission as a broker or dealer and is a member of SIPC.[12] Irrespective of how the broker-dealer was placed into a Title II resolution, section 205 regarding the liquidation of covered broker-dealers and the proposed rule (if adopted) would always apply to the broker-dealer even if section 210 is invoked.[13]

Upon a determination under section 203 or section 210, a covered financial

[1] *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* Public Law 111–203, 124 Stat. 1376 (2010) and codified at 12 U.S.C. 5301 *et seq.* Title II of the Dodd-Frank Act is codified at 12 U.S.C. 5381–5394.

[2] *See* 12 U.S.C. 5384 (pertaining to the orderly liquidation of covered financial companies).

[3] *See* 12 U.S.C. 5385 (pertaining to the orderly liquidation of covered broker-dealers).

[4] Section 201(a)(11) of the Dodd-Frank Act (12 U.S.C. 5381(a)(11)) (defining *financial company*).

[5] *See* 12 U.S.C. 5383(a)(2)(A) through (G).

[6] *See* 12 U.S.C. 5383(a)(1)(B) (pertaining to vote required in cases involving broker-dealers).

[7] *See* 12 U.S.C. 5383(b) (pertaining to a determination by the Secretary).

[8] *See* 12 U.S.C. 5381(a)(8) (definition of covered financial company).

[9] *See* 12 U.S.C. 5381(a)(9) (definition of covered subsidiary). A covered subsidiary of a covered financial company could include a broker-dealer.

[10] *See* 12 U.S.C. 5390(a)(1)(e).

[11] *See* 12 U.S.C. 5381(a)(8) (definition of covered financial company); 12 U.S.C. 5390(a)(1)(E)(ii) (treatment as covered financial company).

[12] *See* 12 U.S.C. 5381(a)(7) (definition of covered broker or dealer). For convenience, we hereinafter refer to entities that meet this definition as covered broker-dealers.

[13] *See* 12 U.S.C. 5390(a)(1)(E).

company would be placed into an orderly liquidation proceeding and the FDIC would be appointed receiver.[14] In the case of a covered broker-dealer, the FDIC would appoint SIPC as trustee for the covered broker-dealer.[15] Although the statute refers to the appointment of SIPC as trustee for the ''liquidation of the covered broker-dealer under [the Securities Investor Protection Act (''SIPA'')]'',[16] the proposed rule simply refers to SIPC as trustee for the covered broker-dealer since the Title II receivership is not a liquidation of the covered broker-dealer under SIPA, but rather an orderly liquidation of the broker-dealer under Title II that incorporates the customer protection provisions of SIPA. The FDIC could utilize a bridge financial company, a bridge broker-dealer,[17] as a means to liquidate the covered broker-dealer, transferring customer accounts and associated customer name securities and customer property to such bridge financial company.[18] In the event that a bridge broker-dealer were created, SIPC, as trustee under SIPA for the covered broker-dealer, would determine claims and distribute assets retained in the receivership of the covered broker-dealer in a manner consistent with SIPA.[19] The transfer of customer property, and advances from SIPC, made to the bridge broker-dealer and allocated to a customer's account at the bridge broker-dealer would satisfy a customer's net equity claims against the covered broker-dealer to the extent of the value, as of the appointment date, of such allocated property. SIPC would have no powers or duties with respect to assets and liabilities of the bridge broker-dealer.[20] This rulemaking clarifies for purposes of section 205(h):[21] How the customer protections of SIPA will be integrated with the other provisions of Title II; the roles of the Corporation as receiver and SIPC as trustee for a covered broker-dealer; and the administration of claims in an orderly liquidation of a covered broker-dealer.

II. Proposed Rule

A. Definitions[22]

The proposed definitions section would define certain key terms. Consistent with the remainder of the proposed rule, the definitions are designed to help ensure that, as the statute requires, net equity claims of customers against a covered broker-dealer are determined and satisfied in a manner and amount that is at least as beneficial to customers as would have been the case had the covered broker-dealer been liquidated under SIPA without the appointment of the FDIC as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the FDIC was appointed as receiver.[23] To effectuate the statutory requirement, the definitions in the proposed rule are very similar or identical to the corresponding definitions in SIPA and Title II of the Dodd-Frank Act, and where they differ, it is for purposes of clarity only and not to change or modify the meaning of the definitions under either Act.

1. Definitions Relating to Covered Broker-Dealers

The term *covered broker or dealer* would be defined as ''a covered financial company that is a qualified broker or dealer.''[24] Pursuant to section 201(a)(10) of the Dodd-Frank Act, the terms *customer, customer name securities, customer property,* and *net equity* in the context of a covered broker-dealer will have the same meaning as the corresponding terms in section 16 of SIPA.[25]

Section 16(2)(A) of SIPA defines *customer* of a debtor, in pertinent part, as any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.[26] Section 16(3) of SIPA defines *customer name securities* as securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.[27] Section 16(4) of SIPA defines *customer property,* in pertinent part, as cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.[28]

Section (16)(11) of SIPA defines *net equity* as the dollar amount of the account or accounts of a customer, to be determined by:

1. Calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

a. All securities positions of such customer (other than customer name securities reclaimed by such customer); and

b. All positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; *minus*

2. Any indebtedness of such customer to the debtor on the filing date; *plus*

3. Any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section (8)(a) [of SIPA]).[29]

The proposed definition of *appointment date* is the date of the appointment of the Corporation as receiver for a covered financial company that is a covered broker or

[14] *See* 12 U.S.C. 5384 (pertaining to orderly liquidation of covered financial companies).

[15] *See* 12 U.S.C. 5385(a) (appointment of SIPC as trustee for the liquidation).

[16] 12 U.S.C. 5385(a)(1).

[17] *See* Section II.A.2 below for a definition of bridge broker or dealer. For convenience, we hereinafter refer to entities that meet that definition as bridge broker-dealers.

[18] *See* 12 U.S.C. 5390(h)(2)(H) (pertaining to the Corporation's authority to organize bridge financial companies). *See also infra* section II.D.2 (describing the process of transferring accounts to the bridge broker-dealer).

[19] *See* 12 U.S.C. 5385(a)(2)(B) (pertaining to the administration by SIPC of assets of the covered broker-dealer not transferred to a bridge broker-dealer).

[20] 12 U.S.C. 5385(b)(1).

[21] 12 U.S.C. 5385(f).

[22] If adopted, the definitions section would appear in 12 CFR 380.60 for purposes of the Corporation and 17 CFR 302.100 for purposes of the Commission.

[23] *See* 12 U.S.C. 5385(f)(1) (pertaining to obligations to customers) and 12 U.S.C. 5385(d)(1)(A) through (C) (limiting certain actions of the Corporation that would adversely affect, diminish or otherwise impair certain customer rights).

[24] *See* §§ 380.60(d) and 302.100(d), as proposed. *See also* 12 U.S.C. 5381(a)(7).

[25] 12 U.S.C. 5381(a)(10). *See also* 15 U.S.C. 78*lll* and §§ 380.60 and 302.100, as proposed.

[26] 15 U.S.C. 78*lll*(2)(A). *See also* §§ 380.60(e) and 302.100(e), as proposed.

[27] 15 U.S.C. 78*lll*(3). *See also* §§ 380.60(f) and 302.100(f), as proposed.

[28] 15 U.S.C. 78*lll*(4). *See also* §§ 380.60(g) and 302.100(g), as proposed.

[29] 15 U.S.C. 78*lll*(11) (emphasis added). *See also* §§ 380.60(h) and 302.100(h), as proposed.

dealer.[30] The appointment date would constitute the *filing date* as that term is used under SIPA [31] and, like the filing date under SIPA, is the reference date for the computation of net equity.[32]

2. Additional Definitions

In addition to the definitions relating to covered broker-dealers under section 201(a)(10) of the Dodd-Frank Act,[33] the Agencies also propose to define the following terms: (1) *bridge broker or dealer;*[34] (2) *Commission;*[35] (3) *qualified broker or dealer;*[36] (4) *SIPA*[37] and (5) *SIPC.*[38]

The term *bridge broker or dealer* would be defined as a new financial company organized by the Corporation in accordance with section 210(h) of the Dodd-Frank Act for the purpose of resolving a covered broker or dealer.[39] The term *Commission* would be defined as the Securities and Exchange Commission.[40] The term *qualified broker or dealer* would refer to a broker or dealer that (A) is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and (B) is a member of SIPC, but is not itself subject to a Title II receivership.[41] This definition is consistent with the statutory definition but is abbreviated for clarity. It is not intended to change or modify the statutory definition. The term *SIPA* would refer to the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa–*lll.*[42] The term *SIPC* would refer to the Securities Investor Protection Corporation.[43]

B. Appointment of Receiver and Trustee for Covered Broker-Dealer[44]

Upon the FDIC's appointment as receiver for a covered broker-dealer, section 205 of the Dodd-Frank Act specifies that the Corporation shall appoint SIPC to act as trustee for the liquidation under SIPA of the covered broker-dealer.[45] The proposed rule deviates from the statutory language in some cases to clarify the orderly liquidation process. For example, the proposed rule would make it clear that SIPC is to be appointed as trustee for the covered broker-dealer but deletes the phrase ''for the liquidation under SIPA'' since in reality there is no proceeding under SIPA and the covered broker-dealer is being liquidated under Title II. Section 205 of the Dodd-Frank Act also states that court approval is not required for such appointment.[46] For ease and clarity, the proposed rule would incorporate these statutory roles which are further explained in other sections of the proposed rule.[47]

C. Notice and Application for Protective Decree for Covered Broker-Dealer[48]

Upon the appointment of SIPC as trustee for the covered broker-dealer, Title II requires SIPC, as trustee, promptly to file an application for a protective decree with a federal district court, and SIPC and the Corporation, in consultation with the Commission, jointly to determine the terms of the protective decree to be filed.[49] Although a SIPA proceeding is conducted under bankruptcy court supervision,[50] a Title II proceeding is conducted entirely outside of the bankruptcy courts, through an administrative process, with the FDIC acting as receiver.[51] As a result, a primary purpose of filing a notice and application for a protective decree is to give notice to interested parties that an orderly liquidation proceeding has been initiated. The proposed rule on notice and application for protective decree provides additional clarification of the statutory requirement by setting forth the venue in which the notice and application for a protective decree is to be filed. It states that a notice and application for a protective decree is to be filed with the federal district court in which a liquidation of the covered broker-dealer under SIPA is pending, or if no such SIPA liquidation is pending, the federal district court for the district within which the covered broker-dealer's principal place of business is located.[52] This court is a federal district court of competent jurisdiction specified in section 21 or 27 of the Exchange Act, 15 U.S.C. 78u, 78aa.[53] It also is the court with jurisdiction over suits seeking de novo judicial claims determinations under section 210(a)(4)(A) of the Dodd-Frank Act.[54] While the statute grants authority to file the notice and application for a protective decree in any federal court of competent jurisdiction specified in section 21 or 27 or the Securities Exchange Act of 1934, the proposed rule restricts the filing to the courts specified above in order to make it easier for interested parties to know where the protective decree might be filed. The proposed rule also clarifies that if the notice and application for a protective decree is filed on a date other than the appointment date, the filing shall be deemed to have occurred on the appointment date for purposes of the rule.[55]

This proposed section of the rule governing the notice and application for a protective decree would also include a non-exclusive list of notices drawn from other parts of Title II.[56] The goal would be to inform interested parties that the covered broker-dealer is in orderly liquidation, and to highlight the application of certain provisions of the orderly liquidation authority particularly with respect to applicable stays and other matters that might be addressed in a protective decree issued under SIPA. A notice and application for a protective decree under Title II may, among other things, provide for notice: (1) That any existing case or proceeding under the Bankruptcy Code or SIPA would be dismissed, effective as of the appointment date, and no such case or proceeding may be commenced with respect to a covered broker-dealer at any time while the Corporation is the receiver for such covered broker-dealer; [57] (2) of the revesting of assets,

[30] *See* §§ 380.60(a) and 302.100(a), as proposed.

[31] *See* §§ 380.60(a) and 302.100(a), as proposed.

[32] *See* §§ 380.60(a) and 302.100(a), as proposed. *See also* 12 U.S.C. 5385(a)(2)(C) and 15 U.S.C. 78*lll*(7).

[33] *See* 12 U.S.C. 5381(a)(10).

[34] *See* §§ 380.60(b) and 302.100(b), as proposed.

[35] *See* §§ 380.60(c) and 302.100(c), as proposed.

[36] *See* §§ 380.60(i) and 302.100(i), as proposed.

[37] *See* §§ 380.60(j) and 302.100(j), as proposed.

[38] *See* §§ 380.60(k) and 302.100(k), as proposed.

[39] *See* §§ 380.60(b) and 302.100(b), as proposed. *See also* 15 U.S.C. 5390(h)(2)(H) (setting forth that the FDIC, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer).

[40] *See* §§ 380.60(c) and 302.100(c), as proposed.

[41] *See* §§ 380.60(i) and 302.100(i), as proposed.

[42] *See* §§ 380.60(j) and 302.100(j), as proposed.

[43] *See* §§ 380.60(k) and 302.100(k), as proposed.

[44] If adopted, the section about the appointment of receiver and trustee for covered broker-dealers would appear in 12 CFR 380.61 for purposes of the Corporation and 17 CFR 302.101 for purposes of the Commission. The rule text in both CFRs will be identical.

[45] *See* 12 U.S.C. 5385(a)(1).

[46] *Id.*

[47] *See* §§ 380.61 and 302.101, as proposed.

[48] If adopted, the notice and application for protective decree for the covered broker-dealer section will appear in 12 CFR 380.62 for purposes of the FDIC and 17 CFR 302.102 for purposes of the Commission.

[49] *See* 12 U.S.C. 5385(b)(3) (pertaining to the filing of a protective decree by SIPC).

[50] *See* 15 U.S.C. 78eee(b).

[51] *See* 15 U.S.C. 5388 (requiring the dismissal of all other bankruptcy or insolvency proceedings upon the appointment of the Corporation as receiver for a covered financial company).

[52] *See* §§ 380.62(a) and 302.102(a), as proposed.

[53] *See* 12 U.S.C. 5385(a)(2)(A) (specifying the federal district courts in which the application for a protective decree may be filed).

[54] *See* 12 U.S.C. 5390(a)(4)(A) (a claimant may file suit in the district or territorial court for the district within which the principal place of business of the covered financial company is located).

[55] *See* §§ 380.62(a) and 302.102(a), as proposed.

[56] *See* §§ 380.62(b) and 302.102(b), as proposed.

[57] *See* §§ 380.62(b)(2)(i) and 302.102(b)(2)(i), as proposed. *See also* 12 U.S.C. 5388(a) (regarding dismissal of any case or proceeding relating to a covered broker-dealer under the Bankruptcy Code

Continued

with certain exceptions, in a covered broker-dealer to the extent that they have vested in any entity other than the covered broker-dealer as a result of any case or proceeding commenced with respect to the covered broker-dealer under the Bankruptcy Code, SIPA, or any similar provision of state liquidation or insolvency law applicable to the covered broker-dealer; [58] (3) of the request of the Corporation as receiver for a stay in any judicial action or proceeding in which the covered broker-dealer is or becomes a party for a period of up to 90 days from the appointment date; [59] (4) that except with respect to *qualified financial contracts* (''QFCs''),[60] no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered broker-dealer is a party or to obtain possession of or exercise control over any property of the covered broker-dealer or affect any contractual rights of the covered broker-dealer without the consent of the FDIC as receiver of the covered broker-dealer upon consultation with SIPC during the 90-day period beginning from the appointment date [61]; and (5) that the exercise of rights and the performance of obligations by parties to QFCs with the covered broker-dealer may be affected, stayed, or delayed pursuant to the provisions of Title II (including but not limited to 12 U.S.C. 5390(c)) and the regulations promulgated thereunder.[62]

The proposed rule makes clear that the matters listed for inclusion in the notice and application for a protective decree are neither mandatory nor all-inclusive. The items listed are those that the Agencies believe might provide useful guidance to customers and other parties who may be less familiar with the Title II process than with a SIPA proceeding. It is worth noting that the language relating to QFCs is rather general. In certain circumstances it may be worthwhile specifically to highlight the one-day stay provisions in section 210(c)(10) of the Dodd-Frank Act, the provisions relating to the enforcement of affiliate contracts under section 210(c)(16) of the Dodd-Frank Act, and other specific provisions relating to QFCs or other contracts.

D. Bridge Broker-Dealer [63]

1. Power To Establish Bridge Broker-Dealer; Transfer of Customer Accounts and Other Assets and Liabilities

Section 210 of the Dodd-Frank Act sets forth the Corporation's powers as receiver of a covered financial company.[64] One such power the Corporation has, as receiver, is the power to form bridge financial companies.[65] Paragraph (a) of this section of the proposed rule states that the Corporation as receiver for a covered broker-dealer, or in anticipation of being appointed receiver for a covered broker-dealer, may organize one or more bridge broker-dealers with respect to a covered broker-dealer.[66] Paragraph (b) of this section of the proposed rule states that if the Corporation were to establish one or more bridge broker-dealers with respect to a covered broker-dealer, then the Corporation as receiver for such covered broker-dealer shall transfer all customer accounts and all associated customer name securities and customer property to such bridge broker[s]-dealer[s] unless the Corporation, after consultation with the Commission and SIPC, determines that: (1) The transfer of such customer accounts, customer name securities, and customer property to one or more qualified broker-dealers will occur promptly such that the use of the bridge broker[s]-dealer[s] would not facilitate such transfer to one or more qualified broker-dealers; or (2) the transfer of such customer accounts to the bridge broker[s]-dealer[s] would materially interfere with the ability of the FDIC to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.[67] The two conditions in paragraph (b) of the proposed rule are contained in Title II and are provided in the proposed rule for ease and clarity and to make it clear the transfer to a bridge broker-dealer will take place unless a transfer to a qualified broker-dealer is imminent.[68] The use of the word ''promptly'' in the proposed rule, in this context, is intended to emphasize the urgency of transferring customer accounts, customer name securities, and customer property either to a qualified broker-dealer or to a bridge broker-dealer as soon as practicable to allow customers the earliest possible access to their accounts.

Paragraph (c) of this section of the proposed rule states that the Corporation as receiver for the covered broker-dealer also may transfer to such bridge broker[s]-dealer[s] any other assets and liabilities of the covered broker-dealer (including non-customer accounts and any associated property) as the Corporation may, in its discretion, determine to be appropriate. Paragraph (c) is based upon the broad authority of the Corporation as receiver to transfer any assets or liabilities of the covered broker-dealer to a bridge financial company in accordance with, and subject to the requirements of, section 210(h)(5) of the Dodd-Frank Act [69] and is designed to facilitate the

or SIPA on the appointment of the Corporation as receiver and notice to the court and SIPA).

[58] *See* §§ 380.62(b)(2)(ii) and 302.102(b)(2)(ii), as proposed. *See also* 12 U.S.C. 5388(b) (providing that the notice and application for a protective decree may also specify that any revesting of assets in a covered broker or dealer to the extent that they have vested in any other entity as a result of any case or proceeding commenced with respect to the covered broker or dealer under the Bankruptcy Code, SIPA, or any similar provision of State liquidation or insolvency law applicable to the covered broker or dealer shall not apply to assets of the covered broker or dealer, including customer property, transferred pursuant to an order entered by a bankruptcy court).

[59] *See* §§ 380.62(b)(2)(iii) and 302.102(b)(2)(iii), as proposed. *See also* 12 U.S.C. 5390(a)(8) (providing for the temporary suspension of legal actions upon request of the Corporation).

[60] *See* 12 U.S.C. 5390(c)(8)(D) (defining *qualified financial contract* as ''any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph'').

[61] 12 U.S.C. 5390(c)(13)(C)(i).

[62] *See* §§ 380.62(b)(2)(iv) and 302.102(b)(2)(iv), as proposed. *See also* 12 U.S.C. 5390(c)(8)(F) (rendering unenforceable all QFC *walkaway clauses* (as defined in 12 U.S.C. 5390(c)(8)(F)(iii)) including those provisions that suspend, condition, or extinguish a payment obligation of a party because of the insolvency of a covered financial company or the appointment of the FDIC as receiver) and 12 U.S.C. 5390(c)(10)(B)(i) (providing that in the case of a QFC, a person who is a party to a QFC with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract solely by reason of or incidental to the appointment of the FDIC as receiver (or the insolvency or financial condition of the covered financial company for which the FDIC has been appointed as receiver) —until 5:00 p.m. (eastern time) on the business day following the appointment, or after the person has received notice that the contract has been transferred pursuant to 12 U.S.C. 5390(c)(9)(A)).

[63] If adopted, the bridge broker or dealer section will appear in 12 CFR 380.63 for purposes of the Corporation and 17 CFR 302.103 for purposes of the Commission.

[64] 12 U.S.C. 5390.

[65] *See* 12 U.S.C. 5390(h)(1)(A) (granting general power to form bridge financial companies). *See also* 12 U.S.C. 5390(h)(2)(H)(i) (granting authority to organize one or more bridge financial companies with respect to a covered broker-dealer).

[66] *See* §§ 380.63 and 302.103, as proposed. *See also* 12 U.S.C. 5390(h)(2)(H) (granting the Corporation as receiver authority to organize one or more bridge financial companies with respect to a covered broker-dealer).

[67] *See* §§ 380.63(b) and 302.103(b), as proposed. *See also* 12 U.S.C. 5390(a)(1)(O)(i)(I) and (II) (listing the specific conditions under which customer accounts would not be transferred to a bridge financial company if it was organized).

[68] 12 U.S.C. 5390(a)(1)(O)(i)(I) and (II).

[69] *See* 12 U.S.C. 5390(h)(5)(A) (providing that the receiver may transfer any assets and liabilities of a covered financial company). The statute sets forth certain restrictions and limitations that are not affected by this proposed rule. *See, e.g.,* 12 U.S.C. 5390(h)(1)(B)(ii) (restricting the assumption of liabilities that count as regulatory capital by the bridge financial company) and 12 U.S.C. 5390(h)(5)(F) (requiring that the aggregate liabilities transferred to the bridge financial company may not exceed the aggregate amount of assets transferred).

receiver's ability to continue the covered broker-dealer's operations, minimize systemic risk, and maximize the value of the assets of the receivership.[70] The transfer of assets and liabilities to a bridge broker-dealer under the proposed rule would enable the receiver to continue the day-to-day operations of the broker-dealer and facilitate the maximization of the value of the assets of the receivership by making it possible to avoid a forced or other distressed sale of the assets of the covered broker-dealer. In addition, the ability to continue the operations of the covered broker-dealer may help mitigate the impact of the failure of the covered broker-dealer on other market participants and financial market utilities and thereby minimize systemic risk.

Finally, paragraph (c) of this section of the proposed rule clarifies that the transfer to a bridge broker-dealer of any account or property pursuant to this section does not create any implication that the holder of such an account qualifies as a ''customer'' or that the property so transferred qualifies as ''customer property'' or ''customer name securities'' within the meaning of SIPA or within the meaning of the rule. Under Title II, the Corporation may transfer all the assets of a covered broker-dealer to a bridge broker-dealer.[71] Such a transfer of assets may include, for example, securities that were sold to the covered broker-dealer under reverse repurchase agreements. Under the terms of a typical reverse repurchase agreement, it is common for the broker-dealer to be able to use the purchased securities for its own purposes. In contrast, Commission rules specifically protect customer funds and securities and essentially forbid broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers.[72] An integral component of the broker-dealer customer protection regime is that, under SIPA, customers have preferred status relative to general creditors with respect to customer property and customer name securities.[73] Given the preferred status of customers, litigation has arisen regarding whether, consistent with the above example, claims of repo counterparties are ''customer'' claims under SIPA.[74] In implementing section 205 of the Dodd-Frank Act, consistent with the statutory directive contained therein,[75] the Corporation and the Commission are seeking to ensure that customers of the covered broker-dealer under Title II are treated in a manner at least as beneficial as would have been the case had the broker-dealer been liquidated under SIPA.[76] Accordingly, the Commission and the Corporation are proposing to preserve customer status as would be the case in a SIPA proceeding. Thus, the proposed rule clarifies that moving assets to a bridge financial company as part of a Title II orderly liquidation is not determinative as to whether the holder of such an account qualifies as a ''customer'' or if the property so transferred qualifies as ''customer property'' or ''customer name securities.'' Rather, the status of the account holder and the assets in the orderly liquidation of a covered broker-dealer would depend upon whether the claimant would be a customer under SIPA.[77]

2. Other Provisions With Respect to Bridge Broker-Dealer

The proposed rule addresses certain matters relating to account transfers to the bridge broker-dealer.[78] The process set forth in this part of the proposed rule is designed to put the customer in the position the customer would have been in had the broker-dealer been liquidated in a SIPA proceeding.[79] In a SIPA proceeding, the trustee would generally handle customer accounts in two ways. First, a trustee may sell or otherwise transfer to another SIPC member, without the consent of any customer, all or any part of a customer's account, as a way to return customer property to the control of the customer.[80] Such account transfers are separate from the customer claim process. Customer account transfers are useful insofar as they serve to allow customers to resume trading more quickly and minimize disruption in the securities markets. If it is not practicable to transfer customer accounts, then the second way of returning customer property to the control of customers is through the customer claims process. Under bankruptcy court supervision, the SIPA trustee will determine each customer's net equity and the amount of customer property available for customers.[81] Once the SIPA trustee determines that a claim is a customer claim (an ''allowed customer claim''), the customer will be entitled to a ratable share of the fund of customer property. As discussed above, SIPA defines ''customer property'' to generally include all the customer-related property held by the broker-dealer.[82] Allowed customer claims are determined on the basis of a customer's net equity,[83] which, as described above, generally is the dollar value of a customer's account on the filing date of the SIPA proceeding less indebtedness of the customer to the broker-dealer on the filing date.[84] Once the trustee determines the fund of customer property and customer net equity claims, the trustee can establish each customer's *pro rata* share of the fund of customer property. Customer net equity claims generally are satisfied to the extent possible by providing the customer with the identical securities owned by that customer as of the day the SIPA proceeding was commenced.[85]

Although a Title II orderly liquidation is under a different statutory authority, the process for determining and satisfying customer claims would follow a substantially similar process to a SIPA proceeding. Upon the commencement of a SIPA liquidation, customers' cash and securities held by the broker-dealer are returned to customers on a *pro rata*

[70] *See* §§ 380.63(f) and 302.103(f), as proposed. *See also* 12 U.S.C. 5390(h)(5) (granting authority to the Corporation as receiver to transfer assets and liabilities of a covered financial company to a bridge financial company). Similarly, under Title II, the Corporation, as receiver for a covered broker-dealer, may approve articles of association for such bridge broker-dealer. *See* 12 U.S.C. 5390(h)(2)(H)(i). The bridge broker-dealer would also be subject to the federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission as is necessary or appropriate in the public interest or for the protection of investors. *See* 12 U.S.C. 5390(h)(2)(H)(ii).

[71] *See* 12 U.S.C 5390(h)(2)(H) and 12 U.S.C. 5390(h)(5) (granting authority to the Corporation as receiver to transfer assets and liabilities of a covered broker-dealer).

[72] *See Net Capital Requirements for Brokers and Dealers,* Exchange Act Release No. 21651 (Jan. 11, 1985), 50 FR 2690, 2690 (Jan. 18, 1985). *See also Broker-Dealers; Maintenance of Certain Basic Reserves,* Exchange Act Release No. 9856 (Nov. 10, 1972), 37 FR 25224, 25224 (Nov. 29, 1972).

[73] *See* 15 U.S.C. 78fff(a).

[74] *See, e.g., In re Lehman Brothers Inc.,* 492 B.R. 379 (Bankr. S.D.N.Y. 2013), *aff'd,* 506 B.R. 346 (S.D.N.Y. 2014).

[75] *See* 12 U.S.C. 5385(f)(1) (pertaining to the statutory requirements with respect to the satisfaction of claims).

[76] *Id.*

[77] *See* 15 U.S.C. 78*lll*(2)(B) (SIPA definition of *customer*). *See also* 12 U.S.C. 5381(a)(10) (defining *customer, customer name securities, customer property,* and *net equity* in the context of a covered broker-dealer as the same meanings such terms have in section 16 of SIPA (15 U.S.C. 78*lll*)); *In re Bernard L. Madoff Inv. Sec. LLC,* 654 F.3d 229, 236 (2d Cir. 2011).

[78] *See* §§ 380.63(d) and 302.103(d), as proposed.

[79] *See* 12 U.S.C. 5385(f) (obligations of a covered broker-dealer to customers shall be satisfied in the manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker-dealer been distributed in a proceeding under SIPA).

[80] *See* 15 U.S.C. 78fff–2(f).

[81] *See generally* 15 U.S.C. 78fff.

[82] *See* 15 U.S.C. 78*lll*(4). *See* Section II.A.1.

[83] *See* 15 U.S.C. 78*lll*(11).

[84] *Id. See* Section II.A.1.

[85] *See* 15 U.S.C. 78fff–2(d).

basis.[86] If sufficient funds are not available at the broker-dealer to satisfy customer net equity claims, SIPC advances would be used to supplement the distribution, up to a ceiling of $500,000 per customer, including a maximum of $250,000 for cash claims.[87] When applicable, SIPC will return securities that are registered in the customer's name or are in the process of being registered directly to each customer.[88] As in a SIPA proceeding, in a Title II liquidation of a covered broker-dealer, the process of determining net equity would thus begin with a calculation of customers' net equity. A customer's net equity claim against a covered broker-dealer would be deemed to be satisfied and discharged to the extent that customer property of the covered broker-dealer, along with property made available through advances from SIPC, is transferred and allocated to the customer's account at the bridge broker-dealer. The bridge broker-dealer would undertake the obligations of the covered broker-dealer only with respect to such property. The Corporation, as receiver, in consultation with SIPC, as trustee, would allocate customer property and property made available through advances from SIPC in a manner consistent with SIPA and with SIPC's normal practices thereunder. The calculation of net equity would not be affected by the assumption of liability by the bridge broker-dealer to each customer in connection with the property transferred to the bridge broker-dealer. The use of the bridge broker-dealer is designed to give customers access to their accounts as quickly as practicable, while ensuring that customers receive assets in the form and amount that they would receive in a SIPA liquidation.[89]

The proposed rule also provides that allocations to customer accounts at the bridge broker-dealer may initially be derived from estimates based upon the books and records of the covered broker-dealer or other information deemed relevant by the Corporation as receiver, in consultation with SIPC as trustee.[90] This approach is based upon experience with SIPA liquidations where, for example, there were difficulties reconciling the broker-dealer's records with the records of central counterparties or other counterparties or other factors that caused delay in verifying customer accounts.[91] This provision of the proposed rule is designed to facilitate access to accounts for the customers at the bridge broker-dealer as soon as is practicable under the circumstances while facilitating the refinement of the calculation of allocations of customer property to customer accounts as additional information becomes available. This process will help ensure both that customers have access to their customer accounts as quickly as practicable and that customer property ultimately will be fairly and accurately allocated.

The proposed rule also states that the bridge broker-dealer undertakes the obligations of a covered broker-dealer with respect to each person holding an account transferred to the bridge broker-dealer, but only to the extent of the property (and SIPC funds) so transferred and held by the bridge broker-dealer with respect to that person's account.[92] This portion of the proposed rule provides customers of the bridge broker-dealer with the assurance that the securities laws relating to the protection of customer property will apply to customers of a bridge broker-dealer in the same manner as they apply to customers of a broker-dealer which is being liquidated outside of Title II.[93] The Agencies believe that such assurances would help to reduce uncertainty regarding the protections that will be offered to customers.

This portion of the proposed rule also provides that the bridge broker-dealer would not have any obligations with respect to any customer property or other property that is not transferred from the covered broker-dealer to the bridge broker-dealer.[94] A customer's net equity claim remains with the covered broker-dealer and, in most cases, would be satisfied, in whole or in part, by transferring the customer's account together with customer property, to the bridge broker-dealer.[95] In the event that a customer's account and the associated account property is not so transferred, the customer's net equity claim would be subject to satisfaction by SIPC as the trustee for the covered broker-dealer in the same manner and to the same extent as in a SIPA proceeding.[96]

The bridge broker-dealer section of the proposed rule[97] also provides that the transfer of assets or liabilities of a covered broker-dealer, including customer accounts and all associated customer name securities and customer property, assets and liabilities held by a covered broker-dealer for non-customer creditors, and assets and liabilities associated with any trust or custody business, to a bridge broker-dealer, would be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court.[98] This section is based on the Corporation's authority, under three separate statutory provisions of Title II.[99] The broad language of this paragraph of the proposed rule is intended to give full effect to the statutory provisions of the Dodd-Frank Act regarding transfers of assets and liabilities of a covered financial company,[100] which represent an important recognition by Congress that, in order to ensure the financial stability of the United States following the failure of a covered financial company, the Corporation as receiver must be free to determine which

[86] 15 U.S.C. 8fff–2(b).

[87] 15 U.S.C. 8fff–3(a).

[88] 15 U.S.C. 8fff–2(b)(2).

[89] This outcome would satisfy the requirements of section 205(f)(1) of the Dodd-Frank Act. *See* 12 U.S.C. 5385(f)(1) (stating that notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under SIPA without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver).

[90] *See* §§ 380.63(d) and 302.103(d), as proposed. *See also* 12 U.S.C. 5385(h) (granting the Corporation and the Commission authority to adopt rules to implement section 205 of the Dodd-Frank Act).

[91] *See, e.g., In re Lehman Brothers Inc.,* (Bankr. S.D.N.Y. 2008), Trustee's Preliminary Investigation Report and Recommendations, available at *http://dm.epiq11.com/LBI/Project#*).

[92] *See* §§ 380.63(d) and 302.103(d), as proposed.

[93] *See also* 12 U.S.C. 5390(h)(2)(H)(ii) (stating that the bridge financial company shall be subject to the federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors).

[94] *See* §§ 380.63(d) and 302.103(d), as proposed.

[95] *See* §§ 380.63(d) and 302.103(d), as proposed.

[96] *See* 12 U.S.C. 5385(f)(2).

[97] *See* §§ 380.63(e) and 302.103(e), as proposed.

[98] *See* §§ 380.63(e) and 302.103(e), as proposed; *see also* 12 U.S.C. 5390(h)(5)(D).

[99] *See* 12 U.S.C. 5390(h)(5)(D). *See also* 12 U.S.C. 5390(a)(1)(G); 12 U.S.C. 5390(a)(1)(O). Notably, the power to transfer customer accounts and customer property without customer consent is also found in SIPA. *See* 15 U.S.C. 78fff–2(f).

[100] The proposed rule text omits the reference to ''further'' approvals found in 12 U.S.C. 5390(h)(5)(D). The reference in the statute is to the government approvals needed in connection with organizing the bridge financial company, such as the approval of the articles of association and by-laws, as established under 12 U.S.C. 5390(h). These approvals will already have been obtained prior to any transfer under the proposed rule, making the reference to ''further'' approvals unnecessary and superfluous.

contracts, assets, and liabilities of the covered financial company are to be transferred to a bridge financial company, and to transfer such contracts, assets, and liabilities expeditiously and irrespective of whether any other person or entity consents to or approves of the transfer. The impracticality of requiring the Corporation as receiver to obtain the consent or approval of others in order to effectuate a transfer of the failed company's contracts, assets, and liabilities arises whether the consent or approval otherwise would be required as a consequence of laws, regulations, or contractual provisions, including as a result of options, rights of first refusal, or similar contractual rights, or any other restraints on alienation or transfer. Paragraph (e) would apply regardless of the identity of the holder of the restraint on alienation or transfer, whether such holder is a local, state, federal or foreign government, a governmental department or other governmental body of any sort, a court or other tribunal, a corporation, partnership, trust, or other type of company or entity, or an individual, and regardless of the source of the restraint on alienation or transfer, whether a statute, regulation, common law, or contract. It is the Corporation's view that the transfer of any contract to a bridge financial company would not result in a breach of the contract and would not give rise to a claim or liability for damages. In addition, under section 210(h)(2)(E) of the Dodd-Frank Act, no additional assignment or further assurance is required of any person or entity to effectuate such a transfer of assets or liabilities by the Corporation as receiver for the covered broker-dealer. Paragraph (e) of the proposed rule would facilitate the prompt transfer of assets and liabilities of a covered broker-dealer to a bridge broker-dealer and enhance the Corporation's ability to maintain critical operations of the covered broker-dealer. Rapid action to set-up a bridge broker-dealer and transfer assets, including customer accounts and customer property, may be critical to preserving financial stability and to giving customers the promptest possible access to their accounts.

Paragraph (f) of the bridge broker-dealer provision of the proposed rule provides for the succession of the bridge broker-dealer to the rights, powers, authorities, or privileges of the covered broker-dealer.[101] This provision of the proposed rule draws directly from authority provided in Title II and is designed to facilitate the ability of the Corporation as receiver to operate the bridge broker-dealer.[102] Pursuant to paragraph (g) of the bridge broker-dealer provision,[103] the bridge broker-dealer would also be subject to the federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission as is necessary or appropriate in the public interest or for the protection of investors.[104] This provision of the proposed rule also draws closely upon Title II.[105]

Paragraph (h) of the bridge broker-dealer provision of the proposed rule states that at the end of the term of existence of the bridge broker-dealer, any proceeds or other assets that remain after payment of all administrative expenses of the bridge broker-dealer and all other claims against the bridge broker-dealer would be distributed to the Corporation as receiver for the related covered broker-dealer.[106] Stated differently, the residual value in the bridge broker-dealer after payment of its obligations would benefit the creditors of the covered broker-dealer in satisfaction of their claims.

E. Claims of Customers and Other Creditors of a Covered Broker-Dealer[107]

The proposed section on the claims of the covered broker-dealer's customers and other creditors would address the claims process for those customers and other creditors as well as the respective roles of the trustee and the receiver with respect to those claims.[108] The proposed section would provide SIPC with the authority as trustee for the covered broker-dealer to make determinations, allocations, and advances in a manner consistent with its customary practices in a liquidation under SIPA.[109] Specifically, the proposed section provides that the allocation of customer property, advances from SIPC, and delivery of customer name securities to each customer or to its customer account at a bridge broker or dealer, in partial or complete satisfaction of such customer's net equity claims as of the close of business on the appointment date, shall be in a manner, including form and timing, and in an amount at least as beneficial to such customer as would have been the case had the covered broker or dealer been liquidated under SIPA.[110] Each customer of a covered broker-dealer would receive cash and securities at least equal in amount and value, as of the appointment date, to what that customer would have received in a SIPA proceeding.[111]

This proposed section further addresses certain procedural aspects of the claims determination process in accordance with the requirements set forth in section 210(a)(2) through (5) of the Dodd-Frank Act.[112] The proposed section describes the role of the receiver of a covered broker-dealer with respect to claims and provides for the publication and mailing of notices to creditors of the covered broker-dealer by the receiver in a manner consistent with both SIPA and the notice procedures applicable to covered financial companies generally under section 210(a)(2) of the Dodd-Frank Act.[113] The proposed section provides that the notice of the Corporation's appointment as receiver must be accompanied by notice of SIPC's appointment as trustee.[114] In addition, the Corporation, as receiver, would consult with SIPC, as trustee, regarding procedures for filing a claim including the form of claim and the filing instructions, to facilitate a process that is consistent with SIPC's general practices.[115] The claim form would include a provision permitting a claimant to claim customer status, if applicable, but the inclusion of any such claim to customer status on the claim form would not be determinative of customer status under SIPA.

The proposed rule would set the claims bar date as the date following the expiration of the six-month period beginning on the date that the notice to creditors is first published.[116] The claims bar date in the proposed rule is consistent with section 8(a) of SIPA, which provides for the barring of claims after the expiration of the six-month period beginning upon publication.[117] The six-month period is also consistent

[101] *See* §§ 380.63(f) and 302.103(f), as proposed.

[102] *See* 12 U.S.C. 5390(h)(2)(H)(i).

[103] *See* §§ 380.63(g) and 302.103(g), as proposed.

[104] *See* 12 U.S.C. 5390(h)(2)(H)(ii).

[105] *Id.*

[106] *See* §§ 380.63(h) and 302.103(h), as proposed. *See also* 12 U.S.C. 5385(d)(2); 12 U.S.C. 5390(h)(15)(B).

[107] If adopted, the section of the proposed rule on claims of customers and other creditors of a covered broker-dealer will appear in 12 CFR 380.64 for purposes of the Corporation and 17 CFR 302.104 for purposes of the Commission. The rule text in both CFRs will be identical.

[108] *See* §§ 380.64 and 302.104, as proposed.

[109] *See* §§ 380.64(a)(4) and 302.104(a)(4), as proposed. *See also* 15 U.S.C. 78aaa *et seq.*

[110] *See* §§ 380.64(a)(4) and 302.104(a)(4), as proposed.

[111] *See* 15 U.S.C. 78aaa *et seq.*

[112] 12 U.S.C. 5390(a)(2) through (5).

[113] *See* §§ 380.64(b) and 302.104(b), as proposed. *See also* 12 U.S.C. 5390(a)(2).

[114] *See* §§ 380.64(b)(1) and 302.104(b)(1), as proposed.

[115] *See* §§ 380.64(b)(2) and 302.104(b)(2), as proposed.

[116] *See* §§ 380.64(b)(3) and 302.104(b)(3), as proposed (discussing claims bar date).

[117] *See* 15 U.S.C. 78fff–2(a).

with section 210(a)(2)(B)(i) of the Dodd-Frank Act, which requires that the claims bar date be no less than ninety days after first publication.[118] As required by section 210(a)(3)(C)(i) of the Dodd-Frank Act, the proposed rule provides that any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, except that a claim filed after the claims bar date would be considered by the receiver if (i) the claimant did not receive notice of the appointment of the receiver in time to file a claim before the claim date, and (ii) the claim is filed in time to permit payment of the claim, as provided by section 210(a)(3)(C)(ii) of the Dodd-Frank Act.[119] This exception for late-filed claims due to lack of notice to the claimant would serve a similar purpose (*i.e.,* to ensure a meaningful opportunity for claimants to participate in the claims process) as the ''reasonable, fixed extension of time'' that may be granted to the otherwise applicable six-month deadline under SIPA to certain specified classes of claimants.[120]

Section 8(a)(3) of SIPA provides that a customer who wants to assure that its net equity claim is paid out of customer property must file its claim with the SIPA trustee within a period of time set by the court (not exceeding 60 days after the date of publication of the notice provided in section 8(a)(1) of SIPA) notwithstanding that the claims bar date is later.[121] The proposed rule conforms to this section of SIPA by providing that any claim for net equity filed more than 60 days after the notice to creditors is first published need not be paid or satisfied in whole or in part out of customer property and, to the extent such claim is paid by funds advanced by SIPC, it would be satisfied in cash or securities, or both, as SIPC, the trustee, determines is most economical to the receivership estate.[122]

Under the proposed rule, the Corporation as receiver would be required to notify a claimant whether it allows a claim within the 180-day period [123] as such time period may be extended by written agreement,[124] or the expedited 90-day period,[125] whichever would be applicable. The process established for the determination of claims by customers of a covered broker-dealer for customer property or customer name securities would constitute the exclusive process for the determination of such claims.[126] This process corresponds to the SIPA provision that requires that customer claims to customer property be determined *pro rata* based on each customer's net equity applied to all customer property as a whole.[127] While the Dodd-Frank Act provides for expedited treatment of certain claims within 90 days, given that all customers may have preferred status with respect to customer property and customer name securities, no one customer's claim, or group of customer claims, would be treated in an expedited manner ahead of other customers' claims. Consequently, the concept of expedited relief would not apply to customer claims.[128] The receiver's determination to allow or disallow a claim in whole or in part would utilize the determinations made by SIPC, as trustee, with respect to customer status, claims for net equity, claims for customer name securities, and whether property held by the covered broker-dealer qualifies as customer property.[129] A claimant may seek a *de novo* judicial review of any claim that is disallowed in whole or in part by the receiver, including but not limited to any claim disallowed in whole or part based upon any determination made by SIPC.[130]

F. Additional Proposed Sections

In addition to the previously discussed proposed sections, the Agencies propose to include sections in the proposed rule addressing: (1) The priorities for unsecured claims against a covered broker-dealer;[131] (2) the administrative expenses of SIPC;[132] and (3) QFCs.[133] The Dodd-Frank Act sets forth special priorities for the payment of claims of general unsecured creditors of a covered broker-dealer, which would be addressed in the proposed section on priorities for unsecured claims against a covered broker-dealer.[134] The priorities for unsecured claims against a covered broker-dealer include claims for unsatisfied net equity of a customer and certain administrative expenses of the receiver and SIPC.[135] The priorities set forth in the proposed rule express the cumulative statutory requirements set forth in Title II.[136] First, the priorities provide that the administrative expenses of SIPC as trustee for a covered broker-dealer would be reimbursed *pro rata* with administrative expenses of the receiver for the covered broker-dealer.[137] Second, the amounts paid by the Corporation as receiver to customers or SIPC would be reimbursed on a *pro rata* basis with amounts owed to the United States, including amounts borrowed from the U.S. Treasury for the orderly liquidation fund.[138] Third, the amounts advanced by SIPC for the satisfaction of customer net equity claims would be reimbursed subsequent to amounts owed to the United States, but before all other claims.[139]

Title II provides that SIPC is entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation.[140] Title II also sets forth a description of the administrative expenses of the receiver.[141] In order to provide additional clarity as to the types of administrative expenses that SIPC would be entitled to recover in connection with its role as trustee for the covered broker-dealer, the proposed rule provides that SIPC, in connection

[118] *See* 12 U.S.C. 5390(a)(2)(B)(i).

[119] *See* §§ 380.64(b)(3) and 302.104(b)(3), as proposed. *See also* 12 U.S.C. 5390(a)(3)(C)(i) and (ii).

[120] *See* 15 U.S.C. 78fff–2(a)(3).

[121] *See* 15 U.S.C. 78fff–2(a)(3) and 15 U.S.C. 78fff–2(a)(1).

[122] *See* §§ 380.64(b)(3) and 302.104(b)(3), as proposed. *See also* 15 U.S.C. 78fff–2(a)(3).

[123] *See* §§ 380.64(c) and 302.104(c), as proposed. *See also* 12 U.S.C. 5390(a)(3)(A)(i).

[124] *See* 15 U.S.C. 5390(a)(3)(A).

[125] *See* §§ 380.64(c) and 302.104(c), as proposed. *See also* 12 U.S.C. 5390(a)(5)(B).

[126] *See* §§ 380.64(c) and 302.104(c), as proposed.

[127] *See* 15 U.S.C. 78fff–2.

[128] *See* §§ 380.64(c) and 302.104(c), as proposed.

[129] *Id.*

[130] *See* §§ 380.64(d) and 302.104(d), as proposed (stating thathe claimant may seek a judicial determination of any claim disallowed, in whole or in part, by the Corporation as receiver, including any claim disallowed based upon any determination(s) made by SIPC as trustee by the appropriate district or territorial court of the United States). *See also* 12 U.S.C. 5390(a)(4) and (5).

[131] If adopted, the priorities for unsecured claims against a covered broker-dealer section will appear in 12 CFR 380.65 for purposes of the Corporation and 17 CFR 302.105 for purposes of the Commission. The rule text in both CFRs will be identical.

[132] If adopted, the SIPC administrative expenses section will appear in 12 CFR 380.66 for purposes of the Corporation and 17 CFR 302.106 for purposes of the Commission. The rule text in both CFRs will be identical.

[133] If adopted, the QFC section will appear in 12 CFR 380.67 for purposes of the Corporation and 17 CFR 302.107 for purposes of the Commission. The rule text in both CFRs will be identical.

[134] *See* 12 U.S.C. 5390(b)(6) (providing the priority of expenses and unsecured claims in the orderly liquidation of SIPC members).

[135] *See* §§ 380.65 and 302.105, as proposed.

[136] *See* 12 U.S.C. 5390(b)(6) (providing the priority of expenses and unsecured claims in the orderly liquidation of SIPC members). *See also* §§ 380.65 and 302.105, as proposed.

[137] *See* §§ 380.65(a) and 302.105(a), as proposed. *See also* 12 U.S.C. 5390(b)(6)(A).

[138] *See* §§ 380.65(b) and 302.105(b), as proposed. *See also* 12 U.S.C. 5390(b)(6)(B); 12 U.S.C. 5390(n) (establishing the ''orderly liquidation fund'' available to the Corporation to carry out the authorities granted to it under Title II).

[139] *See* §§ 380.65(c) and 302.105(c), as proposed. *See also* 12 U.S.C. 5390(b)(6)(C).

[140] *See* 12 U.S.C. 5390(b)(6)(A). The regulation governing the Corporation's administrative expenses in its role as receiver under Title II is located at 12 CFR 380.22.

[141] *See* 12 U.S.C. 5381(a)(1).

with its role as trustee for the covered broker-dealer, has the authority to ''utilize the services of private persons, including private attorneys, accountants, consultants, advisors, outside experts and other third party professionals.'' The section further provides SIPC with an allowed administrative expense claim with respect to any amounts paid by SIPC for services provided by these persons if those services are ''practicable, efficient and cost-effective.''[142] The proposed definition of *administrative expenses of SIPC* conforms to both the definition of administrative expenses of the Corporation as receiver and the costs and expenses of administration reimbursable to SIPC as trustee in the liquidation of a broker-dealer under SIPA.[143] Specifically, the proposed definition includes ''the costs and expenses of such attorneys, accountants, consultants, advisors, outside experts and other third parties, and other proper expenses that would be allowable to a third party trustee under 15 U.S.C. 78eee(b)(5)(A), including the costs and expenses of SIPC employees that would be allowable pursuant to 15 U.S.C. 78fff(e).''[144] The proposed definition excludes advances from SIPC to satisfy customer claims for net equity because the Dodd-Frank Act specifies that those advances are treated differently than administrative expenses with respect to the priority of payment.[145]

Lastly, the proposed section on QFCs states that QFCs are governed in accordance with Title II.[146] Paragraph (b)(4) of section 205 of the Dodd-Frank Act states in pertinent part that notwithstanding any provision of SIPA the rights and obligations of any party to a qualified financial contract (as the term is defined in section 210(c)(8)) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).[147] Paragraph (c)(8)(A) of section 210 states that no person shall be stayed or prohibited from exercising: (i) Any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment; (ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or (iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.''[148] Paragraph (c)(10)(B)(i)(I) and (II) of section 210 provides in pertinent part that a person who is a party to a QFC with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (c)(8)(A) of section 210 solely by reason of or incidental to the appointment under Title II of the Corporation as receiver for the covered financial company: (1) Until 5:00 p.m. eastern time on the business day following the date of the appointment; or (2) after the person has received notice that the contract has been transferred pursuant to paragraph (c)(9)(A) of section 210.[149] The proposed rule reflects these statutory directives and states: ''The rights and obligations of any party to a qualified financial contract to which a covered broker or dealer is a party shall be governed exclusively by 12 U.S.C. 5390, including the limitations and restrictions contained in 12 U.S.C. 5390(c)(10)(B), and any regulations promulgated thereunder.''[150]

III. Requests for Comments

A. In General

The Agencies generally request comment on the proposal to implement Title II's orderly liquidation of covered broker-dealers provisions. The Agencies invite interested persons to submit written comments on any aspect of the proposed rule, in addition to the specific requests for comment. Further, the Agencies invite comment on other matters that might have an effect on the proposed rule contained in this release, including any competitive impact.

B. Requests for Comment on Certain Specific Matters

In addition to the general request for comments, the Agencies request comment with respect to the following specific questions:

1. In light of section 205(f)(1)'s requirement that customers in a section 205 orderly liquidation receive distributions that are at least as beneficial as what they would have received in a SIPA liquidation, are there any circumstances in which the application of the proposed rule would result in delivery or distributions to customers of securities or cash, in connection with net equity claims, customer property or customer name securities, in a manner and in an amount less than such customers would receive if the covered broker-dealer were subject to a SIPA liquidation? If yes, what are those circumstances? Please be specific.

2. Would an orderly liquidation of a broker-dealer under the approach described in the proposed rule have any unintended or adverse impact(s) on customers or other classes of claimants? If yes, what are those impacts? Are there other approach(es) that might be consistent with the requirements of the Dodd-Frank Act and have fewer such impacts? What are the other approach(es) that might eliminate or minimize such unintended or adverse impact(s), and how would they do so? Please be specific. What would be the costs or benefits associated with such alternative approaches?

3. Would an orderly liquidation of a broker-dealer under the approach described in the proposed rule have any unintended or adverse impact(s) on market participants generally? If yes, what are those impacts? Are there other approach(es) that might be consistent with the requirements of the Dodd-Frank Act and have fewer such impacts? What are the other approach(es) that might eliminate or minimize such unintended or adverse impact(s), and how would they do so? Please be specific. What would be the costs or benefits associated with such alternative approaches?

4. Are there any matter(s) with respect to the orderly liquidation of a covered broker-dealer under Title II of the Dodd-Frank Act that are not currently addressed in the proposed rule, but that should be addressed in a rulemaking under section 205(h) of the Dodd-Frank Act, 12 U.S.C. 5385(h)? If yes, what are

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[142] *See* §§ 380.66(a) and 302.106(a), as proposed.

[143] *See* §§ 380.66(a) and 302.106(a), as proposed. *See also* 12 U.S.C. 5381(a)(1) (defining *administrative expenses of the receiver*); 15 U.S.C. 78eee(5) (providing for compensation for services and reimbursement of expenses).

[144] *See* §§ 380.66(a) and 302.106(a), as proposed. *See also* 15 U.S.C. 78eee(b)(5)(A); 15 U.S.C. 78fff(e).

[145] *See* §§ 380.66(b) and 302.106(b), as proposed (defining the term *administrative expenses of SIPC*). *See also* 12 U.S.C. 5390(b)(6)(C) (stating SIPC's entitlement to recover any amounts paid out to meet its obligations under section 205 and under SIPA).

[146] *See* §§ 380.67 and 302.107, as proposed.

[147] *See* 12 U.S.C. 5385(b)(4) (stating that notwithstanding any provision of SIPA .the rights and obligations of any party to a qualified financial contract to which a covered broker or dealer is a party shall be governed exclusively by section 210 of the Dodd-Frank Act).

[148] *See* 12 U.S.C. 5390(c)(8)(A).

[149] *See* 12 U.S.C. 5390(c)(10)(B).

[150] *See* §§ 380.67 and 302.107, as proposed.

those matters, why should they be addressed, and how? Please be specific.

5. Does the proposed rule clearly address the roles of the FDIC as receiver and SIPC as trustee for the covered broker-dealer in a Title II orderly liquidation? If not, how could the proposed rule be made clearer?

6. Does the proposed rule clearly address the treatment of customers and other classes of claimants and creditors in a Title II orderly liquidation of a covered broker-dealer? Does the proposed rule clearly address the claims bar date and the 60-day filing deadline for payment of net equity claims out of customer property? If not, in what respects could the proposed rule be made clearer and how?

7. Are the priorities for the allocation of customer property and other assets of the covered broker-dealer clearly addressed by the proposed rule? If not, in what respects could they be made clearer and how?

8. Are the standards for judicial review of a claim that is disallowed, in whole or in part, clearly addressed by the proposed rule? If not, in what respects could the proposed rule be made clearer and how?

9. Are the matters listed for inclusion in the protective decree appropriate? Are there any other matters not mentioned that should be included in the protective decree, and if so, why? Could the provision of the protective decree clarifying that, if a protective decree were filed on a date other than the appointment date, the protective decree's filing date would be deemed be the appointment date, cause harm to customers, other claimants, creditors, shareholders, or other interested parties? If so, how? Are there alternative approaches that would not have such impacts? If yes, please describe in detail and provide information about associated costs or benefits.

10. Would customers be harmed by their inability to seek determinations of their claims within the expedited 90-day period (as provided by section 210(a)(5)(B) of the Dodd-Frank Act) rather than within six-months (as provided by section 210(a)(3)(A)(i) of the Dodd-Frank Act)? If so, how? If customers were permitted to seek expedited determinations of their claims, would that allow them to ''jump ahead'' of other similarly-situated claimants? Would that be appropriate?

11. What are the expected costs to covered broker-dealers as a result of this proposed rule?

12. Are there any costs or benefits of the proposed rule for customers or other creditors of covered broker-dealers, or market participants generally, that are not described above? Please describe.

13. What are the proposed rule's implications for systemic risk?

14. Are there any anticipated consequences of the proposed rule that are not otherwise described in this release? Please be specific.

IV. Paperwork Reduction Act

The proposed rule would clarify the process for the orderly liquidation of a covered broker-dealer under Title II of the Dodd-Frank Act. The proposed rule addresses only the process to be used in the liquidation of the covered broker-dealer and does not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.[151] Consequently, no information has been submitted to the Office of Management and Budget for review.

The Agencies request comment on the assertion that the proposed rule will not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

V. Economic Analysis

A. Introduction and General Economic Considerations

The Commission and the Corporation are jointly proposing this rule to implement provisions applicable to the orderly liquidation of covered broker-dealers pursuant to section 205(h) of the Dodd-Frank Act in manner that protects market participants by clearly establishing expectations and equitable treatment for customers and creditors of failed broker-dealers, as well as other market participants. The Commission and the Corporation are mindful of the costs and benefits of their respective rules. The following economic analysis seeks to identify and consider the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed rule. Overall, the Commission and the Corporation preliminarily believe that the primary benefit of the proposed rule is to codify additional details regarding the process for orderly liquidation of failed broker-dealers which will provide additional structure and enable consistent application of the process. Importantly, the proposed rule does not affect the set of options available to the Commission and the Corporation, nor does it affect the range of possible outcomes. The detailed analysis of costs and benefits regarding the proposed rule is discussed below.

The Dodd-Frank Act specifically provides that the FDIC may be appointed receiver for a systemically important broker-dealer for purposes of the orderly liquidation of the company using the powers and authorities granted to the FDIC under Title II of the Act.[152] Section 205 of the Dodd-Frank Act sets forth a process for the orderly liquidation of covered broker-dealers that is an alternative to the process under SIPA, but that process incorporates many of the customer protection features of SIPA into a Title II orderly liquidation. Congress recognized that broker-dealers are different from other kinds of systemically important financial companies in several ways, not the least of which is how customers of a broker-dealer are treated in an insolvency proceeding relating to the broker-dealer.[153] Section 205 of the Dodd-Frank Act is intended to address situations where the failure of a large broker-dealer could have broader impacts on the stability of the United States financial system. The financial crisis of 2008 and the ensuing economic recession resulted in the failure of many financial entities. Liquidity problems that initially began at a small set of firms quickly spread as uncertainty about which institutions were solvent increased, triggering broader market disruptions, including a general loss of liquidity, distressed asset sales, and system-wide redemption runs by some participants.[154] The proposed rule seeks to implement the orderly liquidation provisions of the Dodd-Frank Act in a manner that is designed to help reduce both the likelihood and the severity of financial market disruptions that could result from the failure of a covered broker-dealer.

In the case of a failing broker-dealer, the broker-dealer customer protection regime is primarily composed of SIPA and the Exchange Act, as administered by SIPC and the Commission. Among other Commission financial responsibility rules, Rule 15c3–3 specifically protects customer funds and securities held by a broker-dealer and essentially forbids broker-dealers from using customer assets to finance any part of their businesses unrelated to servicing securities customers.[155] With

[151] 44 U.S.C. 3501 *et seq.*

[152] *See* 12 U.S.C. 5382, 12 U.S.C. 5383, and 12 U.S.C. 5384.

[153] *See* 12 U.S.C. 5385 (orderly liquidation of covered brokers and dealers).

[154] *See* Brunnermeir, M. (2009), *Deciphering the Liquidity and Credit Crunch 2007–2008,* Journal of Economic Perspectives 23, 77–100.

[155] *See Net Capital Requirements for Brokers and Dealers,* Exchange Act Release No. 21651 (Jan. 11, 1985), 50 FR 2690, 2690 (Jan. 18, 1985). *See also Broker-Dealers; Maintenance of Certain Basic Reserves,* Exchange Act Release No. 9856 (Nov. 10, 1972), 37 FR 25224, 25224 (Nov. 29, 1972).

respect to SIPA, and as a general matter, in the event that a broker-dealer enters into a SIPA liquidation, customers' cash and securities held by the broker-dealer are returned to customers on a *pro-rata* basis.[156] If the broker-dealer does not have sufficient funds to satisfy customer net equity claims, SIPC advances may be used to supplement the distribution, up to a ceiling of $500,000 per customer, including a maximum of $250,000 for cash claims.[157] When applicable, SIPC or a SIPA trustee will return securities that are registered in the customer's name, or are in the process of being registered, directly to each customer.[158] An integral component of the broker-dealer customer protection regime is that, under SIPA, customers have preferred status relative to general creditors with respect to customer property and customer name securities.[159] SIPC or a SIPA trustee may sell or transfer customer accounts to another SIPC member in order for the customers to regain access to their accounts in an expedited fashion.[160]

Title II of the Dodd-Frank Act supplemented the customer protection regime for broker-dealers. As described above in more detail, in the event a covered broker-dealer fails,[161] Title II provides the FDIC with a broader set of tools to help ensure orderly liquidation, including the ability to transfer all assets and liabilities held by a broker-dealer— not just customer assets—to another broker-dealer, as well as the ability to borrow from the U.S. Treasury.[162] Upon the commencement of an orderly liquidation under Title II, the FDIC is appointed the receiver of the broker-dealer and SIPC is appointed as the trustee for the liquidation process. The FDIC is given the authority to form and fund a bridge broker-dealer,[163] which would facilitate a quick transfer of customer accounts to a solvent broker-dealer and therefore would accelerate reinstated access to customer accounts.[164] By granting the FDIC the ability to transfer any asset or liability to the bridge broker-dealer as it deems necessary, the orderly liquidation proceeding allows the Corporation to extend relief to certain creditors to reduce the destabilizing effects these creditors may cause if they run on a large broker-dealer.[165] To further reduce the run risk the failed broker-dealer may be facing, Title II imposes an automatic one-business day stay on certain activities by the counterparties to QFCs, so as to provide the FDIC an opportunity to inform counterparties that the covered broker-dealer's liabilities were transferred to and assumed by the bridge broker-dealer.[166]

The proposed rule is designed to implement the provisions of section 205, so that an orderly liquidation can be carried out for certain broker-dealers with efficiency and the intended benefits of orderly liquidation, as established by the Dodd-Frank Act, on the overall economy can be realized. Specifically, the proposed rule implements the framework for the liquidation of covered broker-dealers. The framework includes definitions for the key terms such as customer, customer property, customer name securities, net equity, and bridge broker-dealer. It sets forth three major processes regarding the orderly liquidation—the process of initiating the orderly liquidation (including the appointment of receiver and trustee and the notice and application for protective decree), the process of account transfers to the bridge broker-dealer, and the claims process for customers and other creditors. While establishing orderly liquidation generally, section 205 does not specifically provide the details of such processes.

The proposed rule provides several clarifications to the provisions in the statute. For example, under Title II, the FDIC has authority to transfer any assets without obtaining any approval, assignment, or consents.[167] The proposed rule further provides that the transfer to a bridge broker-dealer of any account, property or asset is not determinative of customer status, nor that the property so transferred qualifies as customer property or customer name securities.[168] The proposed rule also provides clarifications on terms such as the venue for filing the application for a protective decree and the filing date.[169]

In addition, the proposed rule clarifies the process for transferring assets to the bridge broker-dealer, which should help expedite customer access to their respective accounts. For example, the proposed rule provides that allocations to customer accounts at the bridge broker-dealer may initially be derived from estimates based upon the books and records of the covered broker-dealer or other information deemed relevant by the Corporation in consultation with SIPC.[170] This means that customers may potentially access their accounts more expeditiously, before the time-consuming record reconciliation process concludes.

Therefore, overall, the Commission and the Corporation preliminarily believe that the primary benefit of the proposed rule is to codify additional details regarding the process for the orderly liquidation of covered broker-dealers, which will provide additional structure and enable consistent application of the process. Importantly, the proposed rule does not affect the set of options available to the Commission and the Corporation upon failure of a covered broker-dealer, nor does it affect the range of possible outcomes. In the absence of the proposed rule, the Commission, the Board and the Secretary[171] could still determine that an orderly liquidation under Title II is appropriate, and the FDIC would still have broad authority to establish a bridge broker-dealer and transfer all assets and liabilities held by the failed entity. However, in the absence of the proposed rule, uncertainty could arise regarding the definitions (*e.g.,* the applicable filing date or the nature of the application for a protective decree) and the claims process, which could

[156] *See* 15 U.S.C. 78fff–2(b).

[157] *See* 15 U.S.C. 78fff–3(a).

[158] *See* 15 U.S.C. 78fff–2(c).

[159] *See* 15 U.S.C. 78fff(a).

[160] *See* 15 U.S.C. 78fff–2(f).

[161] To facilitate their customer business and to finance their proprietary trading activities, broker-dealers often enter into short-term borrowing arrangements, including repurchase and securities lending agreements. Such financing arrangements can have maturities as short as a day, requiring broker-dealers to continuously refinance their positions. Broker-dealers are therefore subject to liquidity risk in the event that short-term lenders and counterparties refuse to finance their positions or seek less favorable terms for the broker-dealer, such as higher haircuts on collateral. Doubts about a broker-dealer's viability can lead a broker-dealer's customers to move their accounts from the broker-dealer, placing additional strains upon the broker-dealer's liquidity position. Such doubts can, in turn, lead to a general ''run'' against the broker-dealer, both in its secured financing activities and withdrawals of customer accounts. The ability of the Corporation under Title II to provide financing to the broker-dealer and to allow the broker-dealer to continue its operations may help to address the liquidity stress at the broker-dealer and reduce the potential risk to other market participants.

[162] Under a SIPA liquidation, the Commission is authorized to make loans to SIPC should SIPC lack sufficient funds. In addition, to fund these loans, the Commission is authorized to borrow up to $2.5 billion from the U.S. Treasury. *See* 15 U.S.C. 78ddd(g) and (h).

[163] *See* §§ 380.63 and 302.103, as proposed (regarding the FDIC's power to ''organize one or more bridge brokers or dealers with respect to a covered broker or dealer'').

[164] *See* Section II.D.2 on the FDIC's power to transfer accounts to bridge broker-dealer.

[165] *See* Section II.E on the claims of customers and other creditors of a covered broker-dealer.

[166] *See* Section II.F on the additional proposed sections that relate to qualified financial contracts.

[167] *See* §§ 380.63 and 302.103, as proposed.

[168] These determinations would be made by SIPC in accordance with SIPA. *See* §§ 380.64(a)(1) and 302.104, as proposed

[169] *See* §§ 380.62 and 302.102, as proposed.

[170] *See* §§ 380.63(d) and 302.103(d), as proposed.

[171] *See* 12 U.S.C. 5383(a)(1)(B).

cause delays in the process and undermine the goals of the statute. By establishing a uniform process for the orderly resolution of a broker-dealer, the proposed rule should improve the orderly liquidation process while implementing the statutory requirements, so that orderly liquidations can be carried out with efficiency and predictability. Such efficiency and predictability should generally ease implementation burdens and conserve resources that otherwise would have to be expended resolving delays in the claims process or in connection with any potential litigation that could arise from delays. The discussion below elaborates on the likely costs and benefits of the proposed rule and its potential impact on efficiency, competition and capital formation, as well as potential alternatives.

B. Economic Baseline

To assess the economic impact of the proposed rule, the Commission and the Corporation are using section 205 of the Dodd-Frank Act as the economic baseline. Section 205 sets forth provisions specific to the orderly liquidation of certain large broker-dealers and paragraph (h) directs the Commission and the Corporation, in consultation with SIPC, jointly to issue rules to fully implement the section.[172] Although no implementing rules are in place, section 205 of the Dodd-Frank Act was self-effectuating, meaning that the statutory requirements are in effect. Therefore, the appropriate baseline is the orderly liquidation authority in place pursuant to section 205, without any implementation rules issued by the Agencies. As outlined in Title II of the Dodd-Frank Act, irrespective of how the broker-dealer was placed into a Title II resolution, section 205 regarding the liquidation of broker-dealers and the proposed rule (if adopted) would always apply to the covered broker-dealer even if section 210 is invoked.

1. SIPC's Role

Section 205 provides that upon the appointment of the FDIC as receiver for a covered broker-dealer, the FDIC shall appoint SIPC as trustee for the liquidation of the covered broker-dealer under SIPA without need for any approval.[173] Upon its appointment as trustee, SIPC shall promptly file with a federal district court an application for protective decree, the terms of which will jointly be determined by SIPC and the Corporation, in consultation with the Commission.[174] Section 205 also provides that SIPC shall have all of the powers and duties provided by SIPA, except with respect to assets and liabilities transferred to the bridge broker-dealer.[175] The determination of claims and the liquidation of assets retained in the receivership of the covered broker-dealer and not transferred to the bridge financial company shall be administered under SIPA.[176]

2. The Corporation's Power to Establish Bridge Broker-Dealers

Section 205 of the Dodd-Frank Act does not contain specific provisions regarding bridge broker-dealers. However, section 210 of the Dodd-Frank Act provides that, in connection with an orderly liquidation, the FDIC has the power to form one or more bridge financial companies, which includes the power to form bridge broker-dealers with respect to a covered broker-dealer.[177] Under Title II, the FDIC has the authority to transfer any asset or liability held by the covered financial company without obtaining any approval, assignment, or consent with respect to such transfer.[178] It is further provided that any customer of a covered broker-dealer whose account is transferred to a bridge financial company shall have all rights and privileges under section 205(f) of the Dodd-Frank Act and SIPA that such customer would have had if the account was not transferred.[179]

3. Satisfaction of Customer Claims

Section 205(f) of the Dodd-Frank Act requires that all obligations of a covered broker-dealer or bridge broker-dealer to a customer relating to, or net equity claims based on, customer property or customer name securities must be promptly discharged in a manner and in an amount at least as beneficial to the customer as would have been the case had the broker-dealer been liquidated in a SIPA proceeding.

C. Benefits, Costs and Effects on Efficiency, Competition, and Capital Formation

1. Anticipated Benefits

a. Overall Benefits

The key benefit of the proposed rule is that it creates a more structured framework to implement section 205 of the Dodd-Frank Act, so that the orderly liquidation of a covered broker-dealer can be carried out with efficiency and predictability if the need arises. As discussed in the economic baseline, section 205 provides parameters for the orderly liquidation of covered broker-dealers, while the proposed rule implements these statutory parameters. The proposed rule first provides definitions for certain key terms including customer, customer property, customer name securities, net equity, and bridge broker-dealer, among others.[180] It then sets forth three major processes regarding the orderly liquidation: the process of initiating the orderly liquidation,[181] the process of account transfers to the bridge broker-dealer,[182] and the claims process for customers and other creditors.[183]

First, besides incorporating the statutory requirement of appointing SIPC as the trustee for covered broker-dealers, the proposed rule provides a more detailed process for notice and application for protective decree. It provides clarification for the venue in which the notice and application for a decree is to be filed.[184] It clarifies the definition of the filing date if the notice and application is filed on a date other than the appointment date.[185] And finally, it also includes a non-exclusive list of notices drawn from other parts of Title II to inform the relevant parties of the initiation of the orderly liquidation process and what they should expect.[186]

Second, the proposed rule sets forth the process to establish one or more bridge broker-dealers and to transfer accounts, property, and other assets held by a covered broker-dealer to such bridge broker-dealers, pursuant to Title II of Dodd-Frank Act.[187] Section 205 of the Act does not specifically provide for such a process. The proposed rule specifies that the Corporation may transfer any account, property, or asset held by a covered broker-dealer

[172] 12 U.S.C. 5385(h).

[173] 12 U.S.C. 5385(a).

[174] *See* 12 U.S.C. 5385(a)(2).

[175] 12 U.S.C. 5385. *See also* §§ 380.64(a) and 302.104(a), as proposed (regarding SIPC's role as trustee).

[176] *Id.*

[177] *See* 12 U.S.C. 5390(h)(1)(A). *See also* 12 U.S.C. 5390(h)(2)(H).

[178] 12 U.S.C. 5390(a)(1)(G).

[179] *See* 12 U.S.C. 5390(h)(2)(H)(iii).

[180] *See* §§ 380.60 and 302.100, as proposed.

[181] *See* §§ 380.61, 380.62, 302.101 and 302.102, as proposed.

[182] *See* §§ 380.63 and 302.103, as proposed.

[183] *See* §§ 380.64 and 302.104, as proposed.

[184] *See* §§ 380.62(a) and 302.102, as proposed.

[185] *Id.*

[186] *See* §§ 380.62(b) and 302.102(b), as proposed.

[187] *See* §§ 380.63 and 302.103, as proposed.

(including customer and non-customer accounts, property and assets) to a bridge broker-dealer as the Corporation deems necessary, based on the FDIC's authority under Title II to transfer any assets without obtaining any approval, assignment, or consents.[188] The transfer to a bridge broker-dealer of any account, property or asset is not determinative of customer status.[189] The determinations of customer status are to be made by SIPC as trustee in accordance with SIPA.[190] As discussed above, given the preferred status of customers, litigation has been brought on customer status under SIPA (*e.g.,* repo counterparties' claims of customer status under SIPA).[191] Since the Corporation may transfer both customer and non-customer accounts, property and assets held by a covered broker-dealer to a bridge broker-dealer according to the statute, in the absence of the proposed rule, some non-customer creditors may mistakenly interpret under the baseline scenario that such a transfer confers customer status (especially since in a SIPA proceeding only customer assets are transferred). To the extent that such mistaken beliefs may arise from the statutory provisions, litigation over customer status could arise. The clarification in the proposed rule stresses that customer status is determined by SIPC separately from the decision to transfer an asset to a bridge broker-dealer, and could thus help prevent confusion concerning whether other creditors whose assets have also been transferred should be treated as customers. This clarification may mitigate a potential increase in litigation costs, although the economic benefit of such mitigation is likely to be *de minimis.*

Regarding the account transfers to bridge broker-dealers, in addition to the provisions on the specifics of a transfer (*e.g.,* the calculation of customer net equity, the assumption of the net equity claim by the bridge broker-dealer and the allocation of customer property), the proposed rule further provides that allocations to customer accounts at the bridge broker-dealer may initially be derived from estimates based upon the books and records of the covered broker-dealer or other information deemed relevant by the Corporation in consultation with SIPC.[192] Given that it could be time-consuming to reconcile the broker-dealer's records with the records of other parties, this provision may speed up the allocation of customer property to the customer accounts at the bridge broker-dealer, thus providing customers quicker access to their accounts.

Third, the proposed rule also addresses the claims process for customers and other creditors.[193] The proposed rule implements the statute's requirement that the trustee's allocation shall be in an amount and manner, including form and timing, at least as beneficial as such customer would have received under a SIPA proceeding, as required by section 205(f).[194] In addition, it further addresses certain procedural aspects of the claims determination process, such as the publication and mailing of notices to creditors, the notice of the appointment of the FDIC and SIPC, the claims bar date, and expedited relief.

In summary, the proposed rule would provide interested parties with details on the implementation of the orderly liquidation process. By providing for a uniform process, the proposed rule could improve the orderly liquidation process, so that the orderly liquidation can be carried out with efficiency and predictability. Under the baseline scenario, in absence of the proposed rule, uncertainty may arise because various parties may interpret the statutory requirements differently. For example, under the baseline, the repo counterparties of the broker-dealer may not understand that the transfer of the rights and obligations under their contracts to the bridge broker-dealer is not determinative of customer status, because such a transfer to another broker-dealer is only available for customers under a SIPA proceeding. That is, repo counterparties of the broker-dealer may mistakenly believe that the transfer of rights and obligations implies customer status. Accordingly, the proposed rule provides that the transfer of accounts to a bridge broker-dealer is not determinative of customer status, and that such status is determined by SIPC in accordance with SIPA. Uncertainty regarding such matters could result in litigation and delays in the claims process if orderly liquidation were to be commenced with respect to a covered broker-dealer; therefore, the structure provided by the proposed rule could conserve resources that otherwise would have to be expended in settling such litigation and resolving delays that may arise, and create a more efficient process for enabling orderly liquidation. Moreover, under the baseline scenario, uncertainties about process and how customer and creditor claims would be handled could continue to encourage these claimants to reduce exposure if doubts about a broker-dealer's viability arise—for customers, by withdrawing free credit balances; for creditors, by reducing repo and derivatives exposure. Such uncertainties, if they were to persist, could undermine the broader benefits that orderly liquidation could provide to financial stability. In this sense, the processes set forth by the proposed rule could help realize the economic benefits of section 205.

b. Benefits to Affected Parties

The Commission and the Corporation believe that the proposed rule provides benefits comparable to those under the baseline scenario to relevant parties such as customers, creditors, and counterparties. To the extent that it provides additional guidance on procedural matters, the proposed rule may reduce potential uncertainty, thereby providing for an efficient and predictable orderly liquidation process. Therefore, the Commission and the Corporation preliminarily believe the proposed rule will improve the orderly liquidation process and provide benefits beyond the statute, although such benefits are likely to be incremental.

The Commission and the Corporation preliminarily believe that the proposed rule will be beneficial to customers.[195] The proposed rule states that the bridge broker-dealer will undertake the obligations of a covered broker-dealer with respect to each person holding an account transferred to the bridge broker-dealer, providing customers with transferred accounts assurance that they will receive the same legal protection and status as a customer of a broker-dealer that is subject to a liquidation outside of Title II.[196] Further, under the proposed rule, the transfer of non-customer assets to a bridge broker-dealer would not imply customer status for these assets, which could thereby reduce any incentive to not move assets based upon fears of prejudging customer status. Finally, the proposed rule would provide that allocations to customer accounts at the bridge broker-dealer may initially be derived from estimates based on the books and records of the covered broker-dealer.[197] This provision could

[188] *See* §§ 380.63(e) and 302.103(e), as proposed.

[189] *See* §§ 380.64(a) and 302.104(a), as proposed.

[190] *See* §§ 380.64(a) and 302.104(a) as proposed.

[191] *See, e.g.,* In re Lehman Brothers Inc., 492 B.R. 379 (Bankr. S.D.N.Y. 2013), aff'd, 506 B.R. 346.

[192] *See* §§ 380.63(d) and 302.103(d), as proposed.

[193] *See* §§ 380.64 and 302.104, as proposed.

[194] *See* §§ 380.64(a)(4) and 302.104(a)(4), as proposed.

[195] *See* Section II.D.1 discussing the preferred status of customer claims. *See also* §§ 380.65(a)(1) and 302.105(a)(1), as proposed (explaining that ''SIPC . . . shall determine customer status . . .'').

[196] *See* §§ 380.63(d) and 302.103(d), as proposed.

[197] *See* §§ 380.63(d) and 302.103(d), as proposed.

help facilitate expedited customer access to their respective accounts, as customers would not have to wait for a final reconciliation of the broker-dealer's records with other parties' records.[198]

The Commission preliminarily believes the proposed rule will yield benefits to both secured and unsecured creditors, as it clarifies the manner in which creditor claims could be transferred to a bridge broker-dealer. Creditors thus could potentially receive benefits from financing provided by the Corporation to the bridge broker-dealer.

2. Anticipated Costs

While the proposed rule is designed to ensure that an orderly liquidation under Title II would be at least as beneficial to customers as would be the case in a SIPA liquidation, orderly liquidation does entail different treatment of QFC counterparties. Under SIPA, certain QFC counterparties may exercise specified contractual rights regardless of an automatic stay.[199] In contrast, Title II imposes an automatic one-day stay on certain activities by QFC counterparties,[200] which may limit the ability of these counterparties to terminate contracts or exercise any rights against collateral. As proposed, the stay would remain in effect if the QFC contracts are transferred to a bridge broker-dealer. While these provisions may impose costs, they are a consequence of the statute and are already in effect.

In addition, as discussed above, the proposed rule could benefit customers by allowing the allocations to customer accounts at the bridge broker-dealer to be derived from estimates based on the books and records of the covered broker-dealer. Such a process may accelerate customers' access to their accounts, as they would not have to wait for a final account reconciliation to access their accounts. As provided for in the proposed rule, the calculation of allocations of customer property to customer accounts would be refined as additional information becomes available. The Commission and the Corporation preliminarily believe that initial allocations will be made conservatively, which with the backstop of the availability of SIPC advances to customers in accordance with the requirements of SIPA, should minimize the possibility of an over-allocation to any customer. To the extent that initial estimates are excessive, it is possible that customer funds may need to be reallocated after customers initially gain access to their accounts, which could result in costs for customers. Essentially, the proposed rule trades off expedited access to customer funds with the possibility of subsequent reallocation. We currently lack data concerning the impact or costs that might be associated with this possibility. The costs associated with all of these factors may vary significantly depending on broker-dealer systems and the specific events. For these reasons, we are unable to quantify the costs associated with these factors at this time. However, as noted above, the Commission and the Corporation preliminarily believe initial allocations will be made conservatively, which would minimize the possibility of an over-allocation to any customer and mitigate potential costs and uncertainty associated with allocation refinements.

3. Effects on Efficiency, Competition, and Capital Formation

The Commission and the Corporation have preliminarily assessed the effects arising from the proposed rule on efficiency, competition, and capital formation. As discussed above, the Agencies preliminarily believe the primary economic benefit of the proposed rule will be that it provides details to implement section 205 of the Dodd-Frank Act, so that the orderly liquidation of a covered broker-dealer can be carried out with greater efficiency and predictability if the need arises. This structure could reduce uncertainty about treatment of customer and creditor claims in an orderly liquidation, conserving resources and creating a more efficient process relative to orderly liquidation under the baseline. In addition, uncertainty about treatment of claims could encourage customers and creditors to reduce exposure to a broker-dealer facing financial distress, exacerbating liquidity problems. By reducing uncertainty, the proposed rule may reduce incentives for claimants to rush to reduce exposures. In such a scenario, broker-dealers may find it easier to recover from moderate financial distress and to sustain a sufficient capital position to provide financial intermediation services. Furthermore, for sufficiently large broker-dealers with many creditor and counterparty relationships throughout the financial system, positive perceptions about the ability of those broker-dealers to recover from moderate financial distress may stave off aggregate financial sector runs, and thus preserve financial sector capital and the availability of financial intermediation services.

Beyond these identified potential effects, the Commission and the Corporation preliminarily believe that the additional effects of the proposed rule on efficiency, competition, and capital formation will be linked to the existence of an orderly liquidation process itself, which is part of the baseline, and is an option available to regulatory authorities today. Our analysis of the effects of an orderly liquidation process on efficiency, competition, and capital formation focuses on those effects that derive from the process and structure created by the proposed rule, but not those that are due to the underlying statute, which is part of the economic baseline. By establishing a structured framework, the proposed rule sets clearer expectations for relevant parties, and therefore could help reduce potential uncertainty and contribute to market efficiency and liquidity as described above. Relative to the baseline scenario, where orderly liquidation exists as an option for regulatory authorities but without the framework provided in the proposed rule, having a structured process in place as a response to a potential crisis could also allow broker-dealers to more readily attract funding, thus facilitating capital formation.

D. Alternatives Considered

As described above, Title II of the Dodd-Frank Act establishes a process by which a covered broker-dealer would be placed into orderly liquidation. Furthermore, orderly liquidation is available as an option to regulators today, and the proposed rule does not affect the set of options available to the Commission and the Corporation, nor does it affect the range of possible outcomes. As an alternative to this proposed rule, the Commission and the Corporation could rely on statutory

[198] *See* §§ 380.63(e) and 302.103(e), as proposed. *See also* 15 U.S.C. 78eee(b)(2)(C)(i) and (ii).

[199] See 15 U.S.C. 78eee(b)(2)(C)(i) through (ii). *See also* Letter from Michael E. Don, Deputy General Counsel of SIPC to Robert A. Portnoy, Deputy Executive Director and General Counsel of the Public Securities Association, dated February 4, 1986 (repurchase agreements); Letter from Michael E. Don to J. Eugene Marans, Cleary, Gottlieb, Steen & Hamilton, dated August 29, 1988 (securities lending transactions); Letter from Michael E. Don to James D. McLaughlin, Director of the American Bankers Association, dated October 30, 1990 (securities lending transactions secured by cash collateral or supported by letters of credit); Letter from Michael E. Don to John G. Macfarlane, III, Chairman, Repo Committee, Public Securities Association, dated February 19, 1991 (securities lending transactions secured by cash collateral or supported by letters of credit); Letter from Michael E. Don, President of SIPC to Seth Grosshandler, Cleary, Gottlieb, Steen & Hamilton, dated February 14, 1996 (repurchase agreements falling outside the Code definition of ''repurchase agreement''); and Letter from Michael E. Don to Omer Oztan, Vice President and Assistant General Counsel of the Bond Market Association, dated June 25, 2002 (repurchase agreements).

[200] *See* §§ 380.67 and 302.107, as proposed.

provisions alone to achieve similar outcomes. However, the Commission and the Corporation preliminarily believe that relying on the statute alone, without a rule implementing section 205 of the Dodd-Frank Act, would result in orderly liquidations, if any, that are less efficient and less predictable, and that would fail to achieve the benefits of the proposed rule described above. In particular, the absence of the provisions of the proposed rule outlining the process for notice and application for a protective decree, the process for establishing a bridge broker-dealer, and the process governing the transfer of accounts, property, and other assets held by the covered broker-dealer to the bridge broker-dealer, could lead to inconsistent application of the statutory provisions. Such inconsistency could cause delays in the liquidation process and increase the likelihood of litigation over issues such as customer status, increasing costs for customers and creditors without corresponding benefits.

E. Request for Comment

In addition to the general requests for comment, the Commission and the Corporation request comment with respect to the following specific questions:

1. As an alternative to the proposed rule, should the Commission and the Corporation instead rely on the statute alone to implement orderly liquidations of covered broker-dealers? Why?

2. Are there additional alternative processes to implement section 205 of the Dodd-Frank Act that the Commission and the Corporation should consider? If so, what are they and what would be the associated costs or benefits of these alternative approaches?

VI. Regulatory Analysis and Procedures

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [201] requires an agency publishing a notice of proposed rulemaking to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[202] The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.[203]

Pursuant to section 605(b) of the RFA, the Agencies certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Under Small Business Administration size standards defining small entities, broker-dealers are generally considered small entities if their annual receipts do not exceed $38.5 million.[204] If adopted, the proposed rule will clarify rules and procedures for the orderly liquidation of a covered broker-dealer under Title II of the Dodd-Frank Act. A covered broker-dealer is a broker-dealer that is subject to a systemic risk determination by the Secretary pursuant to section 203 of the Dodd-Frank Act, 12 U.S.C. 5383, and thereafter is to be liquidated under Title II of the Dodd-Frank Act. The Agencies do not believe that a broker-dealer that would be considered a small entity for purposes of the RFA would ever be the subject of a systemic risk determination by the Secretary. Therefore, the Agencies are not aware of any small entities that would be affected by the proposed rule. As such, the proposed rule, if adopted, would not affect, and would impose no burdens on, small entities.

B. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.[205]

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [206] requires federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner but nevertheless invites comment on whether the proposal is clearly stated and effectively organized, and how the Agencies might make the proposed text easier to understand.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), the Commission and the Corporation request comment on the potential effect of the proposed rule on the United States economy on an annual basis. The Commission and the Corporation also request comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation based on the proposed rule. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Statutory Authority

The proposed rule is being promulgated pursuant to section 205(h) of the Dodd-Frank Act. Section 205(h) of the Act requires the Corporation and the Commission, in consultation with SIPC, jointly to issue rules to implement section 205 of the Act concerning the orderly liquidation of covered broker-dealers.

List of Subjects

12 CFR Part 380

Bankruptcy, Brokers, Claims, Customers, Dealers, Financial companies, Orderly liquidation.

17 CFR Part 302

Brokers, Claims, Customers, Dealers, Financial companies, Orderly liquidation.

Federal Deposit Insurance Corporation

12 CFR Part 380

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 380 as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. The authority citation for part 380 is revised to read as follows:

Authority: 12 U.S.C. 5385(h); 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D); 12 U.S.C. 5381(b), 12 U.S.C. 5390(r).

■ 2. Add subpart D to read as follows:

Subpart D—Orderly Liquidation of Covered Brokers or Dealers

Sec.

[201] 5 U.S.C. 601 *et seq.*

[202] 5 U.S.C. 603(a).

[203] 5 U.S.C. 605(b).

[204] 13 CFR 121.201.

[205] Public Law 105–277, 112 Stat. 2681.

[206] Public Law 106–102, 113 Stat. 1338, 1471.

§ 380.60 Definitions.

For purposes of this subpart D, the following terms shall have the following meanings:

(a) *Appointment date.* The term *appointment date* means the date of the appointment of the Corporation as receiver for a covered financial company that is a covered broker or dealer. This date shall constitute the *filing date* as that term is used in SIPA.

(b) *Bridge broker or dealer.* The term *bridge broker or dealer* means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered broker or dealer.

(c) *Commission.* The term *Commission* means the Securities and Exchange Commission.

(d) *Covered broker or dealer.* The term *covered broker or dealer* means a covered financial company that is a qualified broker or dealer.

(e) *Customer.* The term *customer* of a covered broker or dealer shall have the same meaning as in 15 U.S.C. 78*lll*(2) provided that the references therein to *debtor* shall mean the covered broker or dealer.

(f) *Customer name securities.* The term *customer name securities* shall have the same meaning as in 15 U.S.C. 78*lll*(3) provided that the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(g) *Customer property.* The term *customer property* shall have the same meaning as in 15 U.S.C. 78*lll*(4) provided that the references therein to *debtor* shall mean the covered broker or dealer.

(h) *Net equity.* The term *net equity* shall have the same meaning as in 15 U.S.C. 78*lll*(11) provided that the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(i) *Qualified broker or dealer.* The term *qualified broker or dealer* means a broker or dealer that:

(1) Is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

(2) Is a member of SIPC.

(j) *SIPA.* The term *SIPA* means the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa–*lll.*

(k) *SIPC.* The term *SIPC* means the Securities Investor Protection Corporation.

§ 380.61 Appointment of receiver and trustee for covered broker or dealer.

Upon the appointment of the Corporation as receiver for a covered broker or dealer, the Corporation shall appoint SIPC to act as trustee for the covered broker or dealer.

§ 380.62 Notice and application for protective decree for covered broker or dealer.

(a) SIPC and the Corporation, upon consultation with the Commission, shall jointly determine the terms of a notice and application for a protective decree that will be filed promptly with the Federal district court for the district within which the principal place of business of the covered broker or dealer is located; provided that if a case or proceeding under SIPA with respect to such covered broker or dealer is then pending, then such notice and application for a protective decree will be filed promptly with the Federal district court in which such case or proceeding under SIPA is pending. If such notice and application for a protective decree is filed on a date other than the appointment date, such filing shall be deemed to have occurred on the appointment date for the purposes of this subpart D.

(b) A notice and application for a protective decree may, among other things, provide for notice—

(1) Of the appointment of the Corporation as receiver and the appointment of SIPC as trustee for the covered broker or dealer; and

(2) That the provisions of Title II of the Dodd-Frank Act and any regulations promulgated thereunder may apply, including without limitation the following:

(i) Any existing case or proceeding with respect to a covered broker or dealer under the Bankruptcy Code or SIPA shall be dismissed effective as of the appointment date and no such case or proceeding may be commenced with respect to a covered broker or dealer at any time while the Corporation is receiver for such covered broker or dealer;

(ii) The revesting of assets in a covered broker or dealer to the extent that they have vested in any entity other than the covered broker or dealer as a result of any case or proceeding commenced with respect to the covered broker or dealer under the Bankruptcy Code, SIPA, or any similar provision of State liquidation or insolvency law applicable to the covered broker or dealer; *provided that* any such revesting shall not apply to assets held by the covered broker or dealer, including customer property, transferred prior to the appointment date pursuant to an order entered by the bankruptcy court presiding over the case or proceeding with respect to the covered broker or dealer;

(iii) The request of the Corporation as receiver for a stay in any judicial action or proceeding (other than actions dismissed in accordance with paragraph (b)(2)(i) of this section) in which the covered broker or dealer is or becomes a party for a period of up to 90 days from the appointment date;

(iv) Except as provided in paragraph (b)(2)(v) of this section with respect to qualified financial contracts, no person may exercise any right or power to terminate, accelerate or declare a default under any contract to which the covered broker or dealer is a party (and no provision in any such contract providing for such default, termination or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered broker or dealer or affect any contractual rights of the covered broker or dealer without the consent of the Corporation as receiver of the covered broker or dealer upon consultation with SIPC during the 90-day period beginning from the appointment date; and

(v) The exercise of rights and the performance of obligations by parties to qualified financial contracts with the covered broker or dealer may be affected, stayed, or delayed pursuant to the provisions of Title II of the Dodd-Frank Act (including 12 U.S.C. 5390(c)) and the regulations promulgated thereunder.

§ 380.63 Bridge broker or dealer.

(a) The Corporation, as receiver for one or more covered brokers or dealers or in anticipation of being appointed receiver for one or more covered broker or dealers, may organize one or more bridge brokers or dealers with respect to a covered broker or dealer.

(b) If the Corporation establishes one or more bridge brokers or dealers with respect to a covered broker or dealer, then, subject to paragraph (d) of this section, the Corporation as receiver for such covered broker or dealer shall transfer all customer accounts and all associated customer name securities and customer property to such bridge brokers or dealers unless the Corporation determines, after consultation with the Commission and SIPC, that:

(1) The customer accounts, customer name securities, and customer property are likely to be promptly transferred to one or more qualified brokers or dealers such that the use of a bridge broker or dealer would not facilitate such transfer to one or more qualified brokers or dealers; or

(2) The transfer of such customer accounts to a bridge broker or dealer would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(c) The Corporation, as receiver for such covered broker or dealer, also may transfer any other assets and liabilities of the covered broker or dealer (including non-customer accounts and any associated property and any assets and liabilities associated with any trust or custody business) to such bridge brokers or dealers as the Corporation may, in its discretion, determine to be appropriate in accordance with, and subject to the requirements of, 12 U.S.C. 5390(h), including 12 U.S.C. 5390(h)(1) and 5390(h)(5), and any regulations promulgated thereunder.

(d) In connection with customer accounts transferred to the bridge broker or dealer pursuant to paragraph (b) of this section, claims for net equity shall not be transferred but shall remain with the covered broker or dealer. Customer property transferred from the covered broker or dealer, along with advances from SIPC, shall be allocated to customer accounts at the bridge broker or dealer in accordance with § 380.64(a)(3). Such allocations initially may be based upon estimates, and such estimates may be based upon the books and records of the covered broker or dealer or any other information deemed relevant in the discretion of the Corporation as receiver, in consultation with SIPC, as trustee. Such estimates may be adjusted from time to time as additional information becomes available. With respect to each account transferred to the bridge broker or dealer pursuant to paragraph (b) or (c) of this section, the bridge broker or dealer shall undertake the obligations of a broker or dealer only with respect to property transferred to and held by the bridge broker or dealer, and allocated to the account as provided in § 380.64(a)(3), including any customer property and any advances from SIPC. The bridge broker or dealer shall have no obligations with respect to any customer property or other property that is not transferred from the covered broker or dealer to the bridge broker or dealer. The transfer of customer property to such an account shall have no effect on calculation of the amount of the affected account holder's net equity, but the value, as of the appointment date, of the customer property and advances from SIPC so transferred shall be deemed to satisfy any such claim, in whole or in part.

(e) The transfer of assets or liabilities held by a covered broker or dealer, including customer accounts and all associated customer name securities and customer property, assets and liabilities held by a covered broker or dealer for any non-customer creditor, and assets and liabilities associated with any trust or custody business, to a bridge broker or dealer, shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court.

(f) Any succession to or assumption by a bridge broker or dealer of rights, powers, authorities, or privileges of a covered broker or dealer shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court, and any such bridge broker or dealer shall upon its organization by the Corporation immediately and by operation of law—

(1) Be established and deemed registered with the Commission under the Securities Exchange Act of 1934;

(2) Be deemed to be a member of SIPC; and

(3) Succeed to any and all registrations and memberships of the covered broker or dealer with or in any self-regulatory organizations.

(g) Except as provided in paragraph (f) of this section, the bridge broker or dealer shall be subject to applicable Federal securities laws and all requirements with respect to being a member of a self-regulatory organization and shall operate in accordance with all such laws and requirements and in accordance with its articles of association; provided, however, that the Commission may, in its discretion, exempt the bridge broker or dealer from any such requirements if the Commission deems such exemption to be necessary or appropriate in the public interest or for the protection of investors.

(h) At the end of the term of existence of a bridge broker or dealer, any proceeds that remain after payment of all administrative expenses of such bridge broker or dealer and all other claims against such bridge broker or dealer shall be distributed to the receiver for the related covered broker or dealer.

§ 380.64 Claims of customers and other creditors of a covered broker or dealer.

(a) *Trustee's role.* (1) SIPC, as trustee for a covered broker or dealer, shall determine customer status, claims for net equity, claims for customer name securities, and whether property of the covered broker or dealer qualifies as customer property. SIPC, as trustee for a covered broker or dealer, shall make claims determinations in accordance with SIPA and with paragraph (a)(3) of this section, but such determinations, and any claims related thereto, shall be governed by the procedures set forth in paragraph (b) of this section.

(2) SIPC shall make advances in accordance with, and subject to the limitations imposed by, 15 U.S.C. 78fff–3. Where appropriate, SIPC shall make such advances by delivering cash or securities to the customer accounts established at the bridge broker or dealer.

(3) Customer property held by a covered broker or dealer shall be allocated as follows:

(i) First, to SIPC in repayment of advances made by SIPC pursuant to 12 U.S.C. 5385(f) and 15 U.S.C. 78fff–3(c)(1), to the extent such advances effected the release of securities which then were apportioned to customer property pursuant to 15 U.S.C. 78fff(d);

(ii) Second, to customers of such covered broker or dealer, or in the case that customer accounts are transferred to a bridge broker or dealer, then to such customer accounts at a bridge broker or dealer, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(iii) Third, to SIPC as subrogee for the claims of customers; and

(iv) Fourth, to SIPC in repayment of advances made by SIPC pursuant to 15 U.S.C. 78fff–3(c)(2).

(4) The determinations and advances made by SIPC as trustee for a covered broker or dealer under this subpart D shall be made in a manner consistent with SIPC's customary practices under SIPA. The allocation of customer property, advances from SIPC, and delivery of customer name securities to each customer or to its customer account at a bridge broker or dealer, in partial or complete satisfaction of such customer's net equity claims as of the close of business on the appointment date, shall be in a manner, including form and timing, and in an amount at least as beneficial to such customer as would have been the case had the covered broker or dealer been liquidated under SIPA. Any claims related to determinations made by SIPC as trustee for a covered broker or dealer shall be governed by the procedures set forth in paragraph (b) of this section.

(b) *Receiver's role.* Any claim shall be determined in accordance with the procedures set forth in 12 U.S.C. 5390(a)(2) through (5) and the

regulations promulgated by the Corporation thereunder, provided however, that—

(1) *Notice requirements.* The notice of the appointment of the Corporation as receiver for a covered broker or dealer shall also include notice of the appointment of SIPC as trustee. The Corporation as receiver shall coordinate with SIPC as trustee to post the notice on SIPC's public Web site in addition to the publication procedures set forth in § 380.33.

(2) *Procedures for filing a claim.* The Corporation as receiver shall consult with SIPC, as trustee, regarding a claim form and filing instructions with respect to claims against the Corporation as receiver for a covered broker or dealer, and such information shall be provided on SIPC's public Web site in addition to the Corporation's public Web site. Any such claim form shall contain a provision permitting a claimant to claim status as a customer of the broker or dealer, if applicable.

(3) *Claims bar date.* The Corporation as receiver shall establish a claims bar date in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder by which date creditors of a covered broker or dealer, including all customers of the covered broker or dealer, shall present their claims, together with proof. The claims bar date for a covered broker or dealer shall be the date following the expiration of the six-month period beginning on the date a notice to creditors to file their claims is first published in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder. Any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, as provided by 12 U.S.C. 5390(a)(3)(C)(i) and any regulations promulgated thereunder, except that a claim filed after the claims bar date shall be considered by the receiver as provided by 12 U.S.C. 5390(a)(3)(C)(ii) and any regulations promulgated thereunder. In accordance with section 8(a)(3) of SIPA, 15 U.S.C. 78fff–2(a)(3), any claim for net equity filed more than sixty days after the date the notice to creditors to file claims is first published need not be paid or satisfied in whole or in part out of customer property and, to the extent such claim is paid by funds advanced by SIPC, it shall be satisfied in cash or securities, or both, as SIPC, as trustee, determines is most economical to the receivership estate.

(c) *Decision period.* The Corporation as receiver of a covered broker or dealer shall notify a claimant whether it allows or disallows the claim, or any portion of a claim or any claim of a security, preference, set-off, or priority, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein) or within the 90-day period set forth in 12 U.S.C. 5390(a)(5)(B) and any regulations promulgated thereunder, whichever is applicable. In accordance with paragraph (a) of this section, the Corporation, as receiver, shall issue the notice required by this paragraph (c), which shall utilize the determination made by SIPC, as trustee, in a manner consistent with SIPC's customary practices in a liquidation under SIPA, with respect to any claim for net equity or customer name securities. The process established herein for the determination, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein), of claims by customers of a covered broker or dealer for customer property or customer name securities shall constitute the exclusive process for the determination of such claims, and any procedure for expedited relief established pursuant to 12 U.S.C. 5390(a)(5) and any regulations promulgated thereunder shall be inapplicable to such claims.

(d) *Judicial review.* The claimant may seek a judicial determination of any claim disallowed, in whole or in part, by the Corporation as receiver, including any claim disallowed based upon any determination(s) of SIPC as trustee made pursuant to § 380.64(a), by the appropriate district or territorial court of the United States in accordance with 12 U.S.C. 5390(a)(4) or (5), whichever is applicable, and any regulations promulgated thereunder.

§ 380.65 Priorities for unsecured claims against a covered broker or dealer.

Allowed claims not satisfied pursuant to § 380.63(d), including allowed claims for net equity to the extent not satisfied after final allocation of customer property in accordance with § 380.64(a)(3), shall be paid in accordance with the order of priority set forth in § 380.21 subject to the following adjustments:

(a) Administrative expenses of SIPC incurred in performing its responsibilities as trustee for a covered broker or dealer shall be included as administrative expenses of the receiver as defined in § 380.22 and shall be paid *pro rata* with such expenses in accordance with § 380.21(c).

(b) Amounts paid by the Corporation to customers or SIPC shall be included as amounts owed to the United States as defined in § 380.23 and shall be paid *pro rata* with such amounts in accordance with § 380.21(c).

(c) Amounts advanced by SIPC for the purpose of satisfying customer claims for net equity shall be paid following the payment of all amounts owed to the United States pursuant to § 380.21(a)(3) but prior to the payment of any other class or priority of claims described in § 380.21(a)(4) through (11).

§ 380.66 Administrative expenses of SIPC.

(a) In carrying out its responsibilities, SIPC, as trustee for a covered broker or dealer, may utilize the services of third parties, including private attorneys, accountants, consultants, advisors, outside experts, and other third party professionals. SIPC shall have an allowed claim for administrative expenses for any amounts paid by SIPC for such services to the extent that such services are available in the private sector, and utilization of such services is practicable, efficient, and cost effective. The term *administrative expenses of SIPC* includes the costs and expenses of such attorneys, accountants, consultants, advisors, outside experts, and other third party professionals, and other expenses that would be allowable to a third party trustee under 15 U.S.C. 78eee(b)(5)(A), including the costs and expenses of SIPC employees that would be allowable pursuant to 15 U.S.C. 78fff(e).

(b) The term *administrative expenses of SIPC* shall not include advances from SIPC to satisfy customer claims for net equity.

§ 380.67 Qualified financial contracts.

The rights and obligations of any party to a qualified financial contract to which a covered broker or dealer is a party shall be governed exclusively by 12 U.S.C. 5390, including the limitations and restrictions contained in 12 U.S.C. 5390(c)(10)(B), and any regulations promulgated thereunder.

Securities and Exchange Commission

17 CFR Part 302

Authority and Issuance

For the reasons stated in the proposing release, the Securities and Exchange Commission proposes to amend 17 CFR 302 as follows:

■ 3. Add part 302 to read as follows:

PART 302—ORDERLY LIQUIDATION OF COVERED BROKERS OR DEALERS

Sec.

Authority: 12 U.S.C. 5385(h).

§ 302.100 Definitions.

For purposes of §§ 302.100 through 302.107, the following terms shall have the following meanings:

(a) *Appointment date.* The term *appointment date* means the date of the appointment of the Corporation as receiver for a covered financial company that is a covered broker or dealer. This date shall constitute the *filing date* as that term is used in SIPA.

(b) *Bridge broker or dealer.* The term *bridge broker or dealer* means a new financial company organized by the Corporation in accordance with 12 U.S.C. 5390(h) for the purpose of resolving a covered broker or dealer.

(c) *Commission.* The term *Commission* means the Securities and Exchange Commission.

(d) *Covered broker or dealer.* The term *covered broker or dealer* means a covered financial company that is a qualified broker or dealer.

(e) *Customer.* The term *customer* of a covered broker or dealer shall have the same meaning as in 15 U.S.C. 78*lll*(2) provided that the references therein to *debtor* shall mean the covered broker or dealer.

(f) *Customer name securities.* The term *customer name securities* shall have the same meaning as in 15 U.S.C. 78*lll*(3) provided that the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(g) *Customer property.* The term *customer property* shall have the same meaning as in 15 U.S.C. 78*lll*(4) provided that the references therein to *debtor* shall mean the covered broker or dealer.

(h) *Net equity.* The term *net equity* shall have the same meaning as in 15 U.S.C. 78*lll*(11) *provided that* the references therein to *debtor* shall mean the covered broker or dealer and the references therein to *filing date* shall mean the appointment date.

(i) *Qualified broker or dealer.* The term *qualified broker or dealer* means a broker or dealer that:

(1) Is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

(2) Is a member of SIPC.

(j) *SIPA.* The term *SIPA* means the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa–*lll.*

(k) *SIPC.* The term *SIPC* means the Securities Investor Protection Corporation.

(l) *Corporation.* The term *Corporation* means the Federal Deposit Insurance Corporation.

(m) *Dodd-Frank Act.* The term *Dodd-Frank Act* means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, enacted July 21, 2010.

§ 302.101 Appointment of receiver and trustee for covered broker or dealer.

Upon the appointment of the Corporation as receiver for a covered broker or dealer, the Corporation shall appoint SIPC to act as trustee for the covered broker or dealer.

§ 302.102 Notice and application for protective decree for covered broker or dealer.

(a) SIPC and the Corporation, upon consultation with the Commission, shall jointly determine the terms of a notice and application for a protective decree that will be filed promptly with the Federal district court for the district within which the principal place of business of the covered broker or dealer is located; provided that if a case or proceeding under SIPA with respect to such covered broker or dealer is then pending, then such notice and application for a protective decree will be filed promptly with the Federal district court in which such case or proceeding under SIPA is pending. If such notice and application for a protective decree is filed on a date other than the appointment date, such filing shall be deemed to have occurred on the appointment date for the purposes of §§ 302.100 through 302.107.

(b) A notice and application for a protective decree may, among other things, provide for notice—

(1) Of the appointment of the Corporation as receiver and the appointment of SIPC as trustee for the covered broker or dealer; and

(2) That the provisions of Title II of the Dodd-Frank Act and any regulations promulgated thereunder may apply, including without limitation the following:

(i) Any existing case or proceeding with respect to a covered broker or dealer under the Bankruptcy Code or SIPA shall be dismissed effective as of the appointment date and no such case or proceeding may be commenced with respect to a covered broker or dealer at any time while the Corporation is receiver for such covered broker or dealer;

(ii) The revesting of assets in a covered broker or dealer to the extent that they have vested in any entity other than the covered broker or dealer as a result of any case or proceeding commenced with respect to the covered broker or dealer under the Bankruptcy Code, SIPA, or any similar provision of State liquidation or insolvency law applicable to the covered broker or dealer; provided that any such revesting shall not apply to assets held by the covered broker or dealer, including customer property, transferred prior to the appointment date pursuant to an order entered by the bankruptcy court presiding over the case or proceeding with respect to the covered broker or dealer;

(iii) The request of the Corporation as receiver for a stay in any judicial action or proceeding (other than actions dismissed in accordance with paragraph (b)(2)(i) of this section) in which the covered broker or dealer is or becomes a party for a period of up to 90 days from the appointment date;

(iv) Except as provided in paragraph (b)(2)(v) of this section with respect to qualified financial contracts, no person may exercise any right or power to terminate, accelerate or declare a default under any contract to which the covered broker or dealer is a party (and no provision in any such contract providing for such default, termination or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered broker or dealer or affect any contractual rights of the covered broker or dealer without the consent of the Corporation as receiver of the covered broker or dealer upon consultation with SIPC during the 90-day period beginning from the appointment date; and

(v) The exercise of rights and the performance of obligations by parties to qualified financial contracts with the covered broker or dealer may be affected, stayed, or delayed pursuant to the provisions of Title II of the Dodd-Frank Act (including 12 U.S.C. 5390(c)) and the regulations promulgated thereunder.

§ 302.103 Bridge broker or dealer.

(a) The Corporation, as receiver for one or more covered brokers or dealers or in anticipation of being appointed receiver for one or more covered broker or dealers, may organize one or more bridge brokers or dealers with respect to a covered broker or dealer.

(b) If the Corporation establishes one or more bridge brokers or dealers with respect to a covered broker or dealer, then, subject to paragraph (d) of this section, the Corporation as receiver for such covered broker or dealer shall transfer all customer accounts and all associated customer name securities and customer property to such bridge brokers or dealers unless the Corporation determines, after consultation with the Commission and SIPC, that:

(1) The customer accounts, customer name securities, and customer property are likely to be promptly transferred to one or more qualified brokers or dealers such that the use of a bridge broker or dealer would not facilitate such transfer to one or more qualified brokers or dealers; or

(2) The transfer of such customer accounts to a bridge broker or dealer would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(c) The Corporation, as receiver for such covered broker or dealer, also may transfer any other assets and liabilities of the covered broker or dealer (including non-customer accounts and any associated property and any assets and liabilities associated with any trust or custody business) to such bridge brokers or dealers as the Corporation may, in its discretion, determine to be appropriate in accordance with, and subject to the requirements of, 12 U.S.C. 5390(h), including 12 U.S.C. 5390(h)(1) and 5390(h)(5), and any regulations promulgated thereunder.

(d) In connection with customer accounts transferred to the bridge broker or dealer pursuant to paragraph (b) of this section, claims for net equity shall not be transferred but shall remain with the covered broker or dealer. Customer property transferred from the covered broker or dealer, along with advances from SIPC, shall be allocated to customer accounts at the bridge broker or dealer in accordance with § 302.104(a)(3). Such allocations initially may be based upon estimates, and such estimates may be based upon the books and records of the covered broker or dealer or any other information deemed relevant in the discretion of the Corporation as receiver, in consultation with SIPC, as trustee. Such estimates may be adjusted from time to time as additional information becomes available. With respect to each account transferred to the bridge broker or dealer pursuant to paragraph (b) or (c) of this section, the bridge broker or dealer shall undertake the obligations of a broker or dealer only with respect to property transferred to and held by the bridge broker or dealer, and allocated to the account as provided in § 302.104(a)(3), including any customer property and any advances from SIPC. The bridge broker or dealer shall have no obligations with respect to any customer property or other property that is not transferred from the covered broker or dealer to the bridge broker or dealer. The transfer of customer property to such an account shall have no effect on calculation of the amount of the affected accountholder's net equity, but the value, as of the appointment date, of the customer property and advances from SIPC so transferred shall be deemed to satisfy any such claim, in whole or in part.

(e) The transfer of assets or liabilities held by a covered broker or dealer, including customer accounts and all associated customer name securities and customer property, assets and liabilities held by a covered broker or dealer for any non-customer creditor, and assets and liabilities associated with any trust or custody business, to a bridge broker or dealer, shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court.

(f) Any succession to or assumption by a bridge broker or dealer of rights, powers, authorities, or privileges of a covered broker or dealer shall be effective without any consent, authorization, or approval of any person or entity, including but not limited to, any customer, contract party, governmental authority, or court, and any such bridge broker or dealer shall upon its organization by the Corporation immediately and by operation of law—

(1) Be established and deemed registered with the Commission under the Securities Exchange Act of 1934;

(2) Be deemed to be a member of SIPC; and

(3) Succeed to any and all registrations and memberships of the covered broker or dealer with or in any self-regulatory organizations.

(g) Except as provided in paragraph (f) of this section, the bridge broker or dealer shall be subject to applicable Federal securities laws and all requirements with respect to being a member of a self-regulatory organization and shall operate in accordance with all such laws and requirements and in accordance with its articles of association; provided, however, that the Commission may, in its discretion, exempt the bridge broker or dealer from any such requirements if the Commission deems such exemption to be necessary or appropriate in the public interest or for the protection of investors.

(h) At the end of the term of existence of a bridge broker or dealer, any proceeds that remain after payment of all administrative expenses of such bridge broker or dealer and all other claims against such bridge broker or dealer shall be distributed to the receiver for the related covered broker or dealer.

§ 302.104 Claims of customers and other creditors of a covered broker or dealer.

(a) *Trustee's role.* (1) SIPC, as trustee for a covered broker or dealer, shall determine customer status, claims for net equity, claims for customer name securities, and whether property of the covered broker or dealer qualifies as customer property. SIPC, as trustee for a covered broker or dealer, shall make claims determinations in accordance with SIPA and with paragraph (a)(3) of this section, but such determinations, and any claims related thereto, shall be governed by the procedures set forth in paragraph (b) of this section.

(2) SIPC shall make advances in accordance with, and subject to the limitations imposed by, 15 U.S.C. 78fff–3. Where appropriate, SIPC shall make such advances by delivering cash or securities to the customer accounts established at the bridge broker or dealer.

(3) Customer property held by a covered broker or dealer shall be allocated as follows:

(i) First, to SIPC in repayment of advances made by SIPC pursuant to 12 U.S.C. 5385(f) and 15 U.S.C. 78fff–3(c)(1), to the extent such advances effected the release of securities which then were apportioned to customer property pursuant to 15 U.S.C. 78fff(d);

(ii) Second, to customers of such covered broker or dealer, or in the case that customer accounts are transferred to a bridge broker or dealer, then to such customer accounts at a bridge broker or dealer, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(iii) Third, to SIPC as subrogee for the claims of customers; and

(iv) Fourth, to SIPC in repayment of advances made by SIPC pursuant to 15 U.S.C. 78fff–3(c)(2).

(4) The determinations and advances made by SIPC as trustee for a covered broker or dealer under §§ 302.100 through 302.107 shall be made in a manner consistent with SIPC's customary practices under SIPA. The allocation of customer property, advances from SIPC, and delivery of

customer name securities to each customer or to its customer account at a bridge broker or dealer, in partial or complete satisfaction of such customer's net equity claims as of the close of business on the appointment date, shall be in a manner, including form and timing, and in an amount at least as beneficial to such customer as would have been the case had the covered broker or dealer been liquidated under SIPA. Any claims related to determinations made by SIPC as trustee for a covered broker or dealer shall be governed by the procedures set forth in paragraph (b) of this section.

(b) *Receiver's role.* Any claim shall be determined in accordance with the procedures set forth in 12 U.S.C. 5390(a)(2) through (5) and the regulations promulgated by the Corporation thereunder, provided however, that—

(1) *Notice requirements.* The notice of the appointment of the Corporation as receiver for a covered broker or dealer shall also include notice of the appointment of SIPC as trustee. The Corporation as receiver shall coordinate with SIPC as trustee to post the notice on SIPC's public Web site in addition to the publication procedures set forth in 12 CFR 380.33.

(2) *Procedures for filing a claim.* The Corporation as receiver shall consult with SIPC, as trustee, regarding a claim form and filing instructions with respect to claims against the Corporation as receiver for a covered broker or dealer, and such information shall be provided on SIPC's public Web site in addition to the Corporation's public Web site. Any such claim form shall contain a provision permitting a claimant to claim status as a customer of the broker or dealer, if applicable.

(3) *Claims bar date.* The Corporation as receiver shall establish a claims bar date in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder by which date creditors of a covered broker or dealer, including all customers of the covered broker or dealer, shall present their claims, together with proof. The claims bar date for a covered broker or dealer shall be the date following the expiration of the six-month period beginning on the date a notice to creditors to file their claims is first published in accordance with 12 U.S.C. 5390(a)(2)(B)(i) and any regulations promulgated thereunder. Any claim filed after the claims bar date shall be disallowed, and such disallowance shall be final, as provided by 12 U.S.C. 5390(a)(3)(C)(i) and any regulations promulgated thereunder, except that a claim filed after the claims bar date shall be considered by the receiver as provided by 12 U.S.C. 5390(a)(3)(C)(ii) and any regulations promulgated thereunder. In accordance with section 8(a)(3) of SIPA, 15 U.S.C. 78fff–2(a)(3), any claim for net equity filed more than sixty days after the date the notice to creditors to file claims is first published need not be paid or satisfied in whole or in part out of customer property and, to the extent such claim is paid by funds advanced by SIPC, it shall be satisfied in cash or securities, or both, as SIPC, as trustee, determines is most economical to the receivership estate.

(c) *Decision period.* The Corporation as receiver of a covered broker or dealer shall notify a claimant whether it allows or disallows the claim, or any portion of a claim or any claim of a security, preference, set-off, or priority, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein) or within the 90-day period set forth in 12 U.S.C. 5390(a)(5)(B) and any regulations promulgated thereunder, whichever is applicable. In accordance with paragraph (a) of this section, the Corporation, as receiver, shall issue the notice required by this paragraph (c), which shall utilize the determination made by SIPC, as trustee, in a manner consistent with SIPC's customary practices in a liquidation under SIPA, with respect to any claim for net equity or customer name securities. The process established herein for the determination, within the 180-day period set forth in 12 U.S.C. 5390(a)(3)(A) and any regulations promulgated thereunder (as such 180-day period may be extended by written agreement as provided therein), of claims by customers of a covered broker or dealer for customer property or customer name securities shall constitute the exclusive process for the determination of such claims, and any procedure for expedited relief established pursuant to 12 U.S.C. 5390(a)(5) and any regulations promulgated thereunder shall be inapplicable to such claims.

(d) *Judicial review.* The claimant may seek a judicial determination of any claim disallowed, in whole or in part, by the Corporation as receiver, including any claim disallowed based upon any determination(s) of SIPC as trustee made pursuant to § 302.104(a), by the appropriate district or territorial court of the United States in accordance with 12 U.S.C. 5390(a)(4) or (5), whichever is applicable, and any regulations promulgated thereunder.

§ 302.105 Priorities for unsecured claims against a covered broker or dealer.

Allowed claims not satisfied pursuant to § 302.103(d), including allowed claims for net equity to the extent not satisfied after final allocation of customer property in accordance with § 302.104(a)(3), shall be paid in accordance with the order of priority set forth in 12 CFR 380.21 subject to the following adjustments:

(a) Administrative expenses of SIPC incurred in performing its responsibilities as trustee for a covered broker or dealer shall be included as administrative expenses of the receiver as defined in 12 CFR 380.22 and shall be paid *pro rata* with such expenses in accordance with 12 CFR 380.21(c).

(b) Amounts paid by the Corporation to customers or SIPC shall be included as amounts owed to the United States as defined in 12 CFR 380.23 and shall be paid *pro rata* with such amounts in accordance with 12 CFR 380.21(c).

(c) Amounts advanced by SIPC for the purpose of satisfying customer claims for net equity shall be paid following the payment of all amounts owed to the United States pursuant to 12 CFR 380.21(a)(3) but prior to the payment of any other class or priority of claims described in 12 CFR 380.21(a)(4) through (11).

§ 302.106 Administrative expenses of SIPC.

(a) In carrying out its responsibilities, SIPC, as trustee for a covered broker or dealer, may utilize the services of third parties, including private attorneys, accountants, consultants, advisors, outside experts, and other third party professionals. SIPC shall have an allowed claim for administrative expenses for any amounts paid by SIPC for such services to the extent that such services are available in the private sector, and utilization of such services is practicable, efficient, and cost effective. The term *administrative expenses of SIPC* includes the costs and expenses of such attorneys, accountants, consultants, advisors, outside experts, and other third party professionals, and other expenses that would be allowable to a third party trustee under 15 U.S.C. 78eee(b)(5)(A), including the costs and expenses of SIPC employees that would be allowable pursuant to 15 U.S.C. 78fff(e).

(b) The term *administrative expenses of SIPC* shall not include advances from SIPC to satisfy customer claims for net equity.

§ 302.107 Qualified financial contracts.

The rights and obligations of any party to a qualified financial contract to

which a covered broker or dealer is a party shall be governed exclusively by 12 U.S.C. 5390, including the limitations and restrictions contained in 12 U.S.C. 5390(c)(10)(B), and any regulations promulgated thereunder.

Dated: February 17, 2016.

By the Securities and Exchange Commission.

Brent J. Fields,

Secretary.

Dated this 17th day of February, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–03874 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P; 6714–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0004]

RIN 1625–AA00

Safety Zone; Misery Challenge, Manchester Bay, Manchester, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Manchester Bay to be enforced during the Misery Challenge marine event, which will involve swimmers, kayakers, and stand-up paddlers. This safety zone would ensure the protection of the event participants, support vessels, and the maritime public from the hazards associated with the event. This proposed rulemaking would prohibit persons and vessels from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Coast Guard Sector Boston Captain of the Port (COTP) or the COTP's designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 1, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0004 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or email Mr. Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS Department of Homeland Security
U.S.C. United States Code
CFR Code of Federal Regulation
FR Federal Register
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum of 1983

II. Background, Purpose, and Legal Basis

On October 23, 2015, the Coast Guard was notified that of a swimming and stand up paddling event from 7:30 a.m. to 12 p.m. on July 23, 2016 with a weather date on July 24, 2016; named the Misery Challenge. The participants will launch from Tucks Point in Manchester Bay, Manchester, MA and continue around Greater Misery Island returning to Tucks Point. Hazards associated with this include accidental collisions with event participants and the maritime public. The COTP has determined that potential hazards associated with the event would be a safety concern for event participants, support vessels, and the maritime public.

The purpose of this rulemaking is to ensure the safety of event participants, support vessels, the maritime public, and the navigable waters within a 100 yard radius of the event participants, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone from 7 a.m. to 12:30 p.m. on July 23, 2016 with a weather date on July 24, 2016. The safety zone would cover all navigable waters within specific geographic locations specified in the regulatory text on the navigable waters of Manchester Bay, Manchester, Massachusetts. Vessels not associated with the event shall maintain a distance of at least 100 yards from the participants. The duration of the zone is intended to ensure the safety of event participants, support vessels, and the maritime public before, during, and after the event scheduled from 7:30 a.m. to 12 p.m. event. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

We expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, this safety zone will be in effect for only five and one half hours in the morning when vessel traffic is expected to be light. Second, vessels may enter or pass through the safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide notification to the public through Broadcast Notice to Mariners well in advance of the event.

B. Impact on Small Entities

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

For all of the reasons discussed in the Regulatory Planning And Review section, this rulemaking would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting five and one half hours that would prohibit entry within 100 yards of the participants and vessels in support of the event. Normally such actions maybe categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T01–0188 under the undesignated center heading First Coast Guard District to read as follows:

§ 165.T01–0188 Safety Zone—Misery Challenge—Manchester Bay, Manchester, Massachusetts.

(a) *General.* Establish a temporary safety zone:

(1) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, within 100 yards from the participants and vessels in support of events in Manchester Bay, Manchester, MA, and enclosed by a line connecting the following points (NAD 83):

Latitude	Longitude
42°34′03″ N.	70°46′42″ W.; thence to
42°33′58″ N.	70°46′33″ W.; thence to
42°32′30″ N.	70°47′43″ W.; thence to
42°32′58″ N.	70°48′40″ W.; thence to point of origin.

(2) *Effective and enforcement period.* This rule will be effective on July 23, 2016, from 7 a.m. to 12:30 p.m. with a weather date on July 24, 2016.

(b) *Regulations.* While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP) or the COTP's representatives. However, any vessel that is granted permission by the COTP or the COTP's representatives must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center).

(c) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 1226.

(d) *Notification.* Coast Guard Sector Boston will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners for the purpose of enforcement of this temporary safety zone. Sector Boston will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(e) *COTP Representative.* The COTP's representative may be any Coast Guard commissioned, warrant or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: February 25, 2016.

C. C. Gelzer,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2016–04540 Filed 3–1–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, 1036, 1037, 1065, 1066, and 1068

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 534, and 535

[EPA–HQ–OAR–2014–0827; NHTSA–2014–0132; FRL–9942–94–OAR]

RIN 2060–AS16; RIN 2127–AL52

Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2—Notice of Data Availability

AGENCIES: Environmental Protection Agency (EPA) and Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of data availability.

SUMMARY: This Notice provides an opportunity to comment on new information being made available by the EPA and by NHTSA, on behalf of DOT, related to the proposed Phase 2 Heavy-Duty National Program proposed July 13, 2015, to reduce greenhouse gas emissions and fuel consumption for new on-road heavy-duty vehicles and engines. The new information, including memoranda and data, have been placed in the public dockets. Data relating to the potential stringency of the proposed standards includes: Powertrain data; additional aerodynamic test data; supplemental test data relating to drive cycles (and frequency thereof) for vocational vehicles; and cycle average mapping data. The agencies are soliciting additional comment on certain revised test reports, and a revised version of the Greenhouse Gas Emission Model (GEM) used both in developing certain of the proposed standards and in demonstrating compliance with those standards. Additionally, EPA is soliciting further comment on memoranda relating to standard applicability and implementation. These memoranda address potential requirements for selective enforcement audits and confirmatory testing related to greenhouse gas emissions, and applicability of emission standards and certification responsibilities for trailers, glider vehicles, and glider kits. Finally, EPA is soliciting additional comments on issues discussed in a late comment related to light-duty motor vehicles used for racing.

DATES: Comments must be received on or before April 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0827 (for EPA's docket) and NHTSA–2014–0132 (for NHTSA's docket), by one of the following methods:

- *Online: www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:*

EPA: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

NHTSA: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:*

EPA: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

NHTSA: West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal Holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0827 and/or NHTSA–2014–0132, as follows:

EPA: Direct your comments to Docket ID No EPA–HQ–OAR–2014–0827. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

NHTSA: Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number NHTSA–2014–0132 in your comments. Your comments must not be more than 15 pages long.[1] NHTSA 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, and there is no limit on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agencies to search and copy certain portions of your submissions.[2] Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and Department of Transportation (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.* DOT's guidelines may be accessed at *http://www.dot.gov/dataquality.htm.*

Docket: All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the following locations:

EPA: Air and Radiation Docket and Information Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW., Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

NHTSA: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The telephone number for the docket management facility is (202) 366–9324. The docket management facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

EPA: Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4332; email address: *wysor.tad@epa.gov.*

NHTSA: Ryan Hagen, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992; *ryan.hagen@dot.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

This action relates to a previously promulgated Proposed Rule that would potentially affect companies that manufacture, sell, or import into the United States new heavy-duty engines and new Class 2b through 8 trucks, including combination tractors, all types of buses, vocational vehicles including municipal, commercial, recreational vehicles, and commercial trailers as well as ¾-ton and 1-ton pickup trucks and vans. The heavy-duty category incorporates all motor vehicles with a gross vehicle weight rating of 8,500 pounds or greater, and the engines that power them, except for medium-duty passenger vehicles already covered by the greenhouse gas standards and corporate average fuel economy standards issued for light-duty model year 2017–2025 vehicles. Proposed categories and entities that might be affected include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	336110 336111 336112 333618 336120 336212 441310	Motor Vehicle Manufacturers, Engine Manufacturers, Engine Parts Manufacturers, Truck Manufacturers, Truck Trailer Manufacturers, Automotive Parts and Accessories Dealers.
Industry	541514 811112 811198	Commercial Importers of Vehicles and Vehicle Components.
Industry	336111 336112 422720 454312 541514 541690 811198	Alternative Fuel Vehicle Converters.

Note:
[a] North American Industry Classification System (NAICS).

[1] See 49 CFR 553.21.

[2] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely covered by these rules. This table lists the types of entities that the agencies are aware may be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. You may direct questions regarding the applicability of this action to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Public Participation

EPA and NHTSA request comment on the information identified in this Notice. We are not requesting comment on other aspects of this joint proposed rule. This section describes how you can participate in this process.

(1) How do I prepare and submit comments?

There are many issues common to EPA's and NHTSA's proposals. For the convenience of all parties, comments submitted to the EPA docket will be considered comments submitted to the NHTSA docket, and vice versa. Therefore, a commenter only needs to submit comments to either of the agency dockets (or choose to submit a comment to both). Comments that are submitted for consideration by one agency should be identified as such, and comments that are submitted for consideration by both agencies should be identified as such. Absent such identification, each agency will exercise its best judgment to determine whether a comment is submitted on its proposal.

(2) Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number)
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes
- Describe any assumptions and provide any technical information and/or data that you used
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced
- Provide specific examples to illustrate your concerns, and suggest alternatives
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats
- Make sure to submit your comments by the comment period deadline identified in the **DATES** section above

(3) How can I be sure that my comments were received?

NHTSA: If you submit your comments by mail and 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.

(4) How do I submit confidential business information?

Any confidential business information (CBI) submitted to one of the agencies will also be available to the other agency. However, as with all public comments, any CBI information only needs to be submitted to either one of the agencies' dockets and it will be available to the other. Following are specific instructions for submitting CBI to either agency. If you have any questions about CBI or the procedures for claiming CBI, please consult the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

EPA: Do not submit CBI to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information not marked as CBI will be included in the public docket without prior notice. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

NHTSA: 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**. When you send a comment containing confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[3]

In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

(5) How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the EPA Docket Center or NHTSA Docket Management Facility by going to the street addresses given above under **ADDRESSES**.

C. Background

As part of the Climate Action Plan announced in June 2013,[4] the President directed the EPA and NHTSA to set the next round of standards to reduce greenhouse gas (GHG) emissions and improve fuel efficiency for medium- and heavy-duty vehicles and engines. More than 70 percent of the oil used in the United States and 28 percent of GHG emissions come from the transportation sector, and since 2009 EPA and NHTSA have worked with industry and the State of California to develop ambitious, flexible standards for both the fuel economy and GHG emissions of light-duty vehicles and the fuel efficiency and GHG emissions of heavy-duty vehicles and engines.[5] [6] Throughout every stage of development for these programs, EPA and NHTSA (collectively, the agencies, or ''we'') have worked in close partnership not only with each other, but with the vehicle and engine manufacturing industries, environmental community leaders, and the State of California, among other entities, to create a single, effective set of national standards.

The agencies' proposed Phase 2 standards (80 FR 40138, July 13, 2015) would phase in through model year

[3] See 49 CFR part 512.

[4] The White House, The President's Climate Action Plan (June, 2013). *http://www.whitehouse.gov/share/climate-action-plan.*

[5] The White House, Improving the Fuel Efficiency of American Trucks—Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation (Feb. 2014), 2.

[6] U.S. Environmental Protection Agency. 2014. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012. EPA 430–R–14–003. Mobile sources emitted 28 percent of all U.S. GHG emissions in 2012. Available at *http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2014-Main-Text.pdf*

2027, and were intended to result in an ambitious, yet achievable program that would allow manufacturers to meet standards through a mix of different technologies at reasonable cost. The proposed Phase 2 program would build on and advance the model years 2014–2018 Phase 1 program in a number of important ways including: Basing standards not only on currently available technologies but also on utilization of technologies now under development or not yet widely deployed while providing significant lead time to assure adequate time to develop, test, and phase in these controls; developing standards for trailers; further encouraging innovation and providing flexibility; including vehicles produced by small business manufacturers; incorporating enhanced test procedures that (among other things) allow individual drivetrain and powertrain performance to be reflected in the vehicle certification process; and using an expanded and improved compliance simulation model.

This notice alerts the public to new information placed in the agencies' public dockets, and solicits comment on that information. The information takes the form of raw data, revised test reports, and memoranda that in some instances indicate potential implications of the data for purposes of standard stringency and implementation. In addition to information placed into the docket by the agencies, EPA also solicits comments on issues discussed in a late public comment that addresses proposed regulations related to light-duty motor vehicles used for racing. The agencies will accept comments on these materials through April 1, 2016. The agencies will not address new comments extraneous to these materials in the final rulemaking or its associated documents.

D. Newly Docketed Materials on Which the Agencies Are Seeking Public Comment

EPA Docket No.	NHTSA Docket No.	Title	Description
EPA–HQ–OAR–2014–0827–1626.	NHTSA–2014–0132–0181.	Greenhouse Gas Emissions Model (GEM) P2v2.1.	A new release of the GEM simulation tool contains revisions that include fixing bugs identified by commenters; enhancements to accommodate cycle averaged fuel maps, transmission efficiency test results, and axle efficiency test results; refinements to the transmission shifting strategies; revised vocational vehicle drive cycle weightings; and a revised road grade profile. Details regarding the revisions are included in the summary file in the docket entry.
EPA–HQ–OAR–2014–0827–1620.	NHTSA–2014–0132–0182.	Default Gasoline Engine Fuel Map for Use in GEM.	EPA sponsored testing of a heavy-duty gasoline engine at Southwest Research Institute. Those results were used to develop a new default fuel map that could be used to develop the final spark-ignited vocational vehicle standards.
EPA–HQ–OAR–2014–0827–1622.	NHTSA–2014–0132–0183.	Oak Ridge National Laboratory Powertrain Data.	EPA sponsored additional testing on heavy-duty powertrains at Oak Ridge National Laboratory. Cycle results are presented from two powertrain configurations.
EPA–HQ–OAR–2014–0827–1619.	NHTSA–2014–0132–0184.	Southwest Research Institute Program Update on Cycle Average Mapping Data.	EPA sponsored additional testing on two heavy-duty engines each with two different horsepower ratings. Information includes the cycle average testing results and findings are included.
EPA–HQ–OAR–2014–0827–1623.	NHTSA–2014–0132–0185.	Final Southwest Research Institute Report to NHTSA: Commercial Medium- and Heavy-Duty Truck Fuel Efficiency Technology Study—Report #2.	A pre-peer review draft version of this report was released in June of 2015. Independent peer review and public release of the draft report identified errors in the analysis in the draft report that were corrected in this final version.
EPA–HQ–OAR–2014–0827–1624.	NHTSA–2014–0132–0186.	Supplemental Aerodynamic Data from EPA Testing.	EPA conducted additional aerodynamic testing using the coastdown, constant speed, wind tunnel, and computational fluid dynamics test procedures since the NPRM was issued. This docket entry includes the raw data from each of these test programs.
EPA–HQ–OAR–2014–0827–1621.	NHTSA–2014–0132–0187.	Vocational Vehicle Drive Cycle Data: Draft Report produced by the National Renewable Energy Laboratory entitled ''The Development of Vocational Vehicle Drive Cycles and Segmentation''.	The National Renewable Energy Laboratory (NREL) collaborated with EPA and conducted a vocational vehicle segmentation evaluation based on NREL's Fleet DNA database. This analysis is intended to inform the final vocational vehicle drive cycle weightings.
EPA–HQ–OAR–2014–0827–1625.	NHTSA–2014–0132–0188.	Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters.	Commenters raised concerns about the proposed audit testing and the need for consideration of compliance margins for the audit's results. The memorandum provides additional discussion of how EPA's audits could be conducted, and key principles related to these requirements.

EPA Docket No.	NHTSA Docket No.	Title	Description
EPA–HQ–OAR–2014–0827–1627.	NHTSA–2014–0132–0189.	Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act.	Draft legal memorandum discussing issues relating to authority under the Clean Air Act to promulgate emission standards for trailers and glider vehicles, certification responsibilities of manufacturers of trailers and glider kits, and potential CO_2 emission standards for different model year glider vehicles.
EPA–HQ–OAR–2014–0827–1469–A1.	Not Applicable; this is in relation to an EPA-specific section of the NPRM.	Public Comment from the Specialty Equipment Market Association.	This comment addresses how a proposed amendment related to the Clean Air Act's prohibition of tampering of emission controls would impact light-duty vehicles used for racing and raises questions about whether adequate notice was given for this proposed amendment.

Issued under authority of 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.95.

Dated: February 24, 2016.

Raymond R. Posten,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

Dated: February 24, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Environmental Protection Agency.

[FR Doc. 2016–04613 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 41
Wednesday, March 2, 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–LPS–15–0067]

Mandatory Country of Origin Labeling of Covered Commodities: Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension and revision to the currently approved information collection of the Mandatory Country of Origin Labeling (COOL) of Covered Commodities.

DATES: Comments must be received by May 2, 2016.

ADDRESSES: Comments should be submitted electronically at *http://www.regulations.gov.* Comments may also be submitted to Julie Henderson, Director, COOL Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture (USDA); STOP 0216; 1400 Independence Avenue SW.; Room 2620–S; Washington, DC 20250–0216; or email to *julie.henderson@ams.usda.gov.* All comments should reference docket number AMS–LPS–15–0067 and note the date and page number of this issue of the **Federal Register**.

Submitted comments will be available for public inspection at *http://www.regulations.gov* or at the above address during regular business hours. Comments submitted in response to this Notice will be included in the records 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 above address.

FOR FURTHER INFORMATION CONTACT: Julie Henderson, Director, COOL Division, AMS, USDA, by telephone at (202) 720–4486, or email at *Julie.Henderson@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mandatory Country of Origin Labeling of Covered Commodities.

OMB Number: 0581–0250.

Expiration Date of Approval: May 31, 2016.

Type of Request: Request for Revision of a Currently Approved Information Collection.

Abstract: The farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (Pub. L. 107–171), the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107–206), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin covered commodities. Covered commodities included muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published A final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009. On May 23, 2013, AMS issued a final rule to amend the country of origin labeling provisions for muscle cuts covered commodities (78 FR 31367). The Consolidated Appropriations Act, 2016 (Pub. L. 114–113) amended the Act to remove mandatory COOL requirements for muscle cut beef and pork. And ground beef and ground pork. The Agency is issuing a final rule to conform with amendments to the Act contained in the Consolidated Appropriations Act, 2016, which appears in this edition of the **Federal Register**. The estimated number of respondents and estimated total annual burden for this information collection is being revised to reflect these amendments.

Individuals who supply covered commodities, whether directly to retailers or indirectly through other participants in the marketing chain, are required to establish and maintain country of origin and, if applicable, method of production information for the covered commodities and supply this information to retailers. As a result producers, handlers, manufacturers, wholesalers, importers and retailers of covered commodities are affected.

This public reporting burden is necessary to ensure conveyance and accuracy of country of origin and method of production declarations relied upon at the point of sale at retail. The public reporting burden also assures that all parties involved in supplying covered commodities to retail stores maintain and convey accurate information as required.

Estimate of Burden: Public reporting burden for recordkeeping storage and maintenance is estimated to average 33 hours per year per individual.

Respondents: Retailers, wholesalers, producers, handlers, and importers.

Estimated Number of Respondents: 569,835.

Estimated Total Annual Responses: 569,835.

Estimated Number of Responses per Respondent: 33.

Estimated Total Annual Burden on Respondents: 18,708,072.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 26, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–04611 Filed 3–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0001]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Deputy Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on April 4, 2016. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 30th Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), taking place in Paris, France, April 11–15, 2016. The Deputy Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 30th Session of the CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, April 4, 2016, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meeting will take place at the Jamie L. Whitten Building, United States Department of Agriculture (USDA), 1400 Independence Ave. SW., Room 107–A, Washington, DC 20250.

Documents related to the 30th Session of the CCGP will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Mary Frances Lowe, U.S. Delegate to the 30th Session of the CCGP, invites U.S. interested parties to submit their comments electronically to the following email address: *USCODEX@fsis.usda.gov.*

Call-In-Number: If you wish to participate in the public meeting for the 30th Session of the CCGP by conference call, please use the call-in-number listed below:

Call-in-Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

Registration: Attendees may register to attend the public meeting by emailing *barbara.mcniff@fsis.usda.gov* by April 1, 2016. The meeting will be held in a Federal building. Early registration is encouraged because it will expedite entry into the building. Attendees should bring photo identification and plan for adequate time to pass through security screening systems. Attendees that are not able to attend the meeting in-person but wish to participate may do so by phone.

For Further Information About the 30th Session of the CCGP Contact: Mary Frances Lowe, U.S. Codex Office, 1400 Independence Ave. SW., Room 4861, Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *USCODEX@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Ave. SW., Room 4861, Washington, DC 20250. Phone: (202) 205–7760, Fax:(202) 720–3157, Email: *USCODEX@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background: Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCGP is responsible for dealing with procedural and general matters referred to it by the Codex, for proposing amendments to the Codex Procedural Manual, and for reviewing and endorsing procedural provisions and texts forwarded by Codex Committees for inclusion in the Procedural Manual.

The Committee is hosted by France.

Issues to be discussed at the Public Meeting: The following items on the Agenda for the 30th Session of the CCGP will be discussed during the public meeting:

- Matters Referred to the Committee.
- Codex Work Management and Functioning of the Executive Committee—Terms of Reference of Secretariat—led Internal Review.
- Consistency of the Risk Analysis Texts across the Relevant Committees.
- Other Business.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat before the Committee Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting: At the April 4, 2016, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 30th Session of the CCGP, Mary Frances Lowe (see **ADDRESSES**). Written comments should state that they relate to activities of the 30th Session of the CCGP.

Additional Public Notification: Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement: No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination: To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: *program.intake@usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC on: February 25, 2016.

Paulo Almeida,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. 2016–04481 Filed 3–1–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco Resource Advisory Committee (RAC) will meet in Bend, Oregon. 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/detail/deschutes/workingtogether/advisorycommittees.*

DATES: The meeting will be held April 1, 2016, at 9:00 a.m.–5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Central Oregon Intergovernmental Council's Office, 334 NE Hawthorne Avenue, Bend, Oregon.

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 Deschutes National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sean Ferrell, RAC Coordinator, by phone at 541–383–5576 or via email at *saferrell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce newly appointed committee members;

2. Discuss the goals and objectives of the RAC;

3. Review projects proposals; and

4. Make project recommendations for Title II funding.

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 March 18, 2016 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Sean Ferrell, RAC Coordinator, Deschutes National Forest Supervisor's Office, 63095 Deschutes Market Road, Bend, Oregon 97701; by email to *saferrell@fs.fed.us,* or via facsimile to 541–383–5531.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 24, 2016.

John Allen,

Designated Federal Offical, Dechutes National Forest, Forest Supervisor.

[FR Doc. 2016–04548 Filed 3–1–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–71–2015]

Authorization of Production Activity, Foreign-Trade Subzone 125D, ASA Electronics, LLC, (Motor Vehicle Audio-Visual Products), Elkhart, Indiana

On October 21, 2015, the St. Joseph County Airport Authority, grantee of FTZ 125, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of ASA Electronics, LLC, operator of Subzone 125D, in Elkhart, Indiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 69636, 11–10–2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–04602 Filed 3–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, March 29, 2016, at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in Room 1412 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–0627; Fax: 202–482–5665;

email: *maureen.hinman@trade.gov.*) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 8:30 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Those interested in attending must provide notification by Tuesday, March 15, 2016 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include discussion of priorities and objectives for the committee, trade promotion programs within the International Trade Administration, and subcommittee working meetings.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2016.

Dated: February 25, 2016.

Man Cho,

Acting Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–04607 Filed 3–1–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA937

Guidelines for Assessing Marine Mammal Stocks

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

ACTION: Notice of availability; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of the guidelines for preparing stock assessment reports (SARs) pursuant to section 117 of the Marine Mammal Protection Act (MMPA). The revised guidelines are now complete and available to the public.

ADDRESSES: Electronic copies of the guidelines are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/sars/guidelines.htm.*

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial stock assessment reports (SARs, or Reports) were first completed in 1995.

NMFS convened a workshop in June 1994, including representatives from NMFS, FWS, and the Marine Mammal Commission (Commission), to develop draft guidelines for preparing SARs. The report of this workshop (Barlow et al., 1995) included the guidelines for preparing SARs and a summary of the discussions upon which the guidelines were based. The draft guidelines were made available, along with the initial draft SARs, for public review and comment (59 FR 40527, August 9, 1994), and were finalized August 25, 1995 (60 FR 44308).

In 1996, NMFS convened a second workshop (referred to as the Guidelines for Assessing Marine Mammal Stocks, or ''GAMMS,'' workshop) to review the guidelines and to recommend changes to them, if appropriate. Workshop participants included representatives from NMFS, FWS, the Commission, and the three regional scientific review groups (SRGs). The report of that workshop (Wade and Angliss, 1997) summarized the discussion at the workshop and contained revised guidelines. The revised guidelines represented minor changes from the initial version. The revised guidelines were made available for public review and comment along with revised stock assessment reports on January 21, 1997 (62 FR 3005) and later finalized.

In September 2003, NMFS again convened a workshop (referred to as GAMMS II) to review the guidelines and again recommend minor changes to them. Participants at the workshop included representatives of NMFS, FWS, the Commission, and the regional SRGs. Changes to the guidelines resulting from the 2003 workshop were directed primarily toward identifying population stocks and estimating Potential Biological Removal (PBR) for declining stocks of marine mammals. The revised guidelines were made available for public review and comment on November 18, 2004 (69 FR 67541) and finalized on June 20, 2005 (70 FR 35397, NMFS 2005).

In February 2011, NMFS convened another workshop (referred to as GAMMS III) to review the guidelines and again recommend changes to them. Participants at the workshop included representatives from NMFS, FWS, the Commission, and the three regional SRGs. The objectives of the GAMMS III workshop were to (1) consider methods for assessing stock status (*i.e.,* how to apply the PBR framework) when abundance data are outdated, nonexistent, or only partially available; (2) develop policies on stock identification and application of the PBR framework to small stocks, transboundary stocks, and situations where stocks mix; and (3) develop consistent national approaches to a variety of other issues, including reporting mortality and serious injury information in assessments. Nine specific topics were discussed at the workshop. The deliberations of these nine topics resulted in a series of recommended modifications to the current guidelines (NMFS, 2005). The main body of the GAMMS III workshop report includes summaries of the presentations and discussions for each of the nine agenda topics, as well as recommended revisions to individual sections of the guidelines (Moore and Merrick, 2011). Appendices to the workshop report provide a variety of supporting documents, including the full proposed revision of the guidelines (Appendix IV). On January 24, 2012 (77 FR 3450), NMFS made the GAMMS III workshop report available for public review, and requested comment on the proposed revisions in Appendix IV. The report is available at *http://www.nmfs.noaa.gov/pr/pdfs/sars/gamms3_nmfsopr47.pdf.*

Revisions to the Guidelines for Preparing Stock Assessment Reports

The paragraphs below describe the proposed guideline revisions that were recommended by the GAMMS III workshop participants, as well as a summary of how NMFS has or has not incorporated those proposed revisions into the final revised guidelines. They are organized by topic, as outlined in Appendix IV of the GAMMS III workshop report.

Topic 1: PBR calculations with outdated abundance estimates. For an increasing number of marine mammal stocks, the most recent abundance estimates are more than 8 years old. Under existing guidelines (NMFS, 2005), these are considered to be outdated and thus not used to calculate PBR. The current practice is to consider the PBR for a stock to be ''undetermined'' after supporting survey information is more than eight years old, unless there is compelling evidence that the stock has not declined during that time.

The workshop participants recommended and the proposed guidelines included the following revisions to calculate PBRs for stocks with old abundance information: (1) During years 1–8 after the most recent abundance survey, ''uncertainty projections'' would be used, based on uniform distribution assumptions, to serially reduce the minimum abundance estimate (N_{min}) by a small increment each year; (2) after eight years, and assuming no new abundance estimate has become available, a worst-case scenario would be assumed (*i.e.,* a plausible 10-percent decline per year since the most recent survey), and so a retroactive 10-percent decline per year would be applied; and (3) if data to estimate a population trend model are available, such a model could have been used to influence the uncertainty projections during the first eight years.

NMFS received a number of comments expressing strenuous objection to/concern with the proposed framework for stocks with outdated abundance estimates, which has led us to reevaluate the topic. As such, NMFS is not finalizing these recommended changes related to Topic 1 at this time. Rather, we will be further analyzing this issue, and should we contemplate changes to the guidelines regarding this topic, NMFS will propose them and solicit public comment in a separate action.

Topic 2: Improving stock identification. For most marine mammal species, few stock definition changes have been made since the initial SARs were written. The proposed guidelines directed that each Report state in the ''Stock Definition and Geographic Range'' section whether it is plausible the stock contains multiple demographically independent populations that should be separate stocks, along with a brief rationale. If additional structure is plausible and human-caused mortality or serious injury is concentrated within a portion of the range of the stock, the Reports should identify the portion of the range in which the mortality or serious injury occurs. These revisions to the guidelines have been made.

The GAMMS III workshop also addressed the terms ''demographic isolation'' and ''reproductive isolation.'' Workshop participants agreed that the intended meaning of these terms when originally included in the guidelines was not of complete isolation, which implies that there should be no interchange between stocks. Therefore, they recommended and the proposed guidelines included clarification of terminology by replacing references to ''demographic isolation'' and ''reproductive isolation'' with ''demographic independence'' and ''reproductive independence,'' respectively. These revisions to the guidelines have been made.

Related to this topic, the workshop participants also recommended that NMFS convene a national workshop to systematically review the status of stock identification efforts and to identify and prioritize the information needed to improve stock identification. NMFS convened such a workshop in August 2014 (Martien *et al.,* 2015). See response to Comment 10.

Topic 3a: Assessment of very small stocks. The PBR estimate for some stocks may be very small (just a few animals or even less than one). In such cases, low levels of observer coverage may introduce substantial small-sample bias in bycatch estimates. The proposed guideline revisions included a table in the Technical Details section that provides guidance on the amount of sampling effort (observer coverage and/or number of years of data pooling) required to limit small-sample bias, given a certain PBR level. If suggested sampling goals (per the table) cannot be met, the proposed guidelines instructed that mortality should be estimated and reported, but the estimates should be qualified in the SARs by stating they could be biased. NMFS has incorporated this language into the revised guidelines.

The proposed guidelines suggested removing the following sentence from the Status of Stocks section: ''In the complete absence of any information on sources of mortality, and without guidance from the Scientific Review Groups, the precautionary principle should be followed and the default stock status should be strategic until information is available to demonstrate otherwise.'' NMFS has incorporated this revision into the guidelines, as NMFS does not consider the original text to be consistent with the MMPA's definition of ''strategic.''

Topic 3b: Assessment of small endangered stocks. Some endangered species, like Hawaiian monk seals, are declining with little to no direct human-caused mortality, and the stock's dynamics therefore do not conform to the underlying model for calculating PBR. Thus, PBR estimates for some endangered species stocks have not been included or have been considered ''undetermined'' in SARs. The proposed guidelines instructed that in such cases, if feasible, PBR should still be calculated and included in the SARs to comply with the MMPA. In situations where a stock's dynamics do not conform to the underlying model for calculating PBR, a qualifying statement should accompany the PBR estimate in the SAR. NMFS has incorporated this language into the revised guidelines.

Topic 4: Apportioning PBR across feeding aggregations, allocating mortality for mixed stocks, and estimating PBR for transboundary stocks.

Feeding aggregations: Given the definition that a population stock consists of individuals in common spatial arrangements that interbreed when mature, population stocks of species that have discrete feeding and breeding grounds (*e.g.,* humpback whales) have generally been defined based on breeding ground stocks. However, given the strong maternal fidelity to feeding grounds, migratory species such as humpback whales can have feeding aggregations that are demographically independent with limited movement of individuals between feeding aggregations. Such feeding aggregations can consist of a portion of one breeding population, or of portions of multiple breeding populations, and can represent a single demographically-independent unit, or a mix of two or more demographically-independent units. Although this approach of identifying stocks based on feeding aggregations seemed feasible, workshop participants felt this approach added significant complexity without providing substantial management advantages. The workshop participants did not recommend any such changes to the guidelines at this point. None were

included in the proposed guidelines nor have any been made in the final revisions.

Allocating mortality for mixed stocks: In some cases, mortality and serious injury occur in areas where more than one stock of marine mammals occurs. The proposed guidelines specify that when biological information is sufficient to identify the stock from which a dead or seriously injured animal came, the mortality or serious injury should be associated only with that stock. When one or more deaths or serious injuries cannot be assigned directly to a stock, then those deaths or serious injuries may be partitioned among stocks within the appropriate geographic area, provided there is sufficient information to support such partitioning. In those cases, Reports should discuss the potential for over- or under-estimating stock-specific mortality and serious injury. In cases where mortalities and serious injuries cannot be assigned directly to a stock and available information is not sufficient to support partitioning those deaths and serious injuries among stocks, the proposed guidelines instruct that the total unassigned mortality and serious injuries should be assigned to each stock within the appropriate geographic area. When deaths and serious injuries are assigned to each overlapping stock in this manner, the Reports should discuss the potential for over-estimating stock-specific mortality and serious injury. NMFS has incorporated this language into the revised guidelines.

Transboundary stocks: The proposed guidelines strengthen the language regarding transboundary stocks, cautioning against extrapolating abundance estimates from one surveyed area to another unsurveyed area to estimate range-wide PBR. They state that informed interpolation (*e.g.,* based on habitat associations) may be used, as appropriate and supported by existing data, to fill gaps in survey coverage and estimate abundance and PBR over broader areas. If estimates of mortality or abundance from outside the U.S. EEZ cannot be determined, PBR calculations should be based on abundance in the EEZ and compared to mortality within the EEZ. NMFS has incorporated this language into the revised guidelines and has provided a footnote defining informed interpolation.

Topic 5: Clarifying reporting of mortality and serious injury incidental to commercial fishing. Currently, SARs do not consistently summarize mortality and serious injury incidental to commercial fishing. The proposed guidelines specified that SARs should include a summary of all human-caused mortality and serious injury including information on all sources of mortality and serious injury. Additionally, a summary of mortality and serious injury incidental to U.S. commercial fisheries should be presented in a table, while mortality and serious injury from other sources (*e.g.,* recreational fisheries, other sources of human-caused mortality and serious injury within the U.S. EEZ, foreign fisheries on the high seas) should be clearly distinguished from U.S. commercial fishery-related mortality. Finally, the proposed guidelines contained the addition of a subsection summarizing the most prevalent potential human-caused mortality and serious injury threats that are unquantified in the SARs, and the SARs should also indicate if there are no known major sources of unquantifiable human-caused mortality and serious injury. NMFS has incorporated this language into the revised guidelines.

Topic 6: When stock declines are sufficient for a strategic designation. The proposed guidelines included the following: ''Stocks that have evidence suggesting at least a 50 percent decline, either based on previous abundance estimates or historical abundance estimated by back-calculation, should be noted in the Status of Stocks section as likely to be below OSP. The choice of 50 percent does not mean that OSP is at 50 percent of historical numbers, but rather that a population below this level would be below OSP with high probability. Similarly, a stock that has increased back to levels pre-dating the known decline may be within OSP; however, additional analyses may determine a population is within OSP prior to reaching historical levels.'' NMFS has incorporated this language into the revised guidelines.

Additionally, the workshop participants recommended and the proposed guidelines included the following interpretation of the definition of a strategic stock: ''A stock shall be designated as strategic if it is declining and has a greater than 50 percent probability of a continuing decline of at least five percent per year. Such a decline, if not stopped, would result in a 50 percent decline in 15 years and would likely lead to the stock being listed as threatened. The estimate of trend should be based on data spanning at least eight years. Alternative thresholds for decline rates and duration, as well as alternative data criteria, may also be used if sufficient rationale is provided to indicate that the decline is likely to result in the stock being listed as threatened within the foreseeable future. Stocks that have been designated as strategic due to a population decline may be designated as non-strategic if the decline is stopped and the stock is not otherwise strategic.'' NMFS received comments expressing concern with the proposed interpretation of ''likely to be listed as a threatened species under the ESA within the foreseeable future'' (sec. 3(19)(B) of the MMPA). NMFS is not finalizing the proposed changes related to this topic at this time. Rather, we will further analyze this issue. Should we contemplate changes to the guidelines regarding this topic, NMFS will propose them and solicit public comment in a separate action.

The proposed guidelines included the following direction regarding recovery factors for declining stocks: ''A stock that is strategic because, based on the best available scientific information, it is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future (sec. 3(19)(B) of the MMPA) should use a recovery factor between 0.1 and 0.5.'' As we are not finalizing the recommended changes regarding strategic stock designation (sec. 3(19)(B) of the MMPA), above, we have decided not to revise the guidelines regarding recovery factors under such situations at this time. Should changes to the guidelines regarding the above be contemplated, NMFS will include the recommended recovery factors when we solicit public comment on that action. Therefore, NMFS is not finalizing the recommended change related to this paragraph at this time.

Topic 7: Assessing stocks without abundance estimates or PBR. For many stocks, data are so sparse that it is not possible to produce an N_{min} and not possible to estimate PBR. When mortality and/or population abundance estimates are unavailable, the PBR approach cannot be used to assess populations, in spite of a statutory mandate to do so. The proposed guidelines included the following addition to the Status of Stocks section: ''Likewise, trend monitoring can help inform the process of determining strategic status.'' NMFS has incorporated this language into the revised guidelines.

Topic 8: Characterizing uncertainty in key SAR elements. It is difficult to infer the overall uncertainty for key parameters as they are currently reported in the SARs. The proposed guidelines direct that the Stock Definition and Geographic Range, Elements of the PBR Formula, Population Trend, Annual Human-Caused Mortality and Serious Injury,

and Status of the Stock sections include a description of key uncertainties associated with parameters in these sections and an evaluation of the effects of these uncertainties associated with parameters in these sections. NMFS has incorporated this language into the revised guidelines with some minor revisions.

Topic 9: Including non-serious injuries and disturbance in SARs. Currently, many Reports include information on human-related mortality and serious injury from all known sources (not just from commercial fisheries) but do not include information on human-related non-serious injury or disturbance. The workshop participants concluded that the guidelines, with respect to the scope of content considered by the SARs, could be retained as they currently stand. However, they encouraged authors to routinely consider including information in the Reports about what ''other factors'' may cause a decline or impede recovery of a particular stock. A final recommended revision to the guidelines was the addition of the following italicized text: ''The MMPA requires for strategic stocks a consideration of other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey, *or other lethal or non-lethal factors*.'' However, this italicized text is not contained in the MMPA, and therefore, as proposed could be misconstrued as being required by the MMPA. Therefore, the revision to the guidelines has been reworded for clarity.

Comments and Responses

NMFS solicited public comments on the proposed revisions to the guidelines (January 24, 2012, 77 FR 3450), contained in Appendix IV of the GAMMS III workshop report. NMFS received comments from the Commission, the three regional SRGs, two non-governmental environmental organizations (Humane Society of the United States and Center for Biological Diversity), representatives from the fishing industry (Western Pacific Regional Fishery Management Council, Garden State Seafood Association, Maine Lobstermen's Association, Hawaii Longline Association, Cape Cod Hook Fishermen's Association, and two individuals), the American Veterinary Medical Association, the States of Maine and Massachusetts, the Makah Indian Tribe, the Center for Regulatory Effectiveness, representatives from the oil and gas industry (American Petroleum Institute, International Association of Geophysical Contractors, and Alaska Oil and Gas Association), and one individual.

NMFS received a number of comments supporting its efforts to improve stock identification (topic 2). Many commenters urged NMFS to prioritize conducting regular surveys for those species with the greatest human-caused mortality or oldest survey data. Many commenters disagreed with NMFS' proposals to use a precautionary approach with aging abundance estimates (topic 1) and apportion PBR and serious injuries and mortalities (topic 4). Comments on actions not related to the GAMMS (*e.g.,* convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)), or on items not related to portions of the guidelines finalized in this action, are not included below. Comments and responses are organized below according to the relevant workshop topics outlined in Appendix IV of the report.

Comments on General Issues

Comment 1: The Commission recommended that NMFS continue to encourage more exchange between regional SRGs to ensure consistency where needed and to promote useful and informative exchange among them.

Response: NMFS acknowledges this comment and will continue to encourage exchange between SRGs and strive to ensure consistency among the groups and among the SARs. To that end, we are convening a joint meeting of the three SRGs in February 2016, in addition to individual SRG meetings.

Comment 2: The Commission recommended that NMFS consider requiring a brief summary paragraph or table on the historical trend of each stock in the SARs, where appropriate, to combat the tendency to exclude important stock dynamics or allow for the shifting baselines phenomenon.

Response: It is unclear from the comment what historical trend information, specifically, the Commission is referencing that is not already provided in the SARs. Where able, we provide historical abundance data and estimate trends in abundance (see for example, the California sea lion SAR, which provides abundance data for the prior four decades). With respect to bycatch, we do not think it is feasible or appropriate to provide trends in bycatch rates over decades, as fisheries and monitoring programs change too frequently. The status of each stock is informed by current parameters, such as ESA listing status and relationship to OSP and PBR. Additionally, the statute specifies that the SARs provide current population trend information. We will continue to endeavor to provide as much historical abundance, trend, and human-related removal information (for example, historical whaling data as it relates to stock recovery and OSP, see Eastern North Pacific blue whale report) as possible, but at this time will not require a summary table or paragraph in each SAR.

Comment 3: NMFS should secure adequate support and funding to conduct marine mammal abundance surveys in the region at least every five years. Alternative cost-effective approaches to determining $N_{min,}$ such as trend data from index sites, should be developed and specified as acceptable methods in the guidelines.

Response: NMFS agrees that such a schedule would be ideal, but we do not currently have the resources to accomplish this. We continue to develop and implement strategies to support more efficient use of ship time through multi-species ecosystem studies, better survey designs and sampling technologies, and leveraging inter- and intra-agency resources. NMFS is also exploring alternative approaches for assessing stock status (*e.g.,* through use of unmanned systems and acoustic technologies) apart from reliance on abundance survey data, in regions where regular surveys are cost-prohibitive. As noted in the workshop report, such approaches could include trend monitoring at index sites. Developing guidelines for alternative assessment methods was not a focus of the GAMMS III workshop, and so this does not appear in the revisions finalized here. However, NMFS will make efforts to consider how alternative sets of information could be used to aid its marine mammal stock assessments.

Comment 4: The effective management of marine mammals requires timely and accurate stock status information that is currently lacking. The proposed assumption that the existing measures protecting marine mammal species are failing to achieve management objectives and the continued use of old data to assess the status of stocks are unacceptable and fail to acknowledge collective efforts to reconcile marine mammal protection with varied ocean uses. NMFS should more frequently assess the status of marine mammal stocks and incorporate this new information into management actions.

Response: NMFS agrees that management of marine mammal stocks depends on timely and accurate stock information, and in many cases up-to-date stock assessments are not available, nor are the resources necessary to

conduct the assessment. NMFS acknowledges that the reliability of abundance estimates for calculating PBR is reduced over time. The proposed approach to calculating PBR with outdated abundance information assumed the worst-case scenario, but we are not finalizing that approach at this time. Accordingly, NMFS is analyzing methods to calculate PBRs for stocks with outdated abundance information as well as developing methods to collect data more efficiently and cost effectively. See response to Comment 3.

Comment 5: The Alaska SRG expressed concern that very different approaches are taken for PBR and mortality components of SARs. A great deal of modeling effort and simulations has gone into making the PBR calculations conservative, but there is no similar concern for the mortality and serious injury data. In some of the Alaska SARs, 20+ year-old observer data are the only mortality data for a particular fishery. The nature of Alaska fisheries can change quite quickly, so Alaska SRG members strongly object to using such old data. The reliability of removals data is just as important as population data when assessing stock status. This issue merits serious attention, and as a first step, the quality of removals data should be thoroughly and explicitly evaluated when uncertainty in SARs is evaluated.

Response: NMFS acknowledges that many of the data related to Alaska marine mammal stocks are dated. NMFS continues to rely upon and incorporate the best available data in the SARs, but in some cases these data are many years old. The revised guidelines instruct SAR authors to describe uncertainties in key factors, including human-caused mortality and serious injury, and to evaluate the effects of those uncertainties.

Comment 6: The proposed changes do not reflect an agency commitment to generating best available science upon which to base its decisions. In fact, this rule contains no statements as to what the agency intends to do with respect to old or non-existent assessments other than to reduce PBR. We request the agency comment for the record specifically how NOAA intends to address the GAMMS III stated need for accurate and timely census data.

Response: The MMPA requires that NMFS and FWS use the best available scientific information in its assessment and management of marine mammal stocks. NMFS strives to collect the data necessary for timely stock assessments in a cost-efficient manner, but agency resources are limited, and there are instances where data are either too old or non-existent. We are currently analyzing how to calculate PBR when data are outdated.

Comment 7: We appreciate NMFS' efforts to improve stock identification, small stock biases, non-serious injuries, and institute other SAR enhancements, and encourage NMFS to incorporate veterinary expertise relative to marine mammal population, health, and ecosystem conservation status.

Response: NMFS acknowledges this comment. NMFS continues to incorporate and rely upon veterinary expertise in activities related to stock assessment; for example, the development of the serious injury determination policy and procedures, and response to stranded animals and UMEs.

Comment 8: Several of the GAMMS III recommendations require more explanations and verbiage to be added to the SARs (*e.g.,* Topics 2, 5, 8, and 9).

Response: NMFS recognizes that the recommendations require additional text to be added to the SARs. We strive to maintain the conciseness of the SARs while providing best available science and meeting the directive of MMPA section 117(a).

Comment 9: NMFS should produce a record showing that the guidelines and GAMMS Report comply with the Information Quality Act (IQA) Pre-dissemination review requirements as follows: (1) All models that the guidelines or GAMMS Report use should be peer reviewed in order to determine their compliance with Council for Regulatory Environmental Modeling Guidance; (2) the method used by the guidelines and GAMMS Report to estimate population uncertainty violates the IQA accuracy and reliability requirement; and (3) the guidelines and GAMMS Report violate the IQA accuracy and reliability requirements by telling staff to make up abundance data and PBR when measured data do not exist (''informed interpolation''). In addition, NMFS should revise the guidelines and GAMMS Report to delete any suggestion that marine mammal SARs should discuss oil and gas seismic effects, as oil and gas seismic operations do not cause mortality or serious injury to marine mammals and do not cause a decline or impede recovery of any strategic stock.

Response: The GAMMS report referenced by the commenter is a summary of the proceedings of a workshop and was reviewed for accuracy prior to dissemination. We did not solicit comments nor are we responding to comments on the workshop report itself. The guidelines also underwent IQA pre-dissemination review prior to being finalized and released to the public. There is no requirement under the NOAA or OMB Information Quality Guidance to explain within the guidelines themselves how they have met IQA requirements.

The marine mammal SARs are based on the best available science. NMFS strives to use peer-reviewed data as the basis for reports. However, in some cases, the best available science may not have been published or subjected to a juried professional journal review, as this process can take months or years to complete. In other cases, data pertinent to assessments of stocks are routinely collected and analyzed but are not suitable for a stand-alone external peer-reviewed publication. Therefore, NMFS often relies on science that has been through a NMFS Science Center's internal expert review process and/or has been subjected to other internal or external expert review to ensure that information is not only high quality but is available for management decisions in a timely fashion. In these cases, all NOAA-authored literature should meet, at the least, the standards for Fundamental Research Communications established by the NOAA Research Council and by NMFS. NMFS may rely on the SRGs to provide independent expert reviews of particular components of new science to be incorporated into the SARs to ensure that these components constitute the best available scientific information. Likewise, upon SRG review of these components and the draft SARs themselves, NMFS considers the SRG review of the draft SARs to constitute peer review and to meet the requirements of the OMB Peer Review Bulletin and the Information Quality Act.

The proposed method for projecting uncertainty in abundance estimates (topic 1) is not being finalized at this time (see below). Any models that are employed in the SARs have been peer reviewed, as is their specific application to the SARs, and therefore meet the requirements of the IQA. Regarding the use of informed interpolation to estimate abundance within a study area based on habitat modeling or similar approaches (*i.e.,* model-based abundance estimation), this approach is commonly applied in ecology. The International Whaling Commission Scientific Committee recently acknowledged the strength and utility of model-based abundance estimation methods and is planning a workshop to formulate revisions to its guidelines for conducting surveys and analyzing data to include guidance on the use of these methods in management (IWC, 2015).

Model-based estimation of density is based on survey data and habitat or other covariates, which is entirely science based. To suggest we are directing staff to ''make up abundance data and PBR'' is a mischaracterization of what is contained in the revised guidelines. We have added a footnote to the guidelines to clarify the definition of ''informed interpolation.''

Regarding oil and gas activities, nowhere in the proposed guidelines are oil and gas or seismic activities specifically discussed. The guidelines do not direct the inclusion of oil and gas activities in the SARs; however, if oil and gas activities are found to be having a detrimental effect on a stock or its habitat, we would include it in the report, as we would with any other activity. The final revised guidelines (very slightly revised from the proposed guidelines) state: ''The MMPA requires for strategic stocks a consideration of other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey. In practice, interpretation of ''other factors'' may include lethal or non-lethal factors other than effects on habitat and prey. Therefore, such issues should be summarized in the Status of the Stock section for all strategic stocks. If substantial issues regarding the habitat of the stock are important, a separate section titled ''Habitat Issues'' should be used. If data exist that indicate a problem, they should be summarized and included in the Report. If there are no known habitat issues or other factors causing a decline or impeding recovery, this should be stated in the Status of the Stock section.''

Comments on Topic 1: Assessing Stocks With Outdated Abundance Estimates

NMFS received a number of comments expressing strenuous objection to/concern with the proposed framework for stocks with outdated abundance estimates. As such, NMFS is not finalizing the proposed revisions related to Topic 1 at this time. Rather, we will further analyze this issue. Should we contemplate changes to the guidelines regarding this topic, NMFS will propose them and solicit public comment in a separate action.

Comments on Topic 2: Improving Stock Identification

Comment 10: The Commission recommended that NMFS convene a national workshop to systematically review the status of stock identification efforts and to identify and prioritize the information needed to improve stock identification.

Response: In August 2014, NMFS convened a workshop on the use of multiple lines of evidence to delineate demographically independent populations (Martien et al., 2015). The meeting participants agreed that the best way to provide guidance on the use of multiple lines of evidence when delineating demographically independent populations for marine mammals was to produce a Stock Delineation Handbook that can serve as a guide for future demographically-independent population delineation efforts. Development of the handbook is currently underway. Subsequent to the 2014 workshop, NMFS began developing an internal procedure for identifying and prioritizing stocks in need of examination for potential revisions that would complement and be integrated into the stock delineation workshop outputs and the existing SAR process.

Comment 11: The GAMMS III workshop report makes several very good recommendations for improving stock identification, and the Alaska SRG and the Humane Society of the United States agree with all of them.

Response: NMFS acknowledges this comment.

Comment 12: The Pacific SRG recommends that NMFS focus on the role of genetics in determining marine mammal stock structure and in defining the terms ''stock'' and ''population.''

Response: Although the guidelines are clear that genetic evidence is not the sole evidence that could be used to define stocks, changes in stock definition have relied on genetic data as the primary line of evidence, and species for which genetic evidence are not available have not had new stocks defined. The MMPA uses the term ''population stock.'' The guidelines have a lengthy section on ''Definition of stock'' that has been discussed in each of the GAMMS workshops and in a special workshop devoted to stock definition (see response to Comment (10). The language that interprets ''population stock'' has remained largely unchanged since the first set of guidelines despite much discussion.

Comment 13: The Pacific SRG would like to have the following questions addressed: How do we integrate the MMPA's goal of maintaining a population as a functioning part of the ecosystem with the statute's definition of a stock (that emphasizes breeding interchange)? In a continuum of levels of genetic exchange, where does one draw the line between what is a stock and what is not? How will the proposed use of eco-regions be practically implemented in stock determination and how will migratory stocks that feed in one region and breed in another be treated under this proposal? How do we balance the conservation concerns resulting from stocks being defined very broadly versus the costs and management concerns resulting from stocks being defined very finely?

Response: The definition of ''population stock'' as ''a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature'' is vague from a biological perspective. To some degree, all ''groups'' within a species interbreed when mature or else they would be considered different species according to the biological species concept. Clearly, population stock was intended to mean interbreeding at some greater level but that level is not specified. Interpretation becomes more difficult when considering known cases of migratory species with strong fidelity to both feeding and breeding grounds. Consider, for example, humpback whales that feed in Southeast Alaska and breed in Hawaii. These individuals can interbreed when mature but can (and do) interbreed with individuals that feed in other areas. If a threat occurred within Southeast Alaska that resulted in unsustainable deaths in that area, then if the ''Southeast Alaska whales'' were a stock, that stock's PBR could be used as an indicator that management efforts to mitigate that threat were warranted. In contrast, if ''interbreed when mature'' considered all the whales in Hawaii, then the human-caused mortality in Southeast Alaska may never exceed the PBR based on Hawaii, and eventually the ecosystem in Southeast Alaska would cease to have humpback whales as a functioning part. Such cases result in an apparent conflict between the words ''interbreed when mature'' and the goal to maintain population stocks as functioning elements of their ecosystem.

Often, changes to stock delineations in the SARs have relied on interpretation of genetic data. The Pacific SRG asks where one draws the line on what level of genetic exchange suffices to qualify as a stock. Interpretation has been based on the guidelines:

''Demographic independence means that the population dynamics of the affected group is more a consequence of births and deaths within the group (internal dynamics) rather than immigration or emigration (external dynamics). Thus, the exchange of individuals between population stocks is not great enough to prevent the depletion of one of the populations as

a result of increased mortality or lower birth rates.''

To date, accepted ''new'' stocks have been strongly differentiated, indicating such low levels of exchange that immigration is relatively trivial. There will be, however, borderline cases. Such is the nature of imposing discrete categories on continuous processes.

The recommendations from the GAMMS III workshop do not propose basing stocks on eco-regions. Eco-regions were discussed during the workshop in two contexts: (1) In a working paper that demonstrated that most stocks are currently defined at a very large scale often encompassing several eco-regions, and (2) that eco-regions may highlight stocks that may deserve consideration in a stock definition meeting because that stock may be at too large a scale and could encompass multiple demographically independent populations.

Comment 14: In the SARs, a concise statement concerning uncertainty in stock structure could be included in the section on uncertainty discussed under Topic 8. Details should be provided only when publications are not yet available. The Pacific SRG questions the usefulness of repeating in nearly every SAR the sentence ''It is plausible that there are multiple demographically-independent populations within this stock.''

Response: The Pacific SRG requested that the reader of a SAR be able to readily assess the level of confidence that can be ascribed to the PBR calculation. A critical part of that calculation is abundance, which can be severely biased if stock definition is incorrect. We recognize that many SARs will include the same statement about the plausibility of multiple demographically independent populations within the stock, but we consider it necessary to better inform the reader's understanding of areas of uncertainty.

Comment 15: NMFS received a number of comments related to stock definition and stock delineation based on feeding aggregations. Such as: The revised guidelines should address whether, and under what circumstances, a feeding aggregation can be identified as a stock consistently with the MMPA's statutory definition of a stock. One commenter stated that it is not clear whether or how the definition of a stock in the proposed guidelines relates to the definition of a stock in the MMPA. One commenter suggested that the revised guidelines should clarify the meaning of ''internal dynamics'' and explain how it relates to the statutory interbreeding requirement. Another suggestion was that the revised guidelines should address the workshop participants' suggestion ''that human-caused mortality on the feeding grounds be monitored and evaluated against a PBR calculation made for the feeding aggregation and that the feeding-ground PBR, mortality, and evaluation results be reported in the SARs, as is currently done for Pacific humpback stocks.''

Response: The workshop participants discussed the possibility of basing stocks on feeding aggregations. Although workshop participants considered this approach to be feasible, they believed it added significant complexity without providing substantial management advantages, and did not recommend revisions to the guidelines at this time. Therefore, this revision of the guidelines does not specifically discuss identification of stocks based on feeding aggregations. We recognize and acknowledge these comments related to feeding aggregations and stock definition, but as they do not relate to the current revisions to the guidelines, we are not addressing them in this action. If the issue is further considered by the agency in a separate action, we will address those comments in the development of that action.

Comment 16: In the proposed guidelines, NMFS suggests that it may delineate marine mammal stocks based upon human factors such as incidental take as a result of human-caused mortality. However, the MMPA does not permit the determination of stock status based on human-related factors. Accordingly, when delineating stocks, NMFS can only consider the demographic and biological characteristics of the species at issue. Carving out stocks in areas where human-caused mortality is high, as NMFS proposes, would violate the MMPA.

Response: The guidelines state: ''For example, it is common to have human-caused mortality restricted to a portion of a species' range. Such concentrated mortality (if of a large magnitude) could lead to population fragmentation, a reduction in range, or even the loss of undetected populations, and would only be mitigated by high immigration rates from adjacent areas.'' They caution that serious consideration should be given to areas with concentrated high human-caused mortality, but that actual stock definition should be based on biological considerations. In other words, high-localized human-caused mortality should highlight the need for stock identification scrutiny but not the lines of evidence used.

Comment 17: If it cannot be demonstrated with normal genetic analysis, then it is unwarranted to establish populations or subpopulations based on behavior or distribution. To split existing populations into smaller units only invites the development of fragmented PBRs with an aggregate value that will likely be lower than that of the whole population.

Response: Genetic data are certainly useful when attainable, but in many cases genetic samples (of sufficient quantity to draw sound inferences) cannot be obtained. There are many other lines of evidence that can be informative to determining stock structure, including behavior and distribution and also movement data from photographic identification or tagging. Genetic data are sometimes sufficient but are not exclusively needed to make sound inferences concerning stock structure. In 2014, NMFS convened a workshop to review the use of other lines of evidence, as consistency and accuracy in delineating stocks for species with limited data would be improved if guidelines were available on both the strengths of different lines of evidence and how to evaluate multiple lines together (Martien *et al.,* 2015). As a result of this workshop, NMFS is developing a handbook for identification of demographically independent populations, which includes genetic information as well as other lines of evidence.

Comment 18: The revised guidelines should acknowledge that factors other than demographic independence, such as a localized disease or a localized change in prey availability, might cause different population responses between geographic regions. In light of such factors, the revised guidelines should discuss under what circumstances it is appropriate to designate stocks solely on the basis of different population responses between geographic regions.

Response: Demographic independence is defined in terms of birth and death rates within the population and immigrations from outside the population. Presumably, the response of a population to 'localized disease or localized change in prey availability' would be changes in the birth and/or death rates. Thus, it would seem that the concern above is already accounted for in the guidelines.

Comment 19: If the revised guidelines continue to define a stock as a demographically-independent biological population, they should explain more clearly the circumstances under which a group of marine mammals can be designated as a stock even in the

absence of evidence that the group comprises a demographically independent biological population. Are such circumstances limited to those in which ''mortality is greater than a PBR calculated from the abundance just within the oceanographic region where the human-caused mortality occurs,'' as suggested in the GAMMS III Report? Or can stocks be designated in other circumstances in the absence of evidence of demographic independence? If so, what other circumstances are contemplated?

Response: The section on definition of stocks in the guidelines seeks to clarify the practical process of definition given biological complexity and different types and qualities of available data. This section was contained in GAMMS II (NMFS 2005) and was not revised in this current revision of the guidelines. The guidelines note that particular attention should be given to areas where mortality is greater than PBR but do not limit stock definition to those circumstances. The stock definition workshop (see above) was suggested as a forum to improve stock definition in data-poor cases.

Comments on Topic 3: Assessment of Small and Endangered Stocks

Comment 20: The Commission recommends that NMFS adopt the workshop recommendation to include, when appropriate, a statement in each assessment explaining that bycatch data are not sufficient to estimate the bycatch rate with acceptable precision. The Commission and another commenter recommended NMFS treat each such stock as strategic unless and until the data are sufficient to demonstrate that it is not.

Response: NMFS agrees with the importance of including a statement in each stock assessment to indicate when bycatch estimates are prone to small-sample bias, though it should be noted that bias and precision are different issues. The guidelines recommend pooling years of information as necessary to achieve precision levels of CV less than 0.3.

At this point, NMFS does not make the default assumption that a stock is strategic until demonstrated otherwise. The MMPA requires a determination of a stock's status as being either strategic or non-strategic and does not include a category of unknown. The revised guidelines state, for non-ESA listed and/or non-depleted stocks, ''if abundance or human-related mortality levels are truly unknown (or if the fishery-related mortality level is only available from self-reported data), some judgment will be required to make this determination. If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgment, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (*e.g.,* greater than the annual production increment) the stock could be considered as strategic.''

Comment 21: When calculating PBR, NMFS should err on the side of caution rather than allowing loosely defined flexibility that may be used to the detriment of the stock. With stocks such as the Cook Inlet belugas or Hawaiian monk seals, the documented decline in abundance would seem to challenge the assumption that net productivity occurs. Therefore, a PBR of zero is appropriate and would promote regional consistency.

Response: NMFS recognizes that in some cases the dynamics of a stock do not comport with the underlying assumptions of the PBR framework. Given that Section 117 directs the agency to calculate PBR, the revised guidelines direct authors to calculate PBR but in such instances to qualify the calculation in the PBR section of the Report.

Comment 22: We support the calculation of PBR even for small stocks with little human-caused mortality to comply with the MMPA. However, we do not support the exception to depart from the PBR requirement.

Response: NMFS recognizes that, pursuant to Sec. 117 of the MMPA, each stock assessment report should include an estimate of the PBR for the stock. However, PBR is not always estimable. Most obviously, we lack abundance estimates for some stocks. Less obviously, the equation for estimating PBR makes assumptions about the underlying population growth model for marine mammals, and for stocks whose population dynamics do not appear to conform to these assumptions, the calculated PBR is considered unreliable as an estimate of the true potential biological removal. The revisions to the guidelines encourage reporting PBR for all stocks possible and qualifying in the SAR when the reported value is not considered reliable. Departure from this suggestion must be discussed fully within any affected report.

Comment 23: The Commission recommends that NMFS require stock assessment authors to set PBR to zero in those cases that are not in accord with the commonly assumed PBR framework and involve stocks with no tolerance for additional human-related removals.

Response: The revisions to the guidelines encourage reporting PBR for all stocks possible and qualifying in the stock assessment report when the reported value is not considered reliable or in cases where a stock's dynamics do not conform to the underlying model for calculating PBR. At this point, the guidelines are not instructing authors to set PBR to zero.

Comment 24: The Pacific SRG continues to support a decision not to report a PBR in the monk seal SAR.

Response: By ecological theory, *i.e.,* when the assumption of simple logistic population growth is reasonable and when a stock's status can be attributed to direct anthropogenic impacts, a non-zero estimate of PBR is not unreasonable. In the case of Hawaiian monk seal, however, it is not apparent that these model assumptions hold. See response to Comment 22.

Comment 25: The Alaska SRG preference would be to have an undetermined PBR when assessing endangered stocks. If numerical estimates of PBR are to be given in SARs, we recommend that language be included clarifying whether negligible impact determinations have been made, what they are, and if not, stating that no human-caused takes are authorized. We do not agree that this topic is beyond the scope of SARs and rather believe that inclusion of such information would help readers understand the actual meaning of PBR in this case.

Response: NMFS disagrees with including negligible impact determinations (NIDs) under section 101(a)(5)(E) of the MMPA in the SARs. The five criteria (64 FR 28800, May 27, 1999) that NMFS may use for making a final determination and issuing 3-year incidental take authorizations to Category I and II fisheries are complex and may be difficult to relate to the data contained in the SARs, which often change on an annual basis. Furthermore, while some NIDs may use fisheries bycatch data from the past five years in making an assessment, other NID analyses may contain bycatch data from more than five years, depending on changes in fisheries, particularly regulatory changes such as time/area closures or mandatory bycatch reduction methods. In addition, NMFS may use the more recent observer data or stranding data, which may not yet be included in the most recent SARs, which may also confuse readers. Further, NMFS does not authorize (or prohibit) incidental mortalities through the SAR process.

Comments on Topic 4: Apportioning PBR, Allocating Mortality, and Estimating PBR for Transboundary Stocks

Comment 26: The Commission recommends that NMFS include in their stock assessments comparisons of PBR for feeding aggregations, and estimate or apportion mortality and serious injury levels for each aggregation.

Response: The workshop participants discussed how feeding ground PBRs should be calculated for stocks where there was a desire to monitor potential risks to feeding aggregations; however, this was not reflected in the recommended revised text for the guidelines nor were comments solicited on this issue. NMFS is not including text regarding apportioning PBR among feeding aggregations in this revision of the guidelines.

Comment 27: The Commission recommends that NMFS apply the total unassigned mortality and serious injury to each affected stock in both data-rich and data-poor cases involving taking of mixed stocks that cannot be or are not identified in the field. Doing so is the only way to be precautionary and also provides the appropriate incentive to develop better information about the affected stocks.

Response: NMFS disagrees and believes that the guidelines are sufficiently conservative at this time.

Comment 28: The Commission recommends that NMFS discourage the use of informed interpolation, require strong justification where it is used, and require that it be accompanied by reasonable measures of uncertainty associated with the interpolation.

Response: The revised guidelines allow for the use of informed interpolation (*i.e.,* model-based abundance estimation) as appropriate and supported by existing data. NMFS has added text to the guidelines specifying that when informed interpolation is employed, the Report should provide justification for its use and associated measure of uncertainty. As a point of clarification, informed interpolation is not a person making an informed judgement; it is a model that is informed by the covariation between habitat or other variables and density that is making the ''judgement.''

Comment 29: We support the recommendation of assigning the total unassigned mortalities and serious injuries to each stock within the appropriate geographic area.

Response: NMFS acknowledges this comment.

Comment 30: NMFS should not assign the ''unassigned mortality and serious injury'' to each stock within the affected geographic area as it would effectively double count these human interactions and affect the PBR of multiple stocks. Instead, NMFS should develop methodology based on the best available data to assign the serious injury and mortality according to the relative abundance of the stocks. When this is not possible, serious injury and mortality should remain unassigned to avoid arbitrary determinations.

Response: The revised guidelines direct that in data poor situations with mixed stocks, when relative abundances are unknown, the total unassigned mortality and serious injuries should be assigned to each stock within the appropriate geographic area. NMFS and workshop participants recognize that this approach effectively would repeatedly ''count'' the same deaths and serious injuries against multiple stocks. However, this approach is considered to be the most conservative in terms of ensuring that the most severe possible impacts were considered for each stock. The revised guidelines instruct that when deaths and serious injuries are assigned to each overlapping stock in this manner, the Reports will contain a discussion of the potential for over-estimating stock-specific mortality and serious injury.

Comment 31: NMFS's proposal to identify transboundary or high seas stocks with no available population data is contrary to the MMPA.

Response: NMFS did not propose to identify transboundary or high seas stocks with no available population data. Rather, the workshop discussions involved estimating range-wide abundance and PBR for transboundary stocks, and specifically, addressing the problem of managing transboundary marine mammal stocks for which PBR is estimated based on abundance from only a portion of each stock's range (for example, PBR levels for transboundary stocks being estimated based on abundance surveys that occur only within the U.S. EEZ). Although it is inappropriate to simply extrapolate abundance estimates to an unsurveyed area, the revised guidelines allow for the use of model-based density estimation to fill gaps in survey coverage and estimate abundance and PBR over broader areas as appropriate and supported by existing data. In such cases, the Report should provide justification for use of interpolation and associated measure of uncertainty.

Comment 32: NMFS must ensure that it prioritizes collection of data necessary to support interpolations when full assessments are not possible. In cases where a partial survey is conducted and methods of interpolation or modeling are not incorporated, serious injuries and mortalities should only be counted if they occur in the portion of the stock that was surveyed.

Response: NMFS agrees surveys should ideally cover the entirety of the stock range. When this is not possible, N_{min} is defined under the MMPA as an estimate of the number of animals in a stock that provides reasonable assurance that the stock size is equal to or greater than the estimate, so a partial survey can be used to calculate N_{min} and PBR. All human-caused mortality and serious injury needs to be accounted for under the MMPA, so injuries or deaths that are known to come from a stock must be apportioned to that stock even if the abundance is underestimated. The solution to this mismatch is not to ignore human-caused mortality and serious injury (which is contrary to the MMPA), but to conduct adequate surveys or develop models to obtain complete abundance estimates.

Comment 33: The apportionment of PBR to foraging grounds between surveyed and un-surveyed areas appears to be a significant problem in the absence of data and lacks scientific justification. It appears that this will be based on untested assumptions regarding stock distributions. Assuming uniform distribution will have animals present where they may not exist or exist only seasonally.

Response: NMFS agrees that it is not appropriate to assume uniform distribution between surveyed and unsurveyed areas, and as such discourages the use of extrapolation. The workshop participants discussed this issue, and the background paper on this topic suggested that informed modeling exercises may sometimes be appropriate or necessary for management decisions and to ensure that stocks remain as functioning elements of the ecosystem. Therefore, the revised guidelines state, ''abundance or density estimates from one area should not be extrapolated to unsurveyed areas to estimate range-wide abundance (and PBR). But, informed interpolation (*e.g.,* based on habitat associations) may be used to fill gaps in survey coverage and estimate abundance and PBR over broader areas as appropriate and supported by existing data.''

Comment 34: Given the known lack of general data and uncertainty of existing data, it appears that it will be difficult to accurately use separate PBRs for marine mammal populations with multiple feeding grounds. To the extent that this is understood, information pertaining to separate feeding

aggregations should be noted in the stock assessment reports, but separate PBRs should not be used for stocks with multiple feeding grounds. There is a significant risk that ''unassigned mortality and serious injury'' could be wrongly assigned and result in erroneous estimates to one or more populations. To avoid arbitrary assignments, when this is not possible, serious injury and mortality should remain unassigned.

Response: See response to Comment 26.

Comment 35: The section on apportioning PBR among feeding aggregations does not provide clear guidance for cases like eastern Pacific gray whales and whether the Pacific Coast Feeding Group is a stock or not, a case where there may be mitochondrial differences between feeding areas but all animals go to a common breeding area.

Response: The current Guideline revisions do not address apportioning PBR among feeding aggregations. See response to Comment 26.

Comment 36: Separate PBRs for stocks with multiple feeding grounds should not be used. Separating PBR among feeding stocks is complicated and data-intensive, and is unlikely to improve management. NMFS is rarely able to adequately determine which portion of the stock was involved in a human interaction.

Response: See response to Comment 26.

Comment 37: There is concern that failure to estimate a population-wide PBR in the assessments will lead to the reliance on the proposed default of assuming the population is in decline. The agency should develop an assessment methodology based on the best available data and devise a statistically sound interpolation algorithm to fill in gaps in survey coverage and estimate abundance over the range of the population. If this is not developed then there is a very strong possibility that assessment scientists will discount or not utilize historical estimates derived from multiple surveys spanning multiple geographic regions in one year, and/or limited surveys the following year.

Response: NMFS recognizes the need to estimate population-wide PBR for marine mammal stocks, which is why the revised guidelines allow for the use of informed interpolation (*i.e.,* model-based abundance estimation) to fill gaps in geographical survey coverage. Where interpolation is employed, the Reports should include a statement about the level of uncertainty surrounding the estimates.

Comment 38: Priority for research should be given to stocks for which serious injury and mortality exceeds PBR and for which additional management action is required under take reduction plans. In cases where this is not possible, NMFS must consider the availability of data for interpolation or informed modeling exercises to obtain abundance estimates for the full range of the stock. This strategy requires careful coordination with Canada for transboundary stocks. If timely and robust data are not available, NMFS should not make stock assessment determinations.

Response: Staffs from NMFS Science Centers, Regional Offices, and Headquarters Offices communicate regularly to discuss science needed to support management and to help prioritize research efforts. This includes discussion of stocks for which human-caused mortality and serious injury exceed PBR and take reduction planning needs. The revised guidelines allow for the use of informed interpolation (*e.g.,* based on habitat associations) to fill gaps in survey coverage and estimate abundance and PBR, as appropriate and when supported by existing data.

Comments on Topic 5: Reporting of Mortality and Serious Injury

Comment 39: The Commission recommends that NMFS require a summary of all human-caused mortality and serious injury in each stock assessment report. Efforts to meet that requirement will almost certainly vary, perhaps markedly. With that in mind, the Commission encourages NMFS to re-examine those report sections after one to two years to identify the most effective reporting strategies that could then be used to develop a consistent and informative reporting approach.

Response: Section 117 of the MMPA requires that all sources of human-caused mortality and serious injury be included in stock assessments. NMFS makes every effort to include these sources of anthropogenic mortality and serious injury in each stock assessment, whether the mortality or serious injury is systematically recorded by fishery observer programs or through opportunistic records, such as strandings, where the cause of death or serious injury can be linked to human-related causes. NMFS understands that clearly presenting these mortality and serious injury data in the SARs is an important part of allowing the public to interpret the status of marine mammal stocks. Every effort will be made to continue to improve the way in which mortality and serious injury are reported in the SARs.

Comment 40: The Alaska SRG believes that extensive tabling of interactions between marine mammals and commercial fisheries should be confined to an Appendix, with only a summary table that includes mortality in the various Federal groundfish fisheries, state water fisheries, and international transboundary fisheries included in the body of the assessment. The strategy of summarizing fishery interactions should lead to a single clearly-documented estimate of mortality and associated variance for all fisheries combined with easy access to details available preferably in an online appendix.

Response: NMFS makes every effort to present fishery interaction data simply in the body of each SAR, whether in the text, tabular form, or both. The agency feels that it is valuable to have all interaction data appear within the SAR itself (although some regions also currently include a separate Appendix describing those fisheries that interact with marine mammals). NMFS also produces stand-alone injury determination and bycatch papers by region, which has reduced the amount of information that needs to go into the SARs, as they are incorporated by reference. The agency will continue to improve the clarity of how interaction data are presented within the SARs.

Comment 41: The SARs tend to lag approximately two years behind in incorporating available observer bycatch data. For some fisheries that have 100-percent observer coverage such as the Hawaii-based swordfish fishery, such bycatch data are available in near real-time. Review of new data should be conducted promptly given that PBR, the zero mortality rate goal, and strategic status for stocks are all based on the most recent SAR.

Response: Bycatch data for most fisheries are not available in real-time and every effort is made to produce and incorporate new bycatch estimates from observer data in a timely manner into the draft SARs. SARs are typically drafted in the autumn of each year, with previous calendar year observer data representing the most up-to-date full-year information. For example, draft 2016 SARs will be prepared in the autumn of 2015 for review by regional Scientific Review Groups in early 2016. These draft 2016 reports will utilize bycatch data from calendar year 2014 if available, thus the 2-year time lag between the year the reports are published and the year of the most recent bycatch data.

Comments on Topic 6: Determining When Stock Declines Warrant a Strategic Designation

Comment 42: In an apparent attempt to interpret the MMPA definition of strategic stock, the proposed guidelines suggest that a ''strategic stock'' is a stock that ''is declining and has a greater than 50 percent probability of a continuing decline of at least five percent per year.'' However, in reality, a stock that ''has a greater than 50 percent probability of a continuing decline of at least five percent per year'' would not necessarily qualify as ''threatened'' in all cases. Rather, the determination of ''threatened'' status under the ESA requires a species-specific analysis of specific factors that are expressly set forth in the ESA. While NMFS may have the discretion to develop a general guideline for determining ''strategic'' status, NMFS may not mechanically apply the ''strategic stock'' definition set forth in the proposed guidelines.

Response: NMFS acknowledges this comment and has not made this revision to the guidelines. See Response to Comment 43.

Comment 43: The Commission recommends that NMFS consider any marine mammal stock that has declined by 40 percent or more to be strategic. Additionally, the Commission and the Humane Society of the United States recommend that stocks declining with more than 50 percent probability of continuing decline (by at least five percent/year) should be treated as strategic with the aim of reducing and reversing the stock's decline before a depleted designation is required.

Response: Section 3(19) of the MMPA defines a ''strategic stock,'' as one: ''(A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), or is designated as depleted under this Act.'' NMFS has not adopted the workshop-recommended revisions regarding a quantitative interpretation of strategic status per section 3(19)(B) but will continue to analyze how to interpret ''likely to be listed as a threatened species under the (ESA) within the foreseeable future.'' However, NMFS has finalized the revision regarding declines in abundance: ''Stocks that have evidence suggesting at least a 50 percent decline, either based on previous abundance estimates or historical abundance estimated by back-calculation, should be noted in the Status of Stocks section as likely to be below OSP. The choice of 50 percent does not mean that OSP is at 50 percent of historical numbers, but rather that a population below this level would be below OSP with high probability.''

Comment 44: The Alaska SRG supports the quantitative recommendations for determining when non-ESA listed stocks should be considered as ''strategic.'' We also find the rationale for using 15 years as ''the foreseeable future'' a reasonable default because it is based on a five percent decrease over a 15-year period resulting in a 50 percent decline.

Response: At this time, NMFS is not adopting the recommended changes related to strategic status of stocks that are declining and likely to be listed as a threatened species under the ESA within the foreseeable future.

Comment 45: The Alaska SRG agrees with the working group's recommendation that a Recovery Factor scaled from 0.1 to 0.5 be associated with stocks that are declining and likely to be listed as a threatened species under the ESA within the foreseeable future. In some cases where a decline is steep and ongoing or where the uncertainty about the population or causes of the decline are high a lower recovery factor could be warranted. We also recommend that there be a more formal process for NMFS to regularly review non-ESA listed stocks of concern to determine their status.

Response: As we are not finalizing the recommended changes regarding strategic stock designation (sec. 3(19)(B) of the MMPA), above, we have decided not to revise the guidelines regarding recovery factors under such situations at this time. Each time a SAR is reviewed, the status of the stock is evaluated.

Comment 46: While the revisions in the guidelines are a step toward developing criteria for a strategic designation, and using the threatened species recovery factors seems prudent, this revision falls short of setting timeframes to evaluate whether a stock should be reclassified.

Response: It is unclear whether the commenter is referencing evaluation timeframes under the MMPA (sec. 117(c)(1)) or the ESA (relative to the interpretation of sec. 3(19)(B) of the MMPA). Stock assessments are reviewed by NMFS every three years for non-strategic stocks or every year for strategic stocks. This sets the timeframe for evaluating whether a stock's status should be revised. See response to Comment 45 regarding MMPA sec. 3(19)(B).

Comment 47: The Pacific SRG supports the revision of when stock declines merit a strategic designation but suggests wording changes that give NMFS more flexibility surrounding the obligation to determine when a stock is depleted prior to classifying it as strategic. The SRG recommends that the NMFS regularly review whether a ''depleted'' status is warranted for (1) unlisted stocks of marine mammals that are declining and (2) stocks listed as depleted that are recovering.

Response: NMFS acknowledges this comment, and agrees that the depleted status of marine mammal stocks should be reviewed periodically to ensure that designations are appropriate. We are currently evaluating information contained within a review of the SARs conducted by the Commission and will, as a part of this evaluation, consider whether there is more that NMFS should to do enhance consistency and accuracy with regard to depleted status of marine mammal stocks on a more regular basis.

Comment 48: Given the challenges facing NMFS to collect timely data covering the full range of stocks already designated as strategic, NMFS should not adopt new guidelines to take on the responsibility of delineating strategic stocks that are not designated under the ESA. There is already an acceptable federal process under the ESA to designate strategic stocks.

Response: The ESA does not designate stocks as strategic or non-strategic. Rather, the MMPA directs stocks be considered strategic if ESA-listed (*i.e.,* threatened or endangered), depleted, or human-caused mortality exceeds PBR. Additionally section 3(19)(B) allows for strategic designations of a stock that is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future. At this time, we are not finalizing the recommended changes regarding strategic stock designation (sec. 3(19)(B) of the MMPA).

Comments on Topic 7: Assessing Stocks Without Abundance Estimates or PBR

Comment 49: The Alaska SRG supports the suggested guideline modifications relating to the use of trend monitoring. However, small changes to the guidelines will do very little to improve the situation. More substantive changes and new approaches are needed and have been described.

Response: NMFS agrees that it would be valuable to identify alternative

approaches for assessing stock status, apart from reliance on abundance survey data, in regions where regular surveys are cost-prohibitive. As noted in the guidelines, such approaches could include trend monitoring at index sites. However, developing guidelines for alternative assessment methods was not a focus of the GAMMS III workshop. NMFS will make efforts to consider how alternative sets of information could be used to aid its marine mammal stock assessments. See responses to Comment 3 and Comment 4.

Comment 50: Based on the statutory mandate to use the PBR formula, NMFS should prioritize gathering data for any stocks with insufficient information to calculate levels of abundance, trends, or mortality. NMFS should not consider approaches other than those that are mandated and should provide admonition that stocks should not automatically be determined to be non-strategic in the absence of information. Absence of data on the degree of impact to stocks is not the same as data on the absence of impacts to stocks.

Response: NMFS does prioritize its data collection based upon what it perceives to be the most critical information gaps. NMFS does not make the default assumption that a stock is strategic or non-strategic until demonstrated otherwise. See response to Comment 20.

Comment 51: If a significant data shortage makes it difficult to identify unit stocks, then NMFS should make it a high priority to remedy this uncertainty that seems crucial to determine ''population status.'' What has NMFS done to improve ''best available science'' on marine mammal abundance and stock structure?

Response: NMFS agrees that it is a high priority to improve the identification of unit stocks. Consistent with this, the GAMMS III workshop participants recommended a national workshop be held to review and summarize information that is relevant to population structure. NMFS convened such a workshop and has begun developing an internal procedure for identifying and prioritizing stocks in need of examination for potential revisions that would complement and be integrated into the stock delineation workshop outputs and the existing SAR process.

Comment 52: Given that the MMPA provides significant latitude in data sources for affected species and to the extent that ''anecdotal information'' and ''unpublished information'' are used, ''trend monitoring'' information from the fishermen who are out there every day should be used in stock assessments.

Response: Various sources of information could be used to estimate trends as long as the information is credible and compatible with existing statistical or modeling frameworks.

Comments on Topic 8: Characterizing Uncertainty

Comment 53: The Commission recommends that NMFS include all relevant sources or measures of uncertainty in stock assessment documents. Such indicators of uncertainty are essential for readers to form reliable conclusions regarding the status of the affected stocks and the factors affecting them.

Response: NMFS agrees that information on key sources of uncertainty should be made explicit in the Reports, and this has been added to the revised guidelines.

Comment 54: The Pacific SRG has strived over the years to make the SARs models of conciseness, and the proposed guidelines could reverse these efforts. SARs should be summaries of significant results and conclusions and not lengthy discussions including detailed descriptions of methods and repetitive caveats. The recommendation to include statements regarding uncertainty about parameters affecting PBR has been made by the Pacific SRG previously, which envisioned a brief separate ''Uncertainties'' section summarizing significant sources of uncertainty in the stock assessment. Lengthy discussions of uncertainty embedded in each SAR section reduce clarity and readability. Additions such as points of contact could be placed in an appendix to each set of SARs, but not be placed in each individual SAR.

Response: NMFS agrees that discussions of uncertainty should be added in a way that will not detract from the clarity and readability of the stock assessment reports and will not add appreciably to the length of those reports. The workshop participants' recommended addition of providing a point of contact has not been incorporated.

Comment 55: The Alaska SRG supports changes to guidelines that would help ensure that SARs provide adequate evaluations of uncertainty. We recommend a 'report card' format as suggested by workshop attendees that will likely be more user-friendly and promote consistency between regional SARs. Additionally, this format would be more concise than the text additions recommended in the GAMMS III proposed guidelines. This report card could include the proportion of fisheries monitored within the last five years that might be interacting with strategic stocks.

Response: NMFS agrees that quantitative criteria should be used to evaluate the uncertainty in marine mammal stock assessment reports and that a ''report card'' may be a good format for presenting this information. The quantitative criteria and format for this has not yet been finalized and is not specified in the revised guidelines. The workshop participants also saw merit to the report card, but there was general agreement that such information would be better conveyed as a periodic publication, such as in a NOAA Technical Memorandum, which could be considered by the SRGs.

Comment 56: The Alaska SRG supports including a characterization of uncertainty in the Status of Stocks section, and recommends that it be described as ''reliable,'' ''moderately reliable,'' or ''unreliable'' as a clear way to characterize the overall utility of the status determination. We also support the suggestion that an overall assessment of the quality of SARs be conducted periodically and reported as Tech Memos, but not as a substitute for the ''report cards'' in the individual SARs.

Response: Uncertainty comes in many gradations, and the method of determining PBR for human-caused mortality and serious injury was specifically designed to be effective at achieving management objectives in the face of many sources and levels of uncertainty. Furthermore, the revised guidelines recommend that the most prevalent sources of uncertainty in determining stock status and PBR levels be identified so that future research can be better directed at reducing these sources of uncertainty.

Comments on Topic 9: Expanding SARs To Include Non-Serious Injury and Disturbance

Comment 57: The Commission recommends that NMFS require sections in stock assessment reports that identify and characterize non-lethal factors that may affect population status.

Response: Section 117(a)(3) requires NMFS, in consultation with the appropriate regional scientific review group, to include other factors that might be causing a decline or impeding recovery of a strategic stock, including effects on marine mammal habitat and prey. While inclusion of non-lethal factors may be a useful qualitative approach, such factors cannot be compared to PBR to assess population status. Furthermore, other environmental documents such as

environmental assessments or impact statements required under the National Environmental Policy Act would contain that information, where known. Consistent with SRG recommendations, NMFS is trying to keep the SARs concise.

Comment 58: NMFS should revise the guidelines to delete any suggestion that a mere ''disturbance'' or ''non-serious injury'' is sufficient to be included in SARs. SARs should only include events—in particular commercial fishing events—which cause mortality or serious injury, or which can be shown to cause the decline or impede the recovery of a strategic stock. This has been NMFS' position in the past, it is correct, and it should not be changed.

Response: The MMPA requires SARs to include an estimate of all sources of human-caused mortality and serious injury, not just an estimate of commercial fisheries mortality. See response to Comment 57.

Comment 59: The Alaska SRG agrees that SARs should include the annual levels of mortality and serious injury reported through take authorizations and research permits in the ''Other Mortality'' section.

Response: NMFS acknowledges this and is finalizing this text within the revised guidelines under the Annual Human-caused Mortality and Serious Injury section.

Comment 60: The MMPA allows for SAR comments on non-lethal factors affecting recovery for strategic stocks, and it seems reasonable that SARs for non-strategic stocks should also evaluate such factors. However, because there is a high degree of uncertainty regarding population-level effects of non-lethal injury and disturbance, it is inappropriate to include estimates of those takes in the SARs unless there is evidence they are affecting stock recovery. Disturbance and non-serious injury do not constitute ''Potential Biological Removal.'' While it may be useful for NMFS permit users or others to compare their potential for disturbance/injury to a stock's PBR, this falls outside the intent of the MMPA-mandated PBR process for managing interactions with commercial fisheries.

Response: The revised GAMMS specify that SARs contain information on other factors that may be causing a decline or impeding recovery strategic stocks, which we have interpreted as including non-lethal effects. As discussed in response to Comment 9, we would report on all activities found to be having a detrimental effect on a stock or its habitat. Within the SARs, PBR is only compared to takes that are determined to be serious injuries or mortalities.

Comment 61: The guidelines should require a ''Habitat Concerns'' section in all new stock assessments. If there are no known habitat issues, this should be stated.

Response: The previous (2005) guidelines direct that if substantial issues regarding the habitat of the stock are important, a separate section titled ''Habitat Issues'' should be used. Specifically, ''If data exist that indicate a problem, they should be summarized and included in the Report. If there are no known habitat issues or other factors causing a decline or impeding recovery, this should be stated in the Status of the Stock section.'' This section of the guidelines was not changed in this revision.

Dated: February 26, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–04537 Filed 3–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Greater Atlantic Region Logbook Family of Forms.

OMB Control Number: 0648–0212.

Form Number(s): NOAA 88–30 and 88–140.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 4,337.

Average Hours per Response: 5 minutes per Fishing Vessel Trip Report page (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring or red crab report to the IVR system; 2 minutes for a tilefish report to the Interactive Voice Response (IVR) system; 30 seconds for voluntary additional halibut information; and 5 minutes for each Days at Sea (DAS) credit request.

Burden Hours: 11,508.

Needs and Uses: This request is for an extension of a currently approved information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a vessel Interactive Voice Response (IVR) system, a Vessel Monitoring System (VMS) and vessel logbooks (VTR) to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. Participants in the herring, tilefish and red crab fisheries are also required to make weekly reports on their catch through IVR. In addition, vessels fishing under a days-at sea (DAS) management system can use the IVR system to request a DAS credit when they have canceled a trip for unforeseen circumstances. The information submitted is needed for the management of the fisheries.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly, monthly and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: February 25, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–04488 Filed 3–1–16; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the Alumni Outcomes Survey. The purpose of this survey is to better understand the long-term civic participation and career pathways of AmeriCorps alumni, the acquisition of career skills obtained through national service, and the utilization of the Education Awards and its effect on future post-secondary outcomes and career choices. The information collected is not required to be considered for or to obtain grant funding support from AmeriCorps.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 1, 2016.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Research and Evaluation; Attention Diana Epstein, Research and Evaluation Manager, 250 E St. SW., Suite 300, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Epstein, 202–606–7564, or by email at *depstein@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 4, 2015. This comment period ended February 2, 2016. No public comments were received from this Notice.

Background

Information will be collected from AmeriCorps alumni through an online survey that will be administered by a contractor on behalf of CNCS. The purpose of the survey is to better understand the long-term civic participation and career pathways of AmeriCorps alumni, the acquisition of career skills obtained through national service, and the utilization of the Education Award and its effect on future post-secondary outcomes and career choices. In addition, the agency is interested in exploring how member outcomes vary by life stage and by different types of service experiences. This survey is also an opportunity to determine the value of data collected from alumni who are at different stages following their service year for informing policy and program decisions.

Current Action

CNCS seeks to renew the current information request with revisions to the survey administered in 2015 (OMB #3045–0170). Information will be collected from a nationally representative sample of AmeriCorps alumni who served in AmeriCorps NCCC, AmeriCorps VISTA, and AmeriCorps State and National programs and completed their most recent term of service 2, 5, or 10 years ago. The information collection will otherwise be used in the same manner as the existing clearance OMB #3045–0170. CNCS also seeks to continue using the current clearance until the revised survey is approved by OMB. The current clearance is due to expire on April 30, 2018.

Type of Review: Renewal with revisions.

Agency: Corporation for National and Community Service.

Title: Alumni Outcomes Survey.

OMB Number: 3045–0170.

Agency Number: None.

Affected Public: AmeriCorps alumni.

Total Respondents: 3,150.

Frequency: One time.

Average Time per Response: Averages 22 minutes.

Estimated Total Burden Hours: 1,155.

The desired number of completed surveys is 3,150.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 25, 2016.

Mary Hyde.

Director, Office of Research and Evaluation.

[FR Doc. 2016–04556 Filed 3–1–16; 8:45 am]

BILLING CODE 6050–28–P

COUNCIL ON ENVIRONMENTAL QUALITY

Guiding Principles for Sustainable Federal Buildings

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability of *Guiding Principles for Sustainable Federal Buildings and Associated Instructions* and *Determining Compliance with the Guiding Principles for Sustainable Federal Buildings.*

SUMMARY: The Council on Environmental Quality (CEQ) has issued

updated guidance to Federal agencies outlining the key principles and primary requirements for the design, construction, modernization, and operation of new and existing sustainable Federal buildings, as required under Executive Order 13693 (''E.O. 13693''), ''Planning for Federal Sustainability in the Next Decade,'' signed by President Obama on March 19, 2015, 80 FR 15871, March 25, 2015. Section 4(f) of E.O. 13693 calls for ''revised Guiding Principles for both new and existing Federal buildings . . .'' to support Federal efforts to improve the environmental performance, climate resilience, and occupant health and wellness as well as increase the operating efficiency of Federal buildings.

DATES: The *Guiding Principles for Sustainable Federal Buildings and Associated Instructions* and *Determining Compliance with the Guiding Principles for Sustainable Federal Buildings* were issued on February 26, 2016.

ADDRESSES: The *Guiding Principles for Sustainable Federal Buildings and Associated Instructions* and *Determining Compliance with the Guiding Principles for Sustainable Federal Buildings,* are available at: *https://www.whitehouse.gov/administration/eop/ceq/sustainability.*

FOR FURTHER INFORMATION CONTACT: Amy Porter, Office of Federal Sustainability, at *aporter@ceq.eop.gov or (202) 395–5750.*

SUPPLEMENTARY INFORMATION: The guidance documents apply only to Federal agencies, operations, and programs. Agencies are expected to follow the Guiding Principles documents as part of their compliance with E.O. 13693.

Authority: E.O. 13693, 80 FR 15871.

Dated: February 26, 2016.

Christine Harada,

Federal Chief Sustainability Officer, Council on Environmental Quality.

[FR Doc. 2016–04563 Filed 3–1–16; 8:45 am]

BILLING CODE 3225–F6–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:15 a.m. to 1:45 p.m. on April 14, 2016.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Martin, the Alternate Designated Federal Officer for the subcommittee, in writing at G3/Department of Academic Operations, 315 Lovell Avenue, Carlisle, PA 17013, by email at *Michael.t.martin.civ@mail.mil,* or by telephone at (717) 961–2038.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan, annual year 16 curriculum, discuss Middle States and JPME II accreditation matters, and to address other administrative matters.

Proposed Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Michael Martin, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Michael Martin, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Michael Martin, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments submitted, the subcommittee Chairperson and the Alternate Designated Federal Official may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific

amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–04492 Filed 3–1–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Grant Exclusive License of the United States Patent No. 7,495,767 Issued February 24, 2009 Entitled: Digital Optical Method (DOM™) and System for Determining Opacity

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the following U.S. Patent Application 11/407,216 Filed April 20, 2006 to Byung J. Kim for use of the Digital Optical Method (DOM™) to quantify the opacity of fluids from digital photos.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, ATTN: CEERD–ZBT–O (Dr. Phoebe Lenear), 2902 Newmark Drive, Champaign, IL 61822–1076.

FOR FURTHER INFORMATION CONTACT: Dr. Phoebe Lenear, (217) 373–7234, FAX (217) 373–6740, email *Phoebe.E.Lenear@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This patent claims a method for obtaining an accurate quantitative measure of the opacity of a fluid, comprising: Providing at least one image receiving device incorporating at least one light sensitive device; calibrating said image receiving devices, wherein said calibrating yields at least one response curve for each said image receiving devices, said response curve empirically based on a ratio of received radiances; employing at least one said image receiving device for taking images of said fluid, said images to include at least one background associated with said fluid; providing at least one algorithm based on a ratio of received radiances, said algorithm implemented in software on a computer readable medium; providing at least one processor for at least running said software; receiving and processing said image on at least one said processor; and analyzing said image using said algorithm and said software to obtain said measure of opacity, wherein said opacity may be measured under various ambient conditions, including measurement at night, and wherein said opacity may be measured under various ambient conditions without operator interpretation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–04494 Filed 3–1–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy (SECNAV) Advisory Panel will meet to review the findings and recommendations from the Panel's Report on ways to establish a culture of innovation in the Department of the Navy.

DATES: The meeting will be held on Thursday, March 17, 2016, from 12:30 p.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Pentagon, in room 4B746, 1000 Navy Pentagon, Washington, DC 20350–1000.

Building Access: Public access is limited due to the Pentagon Security requirements. Any individual wishing to attend this meeting should contact Ms. Cassandra Dean at 703–697–2386 no later than March 3, 2016. Members of the public who do not have Pentagon access will be required to provide Name, Date of Birth and Social Security Number by March 3, 2016, in order to obtain visitor's clearance. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this meeting must enter through the Pentagon's Metro Entrance with sufficient time to complete security screening between 11:45 a.m. and 12:00 p.m., where they will need two forms of identification in order to receive a visitor badge and meet their escort. Members will then be escorted to Room 4B746 to attend the meeting of the Advisory Panel. Members of the public must remain with the designated escort at all times while in the Pentagon. After the meeting is adjourned, members of the public will be escorted back to the Pentagon Metro Entrance.

FOR FURTHER INFORMATION CONTACT: Commander Randall Biggs, SECNAV Advisory Panel, 1000 Navy Pentagon, Washington, DC 20350–1000, 703–695–3042.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

12:40 p.m.–1:00 p.m.—Panel Report
1:00 p.m.–1:10 p.m.—Public Comment (if time permits; written public comments are encouraged)
1:15 p.m.–1:30 p.m.—Panel Deliberations

Individuals or interested groups may submit written statements for consideration by the SECNAV Advisory Panel at any time or in response to the agenda of a schedule meeting. If the written statement is in response to the agenda mentioned in this meeting notice, it must be received at least 5 business days prior to the meeting in question. All written comments should be submitted via email to *SNAP@Navy.mil.* The DFO will review all timely submissions with the SECNAV Advisory Panel before the meeting that is the subject of this notice. All requests can be submitted to the Designated Federal Officer (DFO) at the address detailed below.

To contact the DFO write to: Deputy Under Secretary of the Navy, (Policy), Secretary of the Navy Advisory Panel, Captain Christopher Rodeman, Designated Federal Officer, 1000 Navy Pentagon, Washington, DC 20350–1000.

Dated: February 17, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–04554 Filed 3–1–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0137]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of Effectiveness of the Scholarships for Opportunity and Results (SOAR) Program

AGENCY: Institute of Education Sciences (IES), Department of Education (ED) .

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0137. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Meredith Bachman, 202–219–2014.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of Effectiveness of the Scholarships for Opportunity and Results (SOAR) Program.

OMB Control Number: 1850–0800.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals and Households; Private Sector.

Total Estimated Number of Annual Responses: 2,131.

Total Estimated Number of Annual Burden Hours: 866.

Abstract: The foundation of this evaluation is a randomized control trial (RCT) comparing outcomes of eligible applicants (students and their parents) assigned by lottery to receive or not receive a scholarship. This design is consistent with the requirement for a rigorous evaluation as well as the need to fairly allocate the scholarships if the program is oversubscribed. Because the law also specified other kinds of comparisons and analyses, the planned evaluation study includes both quantitative and qualitative components.

In order for the evaluation to have sufficient statistical power to detect policy relevant impacts, the sample consists of 1,771 eligible program applicants in spring 2012 (cohort 1; n = 536), spring 2013 (cohort 2; n = 718), and in spring 2014 (cohort 3, n = 517) (see Part B of this submission). OMB approval was already obtained for this evaluation and this ICR covers follow up data collection for cohorts 2 and 3.

Data Collection: Evaluation data will be collected for the three cohorts of program applicants from a variety of sources listed below. Each cohort will have baseline data as well as three years of follow up (post-lottery) data collection; 2013–2015 for cohort 1, 2014–2016 for cohort 2, and 2015–2017 for cohort 3. In addition to estimating program impact, we will use this experimental study to conducted research about interim outcomes.

Data sources include:

—Student assessments: The Terra Nova assessment will be administered each spring following the lotteries for 3 years (spring 2013–2015 for the 2012 cohort, spring 2014–2016 for the 2013 cohort, and spring 2015–2017 for the 2014 cohort). The follow up assessments will be administered in students' school and will provide the primary outcome measure for the impact evaluation.

School records Administrative records will be collected from DCPS, the District of Columbia Public Charter School Board and participating private schools in the fall of each year to obtain data on prior year attendance, persistence, disciplinary actions, and grades for members of the treatment and control groups.

—Parent surveys: Annual surveys of evaluation sample members' parents in each follow up year. These surveys will examine such issues as reasons for continued participation or withdrawal, involvement in school, satisfaction with school choices, and perceptions of school safety, leadership, and offerings. The survey will be mixed mode. (Web with phone or paper follow up).

Student surveys The surveys will be administered to each evaluation sample student in grades four and above in each of the follow up years at the same time (and place) as the student assessments.

—Principal surveys: Surveys to be administered to principals in the DC traditional public school, charter school, and private school systems in 2013–2017. Data from principals of students in the treatment and control groups will provide information about school organization and offerings for descriptive analyses of students' school environments and for use as mediators in the impact analysis. The web-based principal surveys will also be used to examine how aware public and private schools are of the DC Opportunity Scholarship Program and whether they are making any changes in response to it. whether they are making any changes in response to it.

Dated: February 26, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–04536 Filed 3–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native American-Serving Nontribal Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Native American-Serving Nontribal Institutions (NASNTI) Program.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382C.

DATES:

Applications Available: March 2, 2016.

Deadline for Transmittal of Applications: May 2, 2016.

Deadline for Intergovernmental Review: June 30, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The NASNTI Program provides grants to eligible institutions of higher education (IHEs) that have an undergraduate enrollment of at least 10 percent Native American students to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions' capacity to serve Native American and low-income individuals. The program is authorized under section 371 of the Higher Education Act of 1965, as amended.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. The absolute priority is from the Department's notice of final supplemental priorities and definitions for discretionary grant programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2014 (79 FR 73425). In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priorities are from 34 CFR 75.226.

Absolute Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority.

This priority is:

Supporting High-Need Students.

(a) Projects that are designed to improve:

(i) Academic outcomes;

(ii) Learning environments; or

(iii) Both,

(b) For one or more of the following groups of students:

(i) High-need students.

(ii) Students with disabilities.

(iii) English learners.

(iv) Disconnected youth or migrant youth.

(v) Low-skilled adults.

(vi) Students who are members of federally recognized Indian tribes.

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award one additional point to an application that meets Competitive Preference Priority 1 and three additional points to an application that meets Competitive Preference Priority 2. Applicants may address only one of the competitive preference priorities and must clearly indicate in their application which competitive preference priority they are addressing. Applicants that apply under Competitive Preference Priority 2, but whose applications do not meet the moderate evidence of effectiveness standard, may still be considered under Competitive Preference Priority 1 to determine whether their applications meet the evidence of promise standard.

These priorities are:

Competitive Preference Priority 1 (One additional point) Applications supported by evidence of effectiveness that meets the conditions set out in the definition of ''evidence of promise.''

Competitive Preference Priority 2 (Three additional points) Applications supported by evidence of effectiveness that meets the conditions set out in the definition of ''moderate evidence of effectiveness.''

Invitational Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that support activities that strengthen Native American language preservation and revitalization.

Definitions: The following definitions are from 34 CFR 77.1 and the Supplemental Priorities.

Disconnected youth means low-income individuals, ages 14–24, who are homeless, are in foster care, are involved in the justice system, or are not working or enrolled in (or at risk of dropping out of) an educational institution.

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger) favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

High-minority school means a school as that term is defined by a local educational agency (LEA), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The applicant must provide the definition(s) of high-minority schools used in its application.

High-need students means students who are at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units).

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Low-skilled adult means an adult with low literacy and numeracy skills.

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or

settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample. **Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph.

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: 20 U.S.C. 1067q(a)(7) and (b)(2)(D)(iv).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,635,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$350,000 per year.

Estimated Average Size of Awards: $325,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $350,000 for a single budget period of 12 months.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An IHE is eligible to receive funds under the NASNTI Program if it qualifies as a Native American-Serving Nontribal Institution. At the time of application, IHEs applying for funds under the NASNTI Program must have an enrollment of undergraduate students that is at least 10 percent Native American, as defined as follows:

Native American means a person who is of a tribe, people, or culture that is indigenous to the United States.

At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that 10 percent of the IHE's enrollment is Native American. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

To qualify as an eligible institution under the NASNTI Program, an institution must also be—

(a) Accredited or pre-accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Legally authorized by the State in which it is located to be a community college or to provide an educational program for which it awards a bachelor's degree; and

(c) Designated as an ''eligible institution'' by demonstrating that it has: (i) An enrollment of needy students as described in 34 CFR 607.3; and (ii) low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2016 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on November 19, 2015 (80 FR 72422). Only institutions that the Department determines are eligible, or which are granted a waiver, may apply for a grant in this program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless funds are used for an endowment.

IV. Application and Submission Information

1. *Address to Request Application Package:*

Don Crews, U.S. Department of Education, 400 Maryland Avenue SW., Room 7E311, Washington, DC 20202. You may contact these individuals at the following email addresses or telephone numbers: *Don.Crews@ed.gov;* (202) 453–7920.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

You can obtain an application via the Internet using the following address: *www.Grants.gov.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc)

by contacting one of the program contact people listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria, the absolute priority, the competitive preference priorities, and the invitational priority that reviewers use to evaluate your application. We have established mandatory page limits. You must limit the section of the application narrative that addresses:

- The selection criteria to no more than 50 pages.
- The absolute priority to no more than three pages.
- A competitive preference priority, to no more than three pages, if you address one.
- The invitational priority to no more than two pages, if you address it.

Accordingly, under no circumstances may the application narrative exceed 58 pages. Include a separate heading for each priority that you address.

For the purpose of determining compliance with the page limits, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margins.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limits.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the Application for Federal Assistance (SF 424); the Supplemental Information for SF 424 Form; the Budget Information Summary Form (ED Form 524) and Budget Narrative; and the assurances and certifications. The page limit also does not apply to the table of contents, the one-page abstract, the resumes, the bibliography, the letters of support, program profile, or the studies. If you include any attachments or appendices, these items will be counted as part of the application narrative for purposes of the page-limit requirement. You must include your complete response to the selection criteria and priorities in the application narrative.

We will reject your application if you exceed the page limits.

3. *Submission Dates and Times:*

Applications Available: March 2, 2016.

Deadline for Transmittal of Applications: May 2, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact one of the program contact people listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 30, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following

Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under the NASNTI Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the NASNTI Program, CFDA number 84.382C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NASNTI Program at *www.Grants.gov.* You must search for the downloadable application package for this program competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.382, not 84.382C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit

your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact one of the program contact people listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Don Crews, U.S. Department of Education, 400 Maryland Avenue SW., Room 7E311, Washington, DC 20202. FAX: (202) 205–0063.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382C) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382C) 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for project.* (Maximum 25 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers:

1. The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

2. The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (10 points)

3. The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

b. *Quality of the project design.* (Maximum 20 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

1. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

2. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

c. *Quality of project services.* (Maximum 10 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible

project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

1. The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (5 points)

2. The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (5 points)

d. *Quality of project personnel.* (Maximum 10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers:

1. The qualifications, including relevant training and experience, of the project director or principal investigator. (5 points)

2. The qualifications, including relevant training and experience, of key project personnel. (5 points)

e. *Adequacy of resources.* (Maximum 5 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

1. The extent to which the budget is adequate to support the proposed project. (3 points)

2. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

f. *Quality of the management plan.* (Maximum 15 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

2. The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (2.5 points)

3. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (2.5 points)

g. *Quality of the project evaluation.* (Maximum 15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

1. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

2. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

3. The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* Awards will be made in rank order according to the average score received from a panel of three readers.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Tie-breaker for Grants.* To resolve ties in the reader scores of applications for grants, the Department will award one additional point to an application from an IHE that has an endowment fund for which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction. In addition, to resolve ties in the reader scores of applications for grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction. We also will add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

a. Faculty development;

b. Funds and administrative management;

c. Development and improvement of academic programs;

d. Acquisition of equipment for use in strengthening management and academic programs;

e. Joint use of facilities; and

f. Student services.

For the purpose of these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2016, we will use 2013–2014 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the NASNTI Program:

a. The percentage change, over a five-year period, of the number of full-time, degree-seeking undergraduates enrolling at NASNTIs. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at four-year NASNTIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same NASNTI;

c. The percentage of first-time, full-time degree-seeking undergraduate students at two-year NASNTIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same NASNTI;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year NASNTIs who graduate within six years of enrollment; and

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year NASNTIs who graduate within three years of enrollment.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Don Crews, U.S. Department of Education, 400 Maryland Avenue SW., Room 7E311, Washington, DC 20202. You may contact this individual at the following email address or telephone number: *Don.Crews@ed.gov;* (202) 453–7920. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 26, 2016.

Lynn Mahaffie,

Deputy Assistant Secretary for Policy, Planning and Innovation Delegated the Duties of Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–04593 Filed 3–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Request for Information: Clean Energy Investment Center

AGENCY: Department of Energy (DOE).

ACTION: Request for Information (RFI).

SUMMARY: The U.S. Department of Energy's (DOE or the Department) Clean Energy Investment Center (CEIC), a component of the Office of Technology Transitions, is issuing this Request for Information (RFI) to gain public input on its efforts to expand and facilitate public access to the Department's resources and to mobilize investment in U.S. clean energy technology. The CEIC also is seeking information through this RFI to further define the scope and priorities of the services it provides to the general public, specifically to mission-driven investors, as well as the investment community more broadly. The information collected may be used for internal CEIC planning and decision-making to ensure that future activities maximize public benefit while advancing the Administration's goals for leading the world in building a competitive, clean energy economy; securing America's energy future; reducing carbon pollution; and creating domestic jobs.

DATES: Written comments and information are requested on or before March 31, 2016.

ADDRESSES: Comments must be submitted electronically to *CEIC@hq.doe.gov.* Responses must be provided as a Microsoft Word (.doc) or (.docx) attachment to the email with no more than 3 pages in length for each category section listed in the RFI. Only electronic responses will be accepted.

Response Guidance: Please identify your answers by responding to a specific question or topic if possible. Respondents may answer as many or as few questions as they wish.

The CEIC will not respond to individual submissions or publish a public compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be submitted electronically to Marcos Gonzales Harsha at *CEIC@hq.doe.gov or by* contacting the Department of Energy at 202–586–5000.

SUPPLEMENTARY INFORMATION:

Background: In February 2015, the White House launched the Clean Energy Investment Initiative to catalyze expanded private sector investment in climate change solutions, including innovative technologies with breakthrough potential to reduce carbon pollution. To support this initiative, the Department of Energy formally launched the DOE Clean Energy Investment Center (CEIC) in January 2016, with the mandate to make the Department's resources more readily available and understandable to the public and to create pathways that enable expanded access to the unique technical expertise and analytical capabilities within DOE's programs, sites, and 17 national laboratories located across the country. The CEIC's goal is to advance private, mission-oriented investment in clean energy technologies that address the present gap in U.S. clean tech investment. The CEIC is also charged with enhancing the availability of the Department's resources to investors and the public.

To advance this mission, DOE supports a variety of commercialization and deployment activities in partnership with its national laboratories, universities, businesses, and nonprofit organizations. Existing programs include the Loan Programs Office, Advanced Research Projects Agency-Energy, Small Business Vouchers, Small Business Innovation Research/Small Business Technology Transfer, Lab Corps, Gateway for Accelerated Innovation in Nuclear Technologies, and the Technology Commercialization Fund. For more information on existing programs, visit: *http://energy.gov/technologytransitions/us-department-energys-clean-energy-investment-center.*

However, recent investment trends are cause for some concern. According to Bloomberg New Energy Finance, global clean energy investment has grown significantly over the last 10 years but slowed and even plateaued starting in 2009. Meanwhile, early-stage cleantech investment (a primary driver of innovation) has steadily fallen in recent years. The constrained level of investment in clean energy in recent years represents a significant hurdle for commercialization and deployment of emerging technologies with game-changing potential. The CEIC's role is to enable domestic investment with global impact. This role can take many forms and the next section discusses strategic areas where the CEIC can contribute.

Fresh impetus for designing a robust CEIC arrived on December 12, 2015, when an historic climate agreement was adopted by 195 nations at the United Nations climate summit in Paris, France. The goals and principles framed in that agreement, as well as the accompanying ''intended nationally determined contributions'' that defined targets for emission reductions and clean energy investment for each participating nation, will only be achievable with substantial private capital investment. This fact was explicitly recognized through the announcement of a public-private Mission Innovation partnership, in which 20 nations announced their intent to double public clean energy research and development (R&D) spending over the next five years.

These announcements and commitments present a tremendous opportunity for forward-looking investors, and the CEIC is working to utilize DOE's considerable resources and expertise to support the investor community as it gathers information, develops investment principles and policies, and identifies clean energy technology investment opportunities. The questions posed in this RFI primarily address the specific services and tools the CEIC can develop to maximize value of DOE engagement with the investment community and support clean energy investment decision making by the public.

Purpose: The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders to assist the Office of Technology Transitions with further defining the scope and priorities of the services the CEIC will provide. This is solely a request for information. The CEIC is not accepting applications at this time.

Disclaimer and Important Notes: This RFI is not a Funding Opportunity Announcement (FOA) or request for proposals (RFP) for a procurement contract; therefore, the CEIC is not accepting applications or proposals at this time. The CEIC may develop programs in the future and solicit contracts based on or related to the content and responses to this RFI. However, CEIC may also elect not to incorporate responses into its program and tool design. There is no guarantee that an RFP or FOA will be issued as a result of this RFI. Responding to this RFI does not provide any advantage or disadvantage to potential applicants if the CEIC chooses to issue a FOA or solicit a contract related to the subject matter.

Any information obtained through this RFI is intended to be used by the government on a non-attribution basis for planning and strategy development. The CEIC will review and consider all responses as it formulates program strategies related to the subjects within this request. In accordance with Federal Acquisition Regulations, 48 CFR 15.201(e), responses to this notice are not offers and cannot be accepted by the government to form a binding contract. The CEIC will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. Responses to this RFI do not bind the CEIC to any further actions related to this topic.

Proprietary Information: Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, respondents must NOT include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. Responses must be submitted with the understanding that their contents may be publicly disclosed and, in the event of a public disclosure, DOE will NOT notify respondents or provide any opportunity to revise or redact submitted information.

Review by Federal and Non-Federal Personnel: Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The government may seek the advice of qualified non-federal personnel. The government may also use non-federal personnel to conduct routine, non-discretionary administrative activities. The respondents, by submitting their response(s), consent to DOE providing their response(s) to non-federal parties. Non-federal parties given access to responses must be subject to an appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Request for Information Categories and Questions:

Category 1: Information Access

Background/Context

The Department already has numerous programs designed to help U.S. energy innovation stakeholders cross the technological and financial ''valleys of death'' to bring new technology solutions to the market. However, there may be opportunities to expand public awareness of these

programs raise the profile of individual projects/companies with investors by providing information about existing awardees supported by DOE and, potentially, about unsuccessful applicants who agree to have their information shared.

This approach is reflective of other agencies that have relevant programs and connections to the clean energy investment space, including activities at the Departments of Agriculture and Transportation, the Environmental Protection Agency, the Overseas Private Investment Corporation and the Export-Import Bank. While the CEIC will not be in a position to represent the work of these organizations, the Center may still serve as a helpful conduit to non-DOE programs.

Information Requested

The following questions may guide, but should not restrict, responses:

1. What type of information would be most useful to investors and organizations serving investors (information on individual awardees, market analysis, DOE-funded project and patent listings, indication of project results and/or others)? Specificity is welcomed.

2. Would a single internet location that provides a searchable web-based interface containing information about active programs (and, potentially, awardees and applicants) be a high-value tool? Are there any examples of similar tools/databases that you consider to be useful? How would such a tool benefit the market in general? What elements would need to be included to ensure that this is a useful tool?

3. Are there any current DOE or other federal programs that help innovators bring technologies to market (financial or technical assistance)? If so, how and where do investors learn about it/them?

4. Is information on DOE open funding opportunity announcements, requests for proposals, and lists of awardees readily available and accessible in a useful format?

5. Currently, most DOE offices and programs have active Web sites. Are they useful to investors and provide necessary information?

Category 2: Technical Energy Expertise

Background/Context

DOE's national laboratory system maintains vital scientific and technological capabilities in support of U.S. national security, scientific discovery, and economic competitiveness. The laboratories offer unique opportunities for the private sector to engage in collaborative research and development, licensing agreements, user facilities, and to obtain technical assistance. The recent establishment of DOE's Office of Technology Transitions has heightened the Department's focus on improving coordination and effectiveness of the national laboratories in executing their technology transfer missions. As part of the suite of services that the CEIC may offer, the Department is considering development of an online portal that would connect public inquiries with relevant experts within DOE's programs and at its 17 national laboratories.

The technical expertise resident at the national labs is complemented by program knowledge within DOE program offices. The Department recently released the 2015 Quadrennial Technology Review, a study that examines the most promising research, development, demonstration, and deployment opportunities across energy technologies to effectively address the nation's energy needs, and the Department conducts ongoing reviews on the state of technologies.

Though the Department is not in a position to recommend specific investments to private investors, the experts at the Department's laboratories and programs are uniquely positioned to provide insight into the latest clean energy technology discoveries and emerging deployment trends.

Information Requested

The following questions may guide, but should not restrict, responses:

1. Is sufficient information available to investors about the clean energy technology landscape?

○ If not, what are key areas of research, analysis, or information sharing that would most contribute to better understanding the clean energy technology landscape and markets?

○ Are there any existing modes or channels of communication that the Department could use to reach a larger audience?

○ Would case studies about project/company development made possible through DOE funding be useful?

2. DOE undertakes market analysis and mapping of technology development pathways. However, are there other key areas of research and analysis that would lead to a better understanding of challenge areas, broad technical risk, and the current state of clean energy technologies that DOE could conduct?

3. How can the CEIC and the Department better match existing national laboratory resources and expertise with the needs of investors?

4. Are clean energy investors aware of the resources/expertise available at the national laboratories? Do investors know how to access the people and capabilities around the national laboratory complex? If so, do investors reach out for information and technical assistance?

5. Do investors view DOE program and national laboratory employees as subject matter experts? Have investors ever tried to obtain information directly from DOE or any of the 17 laboratories? If so, are there best practices or lessons learned that can be shared?

6. Would a searchable web-based interface that facilitates connections between investors and technical experts at DOE's programs and national laboratories be a high-value tool? Do investors have any examples of similar tools/databases that may be useful? If implemented correctly, could such a tool lead to more and/or improved clean energy investment deals? What questions remain that would need to be answered to determine the usefulness of the tool?

7. What publications/organizations/methods do investors currently consult or regard as possessing expertise in specialized information on clean energy technology? As applicable, please specify sources used for technical review, market review, etc.

Category 3: Stakeholder Engagement and Communications

Background/Context

Many organizations outside of the government are already working to provide information exchanges regarding clean energy technologies and partnering on shared objectives. However, the Department provides a powerful convening and communication forum for facilitated engagement between the government and the investment community. The joint public-private Mission Innovation announcement, during which 28 high-net-worth individuals from 10 countries announced their intent to commit billions of dollars to clean energy R&D through an initiative of the Breakthrough Energy Coalition, is an example of the importance of a direct public role in spurring activity. The CEIC is able to build on this convening ability, and events such as Innovation Interface sessions can be resources for sharing information about the Department's program offices. In this section, the CEIC is interested in learning more about where clean energy investors gather regionally and nationally, and how and where they prefer to receive information.

Information Requested

The following questions may guide, but should not restrict, responses:

1. Do clean energy investors see value in participating in a structured visit to DOE and/or any of its facilities/laboratories? What kind of information would be most useful to obtain/learn about during such a visit?

2. Are you aware of/do you represent any organization(s) in the clean energy field that would be able to provide useful information to the CEIC team? What events present the best opportunities for the CEIC to engage in valuable dialogue/interactions, inform the general public about the clean energy landscape, and/or connect with new or prospective investors? In which events, conferences, or settings would you like to see CEIC participation?

3. What kinds of communication channels are most useful/effective? What is the best way for investors and the public to receive information and updates?

4. Do investors obtain most of your information from academic articles, data aggregators, analytical and advisory firms, or other sources? Where do investors search for information pertaining to innovations, early stage research, or clean energy investment?

5. Are there any other successful federal or non-federal models for engagement and communication that should be adopted by the CEIC?

Category 4: Open

Background/Context

The CEIC recognizes that there may be tools and services other than those discussed in this RFI that may be useful to investors. This category serves as an open call for suggestions on how to effectively align the CEIC and its programs with the needs of its customers (the public, investors, and industry) and overarching Administration goals.

Information Requested

The following questions may guide, but should not restrict, responses:

1. What are the greatest concerns with investing in the clean energy technology space? What sort of information/assistance would provide greater comfort with this category?

2. In general, how can the CEIC (and the federal government more broadly) most effectively help to catalyze further clean energy investment? In particular, how can CEIC most effectively advance the following goals:

a. Unlock new sources of capital and foster more effective investment models to scale innovative clean energy companies;

b. Facilitate match-making between early-stage companies and potential investors and customers;

c. Support the development of innovative marketplaces for early-stage investment, including crowd-funding platforms;

d. Enhance activity and engagement with corporate investors/strategic investors, including utilities;

e. Catalyze the formation of long-term, patient capital funds for energy technology development;

f. Leverage philanthropic capital through program-related investments, mission-related investments, and other mechanisms;

g. Encourage more clean energy venture dollars focused on U.S.-based companies with high potential for domestic economic benefit; and

h. Leverage existing programs (*e.g.,* SBIR) to be of best use to the clean energy investment community.

3. Is there any other information, other approaches, or other data that would be useful to investors?

4. Are there any other tools that would be useful to investors or key stakeholders that were not discussed above?

5. What are the greatest challenges when it comes to investing in clean energy?

6. Is there any information about investment principles and/or investment policy statements as it pertains to clean energy investments that could be shared with other investors and the public?

7. What DOE (or other state/federal) finance and commercialization programs are available, and should anything about them be changed to enhance their utility?

Issued in Washington, DC, on February 25, 2016.

Sanjiv Malhotra,

Director, Clean Energy Investment Center.

[FR Doc. 2016–04625 Filed 3–1–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2015–0836; FRL–9943–12–Region 3]

Proposed Information Collection Request; Comment Request; Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food To Support EPA's Sustainable Food Management Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food to support EPA's Sustainable Food Management Programs'' (EPA ICR No. 2533.01, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new 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.

DATES: Comments must be submitted on or before May 2, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2015–0836 online using *www.regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 228221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Melissa Pennington, U.S. Environmental Protection Agency, Region 3, Mail Code 3LC40, 1650 Arch Street, Philadelphia, PA 19103; telephone number: 215–814–3372; fax number: 215–814–3114; email address: *pennington.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA's Office of Land and Emergency Management Sustainable Food Management (SFM) program is designed to advance sustainable food management practices throughout the United States by preventing and diverting wasted food from landfills. The focal point of the SFM program is the Food Recovery Challenge in which organizations pledge to improve their sustainable food management practices. The success of the SFM program efforts to divert wasted food from landfills requires sufficient capacity to process the diverted materials which includes composting and anaerobic digestion operations. In addition to increasing opportunity to process wasted food diverted from the municipal solid waste stream, anaerobic digesters achieve social, environmental and economic benefits, such as generation of renewable energy, reduction of methane emissions, and opportunities to improve soil health through the production of soil amendments. The SFM program supports these efforts by educating state and local governments and communities about the benefits of wasted food diversion. The SFM program also builds partnerships with state agencies and other strategic partners interested in developing organics recycling capacity and provides tools to assist organizations in developing anaerobic digestion (AD) projects.

This information collection consists of a request for data not currently available on AD facilities processing wasted food as well as a review and update of the existing SFM AD facility inventory. Correspondence will include a questionnaire through which respondents can provide new information on their AD projects and an update to the existing AD facility inventory, if appropriate. This will be the first time the SFM program has formally collected data for this inventory.

Form numbers: None.

Respondents/affected entities: State Liaisons, Industry Representatives, Project Owner/Operators, and Other Stakeholders (*e.g.* non-profits).

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 460 (total).

Frequency of response: Annually.

Total estimated burden: 231 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $16,972 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There are no changes in burden estimates as this is a new ICR.

Dated: February 18, 2016.

John A. Armstead,

Director, Land and Chemicals Division, EPA Region III.

[FR Doc. 2016–04603 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0099; FRL–9942–65]

Premanufacture Notice for a Certain New Chemical; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's extension of the review period for a premanufacture notice (PMN) P–14–0627 under the Toxic Substances Control Act (TSCA). Based on analysis, the Agency requires an extension of the review period to investigate further potential risk, examine regulatory options, and prepare the necessary documents, should regulatory action be required.

DATES: The review period is extended to May 25, 2016.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jeff Bauer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9042; email address: *Bauer.Jeff@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the chemical manufacturing company that submitted the PMN. This action may also be of interest to persons concerned about health, environmental, and/or economic aspects of this new chemical substance. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0099, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What chemical is subject to this notice?

On June 19, 2014, EPA received PMN number P–14–0627 for a new chemical substance, identified as Cyclic amide. The submitter claimed the company name, specific chemical identity, production volume, use information, process information, and other information to be CBI.

III. What action is the Agency taking?

The notice of receipt for this PMN was published in the **Federal Register** of September 16, 2014 (79 FR 55460) (FRL–9915–80). The running of the PMN review period was voluntarily suspended by the PMN submitter with EPA's agreement. The PMN review period has been resumed. As extended,

the review period for this PMN expires May 25, 2016.

IV. What is EPA's authority for taking this action?

Section 5(c) of TSCA and 40 CFR 720.75(c) authorizes EPA to extend, for good cause, the 90-day PMN review period for additional periods not to exceed in the aggregate 90 days. For this PMN, EPA finds that there is good cause to extend the review period. Based on analysis, EPA may need to regulate this new chemical substance and the Agency needs an extension of the review period to further investigate potential risk, examine regulatory options, and prepare the necessary documents, should regulatory action be required.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: February 25, 2016.

Greg Schweer,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–04597 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FDA–2015–N–3403; FRL–9943–08]

Modernizing the Regulatory System for Biotechnology Products; Notice of Second Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the auspices of the National Science and Technology Council, EPA, along with the Office of Science and Technology Policy (OSTP), the Food and Drug Administration (FDA), and the United States Department of Agriculture (USDA) are holding a second public meeting related to the memorandum entitled, ''Modernizing the Regulatory System for Biotechnology Products,'' issued by the Executive Office of the President (EOP) in July 2015. The purpose of the second public meeting is to illustrate current federal roles and responsibilities regarding biotechnology products. The docket, FDA–2015–N–3403, established by FDA prior to the first public meeting will continue to be used for this interagency effort.

DATES: The meeting will be held on March 9, 2016, from 9:30 a.m. to 1:00 p.m.

To request accommodation of a disability, please immediately contact the person listed under **FOR FURTHER INFORMATON CONTACT** to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the EPA Region 6 Office at 1445 Ross Avenue, Dallas, Texas 75202–2750.

FOR FURTHER INFORMATION CONTACT: For general questions about the meeting, contact Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.* For questions about the memorandum entitled, ''Modernizing the Regulatory System for Biotechnology Products,'' or related activities described in that memorandum, contact the National Science and Technology Council: Emerging Technologies Interagency Policy Coordination Committee, Office of Science and Technology Policy, Executive Office of the President, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. Washington, DC 20504, 202–456–4444, online: *https://www.whitehouse.gov/webform/contact-emerging-technologies-interagency-policy-coordinating-committee-national-science-and.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the auspices of the National Science and Technology Council, EPA, FDA, USDA and OSTP (collectively referred to as ''we'' in this **Federal Register** document), held a public meeting on October 30, 2015, to discuss the Executive Office of the President (EOP) memorandum entitled, ''Modernizing the Regulatory System for Biotechnology Products,'' that was issued in July 2015. The purpose of the October 2015 meeting was to inform the public about the activities described in the July 2015 memorandum; invite oral comments from interested parties; and provide information about how to submit written comments, data, or other information to the docket. The October meeting was the first of three public engagement sessions on this topic.

On February 1, 2016, we announced the dates and locations for the second and third public engagement sessions: (1) *https://wcms.epa.gov/pesticides/save-date-march-9-30-2016-public-meetings-updating-coordinated-framework-regulation;* (2) *http://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm463783.htm;* and (3) *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/sa_stakeholder_meetings/cf_meeting.*

The second public meeting will be held on March 9, 2016, from 9:30 a.m. to 1:00 p.m. at EPA's Region 6 Office in Dallas, Texas. The second public meeting will be used to illustrate current federal roles and responsibilities regarding biotechnology products. The final meeting agenda will be placed in the docket [FDA–2015–N–3403] as soon as it is available.

The third public meeting will be held on March 30, 2016, at the University of California's Davis Conference Center in Davis, California and information about that meeting, including an agenda and information regarding how to register will be placed in the docket and on the USDA Web site prior to the meeting.

II. How can I participate in the March 9th meeting?

To participate in person or by webinar via Adobe Connect, please register online at *http://www.epa.gov/regulation-biotechnology-under-tsca-and-fifra/modernizing-regulatory-system-biotechnology-products.*

Those registered will receive detailed instructions with their confirmations that explain how to access the meeting via webinar or in person.

III. Meeting Materials, Transcripts and Recorded Video

Any additional information and data submitted voluntarily to us will become part of the administrative record for this activity and will be accessible to the public in the docket [FDA–2015–N–3403] at *http://www.regulations.gov.* The transcript of the proceedings from the public meeting will become part of the administrative record for this activity and will also be included in the docket. Please be advised that as soon as a transcript is available, it will be accessible in the docket at *http://www.regulations.gov.*

Transcripts and meeting materials may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the FDA Division of Freedom of Information, 5630 Fishers Lane, Rm. 1035, Rockville, MD 20857. Additionally, we will live webcast and record the public meeting. Once the recorded video is available, it will be accessible on EPA's YouTube Channel.

Dated: February 24, 2016.

Mark A. Hartman,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–04583 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPAHQ–SFUND–2012–0104; FRL–9943–10–OLEM]

Proposed Information Collection Request; Comment Request; Brownfields Program—Accomplishment Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Brownfields Program—Accomplishment Reporting (Renewal)'' (EPA ICR No. 2104.06, OMB Control No. 2050–0192) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before May 2, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0104 online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kelly Gorini, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–1702; email address: *gorini.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) (''the Brownfields Amendments'') was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award cooperative agreements to states, tribes, local governments, and other eligible entities to assess and clean up brownfield sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, states, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; area-wide planning cooperative agreements to develop revitalization plans for brownfields; and environmental workforce and development job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, states and tribes can receive cooperative agreements to establish and enhance their response programs through the four elements and meet the public record requirements under the statute. Cooperative agreement recipients (''recipients'') have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 2 CFR part 1500 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with funded brownfields activities. EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

Form numbers: EPA ICR No. 2104.06, OMB Control No. 2050–0192.

Respondents/affected entities: State/local/tribal governments; Non-Profits.

Respondent's obligation to respond: Required to obtain or Retain Benefits (2 CFR part 1500).

Estimated number of respondents: 3,711.

Frequency of response: Bi-annual for subtitle C recipients; quarterly for subtitle A recipients.

Total estimated burden: 3,167 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $397,269 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change in the number of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: February 18, 2016.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2016–04615 Filed 3–1–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012174–001.

Title: Hoegh/Liberty Middle East Space Charter Agreement.

Parties: Hoegh Autoliners AS and Liberty Global Logistics LLC.

Filing Party: Brooke Shapiro, Esq., Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166.

Synopsis: The amendment adds Spain to the geographic scope of the Agreement.

Agreement No.: 012233–003.

Title: COSCON/CSCL/UASC/YMUK/CMA CGM/PIL Vessel Sharing and Slot Exchange Agreement—Asia and US/Canada West Coast Services.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party) (CSCL); United Arab Shipping Company (S.A.G.); Yang Ming (UK) LTD.; CMA CGM S.A.; Pacific International Lines (Pte) Ltd.; and COSCO Container Lines Company, Limited (COSCON).

Filing Party: Brett M. Esber, Blank Rome LLP, 600 New Hampshire Ave. NW., Washington, DC 20037.

Synopsis: The amendment adds COSCON as a party to the Agreement, and provides that upon the transfer by CSCL of its liner shipping business to COSCON, all of CSCL's rights and obligations under the Amendment Agreement will be assigned to COSCON and CSCL will be deemed to have withdrawn as a party to the Agreement.

Agreement No.: 012299–001.

Title: COSCON/CSCL/UASC/CMA CGM Vessel Sharing and Slot Exchange Agreement, Asia—U.S. West/East/Gulf Coasts.

Parties: China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping) (CSCL); United Arab Shipping Company S.A.G.; CMA CGM S.A.; and COSCO Container Lines Company, Limited (COSCON).

Filing Party: Brett M. Esber, Esq., Blank Rome, 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The amendment adds COSCON as a party to the Agreement, and provides that upon the transfer by CSCL of its liner shipping business to COSCON, all of CSCL's rights and obligations under the Amendment Agreement will be assigned to COSCON and CSCL will be deemed to have withdrawn as a party to the Agreement.

Agreement No.: 012326–001.

Title: COSCON/CSCL/HSD Slot Charter Agreement.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party) (CSCL); Hamburg Sud; and COSCO Container Lines Company, Limited (COSCON).

Filing Party: Brett M. Esber, Blank Rome LLP, 600 New Hampshire Ave. NW., Washington, DC 20037.

Synopsis: The amendment adds COSCON as a party to the Agreement, and provides that upon the transfer by CSCL of its liner shipping business to COSCON, all of CSCL's rights and obligations under the Amendment Agreement will be assigned to COSCON and CSCL will be deemed to have withdrawn as a party to the Agreement.

Agreement No.: 012328–001.

Title: COSCON/CSCL/CMA CGM/UASC/HSD Vessel Sharing Agreement.

Parties: China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping) (CSCL); United Arab Shipping Company S.A.G.; CMA CGM S.A.; Hamburg Sud; and COSCO Container Lines Company, Limited (COSCON).

Filing Party: Brett M. Esber, Esquire, Blank Rome LLP, 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The amendment adds COSCON as a party to the Agreement, and provides that upon the transfer by CSCL of its liner shipping business to COSCON, all of CSCL's rights and obligations under the Amendment Agreement will be assigned to COSCON and CSCL will be deemed to have withdrawn as a party to the Agreement.

Agreement No.: 012329–001.

Title: COSCON/CSCL/HSD Slot Exchange Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd. (Collectively, CSCL); Hamburg Sudamerikanische Dampfschifffahrts-Gesellschaft KG; COSCO Container Lines Company, Limited (COSCON).

Filing Party: Brett M. Esber, Esq., Blank Rome, 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The amendment adds COSCON as a party to the Agreement, and provides that upon the transfer by CSCL of its liner shipping business to COSCON, all of CSCL's rights and obligations under the Amendment Agreement will be assigned to COSCON and CSCL will be deemed to have withdrawn as a party to the Agreement.

Agreement No.: 012389–001.

Title: Grimaldi/Liberty Global Logistics LLC Space Charter Agreement.

Parties: Grimaldi Euromed S.P.A. and Liberty Global Logistics LLC.

Filing Parties: Brooke Shapiro, Esq., Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166.

Synopsis: The amendment would authorize the parties to charter space to/from one another in the trade between the U.S., Mexico and Canada on the one hand and Jordan on the other hand.

Agreement No.: 012392.

Title: K-Line/Liberty Global Logistics LLC Discussion Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; and Liberty Global Logistics LLC.

Filing Party: John P. Meade, Esq., General Counsel, K-Line America, Inc., 6199 Bethlehem Road, Preston, MD 21655.

Synopsis: The agreement would authorize the parties to discuss non-rate operational matters worldwide.

Agreement No.: 012393.

Title: CMA CGM/ELJSA Vessel Sharing Agreement Asia—U.S. West Coast.

Parties: Evergreen Line Joint Service Agreement and CMA CGM S.A.

Filing Party: Paul M. Keane, Esq., Cichanowicz, Callan, Keane & DeMay, LLP, 50 Main Street, Suite 1045, White Plains, NY 10606.

Synopsis: The Agreement authorizes the parties to cooperate and establish a new weekly service in the trade between ports on the U.S. West Coast and ports in China and Japan.

By Order of the Federal Maritime Commission.

Dated: February 26, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–04586 Filed 3–1–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

February 29, 2016.

TIME AND DATE: 10:00 a.m., Thursday, March 10, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *ICG Illinois, LLC,* Docket No. LAKE 2013–160 (Issues include whether the Judge erred in ruling that a violation of the requirement to maintain a refuge alternative was ''significant and substantial.'')

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–04650 Filed 2–29–16; 11:15 am]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069; Docket 2016–0053; Sequence 12]

Information Collection; Indirect Cost Rates

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Indirect Cost Rates.

DATES: Submit comments on or before May 2, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0069, Indirect Cost Rates, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0069, Indirect Cost Rates''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0069, Indirect Cost Rates'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0069, Indirect Cost Rates.

Instructions: Please submit comments only and cite Information Collection 9000–0069, Indirect Cost Rates, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Contract Policy Division, at 202–501–1448, or via email at *curtis.glover@gsa.gov*.

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Hours per Response: 2,188.

Total Burden Hours: 6,564,000.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: February 25, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–04485 Filed 3–1–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Childhood Obesity Research Demonstration 2.0, FOA DP 16–004, initial review.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on February 10, 2016, Volume 81, Number 27, pages 7123–7124. The meeting time and date should read as follows:

Time and Date: 10:00 a.m.–6:00 p.m., EDT, March 15, 2016 (Closed).

FOR FURTHER INFORMATION CONTACT: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *KVA5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–04591 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Times And Dates: 8:30 a.m.–5:00 p.m., April 13, 2016; 8:30 a.m.–12:00 p.m., April 14, 2016.

Place: CDC, 1600 Clifton Road NE., Tom Harkin Global Communications Center, Building 19, Auditorium B, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. This meeting will also be webcast, please see information below.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters For Discussion: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will include methods for improving the effectiveness/efficiency of CLIAC meetings; an overview of the CMS Advisory Panel on Clinical Diagnostic Laboratory Tests; laboratory interoperability including the Office of the National Coordinator for Health Information Technology (ONC) policies and engagement with clinical laboratories; update on the cytology workload project; update on laboratory biosafety in clinical laboratories; and future CLIAC topics.

Agenda items are subject to change as priorities dictate.

Webcast: The meeting will also be webcast. Persons interested in viewing the webcast can access information at: *http://cdclabtraining.adobeconnect.com/aprilcliac/*.

In-Person Attendance Online Registration Required: All people attending the CLIAC meeting in-person are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at: *http://www.cdc.gov/cliac/Meetings/MeetingDetails.aspx*#.

Register by scrolling down and clicking the ''Register for this Meeting'' button and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than April 7, 2016 for U.S. registrants and March 31, 2016 for international registrants.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments on agenda items whenever possible.

Oral Comments: In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and for public distribution. Written comments, one hard copy with original signature, should be provided to the contact person listed below, and will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC Web site on the day of the meeting for materials: *http://wwwn.cdc.gov/cliac/cliac_meeting_all_documents.aspx.*

Note: If using a mobile device to access the materials, please verify that the device's browser is able to download the files from the CDC's Web site before the meeting. Alternatively, the files can be downloaded to

a computer and then emailed to the portable device. An internet connection, power source, and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–04590 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) GH16–003, Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH)-Research in the conduct of research to assess, prevent, and mitigate public health threats of national and global importance.

Time and Date: 9:00 a.m.–1:00 p.m., EDT, March 23, 2016 (Closed)

Place: Teleconference

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH)-Research in the conduct of research to assess, prevent, and mitigate public health threats of national and global importance, GH16–003, initial review.''

Contact Person for More Information: Hylan Shoob, Scientific Review Officer, Center for Global Health (CGH) Science Office, CGH, CDC, 1600 Clifton Road NE., Mailstop D–69, Atlanta, Georgia 30033, Telephone: (404) 639–4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–04592 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review (SPR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

Notice of Cancellation: A notice was published in the **Federal Register** on February 4, 2016 Volume 81, Number 23, Page 6007, announcing an Audio Conference Call of the ABRWH–SPR on February 24, 2016. This meeting was canceled due to a lack of quorum for the meeting. Notice will be provided when the meeting is rescheduled in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Contact Person For More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov*.

This notice is published less than the required 15 days prior to the start of the announced meeting, in accordance with Section 102–3.150(b) of the GSA Final Rule (2001) that allows for exceptions to the meeting notification time requirement. Section 102–3.150(b) states the following: ''In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.''

In this case, the agency is giving less than 15 days' notice due to the inability to have quorum for the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–04587 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–16–0841]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and

clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Management Information System for Comprehensive Cancer Control Programs (OMB No. 0920–0841, exp. 3/31/2016)—Revision—National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

From 2007–2012, the Centers for Disease Control and Prevention (CDC) provided funding to all 50 states, the District of Columbia, seven tribes/tribal organizations, and seven territories/U.S. Pacific Island Jurisdictions through the National Cancer Prevention and Control Program (CDC Funding Opportunity Announcement [FOA] DP07–703). New five-year cooperative agreements were established in June 2012 under FOA DP12–1205 (''Cancer Prevention and Control Program for State, Territorial and Tribal Organizations''). From 2012–2015, a subset of 13 awardees received additional funding for demonstration programs to advance cancer control using policy, systems, and environmental change strategies.

Since 2010, cancer prevention and control (CPC) awardees have used an electronic management information system (MIS) to submit semi-annual progress reports to CDC (''Management Information System for Comprehensive Cancer Control Programs,'' OMB No. 0920–0841, exp. 3/31/2016). The progress reports satisfy federal reporting requirements and allow CDC to provide targeted technical assistance to awardees while monitoring their activities and progress. The MIS also provides CDC with the capacity to respond in a timely manner to requests for information from the Department of Health and Human Services (HHS), Congress, and other sources.

CDC plans to request a revision of the current MIS-based reporting system. Minor modifications will be made to standardize and streamline data entry; for example, the open-ended text boxes previously used to develop objectives will be replaced with a drop-down menu of evidence-based indicators. The modifications will also make MIS entries and output more user-friendly for CDC staff who use the MIS to monitor and evaluate specific program outcomes. The search function will also be modified to search for these indicators.

All 65 DP12–1205 cancer prevention and control awardees will continue to submit semi-annual reports to CDC through the end of the cooperative agreement period. These reports include information about personnel, resources, finances, planning, action plans, and progress. Information will be submitted by the program director for the state, territory, or tribal cancer control program. Awardees will be responsible for verifying their current information and entering new objectives and progress. To minimize respondent burden, information that has not changed does not need to be re-entered into the MIS. The estimated burden for ongoing system maintenance and semi-annual reporting is being reduced from three hours per response to two hours per response.

CDC anticipates that DP12–1205 will be succeeded in 2017 by a new FOA based on similar objectives and a comparable monitoring and evaluation plan. The burden table includes an annualized, one-time allocation of two hours per response for initial population of the MIS with information that is specific to the new FOA. Due to annualization, this activity is represented in the table as 22 awardees instead of 65 awardees.

CDC is considering a change in the frequency of progress reporting, effective with the new FOA. Routine progress reporting is likely to occur once per year instead of twice per year, however, this decision has not been finalized. Therefore, to avoid under-estimating total annualized burden, the burden table has been constructed to account for semi-annual reporting throughout the 3-year clearance period. If a decision is made to change the frequency of reporting, CDC will process a Change Request or Revision Request, as needed, to adjust (reduce) total estimated annualized burden.

OMB approval will be requested for three years. The total estimated annualized burden for this reporting period will decrease due to a reduction in the estimated burden per response for semi-annual reporting; a reduction in the estimated burden per response for populating the MIS with information specific to the new FOA; and discontinuation of semi-annual reporting for demonstration of program activities.

Awardees are required to submit the requested information to CDC as a condition of funding. CDC will use the information submitted by awardees to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate progress made in achieving program-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness. All information will be collected electronically. There are no costs to respondents other than their time. The total estimated annualized burden hours are 304.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Program Director for State-, Tribal-, or Territorial-based Cancer Prevention and Control Program.	Data Elements for All CPC Programs: Semi-annual Reporting.	65	2	2
	Data Elements for All CPC Programs: Initial MIS Population for New FOA.	22	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–04570 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following teleconference meeting of the aforementioned committee:

Time And Date: 3:00 p.m.–5:00 p.m., March 21, 2016.

Status: Open to the public, limited only by the conference lines available; the toll free dial-in number is 1–888–390–3409 with a passcode of 7621651.

Purpose: The Secretary, Department of Health and Human Services HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matter for Discussion: The agenda item for the BSC Meeting will include a discussion on ''NCEH/ATSDR Support for the Public Health Emergency in Flint, Michigan''.

Agenda item is subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: The public comment period is scheduled from 4:15 p.m. until 4:30 p.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; Telephone 770/488–0575 or 770/488–0755, Fax: 770/488–3377; Email: *smalcom@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–04588 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 10:00 a.m.–5:30 p.m., EDT, April 11, 2016, 8:30 a.m.–3:30 p.m., EDT, April 12, 2016.

Place: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 90 people. Public participants should pre-register for the meeting as described below.

Members of the public that wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EDT) on Tuesday, March 29, 2016:

- Full Name.
- Organizational Affiliation.
- Complete Mailing Address.
- Citizenship.
- Phone Number or Email Address.

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters For Discussion: Day one of the meeting will cover briefings and BSC deliberation on the following topics: Interval updates from OPHPR Divisions and Offices; updates on OPHPR'S policy agenda and Impact Measurement Initiative; medical countermeasures-related activities update; Zika response; and BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Day two of the meeting will cover briefings and BSC deliberation on the following topics: Global Health Security Agenda; risk communication; Laboratory Response Network—Biological and Chemical; and updates on the National Health Security Preparedness Index (NHSPI) and CoPE-Well, a community resilience index.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7450; Facsimile: (404)639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the

Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–04589 Filed 3–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Child Welfare Capacity Building Collaborative.

OMB No.: New Collection.

Description: The Evaluation of the Child Welfare Capacity Building Collaborative is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The Capacity Building Collaborative includes three centers (Center for States, Center for Tribes, Center for Courts) funded by the Children's Bureau to provide national child welfare expertise and evidence-informed training and technical assistance services to State, Tribal and Territorial public child welfare agencies and Court Improvement Programs (CIP). The Centers offer a wide array of services including, but not limited to: Web-based content and resources, product development and dissemination, self-directed and group-based training, virtual learning and peer networking events, and tailored consultation and coaching. During the project period the Centers' services will be evaluated by both Center-specific evaluations and a Cross-Center Evaluation. The Center-specific evaluations are designed to collect data on Center-specific processes and outcomes. The Cross-Center Evaluation is designed to respond to a set of cross-cutting evaluation questions posed by the Children's Bureau. The Cross-Center Evaluation will examine: The extent to which key partners across and within the Centers are collaborating; whether the capacity building service interventions offered by the Centers are evaluable; the degree to which Centers follow common protocols; whether service interventions are delivered or performed as designed; how satisfied recipients are with the services received; how effective the service interventions were; which service approaches were most effective and under what conditions; and the costs of services.

The Cross-Center Evaluation is utilizing a longitudinal mixed methods approach to evaluate the Centers' services as they develop and mature over the course of the study period. Multiple data collection strategies will be used to efficiently capture quantitative and qualitative data to enable analyses that address each evaluation question. Proposed Cross-Center Evaluation data sources for this effort include (1) satisfaction surveys to assess recipients' satisfaction with services, such as the Learning Experiences Satisfaction Survey; (2) a leadership interview, administered to all State child welfare directors, Tribal child welfare directors, and CIP coordinators that are receiving services from the Centers; and (3) a collaboration survey, an annual web-based survey administered to the directors and staff of the three Centers. Center-specific data sources for this effort include (1) assessment tools such as the Tribal Organizational Assessment Caseworker Interview; and (2) service-specific feedback forms, such as the Center for States Intensive Projects instrument and the Center for Courts CQI Workshops instrument.

Respondents: Respondents of data collection instruments will include (1) child welfare and judicial professionals that use the Centers' Web pages, products, and online courses, that participate in virtual or in-person trainings or peer events, and that receive brief or intensive tailored services from the Centers; (2) State child welfare directors, Tribal child welfare directors, and CIP coordinators that are receiving services from the Centers; and (3) the directors and staff of the three Capacity Building Centers. The proposed data collection will span four years.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Webpages and Products Satisfaction Survey	1,560	1	.08	125
Learning Experiences Satisfaction Survey [1]	625	1	.33	206
Learning Experiences Satisfaction Survey [2]	900	1	.08	72
Webinars, Events, and In-Person Meetings Satisfaction Survey	5,333	1	.08	427
Assessment & Capacity Building Plan Satisfaction Survey	450	1	.066	30
Center for Tribes Contact Form	50	1	.05	3
Center for Tribes Demographic Survey	20	1	1.75	35
Tribal Organizational Assessment Caseworker Interview	20	1	1.25	25
Tribal Organizational Assessment Community Provider Interview	16	1	1.25	20
Tribal Organizational Assessment Community Member/Elder Interview	12	1	1.0	12
Tribal Organizational Assessment Family Interview	14	1	1.0	14
Center for States Information and Referral Survey	12	1	.05	1
Center for States Intensive Projects Survey	330	2	.33	218
Center for States Constituency Groups Surveys	400	2	.33	264
Center for States Brief Tailored Services Survey	125	1	.33	42
CIP Annual Meeting Survey	200	1	.13	26
Center for Courts CQI Workshops	48	1	.17	8
Leadership Interview—States and Territories	13	2	1	26
Leadership Interview—CIPs	13	2	1	26
Leadership Interview—Tribes	8	2	1.25	20
Leadership Interview Part II—Tribes	8	2	.67	11
Annual Collaboration Survey	230	1	.36	83

[1] For Learning Experiences that consist of a single event (e.g. on-line session or in-person training).

[2] For more intensive Learning Experiences that require administration of multiple surveys over a series of events, modules, or units.

Estimated Total Annual Burden Hours: 1,694.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–04582 Filed 3–1–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0538]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animation in Direct-to-Consumer Advertising

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled ''Animation in Direct-to-Consumer Advertising.'' This study will examine how animation affects the comprehension of direct-to-consumer (DTC) television advertisements for prescription drugs.

DATES: Submit either electronic or written comments on the collection of information by May 2, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–0538 for ''Animation in Direct-to-Consumer Advertising.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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 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.

Animation in Direct-to-Consumer Advertising—(OMB Control Number 0910—NEW)

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Advertisers use many techniques to increase consumer interest in their ads, including the use of animated spokes-characters. These characters may be fictional or nonfictional and human or non-human (Ref. 1). Despite variations in form, animated characters are often used to grab attention, increase ad memorability, and enhance persuasion to ultimately drive behavior (Refs. 2, 3, and 4). Although animated characters have long been used for low-involvement products (*e.g.,* food products), animation has made its way into direct-to-consumer prescription drug advertising. However, to our knowledge, no studies have comprehensively examined how animation affects consumers' benefit and risk perceptions in drug ads, how various animation strategies (*e.g.,* symbolizing the disease vs. the benefit) influence these perceptions, and whether these effects are generalizable across different patient populations.

Animation in Drug Ads. Animation is used in prescription drug ads in a variety of ways. Perhaps the simplest way is the use of rotoscoped animation, which involves tracing live-action images frame-by-frame to create animated characters. Abilify has used this technique in advertisements (Ref. 5). In this instance, the animated character was not central to the informational content of the ad; instead, the animation appeared to be a visual technique to attract attention. Whether a drug ad with a rotoscoped human results in greater comprehension of product benefit and risk information than an ad with a human actor is unclear. The few studies that have examined this technique in drug ads have found that animated human characters either had no effect on perceived product risk (Ref. 6) or led to poorer recognition of drug side effects (Ref. 5).

Animation also has been used in drug ads to symbolize the disease (*e.g.,* Imitrex and Lamisil ads), the sufferer (*e.g.,* Mybetriq and Zoloft), the benefit (*e.g.,* Rozerem), the mode of administration (*e.g.,* Fluzone), and the mechanism of action (*e.g.,* Lunesta). Drug companies may use a personified non-human character to illustrate, in a visually memorable way, the medical condition or drug attributes. Using secondary data from copy-testing studies, Pashupati found that drug ads featuring animated characters led to much stronger brand recall and brand association scores (Ref. 7); however, the other elements of these studies (*e.g.,* ad characteristics, presence of control group) are unclear.

Animated characters may provide marketers with a way to explain product benefits in an engaging and even humorous manner. Thus, the majority of research on animated characters in advertising focuses on outcomes such as product evaluations (Ref. 8), emotional responses (Refs. 1, 9, and 10), brand attitudes (Ref. 11), and perceived product value (Ref. 12). The extent to which emotional responses can be fostered by animated characters is especially relevant to this study, as the positive effects these animations induce might transfer to the brands being advertised. It is also possible that animated characters may lead to lower perceived risk by minimizing or camouflaging side effects (Ref. 13).

Animation and Message Communication. Personifying animated characters may interfere with message communication. Although personification may increase involvement with the characters in the ad (*i.e.,* perceived as engaging and likeable), it may not increase involvement with the message itself (*e.g.,* risk and benefit information). Whether personified characters lead to reduced comprehension of risk and benefit information in drug ads is an important and unanswered question. Based on a theory called the limited capacity model of mediated message processing (Ref. 14), advertising content that is engaging, relevant, and maximizes audio/visual redundancy should improve learning and memory (Ref. 15). However, others argue that the entertainment aspects can distract from learning key information and may lead to message complexity that interferes with message communication (Ref. 16).

It is important to examine whether animation in drug ads inflates efficacy perceptions, minimizes risk, or otherwise hinders comprehension of drug risks and benefits. To investigate these issues, we will conduct a two-part experimental study to examine how: (1) Type of animation and (2) non-human personification in drug ads influence consumer comprehension, processing, and perception of risk and benefit information. Understanding how issues of animation and personification affect perceptions of both risks and benefits can inform FDA regarding how prescription drug risk and benefit information is processed. These strategies will be examined across two different medical conditions to see if the findings are consistent across patient populations and medications with different levels of risk.

General Research Questions

1. How does consumer processing of a DTC prescription drug ad differ depending on whether the ad is live-action, rotoscoped, or animated?

2. Does consumer processing differ depending on whether the sufferer, the disease, or the benefit is the focus of the animation?

Design

To test these research questions, we will conduct two experiments. Both experiments will be examined in two different medical conditions: chronic dry eye, and psoriasis. The mock drugs we will create for these conditions mimic currently available medications and were chosen for their variance in serious side effects, *i.e.,* medications for psoriasis have very long, serious lists of risks and side effects, whereas chronic dry eye medications have relatively few risks and side effects.

The first experiment will examine whether animation itself influences consumer processing, defined as consumer recall of risks and benefits, perceptions of risks and benefits, and attitudes and emotional responses to the ad, the brand, the product, and the character (table 1). We will examine two different types of animation in addition

to a control ad which will be shot with live actors: An ''in-between'' animation technique, rotoscoping, in which live scenes are drawn to look animated, and full animation with nonhuman characters. The live action and rotoscoped ad will be identical except for the rotoscope treatment. The animated ad will follow the theme and message as closely as possible within the limitations of animation itself. The benefits and risks of the product will be identical, although the ad's storyline may vary somewhat to account for a nonhuman protagonist.

TABLE 1—EXPERIMENT 1 ANIMATION DESIGN

[Type of Animation]

Medical condition	Non-human sufferer	Rotoscoped human sufferer	Human sufferer
Chronic Dry Eye	•	•	•
Psoriasis	•	•	•

The second experiment will examine whether the object of the animation influences consumer processing of the ad (table 2), defined as consumer recall of risks and benefits, perceptions of risks and benefits, and attitudes and emotional responses to the ad, the brand, the product, and the character. The animation will focus on the animated character who will personify either the sufferer of the medical condition, the disease itself, or the benefit from the drug. In this study, all ads will contain the same kind of full animation and the general theme will be as similar as possible, accounting for the variations in focus of character. The experiments will be conducted concurrently, and the same participants in the nonhuman sufferer groups will be part of both.

TABLE 2—EXPERIMENT 2 PERSONIFICATION DESIGN

[Non-Human Personification]

Medical condition	Sufferer	Disease	Benefit
Chronic Dry Eye	•	•	•
Psoriasis	•	•	•

In both cases, a professional firm will create all ads such that they are indistinguishable from currently running DTC ads.

Pretesting will take place before the main study to evaluate the procedures and measures used in the main study. We will recruit adults who fall into one of four age brackets shown in table 1. We will exclude individuals who work in healthcare or marketing settings because their knowledge and experiences may not reflect those of the average consumer. A prior power analyses revealed that we need 300 participants for the pretest to obtain 80% power to detect a moderately small effect size. Each experiment will include 30 participants per condition for a total of 180 participants each, but 60 of those in the nonhuman sufferer conditions will overlap between the two experiments. We will need 1,500 unique participants for the main study to obtain 90% power to detect a moderately small effect size. There will be 150 participants per condition for a total of 900 participants in each experiment, with 300 participants in the overlapping nonhuman sufferer conditions.

In both studies, participants who have been diagnosed with either chronic dry eye or psoriasis will be recruited via opt-in Internet panel to watch one ad for a prescription drug that treats their medical condition. In study 1, participants will be randomly assigned to view either a live-action, rotoscoped, or fully animated ad. All themes in study 1 will focus on the main character as the sufferer of the condition. In study 2, participants will be randomly assigned to a personification condition: sufferer, disease, or benefit. All ads in study 2 will be fully animated. Participants will watch the ad twice and then answer an online survey with questions addressing recall of risks and benefits, perceptions of risks and benefits, and attitudes and emotional responses to the ad, the brand, the product, and the character. The questionnaire is available upon request. Participation is estimated to take approximately 25 minutes.

To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance (ANOVA).

With online surveys, several participants may be completing the survey at the time that the total target sample is reached. Those participants are allowed to complete the survey, which can result in the number of completes going slightly over the target number. Thus, our target number of completes is 1,500, so we have rounded up by an additional 150, or 10%, to allow for some overage.

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total Hours
Pretesting					
Number to complete the screener (assumes 50% eligible)	660	1	660	0.08 (5 min.)	53
Number of completes	330	1	330	.42 (25 min.)	139

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total Hours
Main Study					
Number to complete the screener (assumes 50% eligible)	3,300	1	3,300	0.08 (5 min.)	264
Number of completes	1,650	1	1,650	.42 (25 min.)	693
Total Hours	.....	.....	.....	.....	1,149

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

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Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04569 Filed 3–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0110]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On August 31, 2015, the Agency submitted a proposed collection of information entitled ''Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0437. The approval expires on December 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04576 Filed 3–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–1837]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Electronic User Fee Payment Request Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Electronic User Fee Payment Request Forms'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2015, the Agency submitted a proposed collection of information entitled ''Electronic User Fee Payment Request Forms'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0805. The approval expires on November 20, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: February 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04574 Filed 3–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA–2016–N–0628]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated With New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, we) 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 collection of information associated with new animal drug applications.

DATES: Submit either electronic or written comments on the collection of information by May 2, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–0628 for Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated with New Animal Drug Applications. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/*

regulatoryinformation/dockets/default.htm.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: 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.

Reporting Associated With New Animal Drug Applications (NADA)—21 CFR 514.1, 514.4, 514.5, 514.6, 514.8, 514.11, 558.5 (OMB Control Number 0910–0032)—Extension

Under Section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(b)(1)), any person may file a new animal drug application (NADA) seeking our approval to legally market a new animal drug. Section 512(b)(1) sets forth the information required to be submitted in a NADA. Sections 514.1, 514.4, 514.6, 514.8, and 514.11 of our regulations (21 CFR 514.1, 514.4, 514.6, 514.8, and 514.11) further specify the information that the NADA must contain. The application must include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. FDA Guidance #152 outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. We request that applicants utilize Form FDA 356V, as appropriate, to ensure efficient and accurate processing of information to support new animal drug approval.

Under section 512(b)(3) of the FD&C Act, any person intending to file a NADA or supplemental NADA or a request for an investigational exemption under section 512(j) of the FD&C Act is entitled to one or more conferences with us prior to making a submission. Section 514.5 of our regulations (21 CFR 514.5) describes the procedures for requesting, conducting, and documenting pre-submission conferences. We have found that these meetings have increased the efficiency of the drug development and drug review processes. We encourage sponsors to submit data for review at the most appropriate and productive times in the drug development process. Rather than submitting all data for review as part of a complete application, we have found that the submission of data supporting discrete technical sections during the investigational phase of the new animal drug is the most appropriate and productive. This ''phased review'' of data submissions has created efficiencies for both us and the animal pharmaceutical industry.

Finally, § 558.5(i) of our regulations (21 CFR 558.5(i)) describes the procedure for requesting a waiver of the labeling requirements of § 558.5(h) in the event that there is evidence to indicate that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed.

The reporting associated with NADAs and related submissions is necessary to ensure that new animal drugs are in compliance with section 512(b)(1) of the FD&C Act. We use the information collected to review the data, labeling and manufacturing controls and procedures to evaluate the safety and effectiveness of the proposed new animal drug.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.1 & 514.6; applications and amended applications	182	.05	9	212	1,908
514.1(b)(8) and 514.8(c)(1); evidence to establish safety and effectiveness	182	.10	19	90	1,710
514.5(b), (d), (f); requesting presubmission conferences	182	.49	89	50	4,450
514.8(b); manufacturing changes to an approved application	182	1.40	255	35	8,925
514.8(c)(1); labeling and other changes to an approved application	182	.05	10	71	710
514.8(c)(2) & (3); labeling and other changes to an approved application	182	.43	79	20	1,580
514.11; submission of data, studies and other information	182	.09	16	1	16
558.5(i); requirements for liquid medicated feed	182	.01	1	5	5
Form FDA 356V	182	2.92	531	5	2,655

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total			1009		21,959

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach to assessing antimicrobial concerns as part of the overall pre-approval safety evaluation.

Based on the number of sponsors subject to animal drug user fees, we estimate an average of 182 annual respondents during the 5 fiscal years, from October 1, 2010 through September 30, 2014, on which these estimates were made. We use this estimate consistently throughout the table and calculate the ''annual frequency per respondent'' by dividing the total annual responses by the total number of respondents. We base our estimates of the average burden per response on our experience with NADAs and related submissions.

Dated: February 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04575 Filed 3–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on January 1, 2016, through January 31, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to

paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: February 25, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Danielle Lipscomb Malone, Nashville, Tennessee, Court of Federal Claims No: 16–0002V
2. Phyllis Kostura, Allentown, Pennsylvania, Court of Federal Claims No: 16–0003V
3. Heather Choset, New York, New York, Court of Federal Claims No: 16–0004V
4. Joan Coston, Huntsville, Alabama, Court of Federal Claims No: 16–0005V
5. Hannah E. Boyle, Beaver Falls, Pennsylvania, Court of Federal Claims No: 16–0006V
6. Alexandra Toes, Phoenix, Arizona, Court of Federal Claims No: 16–0007V
7. Michelle Green, Carteret, New Jersey, Court of Federal Claims No: 16–0008V
8. Steven E. Pearson, Mankato, Minnesota, Court of Federal Claims No: 16–0009V
9. Ellen Denham, San Francisco, California, Court of Federal Claims No: 16–0010V
10. Kathleen Berrett on behalf of C.B., Boston, Massachusetts, Court of Federal Claims No: 16–0011V
11. Bradley Grow, Grants Pass, Oregon, Court of Federal Claims No: 16–0013V
12. Barbie Smoot, Virginia Beach, Virginia, Court of Federal Claims No: 16–0014V
13. Steven Blazer, Andover, Kansas, Court of Federal Claims No: 16–0015V
14. Arian Walton, Boise, Idaho, Court of Federal Claims No: 16–0016V
15. Amanda Roetto, Hubert, North Carolina, Court of Federal Claims No: 16–0018V
16. Frederick Root and Lisa Root on behalf of M.A.R., Castleton, New York, Court of Federal Claims No: 16–0020V
17. Eric Mateer, Sarasota, Florida, Court of Federal Claims No: 16–0022V
18. Sarah Volpi, Dallas, Texas, Court of Federal Claims No: 16–0023V
19. Carol Williams, Cottage Grove, Minnesota, Court of Federal Claims No: 16–0024V
20. Mark Chiasson, Thibodaux, Louisiana, Court of Federal Claims No: 16–0025V
21. Kelsey Johnson, Indianapolis, Indiana, Court of Federal Claims No: 16–0027V
22. Etta B. Mcintosh, Butler, Alabama, Court of Federal Claims No: 16–0029V
23. Jodi Weitzman, Bellmore, New York, Court of Federal Claims No: 16–0030V
24. Lucy Dipiazza, Sarasota, Florida, Court of Federal Claims No: 16–0031V
25. Mary Thompson, Seward, Nebraska, Court of Federal Claims No: 16–0032V
26. Gloria Guerrero, Beverly Hills, California, Court of Federal Claims No: 16–0033V
27. Catherine S. Jansen-Larson, Wyncote, Pennsylvania, Court of Federal Claims No: 16–0034V
28. Chrystal Derenzo on behalf of A.S., Boston, Massachusetts, Court of Federal Claims No: 16–0035V
29. A.P., Yountville, California, Court of Federal Claims No: 16–0036V
30. Amy Painter, Union Grove, Wisconsin, Court of Federal Claims No: 16–0037V
31. Tommie Cage, Saginaw, Michigan, Court of Federal Claims No: 16–0038V
32. Ann Stoneburner, Watkinsville, Georgia, Court of Federal Claims No: 16–0040V
33. Dominique Sartain, Westerville, Ohio, Court of Federal Claims No: 16–0041V
34. Ronald D. Klopfenstein, Seattle, Washington, Court of Federal Claims No: 16–0042V
35. Janice Clowe, Rye, New York, Court of Federal Claims No: 16–0046V
36. Peter Stokke, Maumelle, Arkansas, Court of Federal Claims No: 16–0048V
37. Diana Hagerman, Cooper City, Florida, Court of Federal Claims No: 16–0052V
38. Barbara Steele, La Jolla, California, Court of Federal Claims No: 16–0067V
39. Deitra Curry, Lake Orion, Michigan, Court of Federal Claims No: 16–0068V
40. Shirley Grossman, Spokane, Washington, Court of Federal Claims No: 16–0069V
41. Jamie Spivak on behalf of C.C., Great Neck, New York, Court of Federal Claims No: 16–0070V
42. Andrea Herlth on behalf of K.H., Middletown, Connecticut, Court of Federal Claims No: 16–0071V
43. Mandy Ward, Denver, Colorado, Court of Federal Claims No: 16–0072V
44. Maddison Verdecia, Little River, South Carolina, Court of Federal Claims No: 16–0073V
45. Rigo Guzman, Fresno, California, Court of Federal Claims No: 16–0074V
46. Dolores Olonovich, Gardenville, Pennsylvania, Court of Federal Claims No: 16–0079V
47. Carla Theeman, Valhalla, New York, Court of Federal Claims No: 16–0080V
48. Donald G. Jones, Jr., Wake Forest, North Carolina, Court of Federal Claims No: 16–0082V
49. Cheryl Zupon, West Mifflin, Pennsylvania, Court of Federal Claims No: 16–0084V
50. Scott Curtis, Marion, Indiana, Court of Federal Claims No: 16–0085V
51. Patricia Wilson, Marlette, Michigan, Court of Federal Claims No: 16–0086V
52. Maria Corulla on behalf of N.J., Staten Island, New York, Court of Federal Claims No: 16–0088V
53. Lynn Botsaris, Worcester, Massachusetts, Court of Federal Claims No: 16–0090V
54. Jason McDunn and Elysia McDunn on behalf of J.M., Eden Prairie, Minnesota, Court of Federal Claims No: 16–0091V
55. Timothy Neel, Windsor, Colorado, Court of Federal Claims No: 16–0096V
56. Jackie Evans, Marion, Illinois, Court of Federal Claims No: 16–0097V
57. Mati Franco, Beverly Hills, California, Court of Federal Claims No: 16–0099V
58. Cynthia Smith, Marinette, Wisconsin, Court of Federal Claims No: 16–0104V
59. Ganesh Upadhiai, Jamaica, New York, Court of Federal Claims No: 16–0111V
60. Julie Fisk, Fayetteville, Arkansas, Court of Federal Claims No: 16–0112V
61. Robert Garcia, Florence, Oregon, Court of Federal Claims No: 16–0114V
62. Amy Battles, Douglasville, Georgia, Court of Federal Claims No: 16–0115V
63. Sarah and Kristopher Ammons on behalf of D.A., Deceased, Knoxville, Tennessee, Court of Federal Claims No: 16–0116V
64. John Barczuk, Bonita, California, Court of Federal Claims No: 16–0117V
65. Nancy Stites, Huntington Beach, California, Court of Federal Claims No: 16–0118V
66. Raymond Roach on behalf of O.G.R., Tulsa, Oklahoma, Court of Federal Claims No: 16–0119V
67. Thomas Aurigemma, Sarasota, Florida, Court of Federal Claims No: 16–0120V
68. Michael L. Black, Avondale, Louisiana, Court of Federal Claims No: 16–0121V
69. Pamela O'Neal, Baraboo, Wisconsin, Court of Federal Claims No: 16–0122V
70. Jeff Holmes and Christal Holmes on behalf of Z.H., Vienna, Virginia, Court of Federal Claims No: 16–0123V
71. Paris Henderson, Boston, Massachusetts, Court of Federal Claims No: 16–0127V
72. Jeri Harvey, Jericho, Vermont, Court of Federal Claims No: 16–0128V
73. Joan Walton, Carson City, Nevada, Court of Federal Claims No: 16–0129V
74. Jean Meizel, Boston, Massachusetts, Court of Federal Claims No: 16–0130V
75. Dante Vasquez, Dallas, Texas, Court of Federal Claims No: 16–0133V
76. Sheila Adams, Richmond, Virginia, Court of Federal Claims No: 16–0135V
77. David Romero, Palo Alto, California, Court of Federal Claims No: 16–0136V
78. Paula Heilig on behalf of I.H., Ridgewood, New York, Court of Federal Claims No: 16–0140V
79. Carol Basko, Dresher, Pennsylvania, Court of Federal Claims No: 16–0142V
80. Donna Callaway, Chicago, Illinois, Court of Federal Claims No: 16–0144V

[FR Doc. 2016–04530 Filed 3–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 80 FR 81341–81344 dated December 29, 2015).

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA), HIV/AIDS Bureau (RV). Specifically, this notice: (1) Establishes the Division of Administrative Operations (RV21) within the Office of Operations and Management (RV2).

Chapter RV—HIV/AIDS Bureau

Section RV–10, Organization

Delete the organization for the Office of Operations and Management (RV2) in its entirety and replace with the following:

The Office of Operations and Management (RV2) is directed by the Director/Executive Officer who reports directly to the Associate Administrator, HIV/AIDS Bureau (RV). The Associate Administrator, HIV/AIDS Bureau reports directly to the Administrator, Health Resources and Services Administration. The Office of Operations and Management include the following components:

(1) Office of Operations and Management (RV2); and

(2) Division of Administrative Operations (RV21).

Section RV–20, Functions

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA), Office of Operations and Management (RV2). Specifically, this notice: (1) Establishes the Division of Administrative Operations (RV21).

Establish the functional statement for the Division of Administrative Operations (RV21) within the Office of Operations and Management (RV2).

Office of Operations and Management (RV2)

The Office of Operations and Management is directed by the Director/Executive Officer for the HIV/AIDS Bureau. The Office provides expertise guidance, leadership, and support in the areas of: Administration, fiscal operations, and contract administration. The Office of Operations and Management is responsible for providing direction on all budgetary, administrative, human resources, operations, facility management, contracting, organizational development, training and technological developments for the HIV/AIDS Bureau. The Office also oversees and coordinates all Bureau program integrity activities.

Division of Administrative Operations (RV21)

The Division of Administrative Operations is responsible for the administrative, human resources operations, facility management, contracting, organizational development/training functions and fiscal operations for the Bureau.

Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: February 17,2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–04529 Filed 3–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

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), the Health Resources and Services Administration (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 Information Collection Request must be received no later than May 2, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 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 Center Program Application Forms OMB No. 0915–0285—Revision

Abstract: Health Centers (those entities funded under Public Health Service Act section 330 and Health Center Program Look-Alikes) deliver comprehensive, high quality, cost-effective primary health care to patients regardless of their ability to pay. Health centers have become an essential primary care provider for America's most vulnerable populations. Health centers advance the preventive and primary medical/health care home model of coordinated, comprehensive, and patient-centered care; providing a wide range of medical, dental, behavioral, and social services. More than 1,300 health centers operate more than 9,000 service delivery sites that provide care in every state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin.

The Health Center Program is administered by HRSA's Bureau of Primary Health Care (BPHC). HRSA/BPHC uses the following application forms to oversee the Health Center Program.

Need and Proposed Use of the Information: BPHC Health Center Program-specific forms are critical to Health Center Program grant and non-grant award processes and for Health Center Program oversight. The purpose of these forms is to provide HRSA staff and objective review committee panels information essential for application evaluation, funding recommendation and approval, designation, and monitoring. These forms also provide HRSA staff with information essential for ensuring compliance with Health Center Program legislative and regulatory requirements. These application forms are used by existing health centers and other organizations to apply for various grant and non-grant opportunities, renew their grant or non-grant designation, and change their scope of project.

Most of the Health Center Program-specific forms do not require any changes with this revision. HRSA intends to revise some of the forms to streamline and clarify data already being requested (Form 1A, 1B, 2, 3, 5A, 5B, 6A, 8, Performance Measures, Project Work Plan) and change several form names (changing Form 3A to Look-Alike Budget Information, Form 10 to Emergency Preparedness Report, and Increased Demand for Services to Project Narrative). HRSA also intends to add six new forms. The Supplemental Information form and Summary Page will consolidate important application information that is usually found distributed throughout the application, including eligibility criteria and projected goals. These forms would require applicant confirmation that the information provided is accurate. Two

additional forms would include the Program Narrative Update, used to report progress for the renewal of Health Center Program awards, and the Substance Abuse Progress Report, used to report quarterly progress for award recipients of Substance Abuse Expansion supplemental funding. Two other forms, the Health Center Controlled Networks Work Plan and Progress Report, are forms that have been used in the past (under another OMB control number) to collect application baseline data and progress metrics for grantees.

Likely Respondents: Health Center Program award recipients and look-alikes, state and national technical assistance organizations, and other organizations seeking funding.

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 Information Collection Request 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
Form 1A: General Information Worksheet	1,700	1	1,700	1.0	1,700
Form 1B: BPHC Funding Request Summary	450	1	450	0.75	337.5
Form 1C: Documents on File	1,000	1	1,000	0.5	500
Form 2: Staffing Profile	1,700	1	1,700	1.0	1,700
Form 3: Income Analysis	1,900	1	1,900	2.5	4,750
Form 3A: FQHC Look-Alike Budget Information	100	1	100	1.0	100
Form 4: Community Characteristics	1,000	1	1,000	1.0	1,000
Form 5A: Services Provided	1,700	1	1,700	1.0	1,700
Form 5B: Service Sites	1,200	1	1,200	0.75	900
Form 5C: Other Activities/Locations	1,000	1	1,000	0.5	500
Form 6A: Current Board Member Characteristics	1,000	1	1,000	0.5	500
Form 6B: Request for Waiver of Governance Requirements	100	1	100	1.0	100
Form 8: Health Center Agreements	600	1	600	0.75	450
Form 9: Need for Assistance Worksheet	500	1	500	4.5	2,250
Form 10: Annual Emergency Preparedness Report	1,000	1	1,000	1.0	1,000
Form 12: Organization Contacts	1,000	1	1,000	0.5	500
Clinical Performance Measures	1,000	1	1,000	2	2,000
Financial Performance Measures	1,000	1	1,000	1	1,000
Implementation Plan	900	1	900	3.0	2,700
Project Work Plan	200	1	200	4.0	800
Proposal Cover Page	400	1	400	1.0	400
Project Cover Page	400	1	400	1.0	400
Equipment List	400	1	400	1.0	400
Other Requirements for Sites	400	1	400	0.5	200
Funding Sources	400	1	400	0.5	200
Project Qualification Criteria	400	1	400	1.0	400
O&E Supplemental	1,200	1	1,200	1.0	1,200
O&E Progress Report	1,200	1	1,200	1.0	1,200
Checklist for Adding a New Service Delivery Site	700	1	700	2.0	1,400
Checklist for Deleting Existing Service Delivery Site	700	1	700	2.0	1,400
Checklist for Adding New Service	700	1	700	2.0	1,400
Checklist for Deleting Existing Service	700	1	700	2.0	1,400
Checklist for Replacing Existing Service Delivery Site	700	1	700	2.0	1,400
Checklist for Adding a New Target Population	50	1	50	1.0	50
Increased Demand for Services	1,400	1	1,400	1	1,400
Supplemental Information (NEW)	2,000	1	2,000	0.5	1,000
Summary Page (NEW)	1,700	1	1,700	0.25	425
Program Narrative Update (NEW)	900	1	900	1	900
Substance Abuse Progress Report (NEW)	300	4	1,200	1	1,200
Health Center Controlled Networks Progress Report (NEW)	93	1	93	25	2,325
Health Center Controlled Networks Work Plan (NEW)	93	1	93	5	465
Total	33,886	.....	34,786	.....	43,652.5

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.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–04535 Filed 3–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NACNHSC).

Dates and Times: March 21–22, 2016, 8:30 a.m.–4:30 p.m. EST.

Place: U.S. Department of Health and Human Services, Health Resources and Services Administration, Conference Room #5E29, 5600 Fishers Lane, Rockville, Maryland 20857, In-Person Meeting and Conference Call Format.

Status: This advisory council meeting will be open to the public.

Purpose: The NACNHSC provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services and, by designation, the Administrator of the Health Resources and Services Administration, on a range of issues including identifying the priorities for NHSC, and policy revisions.

Agenda: The NACNHSC will continue its discussion on clinician recruitment and retention and explore questions on diversity and workforce analysis. The Council will draft potential policy recommendations for the National Health Service Corps scholarship and loan repayment programs with respect to clinician retention in underserved communities. The content of the agenda is subject to change prior to the meeting. The NACNHAC final agenda will be available on the NACNHSC Web site 3 days in advance of the meeting.

SUPPLEMENTARY INFORMATION: Further information regarding the NACNHSC including the roster of members, past meetings summaries is available at the following Web site: *http://nhsc.hrsa.gov/corpsexperience/aboutus/nationaladvisorycouncil/index.html.* Members of the public and interested parties may request to participate in the meeting by contacting Ashley Carothers via email at *ACarothers@hrsa.gov* to obtain access information. Access will be granted on a first-come, first-served basis. Space is limited. Public participants may submit written statements in advance of the scheduled meeting. If you would like to provide oral public comment during the meeting, please register with the Ashley Carothers. Public comment will be limited to 3 minutes per speaker. Statements and comments can be addressed to Ashley Carothers by emailing her at *ACarothers@hrsa.gov*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting. In addition, please be advised that committee members are given copies of all written statements submitted from the public. Any further public participation will be solely at the discretion of the Chair, with approval of the Designated Federal Official. Registration through the designated contact for the public comment session is required.

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the NACNHSC should contact Ashley Carothers, Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Ashley Carothers, Bureau of Health Workforce, Health Resources and Services Administration, Room 14N108, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–7229; or (3) send an email to *ACarothers@hrsa.gov*.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–04534 Filed 3–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (the Advisory Council). The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to *CARB@hhs.gov.* Registration information is available on the Web site *http://www.hhs.gov/ash/carb/* and must be completed by March 21, 2016; all in-person attendees must pre-register by this date. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/ash/carb/* on the Meetings page.

DATES: The meeting is scheduled to be held on March 30, 2016, from 10:00 a.m. to 5:00 p.m. ET, and March 31, 2016, from 9:00 a.m. to 4:00 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the Web site for the Advisory Council at *http://www.hhs.gov/ash/carb/* when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than March 21, 2016; public attendance at the meeting is limited to the available space.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW., Washington, DC 20201.

The meeting also can be accessed through a live webcast on the day of the meeting. For more information, visit *http://www.hhs.gov/ash/carb/.*

FOR FURTHER INFORMATION CONTACT: Bruce Gellin, Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 260–6638; email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under Executive Order 13676, dated

September 18, 2014, authority was given to the Secretary of Health and Human Services to establish the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council), in consultation with the Secretaries of Defense (DoD) and Agriculture (USDA). Activities of the Advisory Council are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to support and evaluate the implementation of Executive Order 13676, including the National Strategy for Combating Antibiotic-Resistant Bacteria (Strategy) and the National Action Plan for Combating Antibiotic-Resistant Bacteria (Action Plan). The Advisory Council shall function solely for advisory purposes.

In carrying out its mission, the Advisory Council will provide advice, information, and recommendations to the Secretary regarding programs and policies intended to preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The March public meeting will be dedicated to presentations by the five currently active working groups of the Advisory Council, which are: Antibiotic Stewardship; One Health Surveillance; Diagnostic Innovations; Treatment, Prevention and Control Research and Development; and International Collaboration on Combating Antibiotic-Resistant Bacteria (CARB). The Advisory Council will deliberate and vote on the working groups' findings and recommendations. In addition, the Advisory Council will be presented with a new task(s) from the Secretary of HHS, in consultation with USDA and DoD. The meeting agenda will be posted on the Advisory Council Web site at *http://www.hhs.gov/ash/carb* when it has been finalized.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Advisory Council at the address/telephone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/ash/carb/.*

Members of the public will have the opportunity to provide comments prior to the Advisory Council meeting by emailing *CARB@hhs.gov.* Public comments should be sent in by midnight March 21, 2016, and should be limited to no more than one page. All public comments received prior to March 21, 2016, will be provided to Advisory Council members and read during the public comment period designated on the agenda; comments are limited to two minutes per speaker.

Dated: February 25, 2016.

Bruce Gellin,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Deputy Assistant Secretary for Health.

[FR Doc. 2016–04473 Filed 3–1–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564 of the Federal Food, Drug, and Cosmetic (FD&C) Act, 21 U.S.C. 360bbb–3. On February 26, 2016, the Secretary determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.

On the basis of this determination, she also declared that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

DATES: The determination and declaration are effective February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, M.D., MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FD&C Act, the Commissioner of the Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four determinations: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a chemical, biological, radiological, or nuclear (CBRN) agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act [1] sufficient to affect national security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a CBRN agent or agents; or (4) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or

[1] 42 U.S.C. 247d–6b.

a disease or condition that may be attributable to such agent or agents.[2]

Based on any of these four determinations, the Secretary of HHS may then declare that circumstances exist that justify the EUA, at which point the FDA Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FD&C Act are met. The Centers for Disease Control and Prevention (CDC) requested that the FDA issue an EUA for *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection to allow the Department to take preparedness measures based on information currently available about the active transmission of Zika virus, as of February 24, 2016, in the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, 31 countries in the Americas, Pacific Islands, and Africa. On February 1, 2016, the World Health Organization declared a Public Health Emergency of International Concern because of clusters of microcephaly and other neurological disorders in some areas affected by Zika virus. On January 22, 2016, CDC activated its Incident Management System and, working through the Emergency Operations Center, centralized its response to the outbreaks of Zika occurring in the Americas and increased reports of birth defects and Guillain-Barré syndrome in areas affected by Zika virus. On February 8, 2016, CDC elevated its response efforts to a Level 1 activation, the highest response level. The Secretary's Operations Center, which is operated by the Office of the Assistant Secretary of Preparedness and Response, is also activated. The determination of a significant potential for a public health emergency, and the declaration that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection by the Secretary of HHS, as described below, enable the FDA Commissioner to issue an EUA for certain diagnostic tests for emergency use under section 564 of the FD&C Act.

[2] As amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, the Secretary may make determination of a public health emergency, or a significant potential for a public health emergency, under section 564 of the FD&C Act. The Secretary is no longer required to make a determination of a public health emergency in accordance with section 319 of the PHS Act, 42 U.S.C. 247d to support a determination or declaration made under section 564 of the FD&C Act.

II. Determination by the Secretary of Health and Human Services

On February 26, 2016, pursuant to section 564 of the FD&C Act, I determined that a there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus.

III. Declaration of the Secretary of Health and Human Services

Also on February 26, 2016, on the basis of my determination of a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves Zika virus, I declared that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostic tests for detection of Zika virus and/or diagnosis of Zika virus infection pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

Notice of any EUAs issued by the FDA Commissioner pursuant to this determination and declaration will be provided promptly in the **Federal Register** as required under section 564 of the FD&C Act.

Dated: February 26, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–04624 Filed 3–1–16; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–DHS–2016–0019]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security Science & Technology Technology Acceptance and Evaluation Survey

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-Day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology Directorate (S&T) Technology Acceptance and Evaluation (TAE) Survey. The TAE web based tool proposes to collect information from 1,200 members of an online Internet panel. All information collected will be on a voluntary basis. DHS will not receive any personally identifying information. As part of its core mission, DHS is tasked with preventing terrorism and enhancing security, securing and managing our borders, and ensuring resilience to disasters. In order to assist in those key mission spaces, the S&T managed work to create a Rapid DNA Technology that allows field testing of DNA that is inexpensive and quick while performing with high accuracy in a non-laboratory setting. To ensure the effective implementation and diffusion of this new technology, DHS S&T seeks to better understand public perceptions of Rapid DNA, its use cases, and its collection through the TAE Survey. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until May 2, 2016.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2016–0019, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Kathleen.Deloughery@hq.dhs.gov.* Please include docket number DHS–DHS–2016–0019 in the subject line of the message.
- *Fax:* (202) 254–6911. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Kathleen Deloughery 6–055, 245 Murray Lane, Mail Stop 0210, Washington, DC 20528–0210.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathleen Deloughery (202) 254–6189 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Technology Acceptance and Evaluation Survey.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS S&T, First Responders Group.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual who wish to participate in the online survey.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 1,200.

b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 600 burden hours.

Dated: February 23, 2016.

Rick Stevens,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. 2016–04471 Filed 3–1–16; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5889–FA–02]

Tribal HUD–VA Supportive Housing Program Awards, Fiscal Year 2015

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the Tribal HUD–VA Supportive Housing Program (Tribal HUD–VASH) for Fiscal Year 2015. This announcement contains the names of the grantees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Randall R. Akers, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410–5000, telephone, (202) 402–7598 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, approved December 16, 2014) (''2015 Appropriations Act''), authorizes funding for a demonstration program in order to expand the HUD–VA Supportive Housing Program (HUD–VASH) into Indian Country. The Tribal HUD–VASH Program does this by combining Housing Choice Voucher (HCV) rental assistance with Case Management and clinical services provided by or through the VA through Veterans Administration Medical Centers to Native American veterans that are Homeless or At Risk of Homelessness living on or near a reservation or other Indian areas. The program was announced by a notice posted on HUD's Web site on October 19, 2015, and published in the **Federal Register** on October 21, 2015 (80 FR 63822). The notice announced $4 million allowed for Tribal HUD–VASH awards; however, additional funds became available and awarded. Applicants were invited to apply for the demonstration program, and were evaluated based on the criteria contained in the notice.

For Fiscal Year 2015, 26 awards totaling $5,878,516 were awarded to 26 tribes/tribally designated housing entities nationwide. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names of the grantees and the amounts of the awards in Appendix A to this document.

Dated: February 17, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—Fiscal Year 2015 Tribal HUD VA Supportive Housing Awards

Recipient	City	State	Amount ($)
Cook Inlet Housing Authority	Anchorage	Alaska	313,058
Tlingit-Haida Regional Housing Authority	Juneau	Alaska	324,749
The Association of Village Council Presidents Regional Housing Authority	Bethel	Alaska	391,740
Navajo Housing Authority	Window Rock	Arizona	268,835
Hopi Housing Authority	Polacca	Arizona	210,432
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	San Carlos	Arizona	233,100
Tohono O'odham Nation of Arizona	Sells	Arizona	302,936
Leech Lake Housing Authority	Cass Lake	Minnesota	159,022
White Earth Reservation Housing Authority	White Earth	Minnesota	142,980
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Browning	Montana	229,171
Zuni Tribe of the Zuni Reservation, New Mexico	Zuni	New Mexico	123,288
Lumbee Tribe of North Carolina	Pembroke	North Carolina	185,604
Turtle Mountain Band of Chippewa Indians	Belcourt	North Dakota	173,942
Standing Rock Housing Authority	Fort Yates	North Dakota	234,178
Cherokee Nation of Oklahoma	Tahlequah	Oklahoma	194,405
Cheyenne-Arapaho Tribes	Concho	Oklahoma	272,016
Choctaw Nation of Oklahoma	Hugo	Oklahoma	246,992
Osage Nation of Oklahoma	Pawhuska	Oklahoma	265,438
Muscogee(Creek) Nation, Oklahoma	Okmulgee	Oklahoma	216,566
Warm Springs Housing Authority	Warm Springs	Oregon	240,237
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota	Pine Ridge	South Dakota	190,898
Sicangu Wicoti Awayankapi Corporation	Rosebud	South Dakota	183,011
Yakama Nation Housing Authority	Wapato	Washington	145,283
Spokane Indian Housing Authority	Spokane	Washington	245,809
Colville Indian Housing Authority	Nespelem	Washington	179,892

Recipient	City	State	Amount ($)
Oneida Tribe of Indians of Wisconsin	Oneida	Wisconsin	204,934

[FR Doc. 2016–04627 Filed 3–1–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5900–FA–06]

Announcement of Funding Awards for HUD's Fiscal Year 2015 Community Compass Technical Assistance and Capacity Building

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

ACTION: Notice of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the HUD Community Compass Technical Assistance and Capacity Building program for Fiscal Year 2015. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Lauren Deigh, Acting Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–2197 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The goal of Community Compass is to empower communities by providing effective technical assistance and capacity building so that successful program implementation is sustained over the long term.

Recognizing that HUD's customers often interact with a variety of HUD programs as they deliver housing or community development services, Community Compass brings together technical assistance investments from across HUD program offices, including but not limited to the Office of Community Planning and Development, the Office of Housing, and the Office of Public and Indian Housing.

The competition was announced in the NOFA published on August 12, 2015, (FR–5900–06) and closed on September 25, 2015. The NOFA allowed for approximately $44,125,000.00 million for HUD Community Compass Technical Assistance and Capacity Building awards. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the Fiscal Year 2015 competition, awards totaling $44,125,000.00 were awarded to 23 different technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the awardees and the amounts of the awards in Appendix A to this document.

Dated: February 23, 2016.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

FISCAL YEAR 2015

[HUD Community Compass Technical Assistance and Capacity Awards]

Recipient	City	State	Amount
Abt Associates, Inc	Cambridge	MA	($)9,100,000
HomeBase/The Center for Common Concerns	San Francisco	CA	1,700,000
American Institutes for Research	Washington	DC	800,000
Association of Alaska Housing Authorities	Anchorage	AK	600,000
Collaborative Solutions, Inc	Birmingham	AL	1,325,000
Cloudburst Consulting Group, Inc	Landover	MD	4,800,000
Corporation for Supportive Housing	New York	NY	675,000
CVR Associates, Inc	Tampa	FL	1,200,000
Econometrica, Inc	Bethesda	MD	2,200,000
Enterprise Community Partners, Inc	Columbia	MD	2,075,000
FirstPic, Inc	Gambrills	MD	2,000,000
ICF Incorporated, LLC	Fairfax	VA	11,225,000
National Association for Latino Comm. Asset Bldrs	San Antonio	CA	550,000
First Nations Development Institute	Longmont	CO	275,000
National American Indian Housing Council	Washington	DC	2,875,000
National Council for Community Development, Inc	New York	NY	250,000
TDA Consulting, Inc	Laurinburg	NC	500,000
Technical Assistance Collaborative, Inc	Boston	MA	500,000
The Partnership Center, Ltd	Cincinnati	OH	525,000
Innovative Emergency Management, Inc	Morrisville	NC	250,000
Corporate F.A.C.T.S., Inc	Plymouth	MI	250,000
Fair Housing Council of Riverside County, Inc	Riverside	CA	250,000
Rural Community Assistance Corporation	W. Sacramento	CA	200,000
Total			$44,125,000

[FR Doc. 2016–04626 Filed 3–1–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2015–N244; FXRS12610800000–167–FF08R00000]

Guadalupe-Nipomo Dunes National Wildlife Refuge, San Luis Obispo County, CA: Draft Comprehensive Conservation Plan/Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Guadalupe-Nipomo Dunes National Wildlife Refuge for review and comment. The CCP/EA, prepared under the National Wildlife Refuge Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service proposes to manage the refuge for the next 15 years. Draft compatibility determinations for uses proposed under one or more of the alternatives are also available for review and public comment.

DATES: To ensure consideration, we must receive your written comments by April 18, 2016.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: fw8plancomments@fws.gov. Include ''GND CCP'' in the subject line of the message.

Fax: Attn: GND CCP, (916) 414–6497.

U.S. Mail: Pacific Southwest Region, Refuge Planning, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Refuge Planner at (916) 414–6500 or *fw8plancomments@fws.gov.* Further information may also be found at *http://www.fws.gov/refuge/Guadalupe-Nipomo_Dunes/what_we_do/planning.html.*

SUPPLEMENTARY INFORMATION:

Introduction

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs also evaluate the potential for providing wildlife-dependent recreational opportunities to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

We initiated the CCP/EA for Guadalupe-Nipomo Dunes in December 2013. We hosted two public meetings, one in Grover Beach on December 11, 2013, and one in Guadalupe on December 12, 2013. Our public outreach included a **Federal Register** notice of intent, published on December 6, 2013 (78 FR 73557), two planning updates, two scoping meetings, and a CCP Web page, which can be found at *http://www.fws.gov/refuge/Guadalupe-Nipomo_Dunes/what_we_do/planning.html.* The scoping comment period ended on February 4, 2014. The refuge received several comments at the scoping meetings and two comments via email.

Background

Guadalupe-Nipomo Dunes National Wildlife Refuge was established in 2000 under the Endangered Species Act of 1973 (16 U.S.C. 1531) to preserve and conserve Central California coastal dune and associated wetlands habitats and assist in the recovery of native plants and animals that are federally listed as threatened or endangered. Refuge goals include (1) protecting restoring and enhancing native habitat to aid in the recovery of federally listed and special status species and critical habitat; (2) protecting and restoring coastal dune and other natural communities to support the diverse species of the central California coast; and (3) providing safe and high-quality opportunities for compatible wildlife-dependent educational and recreational activities to foster public appreciation of the natural heritage of the region. The 2,553-acre Refuge consists of one parcel that is bordered on its western edge by the Pacific Ocean, agricultural lands to the east, Oso Flaco Lake Natural Area to the north, and Rancho Guadalupe Dunes County Park to the south.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing the refuge for the next 15 years. Each alternative proposes a different level of management and public use. The Final CCP will identify the proposed action, which may look very similar to one of the three alternatives, or could include a combination of components from two or more of the alternatives presented. This decision will be based on the analysis presented in the Draft CCP/EA, comments received from other agencies, Tribal governments, nongovernmental organizations, and/or individuals during the public comment period, and forecasted budgets for the National Wildlife Refuge System.

Under Alternative A (no action alternative), the current management actions, including habitat management, wildlife-dependent recreation opportunities, and environmental education, would be continued at the refuge. Habitat and wildlife management activities would continue to be focused on conservation of listed species, invasive weed control, barrier fencing, planting native vegetation, and baseline surveys. Limited guided tours and self-guided access to support wildlife observation and photography would also continue under Alternative A. Volunteers would continue to be an important component of the Citizen Science research program, where they would help with vegetation surveys and manual weed removal. The refuge would continue to be closed to the public during the western snowy plover breeding season.

Alternative B proposes a moderate increase in wildlife and habitat management over Alternative A, as well as an incremental increase in visitor services and environmental education, including opening the refuge year round to support these uses. Outreach and education during the plover breeding season would be conducted, and a loop trail would be constructed to direct the public away from plover nesting habitat. A draft feral swine control and monitoring plan has been prepared as an appendix to the draft CCP/EA and two future step-down plans (*i.e.,* Integrated Pest Management Plan, Predator Management Plan) are proposed for development following the completion of the Final CCP. An invasive plant early detection and rapid response program to address the introduction of new invasive weeds on the refuge would also be developed. This alternative also proposes the future

establishment of a visitor contact station or office at or near the refuge.

Alternative C, which was developed to take into consideration the forecasted decline in budgets for the National Wildlife Refuge System, proposes to reduce or eliminate many of the current management activities occurring on the refuge, as well as to close the refuge to all public access. Under Alternative C, the Service's management actions would be limited to the minimum necessary to meet statutory responsibilities under the Endangered Species Act of 1973 and National Wildlife Refuge System Improvement Act of 1997.

Public Meetings

The locations, dates, and times of public meetings will be listed in a planning update distributed to the project mailing list and posted on the refuge planning Web site, at *http://www.fws.gov/refuge/Guadalupe-Nipomo_Dunes/what_we_do/planning.html.*

Review and Comment

Copies of the Draft CCP/EA may be obtained by writing to the refuge planner (see **ADDRESSES**). Copies of the Draft CCP/EA may be viewed at the same address and the following local libraries; Guadalupe Branch of the Santa Maria Public Library, 4719 W. Main Street, Guadalupe, CA 93434; and the Santa Maria Public Library (Main Library), 421 S. McClelland Street, Santa Maria, California 93454. The Draft CCP/EA will also be available for viewing and downloading online, at *http://www.fws.gov/refuge/Guadalupe-Nipomo_Dunes/what_we_do/planning.html.*

Comments on the Draft CCP/EA should be addressed to the refuge planner (see **ADDRESSES**).

At the end of the review and comment period for the Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP/EA. 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: February 1, 2016.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–04571 Filed 2–29–16; 11:15 am]

BILLING CODE 4310–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2016–N245; FXRS12610200000–167–FF02R06000]

Draft Environmental Assessment on a Proposed Right-of-Way Permit Application for Pipelines Crossing Brazoria National Wildlife Refuge, Brazoria County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), make available the draft Environmental Assessment (dEA) for issuance of a right-of-way (ROW) permit to Praxair, Inc. (Praxair) for construction, operation, and maintenance of a 24-inch carbon steel pipeline for transport of nitrogen, and a 14-inch carbon steel pipeline for transport of hydrogen, within an existing maintained 4.3-mile ROW pipeline corridor, with 21 existing pipelines crossing the Brazoria National Wildlife Refuge (NWR) in Brazoria County, Texas.

DATES: To ensure consideration of written comments on the issues and possible alternatives to be addressed in the documents, they must be received no later than April 1, 2016.

ADDRESSES: Comments, questions, and requests for further information may be submitted by U.S. mail to Project Leader, Texas Mid-coast NWR Complex, U.S. Fish and Wildlife Service, 2547 County Road 316, Brazoria, TX 77422; by email at *jennifer_sanchez@fws.gov;* by phone at 979–964–4011; or by fax to 979–964–4021.

SUPPLEMENTARY INFORMATION: We, U.S. Fish and Wildlife Service, make available the dEA for issuance of a ROW permit for a segment (4.3 miles) of the Praxair Dual Pipeline System Project on the Brazoria NWR. In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the dEA related to potential issuance of a ROW to the Applicant (Praxair); and

2. The Applicant has developed a Construction Plan as part of the application for a ROW permit, which describes the measures the Applicant has agreed to take to minimize and mitigate impacts of the project.

Proposed Action

The proposed action involves the issuance of a 10-foot ROW permit by the FWS and the subsequent construction, operation, and maintenance of the Proposed Project. The term of the permit would be for 30 years. Construction methods, including matting the entire temporary work area, directional drilling under wetlands rather than open trench, and utilizing a push/pull method for laying the pipe through the salty prairie, are all designed to minimize the impact to refuge habitats and wildlife. Although impacts have been minimized, wildlife utilizing the existing ROW and adjacent habitat will be disturbed and/or displaced during construction. The applicant proposes to provide funds to be utilized to conserve natural habitats that will be added to the Brazoria or San Bernard NWR.

Proposed Project

Praxair proposes to use a combination of conventional open trenching and subsurface Horizontal Directional Drilling (HDD) in its construction methods to cross the refuge lands. The proposed two pipelines would be constructed at the same time, near the center of an existing maintained 300-foot-wide pipeline corridor, 4.3 miles in length, between existing pipelines. The existing pipeline corridor pre-dates FWS ownership of the land in fee title, and extends from Farm-to-Market Road 2004 on the northeast end to Austin Bayou on the southwest end. Construction of the proposed pipelines would require a 100-foot-wide temporary work area, including 90 feet of temporary workspace used during construction activities, and a 10-foot-wide ROW after construction is complete. Praxair is working with FWS staff in the development of its proposed plan of operations in order to determine construction methods and develop measures to avoid or minimize potential adverse impacts during construction activities. However, some impacts are unavoidable and can reasonably be anticipated during pipeline construction, operations, and maintenance activities. Conventional trenching for simultaneous construction of the proposed two pipelines would require excavation of an open trench approximately 5.5 to 6 feet deep, 8 feet wide at the bottom, and 19 feet wide at the surface, with an approximately 45-

degree slope on the sides, depending on soil conditions. Workspace required for HDD sites would be 300 feet by 300 feet.

Alternatives

The only alternative to the proposed action that we are considering as part of this process is the No Action alternative, in which no ROW permit would be issued. Under a No Action alternative, the FWS would not issue the requested ROW permit; therefore, the Applicant would likely seek an alternate alignment, establishing a new ROW corridor around the refuge, as described in the dEA.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Texas Mid-Coast National Wildlife Refuge Complex Headquarters Office, CR 316, Brazoria, TX, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our Web site: *http://www.fws.gov/southwest/refuges/Plan/plansinprogress.html.*
- At the following public libraries:

Library	Address	Phone number
Brazoria County Library—City of Lake Jackson Branch	250 Circle Way, Lake Jackson, TX 77566	979–415–2590
Brazoria County Library—Angleton Branch	401 E Cedar Street, Angleton, TX 77515	979–864–1519

Submitting Comments/Issues for Comment

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment (EA);
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the assessment.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authorities

NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations; and the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act).

Dated: February 25, 2016.

Joy Nicholopoulos,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–04566 Filed 3–1–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0047; FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before April 1, 2016. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by April 1, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0047.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0047; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice,

and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Tonya Bryson, Winston, GA; PRT–42334B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos giant tortoise (*Chelonoidis nigra*), Aquatic box turtle (*Terrapene coahuila*), Bolson tortoise (*Gopherus flavomarginatus*), and spotted pond turtle (*Geoclemys hamiltonii*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Juliann Sweet, Scottsdale, AZ; PRT–80172B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Exuma Island iguana (*Cyclura cychlura figginsi*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: The Austin Savanna, Creedmoor, TX; PRT–10982A

The applicant requests an amendment and renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos giant tortoise (*Chelonoidis nigra*), radiated tortoise, (*Astrochelys radiata*), salmon-crested cockatoo (*Cacatua moluccensis*), white cockatoo (*Cacatua alba*), yellow-crested cockatoo (*Cacatua sulphurea*), blue-throated macaw (*Ara glaucogularis*), ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red-ruffed lemur (*Varecia rubra*), cottontop tamarin (*Saguinus oedipus*), lar gibbon (*Hylobates lar*), Southern white rhinoceros (*Ceratotherium simum simum*), black rhinoceros (*Diceros bicornis*), Indian rhinoceros (*Rhinoceros unicornis*), Grevy's zebra (*Equus grevyi*), Hartmann's zebra (*Equus zebra hartmannae*), Przewalski's horse (*Equus przewalskii*), Barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), bontebok (*Damaliscus pygargus pygargus*), red lechwe (*Kobus leche*), and slender-horned gazelle (*Gazella leptoceros*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kenneth Morrill, Escalon, CA; PRT–86976b

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Anthony Pagano, USGS/Alaska Science Center, Anchorage, AK; PRT–77245B

The applicant requests a permit to take two captive-born polar bears (*Ursus maritimus*) at Oregon Zoo by biological sampling and fitting and removal of GPS collars for the purpose of scientific research on polar bears' diet and energetics. This notification covers activities to be conducted by the applicant for up to a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–04565 Filed 3–1–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–2016–N019; FF08ESMF00–FXES11120800000F2–167]

Draft Environmental Assessment for the Candidate Conservation Agreement With Assurances for Fishers in the Klamath, Cascade, and Sierra Nevada Mountains

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comment; permit application, draft environmental assessment, and proposed candidate conservation plan with assurances.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Sierra Pacific Industries (SPI), a California forest management and lumber manufacturing company (applicant), for an enhancement of survival permit (permit) associated with a Candidate Conservation Agreement with

Assurances (CCAA) covering the fisher (*Pekania pennanti*). The Service has prepared a draft Environmental Assessment (EA) per the National Environmental Policy Act (NEPA) for the applicant's permit application and the proposed CCAA. If approved, the permit would authorize incidental take for the Federal candidate fisher within the West Coast Distinct Population Segment (DPS), during forestry operations including commercial timber harvesting on SPI's property in 16 counties in California, if the fisher is listed under the Endangered Species Act of 1973, as amended. We are requesting comment on the permit application, draft environmental assessment, and proposed candidate conservation plan with assurances.

DATES: To ensure consideration, please send your written comments on or before April 1, 2016.

ADDRESSES: *Obtaining Documents:* You may request a copy of the proposed CCAA and draft EA by email, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify ''SPI CCAA for fishers'' in your request or comment.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods:

- *Email: yreka@fws.gov.* Include ''SPI CCAA for fishers'' in the subject line of the message.
- *Telephone:* Robert Carey, U.S. Fish and Wildlife Service, (530) 841–3103.
- *Fax:* Robert Carey, U.S. Fish and Wildlife Service, (530) 842–4517, Attn: SPI CCAA for fishers.
- *U.S. mail:* Robert Carey, Attn: SPI CCAA for fishers, U.S. Fish and Wildlife Service, 1829 S. Oregon Street, Yreka, CA 96097.
- *In-Person Drop-off, Viewing, or Pickup:* Call (530) 841–3103 to make an appointment during regular business hours at the above address to view and comment on the documents.
- *Online:* Documents will be posted online at: *http://www.fws.gov/yreka/.*

FOR FURTHER INFORMATION CONTACT: Robert Carey, U.S. Fish and Wildlife Service, (530) 841–3103 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We announce receipt of an application from Sierra Pacific Industries (SPI), a forest management and lumber manufacturing company (applicant), for an enhancement of survival permit (permit) associated with a Candidate Conservation Agreement with Assurances (CCAA) covering the fisher (*Pekania pennanti*) for a period of 10 years. The Service has prepared a draft Environmental Assessment (EA) per the National Environmental Policy Act (NEPA) for the applicant's permit application and the proposed CCAA. If approved, the permit would authorize incidental take for the Federal candidate fisher within the West Coast Distinct Population Segment (DPS) if the fisher is listed under the Endangered Species Act (ESA), during forestry operations, including commercial timber harvesting, on SPI's property in 16 California counties: Amador, Shasta, El Dorado, Tehama, Nevada, Plumas, Calaveras, Siskiyou, Modoc, Tuolumne, Butte, Sierra, Lassen, Trinity, Placer, and Yuba.

Introduction

We announce the availability of our draft EA for the proposed SPI CCAA for fishers in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and NEPA implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as the availability of the applicant's section 10(a)(1)(A) permit application in compliance with section 10(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which requires notice of applications for permits. The draft EA considers the environmental effects associated with issuing the applicant's requested enhancement of survival permit and implementation of the proposed CCAA, including impacts to the candidate fisher (*Pekani pennanti*) within the West Coast Distinct Population Segment (DPS). Take of fishers would be incidental to the applicant's forestry operations (29 CFR 780.215) and support activities in 16 counties in California.

Background

A Candidate Conservation Agreement with Assurances is an agreement with the Service in which private and other non-Federal landowners voluntarily agree to undertake management activities and conservation efforts on their properties to enhance, restore, or maintain habitat to benefit species that are proposed for listing under the Act, that are candidates for listing, or that may become candidates. These permits encourage non-Federal property owners to implement conservation measures for species that are, or are likely to become, candidates for Federal listing as endangered or threatened by assuring property owners they will not be subjected to increased property use restrictions if the covered species becomes listed in the future. Application requirements and issuance criteria for permits for enhancement of survival through CCAAs are in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). See also our policy on CCAAs (64 FR 32726; June 17, 1999).

Applicant's Proposal

The applicant requests a 10-year enhancement of survival permit under section 10(a)(1)(A) of the Act, which is accompanied by their CCAA. If we approve the permit application, the applicant anticipates taking fishers as a result of forestry operations and support activities primarily involving harvesting and transporting timber periodically on 1,570,963 acres of land where fishers are either known to occur or could reasonably be expected to occur in the future. Some forests owned by SPI are used by fishers for breeding, feeding, and sheltering. The take would be incidental to the applicant's routine forestry operations and support activities. The property is located in portions of 16 counties in California, generally occurring in rural regions but with some residential development intermingled with other privately owned lands and publically owned forests. Fishers use large home ranges and are difficult to detect during surveys. Without using telemetry or other methods of marking and recording fisher locations, home ranges are impossible to delineate precisely. Where fishers are known to occur within proximity (3 miles) of SPI's property, the Service has determined that SPI's timber activities may incidentally take fishers. Other federally listed species that are known to occur on or near SPI lands include northern spotted owls, gray wolves, several amphibians, and three anadromous salmonid runs (Central Valley Steelhead, S. Oregon-Northern California coho, and spring-run Chinook salmon).

To enhance the survival of fishers on the enrolled lands, the applicant proposes to implement conservation actions that limit the removal or degradation of currently suitable fisher habitat, maintain and recruit habitat elements important to fishers, limit the timing of operations to avoid activities during the critical denning period, remove or reduce threats associated with the illegal use of toxic substances by trespassers cultivating marijuana, and reduce the risk of fishers drowning

in water tanks. During the 10-year term of the CCAA and ESP, the applicant proposes to maintain on its property the functional characteristic of fisher habitat on roughly 80 percent of the 10,000 acre polygons identified by the Service as having the highest likelihood of supporting a reproductive female fisher and her offspring. The implementation of the CCAA will be funded by SPI's general revenue.

The applicant proposes to continue with their normal forestry operations, which have been ongoing for several decades and are guided by a long-term management plan approved by the California Department of Forestry and Fire Protection under the California Forest Practice Rules (FPRs) at 14 CCR 913.1(a), 933.1(a), 953.1(a) (Option A plan). This demonstration of Maximum Sustained Production (MSP) of high-quality timber products per the FPRs specifies the amount of timber harvest that will occur over a 100-year planning horizon after accounting for constraints associated with protecting non-timber resources such as watershed, wildlife, fisheries quality, and aesthetic values. One of the conservation measures proposed in the CCAA is to maintain the harvest rate specified in the Option A plan. Under that rate of harvest SPI will keep approximately 50 percent (at least 700,000 acres) of their enrolled property in a mixed age condition. Harvest scheduling will also be constrained where necessary such that 43 of the 54 originally identified high quality fisher areas maintain the functional characteristics of fisher habitat at the landscape scale over the 10-year CCAA. In each timber harvesting unit, habitat elements such as large old trees, defective trees, snags, and hardwoods will be specifically retained and recruited as detailed in the CCAA. The implementation of these conservation measures will be monitored, and over time the effectiveness of these measures for providing functional fisher habitat will be evaluated in adaptive manner allowing for changes, if necessary to achieve the conservation goals.

National Environmental Policy Act Compliance

We provide this notice under section 10(c) of the Act and Service regulations for implementing NEPA. We have prepared a draft EA for the proposed action and have made it and the applicant's proposed CCAA available for public inspection (see **ADDRESSES**). NEPA requires that a range of reasonable alternatives, including the proposed action, be described. The draft EA analyzes three alternatives, described below.

Proposed Action (Preferred Alternative)

We propose issuing an enhancement of survival permit to the applicant, who would implement the CCAA, described above. If we approve the permit, incidental take of fishers would be authorized during the applicant's forestry operations and support activities should the fisher become listed. With this alternative, incidental take would be reduced from the No Action and Stirling Management area alternative because under the CCAA SPI would be required to reduce the disturbance during the fisher breeding season, maintain large blocks of mixed age class forest, maintain functional landscapes for fishers, retain and recruit habitat elements that are important to fishers, and monitor the implementation and effectiveness of these measures for conserving fishers throughout their property, including the Stirling Management Area.

No Action Alternative

The draft EA includes a No Action alternative; the Service and SPI would not enter into the CCAA and the conservation measures would not be implemented. Under the No Action alternative, impacts to fishers would likely continue at the current rate. Under this alternative, SPI would continue with their ongoing operations guided by the California Forest Practice Rules, other local, State and Federal regulatory frameworks including the ESA.

Excluding the SPI Stirling Management Area From the CCAA Alternative

Under this alternative, SPI's 159,966-acre Stirling Management Area (SMA) would be excluded from the CCAA. In 2005, in response to concerns over the absence of fishers in portions of their historical occupied range, the Service and the California Department of Fish and Wildlife (CDFW) began considering translocation of fishers to reestablish fishers in historically occupied areas. The Service and SPI entered into a CCAA and the Service issued an ESP that would authorize SPI's take of fishers in the event the translocation was successful and if the fisher is listed. Between 2009 and 2011, 40 fishers were translocated to the SMA. The Stirling CCAA requires fewer conservation measures than the proposed CCAA and will expire on April 14, 2028. Under Alternative 3 (excluding the SMA from the proposed CCAA), the environmental impacts from SPI's forestry operations and support activities would be identical to those under the Proposed Action; however, the SMA would be managed under the previous CCAA rather than the proposed CCAA.

Public Review

The Service invites the public to comment on the permit application, including the proposed CCAA and draft EA, during the public comment period (see **DATES**). If you wish to comment, you may submit your comments via one of the means listed in **ADDRESSES**. 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 may 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.

Next Steps

Issuance of an enhancement of survival permit is a Federal action subject to compliance with NEPA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of fishers that becomes effective if fishers are listed. We will not make our final decision until after the 30-day public comment period ends.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–04550 Filed 3–1–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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

Indian Child Welfare Act; Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indians Affairs, Interior.

ACTION: Notice.

SUMMARY: The regulations implementing the Indian Child Welfare Act provide that Indian Tribes may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act. This notice includes the current

list of designated Tribal agents for service of notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513–MIB, Washington, DC 20240; Phone: (202) 513–7621.

SUPPLEMENTARY INFORMATION: The regulations implementing the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.,* provide that Indian Tribes may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act. *See* 25 CFR 23.12. The Secretary of the Interior is required to update and publish in the **Federal Register** as necessary the names and addresses of the designated Tribal agents. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

This notice presents, in two different formats, the names and addresses of current designated Tribal agents for service of notice that the Secretary of the Interior received before this publication was prepared. Part A, published in this notice, lists designated Tribal agents by region and alphabetically by Tribe within each region. Part A is also available electronically at *http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm.*

Part B is a table that lists designated Tribal agents alphabetically by the Tribal affiliation (listing Tribes in Alaska separately after Tribes in the lower 48 states). Part B is available only in electronic form at *http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm.*

Each format also lists the Bureau of Indian Affairs contact(s) for each of the twelve regions.

A. List of Designated Tribal Agents by Region

1. Alaska Region

Alaska Regional Director, Bureau of Indian Affairs, Human Services, 3601 C Street, Suite 1100 Anchorage, Alaska 99503; Phone: (907) 271–4111

A

Afognak, Native Village of, Denise Malutin, Cultural Programs Coordinator, Taletha Gertz, Program Manager, Melissa Borton, Tribal Administrator, 323 Carolyn Street, Kodiak, AK 99615; Phone: (907) 486–6357; Fax: (907) 486–6529; Email: *denise@afognak.org; taletha@afognak.org; Melissa@afognak.org*

Agdaagux Tribe of King Cove, Mr. Ozzy E. Escarate, ICWA Representative, Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518–1408; Phone: (907) 276–2700; Fax: (907) 222–9735; Email: *icwa@apiai.org*

Akhiok, Native Village of, Hannah Gordon, ICWA Specialist, Kodiak Area Native Association, 3449 Rezanof Drive East, Kodiak, AK 99615; Phone: (907) 486–1370; Fax: (907) 486–4829; Email: *hannah.gordon@kanaweb.org; ICWA@kanaweb.org*

Akiachak Native Community, Georgianna Wassilie, ICWA Worker & Jonathan Lomack, Tribal Administrator, P.O. Box 51070 Akiachak, AK 99551; Phone: (907) 825–4073 or (907) 825–4626; Fax: (907) 825–4029; Email: *gwassilie@avcp.org* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Akiak Native Community, David Gilila Sr., ICWA Director, P.O. Box 52127, Akiak, AK 99552; Phone: (907) 765–7909; Fax: (907) 765–7512

Akutan, Native Village of, Mr. Ozzy E. Escarate, ICWA Representative, Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518–1408; Phone: (907) 276–2700; Fax: (907) 222–9735; Email: *icwa@apiai.org*

Alakanuk, Native Village of, Charlene Striling, ICWA Worker and Ray Oney, Tribal Administrator, Box 149, Alakanuk, AK 99554; Phone: (907) 238–3704, (907) 238–3419; Fax: (907) 238–3705, (907) 238–3429; Email: *cstriling@avcp.org, roney@avcp.org;* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Alatna Village, P.O. Box 70 Allakaket, AK 99720; Phone: (907) 968–2261; Fax: (907) 968–2305; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Aleknagik, Native Village of, Jane Gottschalk, Caseworker, ICWA P.O. Box 115, Aleknagik, AK 99555; Phone: (907) 842–4577; Fax: (907) 842–2229; Email: *aleknagokicwa@bbna.com* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

Algaaciq Native Village (St. Mary's), Theresa Kelly, ICWA Worker & Sven Paukan, Tribal Administrator, Box 48, St. Mary's, AK 99658; Phone: (907) 438–2335 or (907) 438–2932; Fax: (907) 438–2227; Email: *tkelly@avcp.org* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Allakaket Village, Corinna Gray, Tribal Family Youth Specialist, P.O. Box 50, Allakaket, AK 99720; Phone: (907) 968–2303; Fax: (907) 968–2233; Email: *corinna.gray@tananachiefs.org;* and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Ambler, Native Village of, Hannah Wood, ICWA Coordinator, Katherine Cleveland, Council ICWA; P.O. Box 47 Ambler, AK 99786; Phone: (907) 445–2189 or (907) 445–5051; Fax: (907) 445–2257 or (907) 445–2181; Email: *icwa@ivisaappaat.org*

Anaktuvuk Pass Village of, Marie H. Ahsoak, Social Services Director, P.O. Box 934, Barrow, AK 99723; Phone: (907) 852–5923; Fax: (907) 852–5924; Email: *social@inupiatgov.com*

Andreafski (see Yupiit of Andreafski)

Angoon Community Association, Raynelle Jack, Tribal Administrator & Wally Frank, President, P.O. Box 328, Angoon, AK, 99820; Phone: (907) 788–3411; Fax: (907) 788–3412; Email: *rjack.agntribe@gmail.com*

Aniak, Village of, Muriel Morgan, ICWA Worker, P.O. Box 349, Aniak, AK 99557; Phone: (907) 675–4349; Fax: (907) 675–4513; Email: *aniaktribe@gmail.com*

Anvik Village, Tami Jerue, Tribal Family Youth Specialist, P.O. Box 10, Anvik, AK 99558; Phone: (907) 663–6388; Fax: (907) 663–6357; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Arctic Village, Tribal Administrator, P.O. Box 22069, Arctic Village, AK

99722; Phone: (907) 587–5523; Fax: (907) 587–5128; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Asa'carsarmiut Tribe (formerly Native Village of Mountain Village), Evelyn Peterson and Daphne Joe, Directors of Social Services & Education, P.O. Box 32107; Mountain Village, AK 99632; Phone: (907) 591–2428; Fax: (907) 591–2934; Email: *atcicwa@gci.net*

Atka, Native Village of, Mr. Ozzy E. Escarate, ICWA Representative, Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518–1408; Phone: (907) 276–2700; Fax: (907) 222–9735; Email: *icwa@apiai.org*

Atmautluak, Village of, Alexie Earl Brown, ICWA Worker & Daniel Waska, Tribal Administrator, P.O. Box 6568, Atmautluak, AK 99559; Phone: (907) 553–5610 or (907) 553–5613; Fax: (907) 553–5150; Email: *atmautluaktc@gmail.com*

Atqasuk Village, P.O. Box 91108, Atqasuk, Alaska 99791; Phone: (907) 633–2575; Fax: (907) 633–2576 and Maude Hopson, Community & Social Services Division Manager, Arctic Slope Native Association, P.O. Box 29, Barrow, Alaska 99723; Phone: (907) 852–9374; Fax: (907) 852–9152; Email: *maude.hopson@arcticslope.org*

B

Barrow Inupiat Traditional Government, Marjorie Solomon, Social Services Director, P.O. Box 1130 Barrow, AK 99723; Phone: (907) 852–4411 Fax: (907) 852–4413; Email: *marjorie.solomon@nvbarrow.net*

Beaver Village, Arlene Pitka, Tribal Family Youth Specialist, P.O. Box 24029, Beaver, AK 99724; Phone: (907) 628–6126; Fax: (907) 628–6185; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Belkofski Native Village of, Mr. Ozzy E. Escarate, ICWA Representative, Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518–1408; Phone: (907) 276–2700; Fax: (907) 222–9735; Email: *icwa@apiai.org*

Bethel (see Orutsararmuit Native Council)

Bettles Field (see Evansville Village)

Bill Moore's Slough, Village of, Nancy C. Andrews, ICWA Worker & Joel Okitkun, Tribal Administrator, P.O. Box 20288, Kotlik, AK 99620; Main Office Phone: (907) 899–4232; Main Office Fax: (907) 899–4461; ICWA Office Phone: (907) 899–4236; ICWA Office Fax: (907) 899–4002; Email: *nacnadrews123@gmail.com*; *joelokitkun@gmail.com*

Birch Creek Tribe, Jackie Balaam, Tribal Family Youth Specialist, 3202 Shell Street, Fairbanks, AK 99701; Phone: (907) 221–2215; Fax: (907) 452–5063; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Brevig Mission, Native Village of, Linda Divers, Tribal Family Coordinator, P.O. Box 85039, Brevig Mission, AK 99785; Phone: (907) 642–3012; Fax: (907) 642–3042; Email: *tfc.kts@kawerak.org* and Ms. Traci McGarry, Program Director, Kawerak, Inc. Children & Family Services, P.O. Box 948 Nome, AK 99762; Phone: (907) 443–4376 Fax: (907) 443–4474; Email: *cfsdir@kawerak.org*

Buckland, Native Village of, Glenna Parrish, ICWA Coordinator, P.O. Box 25, Buckland, AK 99727; Phone: (907) 494–2169; Fax: (907) 494–2192; Email: *icwa@nunachiak.org*

C

Cantwell, Native Village of, Nelly Ewan, ICWA Advocate, P.O. Box H, Copper Center, AK 99573; Phone: (907) 822–8865 or (907) 320–0048; Fax: (907) 822–8800; Email: *newan@crnative.org*

Central Council of the Tlingit and Haida Indian Tribes of Alaska, Barbara Dude, Child Welfare Program Specialist; 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801; Phone: (907) 463–7169; Fax: (907) 885–0032; Email: *icwamail@ccthita.org*

Chalkyitsik Village, Tamara Henry, Tribal Administrator, P.O. Box 57, Chalkyitsik, AK 99788; Phone: (907) 848–8117; Fax: (907) 848–8986; and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178 Fax: (907) 459–3953

Chenega, Native Village of, Norma J. Selanoff, ICWA Representative, P.O. Box 8079, Chenega Bay, AK 99574–8079; Phone: (907) 573–5386; Fax: (907) 573–5020; Email: *taaira@nativevillageofchenega.com*

Cheesh-Na Tribe, Ms. Cecil Sanford, Tribal Administrator, P.O. Box 241, Gakona, AK 99586; Phone: (907) 822–3503; Fax: (907) 822–5179; Email: *csanford@cheeshna.com*

Chefornak, Village of, Edward Kinegak, ICWA Specialist and Bernadette Lewis, Tribal Administrator, P.O. Box 110, Chefornak, AK. 99651; Phone: (907) 867–8808 or (907) 867–8850; Fax: (907) 867–8711; Email: *ekinegak@avcp.org* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Chevak Native Village, Natasia Ulroan, ICWA Worker & Mary Jones, Tribal Administrator, Box 140, Chevak, AK 99563; Phone: (907) 858–7918 or (907) 858–7428; Fax: (907) 858–7919 or (907) 858–7812; Email: *nulroan@avcp.org, chevaktc@gmail.com* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Chickaloon Native Village, Penny Westing, ICWA Case Manager, P.O. Box 1105, Chickaloon, AK 99674–1105; Main Office Phone: (907) 745–0749; Phone: (907) 745–0794; Fax: (907) 745–0709; Email: *penny@chickaloon.org*

Chignik Bay Tribal Council, Debbie Carlson, Administrator, Box 11, Chignik Bay, AK 99564; Phone: (907) 749–2445; Fax: (907) 749–2423; Email: *cbaytc@aol.com;* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

Chignik Lagoon, Native Village of, Nancy Anderson, Case Worker, ICWA, P.O. Box 09, Chignik Lagoon, AK 99565; Phone: (907) 444–4060; Fax: (907) 840–2282; Email: *chigniklagoonicwa@bbna.com* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

Chignik Lake Village, Shirley Kalmakoff, Administrator, P.O. Box 33, Chignik Lake, AK 99548; Phone: (907) 845–2212; Fax: (907) 845–2217; Email: *chigniklakevillagecouncil@gmail.com* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

Chilkat Indian Village, Carrie-Ann Durr, ICWA Caseworker, HC 60 Box 2207, Haines, AK 99827; Phone: (907) 767–5505 Ext: 228; Fax: (907) 767–5408; Email: *cdurr@chilkat-nsn.gov*

Chilkoot Indian Association, Stella Howard, Family Caseworker II, P.O. Box 624, Haines, AK 99827; Phone: (907) 766–2323 Ext. 111; Fax: (907)

766–2845; Email: *showard@ccthita.org*

Chinik Eskimo Community (aka Golovin), Kirstie Ione, Tribal Family Coordinator, P.O. Box 62019, Golovin, AK 99762; Phone: (907) 779–3489; Fax: (907) 779–2000; Email: *tfc.glv@kawerak.org* and Ms. Traci McGarry, Program Director, Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762; Phone: (907) 443–4376; Fax: (907) 443–4474; Email: *cfsdir@kawerak.org*

Chistochina (see Cheesh-na Tribe)

Chitina, Native Village of, Tribal President and Tribal Administrator, P.O. Box 31, Chitina, AK 99566; Phone: (907) 823–2215; Fax: (907) 823–2233

Chuathbaluk Native Village of, Teresa Simeon-Hunter, ICWA Worker & Tracy Simeon, Tribal Administrator, Box CHU, Chuathbaluk, AK 99557; Phone: (907) 467–4313; Fax: (907) 467–4113; Email: *ctc.teresahunter@gmail.com, chuathbaluktradcouncil@gmail.com* and Cheryl Offt, ICWA Director, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7461; Fax: (907) 543–5759; Email: *cofft@avcp.org*

Chuloonawick Native Village, Tribal Administrator, P.O. Box 245, Emmonak, AK 99581; Phone: (907) 949–1345; Fax: (907) 949–1346

Circle Native Community, Jessica Boyle, Tribal Family Youth Specialist, P.O. Box 89, Circle, AK 99733; Phone: (907) 773–2822; Fax: (907) 773–2823; Email: *Jessica.boyle@tananachiefs.org;* and Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 ext. 3178; Fax: (907) 459–3953

Clarks Point, Village of, Nadine Wassily, Administrator, P.O. Box 9, Clarks Point, AK 99569; Phone: (907) 236–1427; Fax: (907) 236–1428; Email: *clarkspointadmin@bbna.com* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

Copper Center (see Native Village of Kluti-Kaah)

Cordova (see Eyak)

Council, Native Village of, Rhonda Hanebuth, ICWA Coordinator, P.O. Box 986, Nome, AK 99762; Phone: (907) 443–7649; Fax: (907) 443–5965

Craig Tribal Association, Roberta Patten, Family Caseworker I, P.O. Box 746 Craig, AK 99921; Phone: (907) 826–3948 Fax: (907) 826–5526; Email: *rpatten@ccthita.org* and Central Council Tlingit and Haida Tribes of Alaska; Barbara Dude, Child Welfare Program Specialist, 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801; Phone: (907) 463–7169; Fax: (907) 885–0032; Email: *icwamail@ccthita.org*

Crooked Creek, Native Village of, Helen Macar, ICWA Worker and Tribal Administrator, P.O. Box 69, Crooked Creek, AK 99575; Phone: (907) 432–2200; Fax: (907) 432–2201; Email: *bbcc@starband.net*

Curyung Tribal Council, (formerly the Native Village of Dillingham), Deanna Baier, Case Worker, ICWA, P.O. Box 216, Dillingham, AK 99576; Phone: (907) 842–4508; Fax: (907) 842–4510; Email: *dillinghamicwa@bbna.com;* and Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106; Email: *cnixon@bbna.com*

D

Deering, Native Village of, Pearl Moto, ICWA Coordinator and Delores Iyatunguk, Administrator, P.O. Box 36089, Deering, AK 99736; Phone: (907) 363–2138; Fax: (907) 363–2195 Email: *drgicwa@gmail.com; Tribaladmin@ipnatchiaq.org* and Maniilaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752; Phone: (907) 442–7870

Dillingham (see Curyung Tribal Council)

Diomede (aka Inalik) Native Village of, Florence Kuzuguk, Tribal Family Coordinator, P.O. Box 948 Nome, AK 99762; Phone: (907) 443–4261; Fax: (907) 443–4601; Email: *tfc.dio@kawerak.org and* Ms. Traci McGarry, Program Director, Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762; Phone: (907) 443–4376; Fax: (907) 443–4474; Email: *cfsdir@kawerak.org*

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Edzeno (see Nikolai Village)

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English Bay (see Native Village of Nanwalek)

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Fort Yukon, Native Village (See Gwichyaa Zhee Gwich'in)

Fortuna Ledge (see Native Village of Marshall)

G

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Haines (see Chilkoot Indian Association)

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Lower Kalskag (See Lower Kalskag)

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Kassan (see Organized Village of Kasaan)

Kashnumiut Tribe (see Chevak)

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King Cove (see Agdaagux)

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Klukwan (see Chilkat Indian Village)

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Kwethluk (see Organized Village of Kwethluk)

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Louden (see Galena)

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Mountain Village (see Asa'carsarmiut)

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Qissunaimut Tribe (see Chevak)

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Saint George (see St. George)

Saint Michael (see St. Michael)

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B

Bad River Band of Lake Superior Chippewa, Gina Secord, Abinoojiyag Resource Center Program Manager, P.O. Box 55, Odanah, WI 54861; Phone: (715) 682–7135 Ext: 3; Fax: (715) 682–7883; Email: *ARCMgr@badriver-nsn.gov*

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F

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G

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K

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L

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Lac Vieux Desert, Dee Dee McGeshick, Social Services Director, Marisa Vanzile, ICW Caseworker, P.O. Box 249, Watersmeet, MI 49969; Phone: (906) 358–4940; Fax: (906) 358–4900; Email: *dee.mcgeshick@lvdtribal.com*

Leech Lake Band of Ojibwe, Laurie Chase, Child Welfare Director, 190 Sailstar Drive NE., Cass Lake, MN 56633; P.O. Box 967, Cass Lake, MN 56633; Phone: (218) 335–8270; Fax: (218) 335–3768; Email: *laurie.chase@llojibwe.com*

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M

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Menominee Indian Tribe of Wisconsin, Mary Husby, Director of Social Services, Carol Corn—Acting Director of Social Services, P.O. Box 520, Keshena, WI 54135; Phone: (715) 799–5161; Fax: (715) 799–6061; Email: *mhusby@mitw.org*; *ccorn@mitw.org*

Mille Lacs Band of Ojibwe, Mishelle Ballinger, Administrative Case Aid—Family Services, 17230 Noopiming Drive, Onamia, MN 56359; Phone: (320) 532–7776; Fax: (320) 532–7583; Email: *mishelle.ballinger@hhs.millelacsband-nsn.gov*

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O

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R

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S

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Sault Ste. Marie Tribe of Chippewa Indians, Juanita Bye, ACFS Division Director, 2218 Shunk Rd, Sault Ste. Marie, MI 49783; Phone: (906) 632–5250; Fax: (906) 632–5266; Email: *jbye@saulttribe.net*

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Kootenai Tribal Council, Velma Bahe, ICWA Contact, P.O. Box 1269, Bonners Ferry, ID 83805–1269; Phone: (208) 267–8451

L

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Lummi Nation, Sarah Cook, Child Welfare Director, Kim Goesbehind, ICWA Intervention/Prevention Supervisor, Robert Ludgate Leader Social Services Worker, P.O. Box 1024, Ferndale, WA 98248; Phone: (360) 384–2324; Fax: (360) 384–2341

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Makah Indian Tribal Council, Robin Denney, Social Services Manager or Vanessa Castle, ICW Caseworker, P.O. Box 115, Neah Bay, WA 98357; Phone: (360) 645–3251/3257; Fax: (360) 645–2806

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Squaxin Island Tribe, Donald Whitener, Tribal Administrator, 10 SE. Squaxin

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Suquamish Indian Tribe of the Port Madison Reservation, Dennis Deaton, ICWA Contact, P.O. Box 498, Suquamish, WA 98392; Phone: (360) 394–8478; Fax: (360) 697–6774 Swinomish Indians, Tracy Parker, Swinomish Family Services Coordinator, 17337 Reservation Rd., LaConner, WA 98257; Phone: (360) 466–7222; Fax: (360) 466–1632; Email: *tparker@swinomish.nsn.us*

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8. Pacific Region

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Agua Caliente Band of Cahuilla Indians, John T. Plata, General Counsel, 5401 Dinah Shore Drive Palm Springs, CA 92264; Phone: (760) 669–6837; Fax: (760) 699–6863; Email: *jplata@aguacaliente.net*

Alturas Rancheria, Chairman, P.O. Box 340, Alturas, CA 96101; Phone: (530) 233–5571; Fax: 223–4165

Auburn Rancheria, Attn: Cheryl Douglas, United Auburn Indian Community, 935 Indian Rancheria Road, Auburn, CA 95603; Phone: (916) 251–1550; Fax: (530) 887–1028

Augustine Band of Cahuilla Indians, Mary Ann Green, Chairperson, P.O. Box 846, Coachella, CA 92236; Phone: (760) 398–4722

B

Barona Band of Mission Indians, Charity White-Voth, Kumeyaay Family Services Director, Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903; Phone: (619) 445–1188; Fax: (619) 445–0765

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Berry Creek Rancheria (See Tyme Maidu Tribe)

Big Lagoon Rancheria, Chairperson, P.O. Box 3060, Trinidad, CA 95570; Phone: (707) 826–2079; Fax: (707) 826–0495

Big Pine Paiute Tribe, Rhonda Willis, Tribal Administrator/ICWA Representative, P.O. Box 700, Big Pine, CA 93513; Phone: (760) 938–2003; Fax: (760) 938–2942; Email: *r.willis@bigpinepaiute.org*

Big Sandy Rancheria, Regina Riley, Tribal Council Secretary, P.O. Box 337, Auberry, CA 93602; Phone: (559) 374–0066; Fax: (559) 374–0055; Email: *GRiley@bsrnation.com*

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Bishop Paiute Tribe, Margaret L. Romero, ICWA Specialist; 50 TuSu Lane, Bishop, CA 93514; Phone: (760) 873–4414; Fax: (760) 873–4143; Email: *margaret.romero@bishoppaiute.org*

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C

Cabazon Band of Mission Indians, Chairman, 84–245 Indio Springs Drive, Indio, CA 92201; Phone: (760) 342–2593; Fax: (760) 347–7880

California Valley Miwok Tribe, as of date, there is no recognized government for this federally recognized tribe. Please contact Pacific Regional Director for up to date information.

Cahuilla Band of Mission Indians, Tribal Council, 52701 Hwy. 371, Anza, CA 92539; Phone: (951) 763–5549; Fax: (951) 763–2808. Email: *tribalcouncil@cahuilla.net*

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J

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Jicarilla Apache Nation, Sharnen Velarde, ICWA Social Worker, P.O. Box 546, Dulce, NM 87528; Phone: (575) 759–1712; Fax: (575) 759–3757; Email: *svelarde@jbhd.org*

L

Pueblo of Laguna, Marie A. Alarid, Program Manager, Social Services Department, P.O. Box 194, Laguna, NM 87026; Phone: (505) 552–6513 or (505) 552–5677; Fax: (505) 552–6387; Email: *malarid@lagunapueblo-nsn.gov*

M

Mescalero Apache Tribe, Crystal Lester, Tribal Census Clerk, P.O. Box 227, Mescalero, NM 88340; Phone (575) 464–4494; Fax: (575) 464–9191; Email: *clester@mescaleroapachetribe.com*

N

Pueblo of Nambe, Rhonda Padilla, ICWA Manager, Rte 1, Box 117–BB, Santa Fe, NM 87506; Phone (505) 445–0133; Fax (505) 455–4457; Email: *rpadilla@nambepueblo.org*

O

Ohkay Owingeh, Rochelle Thompson, ICWA Manager, P.O. Box 1187, Ohkay Owingeh, NM 87566; Phone: (575) 852–4400; Fax: (505) 692–0333; Email: *rochelle.thompson@ohkayowingeh-nsn.org*

P

Pueblo of Picuris, J. Albert Valdez, ICWA, P.O. Box 127, Penasco, NM 87553; Phone: (575) 587–1003; Fax (575) 587–1003; *jav.icwa@picurispueblo.org*

Pueblo of Pojoaque, Elizabeth Duran, Social Services Director, 58 Cities of Gold Rd. Suite 4, Santa Fe; NM 87506; Phone: (505) 455–0238; Fax: (505) 455–2363; Email: *eduran@pojoaque.org*

R

Ramah Navajo School Board, Inc., Loretta Martinez, Social Services Director, P.O. Box 250, Pine Hill, NM 87357; Phone: (505) 775–3221, 22, 25; Fax: (505) 775–3520; Email: *loretta@rnsb.k12.nm.us*

S

Pueblo of San Felipe, Darlene J. Valencia, Family Services Director, P.O. Box 4339, San Felipe Pueblo, NM 87004; Phone: (505) 771–9900; Fax: (505) 867–6166; Email: *dvalencia@sfpueblo.com*

Pueblo of San Ildelfonso, Jacqueline X. Benitez, ICWA/Family Advocate, 02 Tunyo Po, Santa Fe, NM 87506; Phone: (505) 455–4164; Cell: (505) 699–0164; Email: *jbenitez@sanipueblo.org*

Pueblo of Sandia, Kimberly Lorenzini, Case Manager, 481 Sandia Loop, Bernalillo, NM 87004; Phone: (505) 771–5117; Fax: (505) 867–7099; Email: *klorenzini@sandiapueblo.nsn.us*

Pueblo of Santa Ana, Mary E. Templin, Social Services Manager, 02 Dove Road, Santa Ana Pueblo, NM 87004; Phone: (505) 771–6737; Fax: (505) 771–6537; Email: *mary.templin@santaana-nsn-gov*

Pueblo of Santa Clara, Dennis Silva, Director of Social Services, P.O. Box 580, Espanola, NM 87532; Phone: (505) 753–0419; Fax: (505) 753–0420; Email: *dsilva@santaclarapueblo.org*

Pueblo of Santo Domingo-Kewa, Virginia Tenorio, Family Service Worker, or Doris Bailon, Social

Services Director, P.O. Box 129, Santo Domingo, NM 87052; Phone: (505) 465–0630; Fax: (505) 465–2854; Email: *vtenorio@kewa-nsn.gov* or *dbailon@kewa-nsn.gov*

Southern Ute Indian Tribe, Jeri K. Sindelar, ICWA Caseworker II, MS 40, P.O. Box 737, Ignacio, CO 81137; Phone: (970) 769–2920; Fax: (970) 563–4862; Email: *jsindelar@southernute-nsn.gov*

Southern Ute Indian Tribe, Peg Rogers, Social Services Attorney, MS 53, P.O. Box 737, Ignacio, CO 81137; Phone (970) 563–0100 #2332; Fax (970) 563–4854; Email: *dssattorney@southernute-nsn.gov*

T

Pueblo of Taos, Ezra Bayles, Division Director, P.O. Box 1846, Taos, NM 87571; Phone: (575) 758–7824; Fax: (575) 758–3346; Email: *ebayles@taospueblo.com*

Pueblo of Tesuque, Jeannette Jagles, MSW, ICWA Director, Route 42, Box 360–T, Santa Fe, NM 87506; Phone: (505) 469–0173; Fax: (505) 820–7780; Email: *jjagles@puebloftesuque.org*

U

Ute Mountain Ute Tribe, Norma Peabody, Acting Social Services Director, P.O. Box 309, Towaoc, CO 81334; Phone: (970) 564–5307; Fax: (970) 564–5300; Email: *npeabody@utemountain.org*

Y

Ysleta del Sur Pueblo, Jesus A. Donacio, ICWA Program Specialist, 9314 Juanchido Ln., El Paso, TX 79907; Phone: (915) 860–6170; Fax: (915) 242–6556; Email: *jdonacio@ydsp-nsn.gov*

Z

Pueblo of Zia, Kateri Chino, MSW, Health & Wellness Director, 135 Capital Square Drive, Zia Pueblo, NM 87053; Phone: (505) 401–6830; Fax: (505) 867–6014; Email: *kchino@ziapueblo.org*

Pueblo of Zuni, Betty Nez, Social Services Director, P.O. Box 339, Zuni, NM 87327; Phone: (505) 782–7166; Fax: (505) 782–7221; Email: *betty.nez@ashiwi.org*

12. Western Region

Western Regional Director, 2600 North Central Avenue, Phoenix, AZ 85004; Phone: (602) 379–6600; Fax: (602) 379–4413

A

Ak-Chin Indian Community, Carole Lopez, Enrollment Specialist, 42507 West Peters & Nall Road, Maricopa, AZ 85138; Phone: (520) 568–1029; Fax: (520) 568–1079; Email: *clopez@ak-chin.nsn.us*

B

Battle Mountain Band Council, Karla Saucedo, Social Worker III, 37 Mountain View Drive, Battle Mountain, NV 89820; Phone: (775) 635–2004; Fax: (775) 635–8528; Email: *Karlasaucedo1@yahoo.com*

C

Chemehuevi Indian Tribe, June Leivas, Secretary/Treasurer, P.O. Box 1976, Havasu Lake, CA 92363; Phone: (760) 858–4219; Fax: (760) 858–5400

Cocopah Indian Tribe, Tomas Romero, CTS–ICWA Specialist, 14515 South Veterans Drive, Somerton, AZ 85350; Phone: (928) 627–3729; Fax: (928) 627–3316; Email: *cocopahicwa@cocopah.com*

Colorado River Indian Tribes, Erica Daniels CNC/ICWA Caseworker, 12302 Kennedy Drive, Parker, AZ 85344; Phone: (928) 669–8187; Fax: (928) 669–8881; Email: *Erica.daniels@CRIT-DHS.org*

Confederated Tribes of the Goshute Reservation, Jeanine Hooper, Social Services/ICWA, HC61 Box 6104, Ibapah, UT 84034; Phone: (435) 234–1141; Fax: (435) 234–1219; Email: *Jeanine.hooper@ctgr.us*

D

Duckwater Shoshone Tribe, Iskandar Alexandar, LCSW, Social Worker, P.O. Box 140087, Duckwater, NV 89314; Phone: (775) 863–0222; Fax: (775) 863–0142; Email: *Iskandar.alexandar@ihs.gov*

E

Elko Band Council of Te-Moak Tribe, Dialina Blackhat, Social Worker, or Angela Mendez, ICWA Coordinator; 1745 Silver Eagle Drive, Elko, NV 89801; Phone: (775) 738–9310; Fax: (775) 778–3397; Email: *elkobandicwa@frontiernet.net*

Ely Shoshone Tribe, Georgia Valdez, Social Services Worker, 16 Shoshone Circle, Ely, NV 89301; Phone: (775) 289–4133; Fax: (775) 289–3237

F

Fallon Paiute-Shoshone Tribe, ICWA Representative, 1007 Rio Vista Drive, Fallon, NV 89406; Phone: (775) 423–1215; Fax: (775) 423–8960; Email: *ssdirector@fpst.org*

Fort McDermitt Paiute-Shoshone Tribe, Dee Crutcher, ICWA Advocate, P.O. Box 68, McDermitt, NV 89421; Phone: (775) 532–8263, Ext. 111; Fax: (775) 532–8060; Email: *dee.crutcher@fmpst.org*

Fort McDowell Yavapai Nation, James Esquirell, ICWA Coordinator/CPS Worker, Wassaja Family Services, P.O. Box 17779, Fountain Hills, AZ 85269; Phone: (480) 789–7990; Fax: (480) 837–4809; Email: *jesquirell@ftmcdowell.org*

Fort Mojave Indian Tribe, Melvin Lewis, Sr., Social Services Department Director, 500 Merriman Avenue, Needles, CA 92363; Phone: (928) 346–1550 or Toll Free Number: (866) 346–6010; Fax: (928) 346–1552; Email: *ssdir@ftmojave.com*

G

Gila River Indian Community, Sara Bissen, Child & Family Welfare Administrator, P.O. Box 427, Sacaton, AZ 85147; Phone: (520) 562–3396; Fax: (520) 562–3633; Email: *Sara.bissen@gric.nsn.us*

H

Havasupai Tribe, Erika Marshall, ICWA Coordinator, P.O. Box 10, Supai, AZ 86435; Phone: (928) 448–2661; Email: *hticwa@havasupai-nsn.gov*

The Hopi Tribe, Social Services Program, Eva Sekayumptewa, MSW, Clinical Supervisor, P.O. Box 945, Polacca, AZ 86042; Phone: (928) 737–1800; Fax: (928) 737–2697

Hualapai Tribe, Janet Silversmith, ICWA Worker, P.O. Box 480, Peach Springs, AZ 86434; Phone: (928) 769–2269/2383/2384/2397; Fax: (928) 769–2659

K

Kaibab Band of Paiute Indians, Manual Savala, Tribal Administrator; HC 65 Box 2, Fredonia, AZ 86022; Phone: (928) 643–7245; Fax: (888) 822–3734

L

Las Vegas Paiute Tribe, Ruth Fitz-Patrick, Social Services Caseworker, 1257 Paiute Circle, Las Vegas, NV 89106; Phone: (702) 382–0784, #410; Fax: (702) 384–5272; Email: *rfitzpatrick@lvpaiute.com*

Lovelock Paiute Tribe, Fran Machado, Director Social Services Director, 201 Bowean Street, Lovelock, NV 89419; Phone: (775) 273–5081; Fax: (775) 273–5151; *fmachado@lovelockpaiutetribe.com*

M

Moapa Band of Paiutes, Darren Daboda, Chairman, One Lincoln Street, Moapa, NV 89025; Phone: (702) 865–2787; Fax: (702) 864–2875; Email: *d_daboda@yahoo.com*

P

Paiute Indian Tribe of Utah, Tyler Goddard, Behavioral Care Director, 440 North Paiute Drive, Cedar City,

UT 84721; Phone: (435) 586–1112; Fax: (435) 867–1516; Email: *tyler.goddard@ihs.gov*

Pascua Yaqui Tribe, Office of the Attorney General, Tamara Walters, Assistant Attorney General, 7777 S. Camino Huivisim, Bldg. C, Tucson, AZ 85757; Phone: (520) 883–5108; Fax: (520) 883–5084; Email: *tamara.walters@pascuayaqui-nsn.gov*

Pyramid Lake Paiute Tribe, Rose Mary Joe-Kinale, Social Services Director, P.O. Box 256, Nixon, NV 89424; Phone: (775) 574–1047; Fax: (775) 574–1052; Email: *rkinale@plpt.nsn.us*

Q

Quechan Indian Tribe, Herlinda Ramos, ICWA Specialist Assistant, P.O. Box 189, Yuma, AZ 85364; Phone: (760) 570–0201; Fax: (760) 572–2099; Email: *icwaspecialist@quechantribe.com*

R

Reno-Sparks Indian Colony, Adriana Botello, Human Services Director, 405 Golden Lane, Reno, NV 89502; Phone: (775) 329–5071; Fax: (775) 785–8758; Email: *abotello@rsic.org*

S

Salt River Pima-Maricopa Indian Community, Allison Miller, ICWA Coordinator, SRPMIC Social Services Division, 10005 East Osborn Road, Scottsdale, AZ 85256; Phone: (480) 362–5645, Direct: (480) 362–7533; Fax: (480) 362–5574; Email: *Allison.Miller@srpmic-nsn.gov*

San Carlos Apache Tribe, Aaron Begay, ICWA Coordinator, P.O. Box 0, San Carlos, AZ 85550; Phone: (928) 475–2313; Fax: (928) 475–2342; Email: *abegay09@tss.scat-nsn.gov*

San Juan Southern Paiute Tribe, James Williams, Superintendent, 180 North 200 East, Suite 111, St. George, UT 84770; Phone: (435) 674–9720, Ext. 5; Fax: (435) 674–9714; Email: *james.williams@bia.gov*

Shoshone-Paiute Tribes, Zannetta Hanks, LSW, Social Worker, P.O. Box 219, Owyhee, NV 89832; Phone: (775) 757–2921, Ext. 26; Fax: (775) 757–2253; Email: *hanks.zannetta@shopai.org*

Skull Valley Band of Goshute Indians, Lori Bear, Chairwoman, P.O. Box 448, Grantsville, UT 84029; Phone: (435) 882–4532; Fax: (435) 882–4889; Email: *ibear@svgoshutes.com*

South Fork Band, Isae King, Social Services Coordinator, 21 Lee, B–13, Spring Creek, NV 89815; Phone: (775) 744–4273, Ext. 106; Fax: (775) 744–4523; Email: *sforksocialservices142@gmail.com*

Summit Lake Paiute Tribe, Page Linton, Vice-Chairwoman, 1001 Rock Blvd., Sparks, NV 89431; Phone: (775) 827–9670; Fax: (775) 827–9678; Email: *page.linton@summitlaketribe.org*

T

Te-Moak Tribe of Western Shoshone Indians (See Elko Band Council)

Tohono O'odham Nation, Laura Berglan, Acting Attorney General, P.O. Box 830, Sells, AZ 85634; Phone: (520) 383–3410; Fax: (520) 383–2689; Email: *laura.berglan@tonation-nsn.gov*

Tonto Apache Tribe, Brian Echols, Social Services Director, T.A.R. #30, Payson, AZ 85541; Phone: (928) 474–5000, Ext. 8120; Fax: (928) 474–4159; Email: *bechols@tontoapache.org*

U

Ute Indian Tribe, Floyd M. Wyasket, Social Services Director, Box 190, Fort Duchesne, UT 84026; Phone: (435) 725–4026 or (435) 823–0141; Fax: (435) 722–5030; Email: *floydw@utetribe.com*

W

Walker River Paiute Tribe, Elliott Aguilar, ICWA Specialist, Social Services Department, P.O. Box 146, 1029 Hospital Road, Schurz, NV 89427; Phone: (775) 773–2058, Ext: 11; Fax: (775) 773–2096; Email: *eaguilar@wrpt.gov*

Washoe Tribe of Nevada and California, Cynthia Blacksmith, Social Services Director, 919 US Highway 395 S., Gardnerville, NV 89410; Phone: (775) 265–8600; Fax: (775) 265–4593; Email: *cindy.blacksmith@washoetribe.us*

Wells Band Council, Te-Moak of Western Shoshone, Ashley MacClalchey, Social Services/ICWA Coordinator, P.O. Box 809, Wells, NV 89835; Phone: (775) 345–3045, Ext. 1002; Fax: (775) 752–2179; Email: *wellsbandssicwa@gmail.com*

White Mountain Apache Tribe, Cora Hinton, ICWA Representative/CPS Supervisor, P.O. Box 1870, Whiteriver, AZ 85941; Phone: (928) 338–4164; Fax: (928) 338–1469; Email: *chinton@wmat.us*

Winnemucca Tribe, Judy Rojo, Chairperson, 595 Humboldt Street, Reno, NV 89509; Phone: (775) 329–5800; Fax: (775) 329.5819

Y

Yavapai-Apache Nation, Ray DiQuarto, Social Services Director, 2400 West Datsi Street, Camp Verde, AZ 86322; Phone: (928) 649–7106; Fax: (928) 567–6832; Email: *rdiquarto@yan-tribe.org*

Yavapai-Prescott Indian Tribe, Elsie Watchman, Family Support Supervisor, 530 East Merritt, Prescott, AZ 86301; Phone: (928) 515–7351; Fax: (928) 541–7945; Email: *ewatchman@ypit.com*

Yerington Paiute Tribe, Nathaniel Landa, Human Services Director, 171 Campbell Lane, Yerington, NV 89447; Phone: (775) 463–7705, Ext. 1; Fax: (775) 463–5929; Email: *nlanda@ypt-nsn.gov*

Yomba Shoshone Tribe, Joshua Lumsden, Social Services Eligibility Worker, HC 61 Box 6275, Austin, NV 89310; Phone: (775) 964–2463, Ext. 107; Fax: (775) 964–1352; Email: *Socialservices@yombatribe.org*

B. Tribal Agents by Tribal Affiliation

See *http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm*

Dated: February 23, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–04619 Filed 3–1–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DF0000.LXSSH1050000.16XL1109AF; HAG 16–0087]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Southeast Oregon RAC will hold a public meeting Monday and Tuesday, April 4th and 5th, 2016. The April 4th meeting begins at noon and ends at 5:00 p.m. The April 5th meeting beings at 8:00 a.m. and ends at 1:00 p.m. The agenda will be released online at *http://www.blm.gov/or/rac/seorrac.php* prior to March 28th, 2016.

Tentative agenda items for the April 4–5, 2016 meeting include: Lands with Wilderness Characteristics (LWC) subcommittee establishment, possible designation of the Owyhee Canyonlands area, Wild Horse and Burro concerns, and planning future meeting agendas, dates, and locations. Any other matters

that may reasonably come before the Southeast Oregon RAC may also be addressed.

A public comment period will be available on the second day of the meeting, April 5th. Unless otherwise approved by the Southeast Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the Southeast Oregon RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Southeast Oregon RAC.

ADDRESSES: The meeting will be held at the Clarion Inn, 1249 Tapadera Ave., Ontario, OR 97914.

FOR FURTHER INFORMATION CONTACT: Larry Moore, Public Affairs Specialist, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or *l2moore@blm.gov.* 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: The Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon. This meeting is open to the public in its entirety. Information to be distributed to the Southeast Oregon RAC is requested prior to the start of each meeting. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Donald Gonzalez,

Vale District Manager.

[FR Doc. 2016–04549 Filed 3–1–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X L1109AF LLUT922000 L13200000.EL0000 24 1A, UTU–91102]

Notice of Invitation to Participate; Coal Exploration License Application UTU–91102, Sevier County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Canyon Fuel Company, LLC (Canyon) on a pro rata cost sharing basis, in a program for the exploration of coal deposits on 978.6 acres owned by the United States of America in Sevier County, Utah.

DATES: Any party seeking to participate in this exploration program must send written notice to both the BLM and Canyon, as provided in the **ADDRESSES** section below, no later than April 1, 2016. Beginning in the first week of April 2015, the notice of invitation was published once each week for two consecutive weeks in the *Richfield Reaper,* Richfield, Utah.

ADDRESSES: Copies of the exploration plan and license (serialized under the number of UTU–91102) submitted by Canyon are available for review from 7:45 a.m.–4:30 p.m., Monday through Friday, excluding Federal holidays, in the public room of the BLM-Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah.

Any party electing to participate in this exploration should send written notice to the following addresses: Roger Bankert, BLM-Utah State Office, Division of Lands and Minerals, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, and to Mark Bunnell, Canyon Fuel Company LLC., c/o Sufco Mine, 597 South SR 24, Salina, Utah 84654.

FOR FURTHER INFORMATION CONTACT: Stan Perkes by telephone: 801–539–4036, or by email: *sperkes@blm.gov.* 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: Canyon has applied to the BLM for a coal exploration license on public lands in the North Fork Quitchupah Canyon area near the existing Sufco Mine, which is located 30 miles north east of Salina, Utah. The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to obtain geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The Federal coal resource area to be explored includes the following described lands in Sevier County, Utah:

Salt Lake Meridian, Utah

T. 21 S., R. 4 E.,
Sec. 1, lot 4, and W1/2SW1/4;
Sec. 11;
Sec. 12, NW1/4NW1/4;
Sec. 14, NW1/4.

The areas described aggregate 978.60 acres.

The Federal coal within the above-described lands is currently not leased. Any exploration program will be fully described and conducted pursuant to an exploration license and plan approved by the BLM.

Authority: 30 U.S.C. 201(b) and 43 CFR 3410.2–1(c)(1).

Joseph Mendez,

Acting State Director.

[FR Doc. 2016–04532 Filed 3–1–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14400000–ET0000–15XL1109AF; HAG–15–0118; WAOR–50699]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 7209 for an additional 20-year term. PLO No. 7209 withdrew 3.25 acres of

public land from settlement, sale, location, or entry under the general lands laws, including the United States mining laws and leasing under the mineral leasing laws, to protect the fragile, unique, and/or endangered natural and cultural resources at Cape Johnson located adjacent to the Olympic National Park in Clallam County, Washington. In addition, this notice gives the public an opportunity to comment on the proposed withdrawal extension application and to a request a public meeting.

DATES: The BLM must receive comments and public meeting requests by May 31, 2016.

ADDRESS: Comments and meeting requests should be sent to the Bureau of Land Management (BLM) Oregon/Washington State Director, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, Land Law Examiner, at the address above or by telephone at 503–808–6225, or Barbara Holyoke at 206–220–4092, National Park Service (NPS), 168 South Jackson St., Seattle, WA 98104. 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 either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 7209 (61 FR 38783 (1996)), will expire July 24, 2016, unless it is extended, and is incorporated herein by reference. The NPS filed a petition/application to extend PLO No. 7209 for an additional 20-year term. PLO No. 7209 withdrew 3.25 acres of public land from settlement, sale, location, and entry under the general land laws, including the United States mining laws and leasing under the mineral leasing laws, subject to valid existing rights.

The Assistant Secretary for Land and Minerals Management has approved the petition/application of the NPS. Therefore, the petition/application constitutes a withdrawal extension proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal extension is to protect the fragile, unique, and endangered resources at Cape Johnson in Clallam County, Washington.

The use of right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection. There are no suitable alternative sites as the described lands are the actual lands in need of protection.

The NPS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

For the period until May 31, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal application may present their views in writing to the BLM State Director Oregon State Office at the address indicated above. 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.

Notice is hereby given that an opportunity for a public meeting is offered in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Oregon/Washington State Director no later than May 31, 2016. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Steve Storo,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2016–04581 Filed 3–1–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application To Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms (ATF F 5320.20)

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. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 2, 2016.

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 Andrew Ashton, Specialist, National Firearms Act (NFA) Branch, 244 Needy Road, Martinsburg, WV 25405 at telephone: 304–616–4541.

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–I): Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF F 5320.20.

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: Individuals or households.

Other (if applicable): None.

Abstract: Certain National Firearms Act firearms may not be transported interstate or temporarily exported by any person, other than a qualified Federal firearms licensee, without approval from ATF. The regulation requires a written request and this form provides for the regulatory requirements and may be used as a written request.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will take 20 minutes to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3,300 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: February 26, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–04555 Filed 3–1–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor

ACTION: Notice.

SUMMARY: On February 29, 2016, the Department of Labor (DOL) will submit the Bureau of International Labor Affairs sponsored information collection request (ICR) titled, ''Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 1, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-1290-001* (this link will only become active on March 1, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor information collection. The DOL Iqbal Masih Award for the Elimination of Child Labor, presented by the Secretary of Labor, is intended to recognize exceptional efforts to reduce the worst forms of child labor. The Award was created in response to a Senate Committee mandate directing the Secretary of Labor to establish an annual non-monetary award recognizing extraordinary efforts by an individual, company, organization, or national government to reduce the worst forms of child labor. The DOL is proposing to extend this ICR to allow the public to nominate and provide critical information on proposed candidates for this award who have demonstrated extraordinary efforts to combat the worst forms of child labor.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1290–0007.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 24, 2016 (80 FR 80368).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1290–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: DOL–OS.

Title of Collection: Solicitation of Nominations for the Iqbal Masih Award for the Elimination of Child Labor.

OMB Control Number: 1290–0007.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 50.

Total Estimated Number of Responses: 50.

Total Estimated Annual Time Burden: 500 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 25, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04584 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976–1, PTE 1977–10, PTE 1978–6

ACTION: Notice.

SUMMARY: On February 29, 2016, the Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976–1, PTE 1977–10, PTE 1978–6,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 1, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201512-1210-001* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the information collection requirements contained in the Prohibited Transaction Class Exemptions (PTE) for Multiple Employer Plans and Multiple Employer Apprenticeship Plans: PTE 1976–1, PTE 1977–10, and PTE 1978–6. PTE 1976–1 permits a multi-employer employee benefit plan, under specific conditions, to negotiate with a contributing employer to accept a delinquent contribution and to settle a delinquency; to make a construction loan to a contributing employer; and to lease property and purchase services and goods from a party in interest, including a contributing employer and an employee association. PTE 1977–10 expands the scope of relief provided under PTE 1976–1 part C for leasing property and purchasing goods and services. PTE 1978–6 provides an exemption to a multi-employer apprenticeship plan for purchasing personal property or leasing real property from a contributing employer. All three exemptions impose recordkeeping requirements on plans as a condition to availability of the relief. Employee Retirement Income Security Act of 1974 sections 407 and 408(a) authorize this information collection. *See* 29 U.S.C. 1107 and 1108(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0058.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0058. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976–1, PTE 1977–10, PTE 1978–6.

OMB Control Number: 1210–0058.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 3,625.

Total Estimated Number of Responses: 3,625.

Total Estimated Annual Time Burden: 906 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 26, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04585 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0017]

Quality Auditing Institute, Ltd.: Grant of Expansion of Recognition and Modification to the List of Appropriate NRTL Program Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for Quality Auditing Institute, Ltd. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on March 2, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Quality Auditing Institute, Ltd. (QAI) as an NRTL. QAI's expansion covers the addition of sixteen test standards to its scope of recognition. Additionally, OSHA announces a modification to its list of Appropriate NRTL Test Standards to include one additional test standard.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

QAI submitted an application, dated November 18, 2014, (OSHA–2013–0017–0006) to expand its recognition to include sixteen additional test standards, including one test standard to be added to the List of Appropriate NRTL Test Standards. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing QAI's expansion application and modification to the list of appropriate test standards in the **Federal Register** on December 7, 2015 (80 FR 76047). The Agency requested comments by December 22, 2015, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of QAI's scope of recognition and modification to the list of Appropriate NRTL Test Standards.

To obtain or review copies of all public documents pertaining to the QAI's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2013–0017 contains all materials in the record concerning QAI's recognition.

II. Final Decision and Order

OSHA staff examined QAI's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that QAI meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant QAI's scope of recognition. OSHA limits the expansion of QAI's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 48	Standard for Electric Signs.
UL 153	Standard for Portable Electric Luminaires.
UL 234	Standard for Low Voltage Lighting Fixtures for Use in Recreational Vehicles.
UL 355	Standard for Cord Reels.
UL 507	Standard for Electric Fans.
UL 508	Standard for Industrial Control Equipment.
UL 508A	Standard for Industrial Control Panels.
UL 514C	Standard for Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 514D	Cover Plates for Flush-Mounted Wiring Devices.
UL 962 *	Standard for Household and Commercial Furnishings.
UL 1574	Standard for Track Lighting Systems.
UL 1993	Self-Ballasted Lamps and Lamp Adapters.
UL 2108	Standard for Low Voltage Lighting Systems.
UL 60950–1	Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010–1	Safety Requirements for Electrical Equipment Measurement, Control, and Laboratory Use—Part 1: General Requirements.
UL 8750	Standard for Light Emitting Diode (LED) Equipment for Use in Lighting Products.

* Represents a new standard that OSHA is adding to the NRTL Program's List of Appropriate Test Standards—listed in Table 2 below.

TABLE 2—TEST STANDARD OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 962	Standard for Household and Commercial Furnishings.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, QAI must abide by the following conditions of the recognition:

1. QAI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. QAI must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. QAI must continue to meet the requirements for recognition, including all previously published conditions on QAI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of QAI, subject to the limitation and conditions specified above.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 25, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–04525 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0028]

Personal Protective Equipment (PPE) Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Personal Protective Equipment (PPE) Standard for General Industry (29 CFR part 1910, subpart I).

DATES: Comments must be submitted (postmarked, sent, or received) by May 2, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0028, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2009–0028) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public

Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Subpart I specifies several paperwork requirements. The following describes the information collection requirements in subpart I and addresses who will use the information.

Hazard Assessment and Verification (§ 1910.132(d))

Paragraph (d)(1) requires employers to perform a hazard assessment of the workplace to determine if hazards are present, or likely to be present, that make the use of PPE necessary. Where such hazards are present, employers must communicate PPE selection decisions to each affected employee (paragraph (d)(1)(ii)).

Paragraph (d)(2) requires employers to certify in writing that they have performed the hazard assessment. The certification must include the date and the person certifying that the hazard assessment was conducted, and the identification of the workplace evaluated (area or location).

The hazard assessment assures that potential workplace hazards necessitating PPE use have been identified and that the PPE selected is appropriate for those hazards and the affected employees. The required certification of the hazard assessment verifies that the required hazard assessment was conducted.

The standards on PPE protection for the eyes and face (29 CFR 1910.133), head (29 CFR 1910.135), feet (29 CFR 1910.136), and hands (29 CFR 1910.138) do not contain any separate information collection requirements.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Personal Protective Equipment (PPE) Standard for General Industry (29 CFR part 1910, subpart I). OSHA is proposing to decrease the burden hours in the currently approved information collection request from 1,696,991 hours to 1,366,521 hours, a difference of 330,470 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, subpart I).

OMB Control Number: 1218–0205.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 3,500,000.

Frequency of Response: On occasion.

Average Time per Response: Varies from one hour to generate and maintain records to 29 hours to perform a hazard assessment.

Estimated Total Burden Hours: 1,366,521.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0028). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the

http://www.regulations.gov Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 25, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–04523 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for TUV SUD America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on March 2, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV SUD America, Inc. (TUVAM) as an NRTL. TUVAM's expansion covers the addition of fifteen test standards and one recognized testing and certification site to its scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVAM submitted an application, dated October 16, 2014, (OSHA–2007–0043–0014) to expand its recognition to include fifteen additional test standards and one additional recognized testing and certification site located at: TUV SUD, 1229 Ringwell Drive, Newmarket, ON, L3Y 8T8, Canada. OSHA staff performed a detailed analysis of the application, including a comparability analysis, and reviewed other pertinent information. OSHA performed an on-site review of TUVAM's testing and certification facility in Newmarket, ON Canada on July 14–15, 2015, in which assessors found nonconformances with the requirements of 29 CFR 1910.7. TUVAM addressed these issues sufficiently, and OSHA staff recommended expansion of TUVAM's recognition to include these standards and this site.

OSHA published the preliminary notice announcing TUVAM's expansion application in the **Federal Register** on December 7, 2015 (80 FR 76045). The Agency requested comments by December 22, 2015, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVAM's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVAM's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0043 contains all materials in the record concerning TUVAM's recognition.

II. Final Decision and Order

OSHA staff examined TUVAM's expansion application, its capability to meet the requirements of the test standards, conducted a detailed on-site assessment, and reviewed other pertinent information. Based on its review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVAM's scope of recognition. OSHA limits the expansion of TUVAM's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below. Further, OSHA limits the expansion of TUVAM's recognition to include the site at TUV SUD, Newmarket, ON Canada as listed above. OSHA's recognition of this site limits TUVAM to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in TUVAM's scope of recognition. These limitations are consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

TABLE 1—LIST APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2202	Standard for Electric Vehicle (EV) Charging System Equipment.
ANSI Z83.8	Gas Unit Heaters, Gas Utility Heaters and Gas-Fired Duct Furnaces.
ANSI Z21.13	Gas-Fired Low Pressure Steam and Hot Water Boilers.
UL 795	Standard for Commercial-Industrial Gas Heating Equipment.
UL 726	Standard for Oil-Fired Boiler Assemblies.
UL 727	Standard for Oil-Fired Central Furnaces.
ANS Z21.10.3	Gas-Fired Water Heaters—Volume III, Storage Water Heaters With Input Ratings Above 75,000 BTU Per Hour, Circulating and Instantaneous.
UL 484	Standard for Room Air Conditioners.
UL 705	Standard for Power Ventilators.
UL 1812	Standard for Ducted Heat Recovery Ventilators.
UL 1815	Standard for Non-ducted Heat Recovery Ventilators.
UL 412	Standard for Refrigeration Unit Coolers.
UL 1042	Standard for Electric Baseboard Heating Equipment.
UL 1996	Standard for Electric Duct Heaters.
UL 2021	Standard for Fixed and Location-Dedicated Electric Room Heaters.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVAM must abide by the following conditions of the recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVAM, subject to the limitation and conditions specified above.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 25, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–04526 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0002]

Walking and Working Surfaces Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D).

DATES: Comments must be submitted (postmarked, sent, or received) by May 2, 2016.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0002, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2013–0002) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the extent possible unnecessary duplication of efforts in obtaining information (29 U.S.C 657).

The collections of information contained in the Walking and Working Surfaces Standard are necessary to protect workers from the collapse of overloaded floors, outrigger scaffolds, and failure of defective portable metal ladders. The following describes the information collection requirements in subpart D:

Paragraph 1910.22(d)(1) requires that in every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.

Under paragraph 1910.26(c)(2)(vii), portable metal ladders having defects are to be marked and taken out of service until repaired by either the maintenance department or the manufacturer.

Paragraph 1910.28(e)(3) specifies that unless outrigger scaffolds are designed by a licensed professional engineer, they shall be constructed and erected in accordance with table D–16 of this section. A copy of the detailed drawings and specifications showing the sizes and spacing of members shall be kept on the job.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D). OSHA is proposing to retain the burden hours in the currently approved information collection request. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Walking and Working Surfaces for General Industry (29 CFR 1910, subpart D).

OMB Control Number: 1218–0199.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 75,408.

Frequency of Response: On occasion.

Average Time per Response: Ranges from three minutes (.05 hour) to mark ladders with a tag or other means to 20 minutes (0.33 hours) to acquire a replacement sign and to post it.

Estimated Total Burden Hours: 6,125 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2013–0002). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 25, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–04524 Filed 3–1–16; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Data Center Optimization Initiative

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, ''*Data Center Optimization Initiative''*.

DATES: The 30-day public comment period on the draft memorandum begins on the day it is published in the **Federal Register** and ends April 1, 2016.

ADDRESSES: Interested parties may submit comments and feedback for 30 days, by the deadline listed on *https://datacenters.cio.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Casey, OMB, at *Sean_C_Casey@omb.eop.gov* and *OFCIO@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is proposing a new policy to update the Federal policy on data center management and optimization, formerly established by the FDCCI. This memorandum is required under the Federal Information Technology Oversight and Reform Act (FITARA). This draft policy improves upon metrics for measuring successful management of data centers; sets Federal governmentwide 3-year targets for those metrics, closures, and cost savings to be achieved from data centers; and takes steps to further Federal incorporation of cloud alternatives. Authority for this notice is granted under the Clinger-Cohen Act, 40 U.S.C. Subtitle III.

Tony Scott,

Administrator, Office of the Federal Chief Information Officer.

[FR Doc. 2016–04601 Filed 3–1–16; 8:45 am]

BILLING CODE 3110–05–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia (together ''the licensees''), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

DATES: Submit comments by April 1, 2016. Requests for a hearing or petition for leave to intervene must be filed by May 2, 2016.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Chandu P. Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–3025; email: *Chandu.patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated February 6, 2015, and supplemented by letter dated September 15, 2015, is available in ADAMS under Accession No. ML15037A715 and ML15258A555, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly

disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–91 and NPF–92, issued to SNC and Georgia Power Company for operation of the Vogtle Electric Generating Plant, Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the Combined Licenses (COLs) by changing the Updated Final Safety Analysis Report in the form of departures from the incorporated plant specific Design Control Document Tier 2 information and by making related changes to COL Appendix C information, with corresponding changes to the associated plant-specific Tier 1 information related to hydrogen igniters. Because, these proposed changes require a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 52.63(b)(1).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed addition of hydrogen igniters and clarifying changes to the hydrogen ignition subsystem does not affect any safety-related equipment or function. The hydrogen ignition subsystem is designed to mitigate beyond design basis hydrogen generation in the containment. The hydrogen ignition subsystem changes do not involve any accident, initiating event or component failure; thus, the probabilities of the accidents previously evaluated are not affected. The modified system will maintain its designed and analyzed beyond design basis function to maintain containment integrity. The maximum allowable leakage rate specified in the Technical Specifications is unchanged, and radiological material release source terms are not affected; thus, the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed addition of hydrogen igniters and clarifying changes to the hydrogen ignition subsystem will maintain the beyond design basis function of the hydrogen ignition subsystem. The hydrogen igniter subsystem changes do not impact its function to maintain containment integrity during beyond design basis accident conditions, and, thus does not introduce any new failure mode. The proposed changes do not create a new fault or sequence of events that could result in a radioactive release. The proposed changes would not affect any safety-related accident mitigating function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed addition of hydrogen igniters and clarifying changes to the hydrogen ignition subsystem will maintain the beyond design basis function of the hydrogen ignition subsystem. The proposed changes do not have any effect on the ability of safety-related structures, systems, or components to perform their design basis functions. The proposed changes do not affect the ability of the hydrogen igniter subsystem to maintain containment integrity following a beyond design basis accident. The hydrogen igniter subsystem continues to meet the requirements for which it was designed, and continues to meet the regulations.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for hearing or a petition for leave to intervene specifying the contentions which the person seeks to have litigated in the hearing with respect to the license amendment request. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the NRC's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing

request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Hearing requests or petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered

complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated February 6, 2015, as supplemented by letter dated September 15, 2015.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: John McKirgan

Dated at Rockville, Maryland, this 24th day of February 2016.

For the Nuclear Regulatory Commission.

John McKirgan,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–04620 Filed 3–1–16; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sundhine Act Cancellation Notice—OPIC's March 9, 2016 Annual Public Hearing

OPIC's Sunshine Act notice of its Annual Public Hearing was published in the **Federal Register** (Volume 81, Number 7, Pages 1449–1450) on January 12, 2016. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's Annual Public Hearing scheduled for 1 p.m., March 9, 2015 has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Catherine F. I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: February 26, 2016.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2016–04657 Filed 2–29–16; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–80; Order No. 3101]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 123 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 4, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On February 25, 2016, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 123 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5. Notice at 1.

The Postal Service also filed the unredacted amendment and supporting financial information under seal. *Id.* The

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 123, February 25, 2016 (Notice).

Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.*

The amendment sets forth the Priority Mail Contract 123 price changes that were contemplated by the contract's terms. *Id.*

The Postal Service intends for the amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* Attachment A at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. Notice, Attachment B at 1.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than March 4, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–80 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than March 4, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–04594 Filed 3–1–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32006; File No. 812–14442]

PowerShares Exchange-Traded Fund Trust, et al.; Notice of Application

February 25, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of ''business development companies'', as defined in section 2(a)(48) of the Act (''BDCs''), that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act and to exempt such transactions in BDCs from section 17(a) to the extent necessary to permit such purchases and redemptions. The requested order would amend a prior order issued to the Applicants by the Commission under section 12(d)(1)(J) of the Act for exemptions from sections 12(d)(1)(A), (B) and (C) of the Act and sections 6(c) and 17(b) of the Act exempting certain transactions from section 17(a) of the Act (''Prior Order'').[1]

APPLICANTS: PowerShares Exchange-Traded Fund Trust, PowerShares Exchange-Traded Fund Trust II, PowerShares Actively Managed Exchange-Traded Fund Trust (each a ''Trust'', and collectively, the ''Trusts''),[2] each organized as a Massachusetts business trust or Delaware statutory trust, as applicable, and each registered as an open-end management investment company under the Act with multiple series, and Invesco PowerShares Capital Management, LLC, a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Adviser'' [3] and, together with the Trusts, the ''Applicants'').

DATES: *Filing Dates:* The application was filed on April 10, 2015, as amended on October 20, 2015, and January 12, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2016 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 3500 Lacey Road, Suite 700, Downers Grove, Illinois 60515.

FOR FURTHER INFORMATION CONTACT: Erin C. Loomis, Senior Counsel, at (202) 551–6721, or Sara Crovitz, Assistant Chief Counsel, at (202) 551–6862 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1)(A) and (C) of the Act. The order would permit a Fund [4] (each a ''Fund of Funds'') to

[1] *In the Matter of PowerShares Exchange-Traded Fund Trust, et al.*, Investment Company Act Release Nos. 30222 (Sept. 26, 2012) (notice) and 30238 (Oct. 23, 2012) (order).

[2] The Trusts have received exemptive relief to operate as exchange-traded funds. *In the Matter of PowerShares Exchange-Traded Fund Trust and PowerShares Capital Management LLC,* Investment Company Act Release Nos. 25961 (Mar. 4, 2003) (notice) and 25985 (Mar. 28, 2003) (order).

[3] All references herein to the term ''Adviser'' include successors-in-interest to the Adviser. A ''successor-in-interest'' is an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[4] Applicants request that the order apply to each existing and future series of the Trusts and to each existing and future registered open-end investment company or series thereof that is advised by the Adviser or by any entity controlling, controlled by or under common control with the Adviser and is part of the same ''group of investment companies'' as the Trusts (each, a ''Fund''). For purposes of the requested order, the same ''group of investment

invest in any BDC (''Underlying BDC'') that may or may not be part of the ''same group of investment companies'' as the Fund of Funds. The order would amend the Prior Order, which permits the Funds of Funds to acquire shares of certain registered open-end management investment companies, registered closed-end management investment companies, and registered unit investment trusts that are within or outside the same group of investment companies as the acquiring investment companies (''Prior Underlying Funds'', and together with the Underlying BDCs, the ''Underlying Funds'') in excess of the limits in sections 12(d)(1)(A), (B) and (C) of the Act.[5] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying BDCs to sell their shares to, and redeem their shares from, the Funds of Funds. Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will generally be based on the net asset values of the Underlying Funds.[6]

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Prior Order, as amended by the Application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act. The Applicants do not believe that investments in BDCs present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies. Moreover, Applicants believe that the terms and conditions of the Prior Order that were designed to address the concerns underlying section 12(d)(1) with regard to investments in closed-end investment companies are sufficient to address those same concerns with respect to investment in underlying BDCs.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04509 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

companies'' means any two or more registered investment companies (including closed-end investment companies) or BDCs that hold themselves out to investors as related companies for purposes of investment and investor services.

[5] The Prior Order also exempts these transactions from section 17(a) to the extent necessary to permit such purchases and redemptions by the Funds of Funds of shares of the Prior Underlying Funds and to permit sales and redemptions by the Prior Underlying Funds of their shares in transactions with each Fund of Funds.

[6] With regard to purchases of underlying closed-end investment companies, the only sales transaction requiring relief from section 17(a) (a follow-on offering) generally must be priced at net asset value (plus the cost of any distributing commission or discount) unless the offering fits within a narrow range of exceptions that are designed to limit overreaching by the selling fund. For this reason, Applicants state that they do not believe that section 17(a) relief to permit sales of shares by underlying closed-end investment companies presents any different concerns or considerations than are presented in connection with section 17(a) relief to permit sales of shares by a BDC to a Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77233; File No. SR–NASDAQ–2016–021]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Alternative Absolute Return Strategy ETF of First Trust Exchange-Traded Fund VII

February 25, 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 February 16, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the First Trust Alternative Absolute Return Strategy ETF (the ''Fund'') of First Trust Exchange-Traded Fund VII (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR–NASDAQ–2014–019) (order approving listing and trading of First Trust Managed Municipal ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares [4] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on November 6, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund will be a series of the Trust. As part of its investment strategy, the Fund will invest in a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the ''First Trust Subsidiary'').

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''BBH'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, which is a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or any sub-adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

First Trust Alternative Absolute Return Strategy ETF

The Fund will be an actively-managed ETF that will seek to achieve long-term total return by using a long/short commodities strategy. Under normal market conditions,[8] the Fund will invest in a combination of securities,

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed-income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (the ''Exemptive Relief''). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed ETFs. *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Exemptive Relief) invest in options contracts, futures contracts or swap agreements provided that they comply with certain representations stated in the No-Action Letter.

[6] *See* Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated January 28, 2016 (File Nos. 333–184918 and 811–22767). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities, commodities or futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities and/or other instruments in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

exchange-traded commodity futures contracts, and other instruments, either directly or through the First Trust Subsidiary as follows. The Fund will invest in: (1) The First Trust Subsidiary; (2) short-term high-quality U.S. government and agency securities; [9] (3) short-term repurchase agreements; [10] (4) money market instruments; [11] and (5) cash. The First Trust Subsidiary may also invest in the instruments described in the foregoing clauses (2) through (5) (collectively, ''Other Investments''). Other Investments (except for cash and money market mutual funds) will each have a maturity of five years or less. The Fund (and, as applicable, the First Trust Subsidiary) will use the Other Investments for investment purposes, to provide liquidity, and/or to collateralize the First Trust Subsidiary's investments in exchange-traded commodity futures contracts (''Commodities'').

The Fund expects to exclusively gain exposure to Commodities indirectly by investing directly in the First Trust Subsidiary. The Fund's investment in the First Trust Subsidiary may not exceed 25% of the Fund's total assets. The Fund will not invest directly in Commodities, and neither the Fund nor the First Trust Subsidiary will invest directly in physical commodities.

The First Trust Subsidiary

The First Trust Subsidiary will be advised by the Adviser.[12] The First Trust Subsidiary will not be registered under the 1940 Act. As an investor in the First Trust Subsidiary, the Fund, as the First Trust Subsidiary's sole shareholder, will not have the protections offered to investors in registered investment companies. However, because the Fund will wholly own and control the First Trust Subsidiary, and the Fund and the First Trust Subsidiary will be managed by the Adviser, the First Trust Subsidiary will not take action contrary to the interest of the Fund or the Fund's shareholders. The Trust Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the First Trust Subsidiary, and the Fund's role as the sole shareholder of the First Trust Subsidiary. The Adviser will receive no additional compensation for managing the assets of the First Trust Subsidiary.

The Fund's investment in the First Trust Subsidiary will be designed to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments.

The First Trust Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. Eligible Commodities will be selected based on liquidity as measured by open interest (generally, the number of contracts that are outstanding at a particular time) and volume. The list of Commodities considered for inclusion can and will change over time. Through its investment process, the Adviser will seek to maximize the total return of a long/short commodity portfolio [13] while managing overall portfolio risk, sector risk, liquidity risk, margin risk, and position size risk. As indicated above, in addition to Commodities, the First Trust Subsidiary may invest in Other Investments.

The First Trust Subsidiary will initially consider investing in Commodities set forth in the following table. The table also provides each instrument's trading hours, exchange and ticker symbol. The table is subject to change.

Commodity	Bloomberg exchange code[14]	Exchange name	Trading hours (E.T.)	Contract ticker (generic Bloomberg ticker)
Cattle, Live/Choice Average	CME	Chicago Mercantile Exchange	18:00–17:00	LC.
Cocoa	NYB	ICE Futures Exchange	04:00–14:00	CC.
Cotton/1–1/16″	NYB	ICE Futures Exchange	21:00–14:30	CT.
Feeder Cattle	CME	Chicago Mercantile Exchange	18:00–17:00	FC.
Coffee 'C'/Colombian	NYB	ICE Futures Exchange	03:30–14:00	KC.
Soybeans/No. 2 Yellow	CBT	Chicago Board of Trade	20:00–14:15	S.
Soybean Meal/48% Protein	CBT	Chicago Board of Trade	20:00–14:15	SM.
Soybean Oil/Crude	CBT	Chicago Board of Trade	20:00–14:15	BO.
Corn/No. 2 Yellow	CBT	Chicago Board of Trade	20:00–14:15	C.
Wheat/No. 2 Hard Winter	CBT	Chicago Board of Trade	20:00–14:15	KW.
Wheat/No. 2 Soft Red	CBT	Chicago Board of Trade	20:00–14:15	W.
Sugar #11/World Raw	NYB	ICE Futures Exchange	02:30–14:00	SB.
Hogs, Lean/Average Iowa/S Minn	CME	Chicago Mercantile Exchange	18:00–17:00	LH.
Crude Oil, WTI/Global Spot	NYM	New York Mercantile Exchange	18:00–17:15	CL.
Crude Oil, Brent/Global Spot	ICE	ICE Futures Exchange	20:00–18:00	CO.

[9] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[10] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Trust's Board of Trustees (the ''Trust Board''). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[11] For the Fund's purposes, money market instruments will include: (i) Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; (ii) non-convertible high-quality corporate debt securities with remaining maturities of not more than 397 days; (iii) money market mutual funds; (iv) commercial paper; and (v) certificates of deposit, bank time deposits, bankers' acceptances and short-term negotiable obligations of U.S. and non-U.S. banks and financial institutions.

[12] The First Trust Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[13] To be ''long'' means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. To be ''short'' means to sell or be exposed to a security or instrument with the expectation that it will fall in value. The Fund, through the First Trust Subsidiary, will benefit if it has a long position in a Commodity that increases in value or a short position in a Commodity that decreases in value.

[14] The exchange codes listed are Bloomberg shorthand codes for the corresponding exchanges. The New York Board of Trade is currently owned by the ICE Futures Exchange; Bloomberg continues to use NYB as its shorthand code for certain contracts formerly traded on the New York Board of Trade.

Commodity	Bloomberg exchange code[14]	Exchange name	Trading hours (E.T.)	Contract ticker (generic Bloomberg ticker)
NY Harb ULSD	NYM	New York Mercantile Exchange	18:00–17:15	HO.
Gas-Oil-Petroleum	ICE	ICE Futures Exchange	20:00–18:00	QS.
Natural Gas, Henry Hub	NYM	New York Mercantile Exchange	18:00–17:15	NG.
Gasoline, Blendstock (RBOB)	NYM	New York Mercantile Exchange	18:00–17:15	XB.
Gold	CMX	Commodity Exchange	18:00–17:15	GC.
Silver	CMX	Commodity Exchange	18:00–17:15	SI.
Platinum	NYM	New York Mercantile Exchange	18:00–17:15	PL.
Copper High Grade/Scrap No. 2 Wire	CMX	Commodity Exchange	18:00–17:15	HG.
Aluminum, LME Primary 3 Month Rolling Forward.	LME	London Metal Exchange	15:00–14:45	LA.
Lead, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LL.
Nickel, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LN.
Tin, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LT.
Zinc, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LX.

As the exchanges referenced above list additional Commodities, as currently listed Commodities on those exchanges that are not included above meet the Adviser's selection criteria, or as other exchanges list Commodities that meet the Adviser's selection criteria, the Adviser will include those Commodities in the list of possible investments of the First Trust Subsidiary. The list of Commodities and commodities markets considered for investment can and will change over time.

With respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight [15] of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of the Intermarket Surveillance Group (''ISG'') or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Commodities Regulation

The Commodity Futures Trading Commission (''CFTC'') has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Fund and the First Trust Subsidiary will be subject to regulation by the CFTC and National Futures Association (''NFA'') as well as additional disclosure, reporting and recordkeeping rules imposed upon commodity pools. The Adviser has previously registered as a commodity pool operator [16] and is also a member of the NFA.

Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry. This restriction will not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (b) securities of other investment companies.[17]

The First Trust Subsidiary's shares will be offered only to the Fund and the Fund will not sell shares of the First Trust Subsidiary to other investors. The Fund and the First Trust Subsidiary will not invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser.[18] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'') [20] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however,

[15] To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary's Commodities.

[16] As defined in Section 1a(11) of the Commodity Exchange Act.

[17] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[18] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades *(e.g.,* the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[20] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on Nasdaq, generally 4:00 p.m., Eastern Time (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* the Registration Statement.

are not expected to consist of less than 50,000 Shares. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[21] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BBH with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on Nasdaq (ordinarily 4:00 p.m., Eastern Time) (the ''Closing Time''), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt, not later than the Closing Time, of a redemption request in proper form by the Fund through the transfer agent and only on a business day.

The Fund's custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Net Asset Value

The Fund's NAV will be determined as of the close of regular trading on Nasdaq on each day Nasdaq is open for trading. If Nasdaq closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for the Fund by taking the value of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Fund's and the First Trust Subsidiary's investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.,* a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a ''Pricing Service'').[22] If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the ''Pricing Committee'') [23] questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the ''Valuation Procedures''), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material. Valuing the investments of the Fund and the First Trust Subsidiary using fair value pricing can result in using prices for those investments (particularly investments that trade in foreign markets) that may differ from current market valuations.

Certain securities in which the Fund and the First Trust Subsidiary may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: Except as provided below, money market instruments (other than money market mutual funds, certificates of deposit and bank time deposits) and U.S. government and agency securities (collectively ''Fixed-Income Instruments''). Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser.

Fixed-Income Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Repurchase agreements will typically be valued as follows: Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Certificates of deposit and bank time deposits will typically be valued at cost.

[21] Subject to, and in accordance with, the provisions of the Exemptive Relief, it is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, it may issue and redeem Creation Units (at least in part) on an in-kind basis.

[22] The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

[23] The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

Money market mutual funds will typically be valued at their net asset values as reported by such funds to Pricing Services. Commodities will typically be valued at the closing price in the market where such instruments are principally traded.

Because foreign exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund's assets may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price'') [24] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [25] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the First Trust Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[26] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund and the First Trust Subsidiary, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio (including the First Trust Subsidiary's portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [27] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the instruments' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares.

Pricing information for Fixed-Income Instruments, certificates of deposit, bank time deposits and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Commodities will be available from the applicable listing exchange and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance

[24] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[25] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[26] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

with Rule 10A–3 [28] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities, Commodities and/or the other assets constituting the Disclosed Portfolio of the Fund and the First Trust Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[29] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Commodities with other markets and other entities that are members of ISG,[30] and FINRA may obtain trading information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund and the First Trust Subsidiary reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, with respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight [31] of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act 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 in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf

[28] *See* 17 CFR 240.10A–3.

[29] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[30] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[31] To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary's Commodities.

of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and is required to implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Commodities with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the Commodities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund and the First Trust Subsidiary reported to FINRA's TRACE. In addition, with respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight [32] of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Fund will invest up to 25% of its total assets in the First Trust Subsidiary.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser. The Fund will not invest directly in Commodities and the Fund expects to exclusively gain exposure to these investments by investing in the First Trust Subsidiary. The Fund and the First Trust Subsidiary will not invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the First Trust Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Pricing information for Fixed-Income Instruments, certificates of deposit, bank time deposits and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Commodities will be available from the applicable listing exchange and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The Fund's and the First Trust Subsidiary's investments will be valued daily. Investments traded on an exchange (*i.e.,* a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Commodities, with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the Commodities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such instruments from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund and the First Trust Subsidiary reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

[32] To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary's Commodities.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–2016–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NASDAQ–2016–021. 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 Nasdaq. 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–2016–021 and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04503 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77232; File No. SR–NASDAQ–2016–026]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5745

February 25, 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 February 17, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. 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

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b–4 thereunder, Nasdaq is filing with the Commission a proposed rule change to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund (''NextShares'')) in connection with a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (''1940 Act''). The shares of a NextShares are collectively referred to herein as ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Nasdaq Rule 5745 in connection with the trading of NextShares[3] on Nasdaq using a new trading protocol called ''NAV-Based Trading.'' In NAV-Based Trading, all bids, offers and execution prices would be expressed as a premium/discount (which may be zero) to a NextShares next-determined net asset value (''NAV'') (*e.g.,* NAV − $0.01;

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34–73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–2014–020).

NAV + $0.01). A NextShares NAV would be determined each business day, normally no later than 6:45 p.m. Eastern Time. Trade executions using NAV-Based Trading would be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of the NextShares NAV at the end of the business day.

A NextShares next determined NAV would be represented by a proxy price (''Proxy Price'') base value (represented as 100) and will be adjusted by the premium/discount being offered/bid by the subject transaction. For example, if a client wanted to enter a bid of NAV minus $0.01 the proxy price would be 99.99 and if a client wanted to enter an offer of NAV plus $0.02 the proxy price would be 100.02.

Specifically, the Exchange proposes to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund (''NextShares'')) to add new subsection (h) to Nasdaq Rule 5745, which defines ''Proxy Price Protection''. Proxy Price Protection states that every NextShares order is subject to the Proxy Price Protection threshold of plus/minus $1.00 and that this threshold determines both the lower and upper threshold whereby orders will be cancelled at any point if it exceeds $101.00 or falls below $99.00, the established thresholds. The Proxy Price Protection threshold is applied to the proxy price amount of $100.00, which is the proxy price that reflects the NAV of a NextShares Fund.

Every NextShares order, regardless of buying or selling instructions and order type, will be subject to the Proxy Price Protection threshold of plus/minus $1.00 and will be applied uniformly across all NextShares products. A NextShares order that is subject to the Proxy Price Protection threshold of plus/minus $1.00 will be cancelled at any point if it exceeds or falls below the established thresholds (*i.e.,* if the NextShares order falls below $99.00 or exceeds $101.00). Additionally, the Proxy Price Protection threshold of plus/minus $1.00 will be monitored to measure its effectiveness, but it may be adjusted by the Exchange in the future if it determines based upon feedback and investor experience that a different threshold would be more effective.

Nasdaq based the Proxy Price Protection threshold of plus/minus $1.00 on how NextShares transactions occur in relation to the NAV. Since each trade executes in Proxy Price format, only the amount of premium/discount can be determined at the time of the transaction. This premium/discount from each transaction will then be applied to the end of day NAV to calculate a final transaction price. The Proxy Price Protection threshold of plus/minus of $1.00 is to ensure that the amount of the premium/discount does not represent a disproportionate amount of the total transaction when applied to the end of day NAV. The Proxy Price Protection threshold, however, will not be adjusted in the future to be less than $1.00 or exceed $3.00.

In the example below, the plus/minus $1.00 threshold would translate into a 4% change in NAV for the Large Cap NextShares given the $25.00 end of day NAV. This 4% change in NAV is narrower, but most closely aligns with the 5% change in NAV set forth in Nasdaq Rule 11890 for clearly erroneous transactions for products with an NAV greater than $25.00 up to and including $50.00,[4] which is the expected NAV range for many NextShares.[5]

To illustrate whether a subject transaction meets the plus/minus $1.00 Proxy Price Protection threshold, consider the following example for a Large Cap NextShares[6] with a $25.00 end of day NAV:

- The plus/minus $1.00 Proxy Price Protection threshold is applied to the proxy price amount of $100.00, which is the proxy price that reflects the NAV of a NextShares Fund
- The lower threshold will be $99.00
- The upper threshold will be $101.00
- Buy or Sell orders lower than $99.00 or greater than $101.00 will not be accepted

When applied to the end of day NAV[7] of $25.00, the example continues as follows:

- The minimum execution price will be $24.00
- The maximum execution price will be $26.00

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[8] in general and Section 6(b)(5) of the Act[9] 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.

The Exchange believes that proposed new subsection (h) to Nasdaq Rule 5745 is designed to promote just and equitable principles of trade and to protect investors in the trading of NextShares by clarifying that NextShares orders that fall outside the Proxy Price Protection threshold of plus/minus $1.00 will be cancelled, as well as by explicitly stating that this threshold is applied to the proxy price amount of $100.00, which is the proxy price that reflects the NAV of a NextShares Fund. The Exchange believes that that the proposed rule change to implement a Proxy Price Protection threshold is similar to existing mechanisms on other markets[10] and would reduce the risk of and potentially prevent the execution of orders that are potentially erroneous from occurring on the Exchange. The proposed rule change will reduce confusion and add clarity around this issue and thereby promote just and equitable principles of trade and protect investors.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed rule changes would assist in the introduction of NextShares, and thereby will promote competition through innovation in the exchange-traded product marketplace.

[4] *See* Nasdaq Rule 11890(a)(2)(C)(1).

[5] The Exchange notes that the proposed Proxy Price Protection threshold of plus/minus $1.00 is also expected to be narrower than the applicable limit up—limit down plan bands. With the introduction of a new trading process (trading in Proxy Price), the Exchange seeks to offer protections that are more narrow than limit up—limit down bands given that the trading process represents a premium or discount to the end of day NAV price.

[6] Large Cap NextShares is used only for illustrative purposes and this example applies across all NextShares (*i.e.,* this example applies exactly the same to any type of NextShares such as a Small Cap NextShares or a Government Obligations NextShares) and does not apply on a security by security basis.

[7] Nasdaq will apply the premium or discount from the transaction done in Proxy Price to the end of day NAV resulting in a final transaction price inclusive of the premium or discount.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 74063 (Jan. 15, 2015), 80 FR 3269 (Jan. 22, 2015) (SR–NYSE–2015–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a Price Protection Mechanism to Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy).

[11] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to implement a Proxy Price Protection threshold similar to existing mechanisms on other markets and would reduce the risk of and potentially prevent the erroneous execution of orders on the Exchange. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–026 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–2016–026. 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–NASDAQ–2016–026, and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04502 Filed 3–1–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77235; File No. SR–NASDAQ–2015–159]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Implement Additional Price Protections in the Opening Process

February 25, 2016.

I. Introduction

On December 23, 2015, the NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to enhance the price protections for the Exchange's opening process. The proposed rule change was published for comment in the **Federal Register** on January 11, 2016.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes new paragraph (F) to Rule 4752(d)(2) to enhance the price protections for the Nasdaq Opening Cross.[5]

Background

Nasdaq Rule 4752(d) describes the Nasdaq Opening Cross process, and Rule 4752(d)(2)(A) through (E) sets forth the process for determining the price at which an Opening Cross occurs. Specifically, the Opening Cross occurs at 9:30 a.m. ET and occurs at the price that maximizes the number of shares of Market On Open orders (''MOO''), Limit On Open orders (''LOO''), Opening Imbalance Only orders (''OIO''), Early

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76833 (January 5, 2016), 81 FR 1240 (''Notice'').

[4] *See* letter from Kermit Kubitz to the Commission, dated February 1, 2016 (''Kubitz Letter'').

[5] The term ''Nasdaq Opening Cross'' (hereinafter also referred to as ''Opening Cross'') is defined in Nasdaq Rule 4752(a)(5).

Market Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.[6] If more than one price exists that would maximize such quotes and orders to be executed, then the Opening Cross occurs at the price that minimizes any imbalance.[7] If more than one price exists that would minimize an imbalance, then the Opening Cross occurs at the entered price at which shares will remain unexecuted in the cross.[8] If more than one price exists at which shares will remain unexecuted in the cross, then the Opening Cross occurs at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.[9]

In addition to the calculation of the Opening Cross price pursuant to Rule 4752(d)(2)(A) through (D), the Exchange applies a price range within which the Opening Cross must execute in order to ensure that the Opening Cross price is reasonably tied to the prevailing market at the time.[10] Specifically, the Exchange applies a percentage based threshold (''Threshold Percentage'') to a benchmark (''Benchmark Value'') to determine a specific value.[11] That value is then applied to the spread for a particular security to determine the price range within which the Opening Cross for the security may occur (''Threshold Range''), and outside of which the Opening Cross for the security may not occur.[12] Currently, the Threshold Percentage is 10% and the Benchmark Value is the midpoint of the Nasdaq Best Bid and Offer (''QBBO'').[13] To establish the Threshold Range, the Exchange calculates 10% of the midpoint of the QBBO, and then adds the resulting value to the Nasdaq Best Offer and subtracts the resulting value from the Nasdaq Best Bid.[14] If the Opening Cross price of a security established pursuant to Rule 4752(d)(2)(A) through (D) falls outside the Threshold Range, then the Exchange adjusts the Opening Cross price to a price within the Threshold Range that best satisfies the conditions of Rule 4752(d)(2)(A) through (D).[15]

According to the Exchange, the current price adjustment process has been effective at ensuring that the Opening Cross price of a security falls within a certain range of the QBBO.[16] However, an order or quote entered by a participant in error that establishes one side of the QBBO could result in an excessively wide QBBO and significantly skew the Opening Cross price of a security.[17] The current price adjustment process would not prevent the Opening Cross from occurring at an erroneous price under these circumstances, because the price would still fall within the excessively wide Threshold Range, which would be calculated using the excessively wide QBBO.[18] Under these circumstances, the parties to the erroneously priced transactions would have to avail themselves of the Exchange's clearly erroneous trade nullification process.[19]

New Price Protections

In order to mitigate the potential for mispriced Opening Crosses and the resulting need to use the Exchange's clearly erroneous trade nullification process, the Exchange proposes additional price protections for its opening process to help ensure that the Opening Cross price is reasonably related to the market and not the product of erroneous order entry.[20] Specifically, in addition to the existing process for determining the Opening Cross price for a security, the Exchange would require the security to pass one of three new ''Opening Cross Price Tests'' in order for an Opening Cross in the security to occur.[21] Each Opening Cross Price Test would specify a range within which the Opening Cross price must fall and, as discussed in more detail below, each price range is calculated by applying a threshold to a specific reference measure.[22] The Exchange proposes to initially set the threshold for each Opening Cross Price Test at the greater of $0.50 or 10% of the reference measure, although the Exchange may adjust the thresholds for each Opening Cross Price Test independently of one another.[23] If a security's Opening Cross price fails all three tests, then all MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Cross in that security would be cancelled back to the participants, no Opening Cross would occur in that security, and the security would open for regular market hours trading consistent with Rule 4752(c).[24]

Under Opening Cross Price Test A, for a Nasdaq-listed security, the Exchange would establish the Opening Cross price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Official Closing Price of the security from the previous trading day. For non-Nasdaq-listed securities, the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the consolidated closing price of the security from the previous trading day. For new Exchange Traded Products (''ETPs'') that do not have a Nasdaq Official Closing Price, the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the offering price. If the Opening Cross price falls outside of the relevant price range, or if a security does not have a Nasdaq Official Closing Price or consolidated closing price from the previous trading day, then the security would fail Opening Cross Price Test A and the Exchange would perform Opening Cross Price Test B.[25]

Under Opening Cross Price Test B, the Exchange would establish the Opening Cross price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq last sale (either round lot or odd lot) after 9:15 a.m. ET but before the Opening Cross. If the Opening Cross price falls outside this price range, or if there is no Nasdaq last sale, then the security would fail Opening Cross Price Test B and the Exchange would perform Opening Cross Price Test C.[26]

Under Opening Cross Price Test C, if the Opening Cross price is higher than the closing price used under Test A, then the Exchange would establish the

[6] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(A). The MOO, LOO, and OIO order types are defined in Rules 4702(b)(8), (b)(9), and (b)(10), respectively; the Early Market Hours order type is defined in Rule 4752(a)(7).

[7] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(B).

[8] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(C).

[9] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(D).

[10] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[11] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[12] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[13] *See* Notice, 81 FR at 1241. The Threshold Percentage and Benchmark Value are set by Nasdaq officials in advance and are published via the NasdaqTrader Web site. *See id.*

[14] *See id.*

[15] *See id.; see also* Rule 4752(d)(2)(E).

[16] *See* Notice, 81 FR at 1242.

[17] *See id.* The Commission understands that such a scenario is most likely to arise with illiquid securities.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.; see also* proposed Rule 4752(d)(2)(F).

[22] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F).

[23] *See* Notice, 81 FR at 1242. As proposed, Nasdaq management would set and modify the thresholds from time to time upon prior notice to market participants. *See id.; see also* proposed Rule 4752(d)(2)(F). In addition, the Exchange states that the thresholds for the proposed Opening Cross Price Tests would be published via the NasdaqTrader Web site. *See* Notice, 81 FR at 1242.

[24] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F).

[25] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(i).

[26] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(ii).

price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Bid. If the Opening Cross price is lower than the closing price used under Test A, then the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Offer. If a security does not have a Nasdaq Official Closing Price or consolidated closing price, as applicable, then the Exchange would use a price of $0. If the Opening Cross price for a security falls outside of the relevant price range, then no Opening Cross would occur in the security; MOO, LOO, OIO, and Early Market Hours orders would be cancelled; and the Exchange would open that security for market hours trading consistent with Rule 4752(c).[27]

Implementation

The Exchange proposes to implement the Opening Cross Price Tests in stages over the course of approximately four weeks, beginning with a small number of securities.[28] The Exchange states that the implementation details would be published via an Exchange Trader Alert and be posted on the NasdaqTrader Web site.[29]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal is designed to enhance the price protections for the Exchange's opening process, to mitigate the potential for mispriced trades, and to mitigate the need to use the Exchange's clearly erroneous trade nullification process. In particular, as discussed above, the proposed Opening Cross Price Tests are designed to mitigate the potential for a mispriced Opening Cross when an order or quote entered by a participant in error establishes one side of the QBBO and significantly skews the Opening Cross price for the security. As noted by the Exchange, the proposal would help ensure that the Opening Cross price for a security is reasonably related to the market and not the product of erroneous order entry. The Commission also notes that a commenter expressed support for the proposal, stating that the ''proposed change to avoid a biased or erroneous opening due to an inadvertent or mistaken submission of a pre-open order and price is a reasonable change by NASDAQ.'' [32] Based on the foregoing, the Commission believes that the proposed Opening Cross Price Tests are consistent with the Act.

The Commission also believes that the Exchange's proposal to implement the Opening Cross Price Tests in stages is consistent with the Act because it would help to limit potential market disruption if the Exchange experiences a technical issue with the implementation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NASDAQ–2015–159) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04505 Filed 3–1–16; 8:45 am]

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[27] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(iii).

[28] *See* Notice, 81 FR at 1243.

[29] *See id.*

[30] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Kubitz Letter, *supra* note 4. This commenter also expressed broader concerns regarding the availability of information about pre-market activities and regarding the circumstances under which pre-market activities would constitute manipulation, in light of the events of August 24, 2015. *See id.*

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77230; File No. SR–ISE Gemini–2016–01]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct the Text of ISE Gemini Rule 306

February 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2016, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Gemini proposes to correct, .08 of Supplementary Material to Rule 306, Registration Requirements, which describes the categories of registration and respective qualification examinations required for individual associated persons (''associated persons'') that engage in the securities activities of members on the Exchange. This amendment proposes to replace the inadvertent use of the term ''Permit Holder'' with ''Member'' which is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make corrections to .08 of Supplementary Material to Rule 306, Registration Requirements, which describes the categories of registration and respective qualification examinations required for associated persons that engage in the securities activities of members on the Exchange. This amendment proposes to replace the inadvertent use of the term ''Permit Holder'' with ''Member'' because ''Member'' is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange.

In December of 2015, ISE Gemini proposed to, among other things, (1) replace the Proprietary Trader registration category and the Series 56 Proprietary Trader registration qualification examination with the Securities Trader category of registration and the Series 57 Securities Trader registration qualification examination for Securities Traders respectively and (2) replace the Proprietary Trader Principal registration category with the registration category of Securities Trader Principal and require Securities Trader Principals to take the Series 57 qualification examination in addition to the Series 24 qualification examination.[3]

Currently, .08 of Supplementary Material to Rule 306, Registration Requirements, inadvertently uses the term ''Permit Holder'' rather than ''Member,'' which is the correct term used throughout the ISE Gemini Rulebook describe a member of the Exchange. ISE Gemini now proposes to amend .08 to Supplementary Material to Rule 306 to reflect ISE Gemini's longstanding use of the term ''Member'' to describe members of the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the proposed replacement of ''Permit Holder'' with ''Member'' so that the correct term is used in its rules. Additionally, replacing the inadvertent use of the term ''Permit Holder'' with ''Member'' will create consistency and eliminate confusion in its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Gemini is correcting its rule text to replace the inadvertent use of the term ''Permit Holder'' with ''Member'' because ''Member'' is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange.

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 written comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b–4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE Gemini–2016–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE Gemini–2016–01. 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

[3] *See* Securities Exchange Act Release No. 76836 (January 5, 2016), 81 FR 1263 (January 11, 2016), SR–ISE Gemini–2015–28.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

should refer to File Number SR–ISE Gemini–2016–01 and should be submitted by March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04501 Filed 3–1–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77240; File No. TP 15–06]

Order Granting Limited Exemptions From Exchange Act Section 11(d), Exchange Act Rules 10b–10, 10b–17, and 11d1–2, and Rules 101 and 102 of Regulation M to Eaton Vance ETMF Trust, Eaton Vance NextShares Trust II, Eaton Vance Balanced NextShares, and Other Exchange-Traded Managed Funds Pursuant to Exchange Act Section 36, Exchange Act Rules 10b–10(f) and 10b–17(b)(2), and Rules 101(d) and 102(e) of Regulation M

February 25, 2016.

By letter dated February 25, 2016 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for Eaton Vance ETMF Trust and Eaton Vance NextShares Trust II (each a ''Trust''), on behalf of each Trust, Eaton Vance Balanced NextShares, Eaton Vance Global Dividend Income NextShares, Eaton Vance Growth NextShares, Eaton Vance Large-Cap Value NextShares, Eaton Vance Richard Bernstein All Asset Strategy NextShares, Eaton Vance Richard Bernstein Equity Strategy NextShares, Eaton Vance Small-Cap NextShares, Eaton Vance Stock NextShares, Parametric Emerging Markets NextShares, Parametric International Equity NextShares, Eaton Vance Bond NextShares, Eaton Vance 5-to-15 Year Laddered Municipal Income NextShares, Eaton Vance Floating-Rate & High Income NextShares, Eaton Vance Global Macro Absolute Return NextShares, Eaton Vance Government Obligations NextShares, Eaton Vance High Income Opportunities NextShares, Eaton Vance High Yield Municipal Income NextShares, Eaton Vance National Municipal Income NextShares, and any future exchange-traded managed funds operating under the same representations and adhering to the same conditions as set forth in this Order (each a ''Fund'' and, collectively, the ''Funds''), any national securities exchange or national securities association on or through which shares issued by the Funds (''Shares'') may subsequently trade (''Exchange''), and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Section 11(d)(1) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), Rules 10b–10, 10b–17, and 11d1–2 thereunder, and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares.

Shares of each Fund will be issued by a Trust, and each Trust will be registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Funds will be listed on an Exchange and will also be actively managed by an investment adviser registered under the Investment Advisers Act of 1940, but may be sub-advised by other investment advisers. The Funds are not actively managed exchange traded funds (''ETFs'') but will be structured similarly to actively managed ETFs. Specifically, the Funds will be investment companies that issue shares that trade individually on an Exchange but can be purchased from and redeemed with the issuing investment company through authorized participants only in large aggregations. The principal difference between the Funds and ETFs is that, unlike with the trading in ETF shares, the trading price of Shares will be directly linked to the relevant Fund's end-of-day net asset value (''NAV''). In connection with this ''NAV-Based Trading,'' all bids, offers, and execution prices will be expressed as a market-determined premium or discount (*e.g.,* +$0.01, −$0.02) to that day's NAV. For each trade, the premium or discount to NAV (which may be zero) is locked in at trade execution and the final transaction price (*i.e.,* NAV plus or minus the market-determined premium/discount to NAV) is determined at the end of the day when the relevant Fund's NAV is computed. Because all transaction prices are based on an end-of-day NAV, the Funds will not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV, as is currently the case with actively managed ETFs.

In the present exemptive request, the Requestors are seeking relief for 18 ''Initial ETMFs,'' the named Funds above, with a variety of investment objectives. The Requestors are also seeking relief for future, unidentified Funds that will be structured in the same way, operating under the same representations and adhering to the same conditions as described in this Order but may have other investment objectives.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trusts which are open-end management investment companies that are registered with the Commission; [1]
- The Trusts will continuously redeem aggregations of Shares at net asset value (''NAV'') and the Shares should routinely trade at tight bid-ask spreads and narrow premiums and discounts to NAV;
- Shares of the Funds will be listed and traded on an Exchange;
- The Exchange or other market information provider will disseminate every 15 minutes throughout the trading day through the NASDAQ OMX Global Index Data Service the intraday indicative value (''IIV'') of Shares; [2]
- The methodology for calculating the NAV will be fully disclosed in the prospectus and any modifications to the methodology used to calculate NAV will be fully disclosed to current and prospective investors prior to implementation;
- The trading price of Shares will be directly linked to the relevant Fund's end-of-day NAV in that all bids, offers, and execution prices will be expressed as a market-determined premium or discount (*e.g.,* +$0.01, −$0.02) to that day's NAV;
- For each trade, the premium or discount to NAV is locked in at trade execution and the final transaction price is determined at the end of the day when the relevant Fund's NAV is computed;
- Because all transaction prices are based on an end-of-day NAV, the Funds will not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV;
- Competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV;

[8] 17 CFR 200.30–3(a)(12).

[1] *See* Investment Company Act Rel. No. 31361 (Dec. 2, 2014).

[2] As explained in the Letter, unlike for ETFs, which arrange for IIVs to be disseminated every 15 seconds, IIVs for the Funds will not provide pricing signals for market intermediaries or other buyers and sellers of Shares seeking to estimate the difference between the value of the Funds' portfolios and the price at which Shares are currently trading. In NAV-Based Trading, the secondary market premium/discount that applies to an ETMF is always fully transparent and does not depend on dissemination of IIVs.

• The Consolidated Tape will report intraday execution prices and quotes for Funds using a ''proxy'' price format, however, the listing Exchange will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Funds that are made available to the investing public follow the same display format;

• At the start of each trading day, the price will re-set to the ''proxy'' price to the NAV;

• On any business day, any market maker in the Funds can earn profits by entering into transactions with the relevant Fund to purchase (or redeem) the number of Creation Units corresponding to the net amount of Shares the market maker has sold (or purchased) that day in the secondary market, buying (or selling) the equivalent quantities of basket instruments and selling any sub-Creation Unit Share inventory in market transactions prior to the market close;

• A market maker's profit will equal the aggregate net premium (or discount) versus NAV at which the Shares are sold (or bought) plus the aggregate net discount (or premium) versus market-closing prices at which basket instruments are bought (or sold), less the transaction fee that applies; and

• No intraday hedging is necessary to manage the market maker's risk position, and any required overnight hedging can be limited to amounts readily addressable on a macro basis by the Funds maintaining relatively small Creation Unit sizes.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[3]

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trusts are registered open-end management investment companies that will continuously redeem at the NAV Creation Units of Shares of the Funds, and that, for each trade, the premium or discount to NAV is locked in at trade execution and the final transaction price is determined at the end of the day when the relevant Fund's NAV is computed, and that the Shares should routinely trade at tight bid/ask spreads and narrow premiums and discounts to NAV, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.[4]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trusts are registered open-end management investment companies that will redeem at the NAV Creation Units of Shares of the Funds, and that for each trade, the premium or discount to NAV is locked in at trade execution and the final transaction price is determined at the end of the day when the relevant Fund's NAV is computed, and that the Shares should routinely trade at tight bid/ask spreads and narrow premiums and discounts to NAV the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

Rule 10b–17

Rule10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b–17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trusts because market participants will receive timely notification of the existence and timing of a pending distribution,[5] we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts a conditional exemption from Rule 10b-17.

Exchange Act Section 11(d)(1) and Rule 11d1–2 Thereunder

Section 11(d)(1) of the Exchange Act prohibits a broker-dealer from effecting any transactions in connection with which he directly or indirectly extends or maintains credit or arranges for the extension or maintenance of credit to or for a customer on any security, other than an exempted security, which was part of a new issue in the distribution

[3] The Funds operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act. The Funds and their securities do not meet those definitions.

[4] Additionally, we confirm the interpretation that a redemption of Creation Units of Shares of the Funds and the receipt of securities in exchange by a participant in a distribution of Shares of the Funds would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[5] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Funds. This is because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

of which the broker-dealer participated as a member of a selling syndicate or group within thirty days prior to such transaction. Fund shares are distributed in a continuous manner, and broker-dealers selling such securities are therefore participating in the ''distribution'' of a new issue for purposes of Section 11(d)(1).[6]

You requested relief from Section 11(d)(1) and Rule 11d1–2 thereunder with respect to certain transactions in Fund shares effected by broker-dealers. You note that each Trust is an open-end management investment company under the Investment Company Act of 1940, which intends to introduce 18 series, each of which would operate as an exchange-traded managed fund (''ETMF''). Furthermore, each Trust will issue and redeem Shares in specified aggregations of Shares, called Creation Units. Each Trust has filed a registration statement on Form N–1A and their Shares will be listed on an Exchange. Each Trust will be overseen by a board of trustees which will maintain the composition requirements of Section 10 of the 1940 Act. Each ETMF will adopt fundamental policies consistent with the 1940 Act and be classified as ''diversified'' or ''non-diversified'' under the 1940 Act. Each ETMF intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company (''RIC'') diversification requirements of the Internal Revenue Code of 1986, as amended.[7]

You also note that each Trust will issue and redeem Shares of ETMFs in Creation Units through a broker-dealer registered under the Exchange Act acting on an agency basis and serving as each ETMF's ''principal underwriter'' as defined in Section 2(a)(29) of the 1940 Act. The number of Shares constituting a Creation Unit will be set by the Adviser. The Trust expects a Creation Unit to consist of a specified number of Shares between 5,000 and 50,000 Shares.

On the basis of your representations and the facts presented in your request, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant to broker-dealers (other than the Fund's distributor) that do not create or redeem Shares but engage in transactions in Shares exclusively in the secondary market a conditional exemption under Section 11(d)(1) of the Exchange Act permitting them to extend or maintain or arrange for the extension or maintenance of credit on Shares in connection with such secondary market transactions. In this regard, we note in particular your representation, and we require as a conditions of this exemption, that no broker-dealer, directly or indirectly, (1) receives from the Sponsor, any Fund, or any affiliate of such entities, any payment, compensation or other economic incentive to promote or sell Shares (other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B) or (C) (including any successor or replacement FINRA rule to NASD Conduct Rule 2830), or (2) receives from the fund complex[8] any payment, compensation or other economic incentive to promote or sell Shares to persons outside of the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C).[9] Additionally, we note your representation, and require as a condition of this exemption, that such broker-dealers do not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on the Shares before thirty days have elapsed from the date that the Shares initially commenced trading (except to the extent that such extension, maintenance or arranging of credit is otherwise permitted pursuant to Rule 11d1–1). Furthermore, we note that you request relief from Section 11(d)(1) on behalf of ETMFs that will hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the ETMF, and we require this as a condition of this exemption and the exemption that follows.

In addition, on the basis of your representations and the facts presented, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant an exemption under Section 11(d)(1) of the Exchange Act to broker-dealers (other than the Fund's distributor) permitting them to treat Shares, for the purposes of Rule 11d1–2 under the Exchange Act,[10] as ''securities issued by a registered . . . unit investment trust as defined in the Investment Company Act of 1940'' and thereby extend or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

Moreover, in view of the substantial similarities between the Funds and exchange traded funds and the nature of the assets held in the Funds, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant an exemption under Section 11(d)(1) of the Exchange Act to an Authorized Participant that extends credit or maintains or arranges for the extension or maintenance of credit on Shares in reliance on the class exemption granted in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) (''Class Relief Letter''), provided that the Authorized Participant satisfies conditions 1 and 2 set forth in the Class Relief Letter.[11]

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[6] *See, e.g.,* Extension of Credit by Broker-Dealers on Investment Company Shares, Exchange Act Release No. 21,577 (Dec. 18, 1984), 49 FR 50172 (Dec. 27, 1984).

[7] Section 851(b)(3) of the Internal Revenue Code, of 1986, 26 U.S.C. 851(b)(3), as amended, states in relevant part that a corporation is a regulated investment company only if:

At the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e) [Investment companies furnishing capital to development corporations], in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships. . . .

[8] For purposes of this order, the term ''fund complex'' means the issuer of Fund shares, any other issuer of exchange-traded fund shares that holds itself out to investors as a related company for purposes of investment or investor services, any investment adviser, distributor, sponsor, depositor, or trustee (in the case of a unit investment trust) of any such issuer or any ''affiliated person'' (as defined in the Investment Company Act) of any such issuer or any such investment adviser, distributor, sponsor, depositor or trustee.

[9] We note that a broker-dealer other than an Authorized Participant that receives some or all of the upfront selling commission from an Authorized Participant would not satisfy this condition and could not, accordingly, rely on the relief granted above.

[10] 17 CFR 240.11d1–2.

[11] For purposes of this order, the Shares would be shares of a Qualifying ETF, as defined in the Class Relief Letter, and the fund complex would be a ''fund complex,'' as defined in the Class Relief Letter. Conditions 1 and 2 of the Class Relief Letter are that: (1) Neither the Authorized Participant, nor

Continued

Exchange Act Rule 10b–10

You request relief from Rule 10b–10 on behalf of ETMFs that will hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the ETMF. These ETMFs will disclose their holdings in full at least once quarterly, with a lag of not more than 60 days, in compliance with the relevant Fund's requirements applicable to open-end investment companies. Rule 10b–10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b–10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. Each Trust has requested exemptive relief from application of Rule 10b–10 with respect to the creation (*i.e.,* issuance) or redemption of Shares (all of which are in Creation Unit size aggregations). Neither Trust requested exemptive or interpretive relief from Rule 10b–10 in connection with purchases and sales of Shares in the secondary market.

The ETMF proposes that broker-dealers acting for their customers in either depositing Deposit Instruments [12] in exchange for Creation Units or redeeming Shares in Creation Unit size aggregations for Redemption Instruments [13] be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the identity, number and price of shares of individual Deposit Instruments included in the Basket tendered to the Trust for purposes of creation of Creation Units, or the identity, number and price of shares of Redemption Instruments to be delivered by the Trust to the redeeming holder. Your request notes that you expect a Creation Unit will consist of at least 5,000 Shares. The composition of the Deposit Instruments required to be tendered to the Trust for creation purposes and of the Redemption Instruments to be delivered on redemption will be disseminated on each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This information will be made available to requesting broker-dealers or other persons through the NSCC. Each Trust anticipates that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable Deposit Instruments or the Redemption Instruments to be received on redemption, so that specific information on the Deposit Instruments or the Redemption Instruments to be received on redemption in the Rule 10b–10 notification would be redundant.

One the basis of your representations and the facts presented, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant a limited exemption from Rule 10b–10 to broker-dealers with respect to their confirmation of creation and redemption transactions such that broker-dealers may omit from the confirmation the identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer in the transaction subject to the following conditions:

(1) Confirmation statements of creation and redemption transactions in Shares will contain all of the information specified in paragraph (a) of Rule 10b–10 other than identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer in the transaction;

(2) Any confirmation statement of a creation or redemption transaction in Shares that omits the identity, price, or number of shares of component securities will contain a statement that such omitted information will be provided to the customer upon request; and

(3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b–10.

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trusts are exempt from the requirements of Rules 101 with respect to transactions in the Shares of the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution as described in the Letter.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trusts are exempt from the requirements of Rule 102 with respect to transaction in the Shares of the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares as described in the Letter.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trusts, subject to the conditions contained in this order, are exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of the Funds as described in the Letter.

This exemption from Rule 10b–17 is subject to the following conditions:

- The Trusts will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trusts will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

It is further ordered, pursuant to Section 11(d)(1) of the Exchange Act and Rule 11d1–2 thereunder, based on the representations and facts presented in the Letter and subject to the conditions discussed above and below, that broker-dealers (other than the a Fund's distributor) may extend or maintain or arrange for the extension or maintenance of credit on Shares in connection with secondary market transactions; that broker-dealers (other than the Fund's distributor) may treat Shares, for the purposes of Rule 11d1–2 under the Exchange Act, as ''securities issued by a registered . . . unit investment trust as defined in the Investment Company Act of 1940'' and thereby extend or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule; and that an Authorized Participant that extends credit or maintains or arranges for the extension or maintenance of credit on Shares may rely on the class exemption granted in the Class Relief Letter, provided that the Authorized Participant satisfies

any natural person associated with such Authorized Participant, directly or indirectly (including through any affiliate of such Authority Participant), receives from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of the exchange-traded fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C); and (2) the Authorized Participant does not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on shares of the exchange-traded fund before thirty days have passed from the date that the ETF's shares initially commence trading (except to the extent that such extension, maintenance or arranging of credit is otherwise permitted pursuant to Exchange Act Rule 11d1–1). ''Authorized Participant'' has the same meaning in this order as in the Class Relief Letter.

[12] ''Deposit Instruments'' means the instruments specified by the ETMF for making a purchase of Creation Units of the ETMF.

[13] ''Redemption Instruments'' means the instruments that shareholders redeeming Creation Units will receive as specified by the ETMF for meeting a redemption.

conditions 1 and 2 set forth in the Class Relief Letter.

It is further ordered, pursuant to Rule 10b–10(f) of the Exchange Act, based on the representations and facts presented in the Letter and subject to the conditions discussed above and below, that broker-dealers may omit from the confirmation of statements of creation and redemption transactions the identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on these exemptions. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2016–04527 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(6), (9), (32), and (62).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77236; File No. SR–NYSEArca–2016–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.44P Retail Liquidity Program

February 25, 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 February 11, 2016, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 7.44P (Retail Liquidity Program). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.44P, which governs the Exchange's Retail Liquidity Program (''Program''), to update the expiration date of the pilot period for the Program and to clarify that Retail Orders may not be designated with a minimum trade size (''MTS'').

The pilot period for the Program, which is currently governed by Rule 7.44, is scheduled to expire on March 31, 2016.[3] When the Exchange filed for the extension of the Program in September 2015, Rule 7.44P, which will govern the Program when the Exchange implements its Pillar trading platform, was not yet approved.[4] The Exchange proposes a non-substantive, technical amendment to Rule 7.44P(m) to update the date when the pilot period for the Program expires from September 30, 2015, which was the prior pilot expiration date, to March 31, 2016, which is the current pilot expiration date.

The Exchange also proposes to amend Rule 7.44P(k) to clarify that Retail Orders may not be designated with an MTS. Both current Rule 7.44(k) and Rule 7.44P(k), which will be operative once symbols begin migrating to the Pillar trading platform, provide for Retail Orders that may be designated with a time-in-force condition of immediate or cancel (''IOC'').[5] The Exchange does not currently provide for an optional MTS for Limit Orders designated IOC. Accordingly, currently, under Rule 7.44, Retail Orders designated IOC are also not eligible for an MTS.

In Pillar, the Exchange will be implementing a substantive difference under Rule 7.31P (Orders and Modifiers) to allow for an optional MTS for Limit Orders designated IOC.[6] However, the Exchange does not propose a substantive difference to the Program in Pillar to allow Retail Orders that are designated IOC to be designated with an MTS. Accordingly, the Exchange proposes to clarify Rule 7.44P(k) to specify that Retail Orders may not be designated with an MTS. This proposed clarification does not represent a substantive change to the Program because Retail Orders are not currently permitted to be designated with an MTS. The Exchange proposes this rule change to provide greater specificity that the new MTS functionality available for Limit IOC Orders as described in Rule 7.31P(b)(2)(A) would not be available for Retail Orders in the Program, which is current functionality.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Arca Equities Rule 7.44(m); *see also* Securities Exchange Act Release No. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR–NYSEArca–2015–84) (Notice of Filing).

[4] *See* Securities Exchange Act Release No. 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR–NYSEArca–2015–56) (''Pillar Approval Order'').

[5] *See* NYSE Arca Equities Rules 7.44(k)(1), 7.44(k)(2)(A), 7.44P(k)(1) and 7.44P(k)(2)(A).

[6] *See* Pillar Approval Order, *supra* note 4 at 66952. *See also* NYSE Arca Equities Rule 7.31P(b)(2)(A) (defining ''Limit IOC Order'' as being eligible for an optional MTS).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed amendment to Rule 7.44P(m) to update the expiration date of the pilot period of the Program would remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that Rule 7.44P(m) reflects the current expiration date of the pilot period of the Program, thus reducing potential investor confusion regarding the actual expiration date for the Program. In addition, the Exchange believes that the proposed amendment to Rule 7.44P(k) to specify that Retail Orders may not be designated with an MTS would remove impediments to and perfect the mechanism of a free and open market and national market system by providing clarification in Exchange rules that one of the new functionalities available for Limit IOC Orders in Pillar would not be available for Retail Orders that are designated IOC. The Exchange believes that the proposed clarification would promote transparency in Exchange rules that current functionality of the Program is not changing and that the new MTS designation that will be available for Limit IOC Orders in Pillar will not be available for Retail Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to make non-substantive amendments to Rule 7.44P to update the expiration date of the pilot period for the Program and to clarify that Retail Orders are not eligible to be designated with an MTS, which is current functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately on filing. In the filing, the Exchange states that it anticipated beginning the migration of symbols to Pillar on February 22, 2016 and, therefore, the Exchange points out that there would be symbols trading on the Exchange that will no longer governed by Rule 7.44 in less than 30 days from the date of filing of this proposed rule change. The Exchange argues that waiving the operative delay would allow these proposed clarifications to Rule 7.44P to have been operative before February 22, 2016, which the Exchange therefore asserts would reduce the potential for any confusion that may result from having an incorrect expiration date for the pilot period in the rule text or potential uncertainty of whether the new MTS functionality would be available for Retail Orders in the Program. The Commission believes that waiving the operative delay so that the proposed rule change would be operative as of the date of filing—February 11, 2016—would help mitigate any confusion as to which rule text for Rule 7.44P applied at the beginning of the migration of symbols to Pillar and throughout the migration. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–30. 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

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2016–30, and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04506 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77229; File No. SR–BOX–2016–10]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Non-Controversial and Clerical Amendments to Its Rules

February 25, 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 February 18, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 7310 (Drill-Through Protection) to make clerical corrections to the BOX Rulebook. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 7310 (Drill-Through Protection) to make clerical corrections to the BOX Rulebook.

The Exchange proposes to amend Rule 7310 (Drill-Through Protection) to make clerical corrections. Specifically, in Rule 7310, regarding the Interpretive Materials, the Exchange proposes to replace the inaccurate numbering of the Interpretive Materials from ''IM–7300–1'' and ''IM–7300–2'' to ''IM–7310–1'' and ''IM–7310–2'' respectively.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[3] in general, and Section 6(b)(5) of the Act,[4] in particular, that it is 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 protect investors and the public interest. The Exchange believes it is appropriate to make these non-controversial and clerical corrections to its rules so that Exchange participants and investors have a clear and accurate understanding of the meaning of the Exchange's rules. By making clerical corrections, the Exchange is eliminating any potential for confusion by simplifying the Exchange Rules and ensuring that Participants, regulators and the public can more easily navigate the Exchange's Rulebook. The Exchange believes that the proposed rule change is not unfairly discriminatory because it treats all market participants equally and will not have an adverse impact on any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to correct clerical errors in BOX Rule 7310, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[16] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[7] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[8] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to immediately reflect changes to the Exchange's rules which will eliminate any potential for confusion and provide clarity on how the rules apply. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. 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–2016–10 and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04500 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77239; File No. SR–NASDAQ–2016–027]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7018

February 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that, on February 22, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing changes to amend Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities listed on Nasdaq,[3] listed on the New York Stock Exchange (''NYSE'')[4] and listed on exchanges other than Nasdaq and NYSE[5] (collectively, the ''Tapes'').

Specifically, the purpose of the proposed rule change is to indicate that Nasdaq will not charge a fee for the use of its recently approved routing option, the Retail Order Process (''RTFY''),[6] regardless of where the execution occurs.[7] The RTFY order routing option

[3] Nasdaq Rule 7018(a)(1).

[4] Nasdaq Rule 7018(a)(2).

[5] Nasdaq Rule 7018(a)(3).

[6] *See* Securities Exchange Act Release No. 76335 (Nov. 3, 2015), 80 FR 69256 (Nov. 9, 2015) (SR–NASDAQ–2015–112).

[7] The Exchange proposed RTFY because retail order firms often send non-marketable order flow (*i.e.,* orders that are not executable against the best prices available in the market place based on their limit price) to post and display on exchanges. Some

is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flow.

Members entering RTFY orders, regardless of where the orders execute will not incur a fee if they use this optional routing strategy. Currently, unless the member is eligible for a lower charge to enter orders that execute in the Nasdaq Market Center (''remove liquidity fee'' or ''remove rate''),[8] all routing strategies that execute on Nasdaq are charged $0.0030 per share executed. Therefore, the proposed $0.0000 per share executed for orders electing to use RTFY is a reduction from the standard remove rate of $0.0030 per share executed that orders with routing instructions currently face.

The Exchange does not expect an order using RTFY to execute on the Exchange, but Nasdaq will cover this atypical scenario by specifically stating that no fee will be assessed if the order ultimately executes on the Exchange. Currently, if an order removes liquidity from the Exchange, unless specifically exempted in a Nasdaq rule, the standard remove rate applies. In sum, this proposed rule change reduces the remove rate from $0.0030 to $0.0000 per share executed for orders electing to use RTFY and establishes routing fees for RFTY as $0.0000 per share executed.

Members using TFTY, in contrast to RTFY, which is a comparable routing strategy, incurs [sic] fees for routing. Members using TFTY are assessed a charge of $0.0030 per share executed for orders that execute at NASDAQ OMX PSX and are assessed a charge of $0.0007 per share executed for orders that execute on venues other than BX or NASDAQ OMX PSX. Orders using TFTY on the Exchange also incur remove liquidity fees. In the case of RTFY, the Exchange intends to provide the RFTY routing option at no charge as an incentive for members to use this new routing strategy. No member that uses this new routing strategy to seek price improvement opportunities for the retail orders that it routes will incur a routing fee. A member that elects not to use this new routing strategy will be assessed the routing fee applicable to the strategy it selected and will be charged the remove rate the member otherwise qualifies for on Nasdaq.

of the orders that have been deemed to be non-marketable by the entering firm become marketable by the time the exchange receives them and ultimately remove liquidity from the exchange order book.

[8] *See* Nasdaq Rule 7014(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [12] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [14]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [15]

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] Securities Exchange Act Release No. 34–51808 (June 9, 2005) (''Regulation NMS Adopting Release'').

[12] *NetCoalition* v. *SEC.* 615 F.3d 525 (D.C. Cir. 2010).

[13] *Id.* at 534–535.

[14] *Id.* at 537.

[15] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it is an incentive for members to select RTFY and a price reduction versus other order types, routing strategies and services offered by the Exchange and other away venues. Additionally, the new fees of $0.0000 per share executed will apply equally to all members entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center. A member that elects not to use this new routing strategy will be assessed charges the member otherwise qualifies for, often $0.0030 per share executed when executing on Nasdaq and ranging from a rebate to a fee when routing to venues other than Nasdaq.

The new fees are being proposed in connection with the recently approved RTFY order routing option under Nasdaq Rule 4758(a)(1)(A)(v) for Designated Retail Orders (''DROs'').[16] If a DRO electing the RTFY routing option is not marketable, it will rest on the Exchange book and other Nasdaq members will have the opportunity to interact with the order at its limit price.[17] The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flows. The Exchange believes that this new Exchange functionality will enhance coordination and cooperation with market participants and produce a more efficient market because the Exchange believes more retail investor orders will be sent to the Exchange to add liquidity or to obtain price improvement. Increasing retail activity on the Exchange, in turn, benefits all participants through more robust price discover opportunities on Nasdaq.

The lower cost ($0.0000 per share executed) of this routing strategy as compared with other existing routing strategies is reasonable because of the lower costs that Nasdaq is charged by the venues to which the RTFY orders are routed. For the majority of orders routed, Nasdaq believes it will not be charged a fee for the orders that become marketable and route to other market centers using this routing strategy.

Equally important, the $0.0000 per share executed is a fee reduction versus an assessed a charge of $0.0030 per share executed for a member who elects not to use this new routing strategy, as well as a fee reduction versus other choices currently available on Nasdaq. The Exchange believes that the lower

[16] *Supra* note 6.

[17] *Supra* note 7.

cost of this routing strategy is reasonable since it is designed to act as an incentive to encourage members to try this new routing strategy. Members have a wide range of options of where to send their orders and the proposed pricing is influenced by these factors. While Nasdaq believes that this new functionality is novel and desired by market participants, Nasdaq equally believes that the proposed rate of $0.0000 per share executed is the appropriate incentive to encourage market participants to use this innovative order routing strategy in lieu of other choices in the market place. The practice of exchanges offering lower rates for new services or those geared toward investors or customers is not novel. For example, there are a variety of programs that exist today that offer incentives and execution opportunities for retail orders, as long as they use specific programs or functionality.

One such program is the retail price improvement (''RPI'') programs that exist on the New York Stock Exchange LLC, NYSE ARCA, Inc., BATS Y–Exchange, Inc., and NASDAQ OMX BX, Inc. (''BX''). For example, on BX a retail order in the RPI program receives higher rebates than an otherwise situated order because of its use of the program's specific order types. Similar to how members currently take advantage of other price reductions, discounts or rebates via volume discounts and tiers, members may elect to use the RTFY routing strategy to receive a reduced fee, just as members may use RPI programs and various order types to receive enhanced rebates or reduced fees. Further, Chicago Board Options Exchange, Incorporated (''CBOE'') and NASDAQ PHLX LLC (''Phlx'') all offer inventive programs designed to attract customer orders.[18] While not identical to the CBOE and Phlx programs, the proposed rate is an incentive designed to attract member's that act as agent for retail orders to choose RTFY over all other alternatives in the market place in the same manner as the CBOE and Phlx supplemental rebates encourage members that rout customer order flow to choose their respective exchanges for execution. The Exchange believes that offering lower fees, even if for a new routing strategy, is consistent with the Exchange Act.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the new fees will be applied uniformly across all members that are willing to use Nasdaq's routing services and opt to use the RTFY routing strategy.[19] All members sending DROs may elect to use the RTFY routing strategy when sending orders. Moreover, assessing different rates when a member elects to use a routing strategy but executes on the venue where the order was originally entered in not novel. BX provided a higher rebate to remove liquidity for members if they elected to use specific routing strategies (the ''BX filing'').[20] In the BX filing, a member using the BDRK or BCST routing strategy was able to receive a $0.0014 rebate for removing liquidity in the BX Equities System rather than the standard $0.0004 rebate for removing liquidity on the BX Equities System. Thus, the same order (apart from the routing strategy used) was eligible for a different rebate when removing liquidity on BX solely because of its routing strategy. This is similar to the proposed $0.0000 fee for RTFY orders that execute on the Nasdaq Market Center in that the member receives a different rate for an otherwise similar order, but by using a specific routing strategy.

Additionally, the proposed rule change also is not unfairly discriminatory because all members sending DROs to Nasdaq for execution are eligible to use RTFY. Each member may elect to use the RTFY routing strategy as they see fit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[21] In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new fees applicable across the Tapes apply to member firms entering RTFY orders that execute in the Nasdaq Market Center, as well as in a venue other than the Nasdaq Market Center (although the proposed new fees are $0.0000 per share executed) do not impose a burden on competition because the Exchange's execution services are voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange believes that the competition among exchanges and other venues will help to drive price improvement and overall execution quality higher for end retail investors.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[18] *See* CBOE Fee Schedule, Volume Incentive Program; *see also* Section B of the Phlx Pricing Schedule, Customer Rebate Program.

[19] *See* Securities Exchange Act Release No. 66763 (April 6, 2012), 77 FR 22008 (April 12, 2012) (SR–EDGA–2012–13) (an example of another exchange using a proposed rate of $0.0000 per share executed that is an equitable allocation of reasonable dues, fees, and other charges).

[20] *See* Securities Exchange Act Release No. 69053 (March 7, 2013), 78 FR 15999 (March 13, 2013) (SR–BX–2013–019).

[21] 15 U.S.C. 78f(b)(8).

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2016–027 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–NASDAQ–2016–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–027 and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04507 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77234; File No. SR–ICEEU–2016–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of a Proposed Rule Change Relating to Additions to Permitted Cover

February 25, 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 February 10, 2016, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. 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 principal purpose of the changes is to permit Clearing Members of ICE Clear Europe to provide additional categories of securities, including treasury bills and floating and inflation-linked government bonds (the ''Additional Permitted Cover'') to ICE Clear Europe to satisfy certain margin requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe 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 ICE Clear Europe accepting the Additional Permitted Cover is to provide its Clearing Members with a greater range of high-quality collateral that can be posted to ICE Clear Europe to satisfy certain margin requirements.

Specifically, the Additional Permitted Cover will include the following types of government securities: (i) U.S. Treasury floating-rate notes (''UST FRNs''), (ii) Canadian government treasury bills and Canadian government real return bonds,[3] (iii) Spanish government treasury bills (*Letras del Tesoro*), (iv) Swedish government treasury bills, (v) German government inflation-linked bonds (of two types: *Deutsche Bundesrepublik* Inflation-Linked Bonds and *Bundesobligationen I/L*), (vi) Japanese government CPI-linked bonds, and (vii) Swedish government inflation index-linked bonds.

ICE Clear Europe believes that the Additional Permitted Cover is of minimal credit risk, comparable to that of other sovereign debt currently accepted by ICE Clear Europe as Permitted Cover. Significantly, other debt obligations of the same governments that issue the Additional Permitted Cover are currently eligible as Permitted Cover. The Additional Permitted Cover consisting of treasury bills is substantially similar to existing forms of treasury bill Permitted Cover currently accepted by the Clearing House. In terms of the Additional Permitted Cover consisting of inflation-linked government bonds, ICE Clear Europe currently accepts similar bonds issued by other governments. As a result, ICE Clear Europe does not believe that such bonds would pose any additional or novel risks for the Clearing House. ICE Clear Europe further believes that the Additional Permitted Cover has demonstrated low volatility, including in stressed market conditions.

Based on its analysis of the Additional Permitted Cover and its volatility and other characteristics, ICE Clear Europe will initially apply to the Additional Permitted Cover the same valuation haircuts as currently applied to currently accepted bonds of the same issuer and within the same maturity bucket. The Clearing House will review and modify such haircuts from time to time, in accordance with Clearing House's Collateral and Haircut Policy. In addition, ICE Clear Europe will impose both absolute limits and relative limits for each type of Additional Permitted Cover (other than U.S. Treasury obligations), consistent with the existing issuer limits for Permitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to confirmation via telephone and email with ICE Clear Europe's outside counsel on February 19 and 23, 2016, staff in the Division of Trading and Markets modified this sentence to add the reference to Canadian government real return bonds to conform to the proposed rule text.

Cover and the Collateral and Haircut Policy. As part of that policy, an additional haircut will apply where Additional Permitted Cover is used to cover a margin requirement denominated in a different currency, to cover the exchange rate risk.

ICE Clear Europe will accept the Additional Permitted Cover in respect of original margin requirements for F&O Contracts and initial margin requirements for CDS Contracts. In addition, the UST FRNs will be accepted as Permitted Cover in respect of F&O and CDS guaranty fund contribution requirements. The Spanish and German securities constituting Additional Permitted Cover will also be accepted for the Euro-denominated component of the CDS guaranty fund. The other types of Additional Permitted Cover will not be accepted in respect of guaranty fund requirements. The Additional Permitted Cover cannot be used to satisfy variation margin requirements because variation margin must be paid in cash in the currency of the contract.

2. Statutory Basis

ICE Clear Europe has identified Additional Permitted Cover as types of assets that are appropriate for Clearing Members to post in order to meet initial margin and original margin requirements for all product categories (and, to the extent noted above, guaranty fund requirements). ICE Clear Europe believes that accepting the Additional Permitted Cover is consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it, and is consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act,[5] in the same manner as other collateral currently accepted by ICE Clear Europe.

ICE Clear Europe has determined, through analysis of the credit risk, liquidity, market risk, volatility and other trading characteristics of the Additional Permitted Cover, that such assets are appropriate for use as Permitted Cover for Clearing Members' obligations under the Rules, subject to the haircuts and limits to be imposed under the Collateral and Haircut Policy, consistent with the risk management of the Clearing House. In particular, the Additional Permitted Cover is a stable collateral type that presents minimal credit risk and low volatility. In this regard, the Additional Permitted Cover is similar to the other categories of sovereign debt that ICE Clear Europe currently accepts as permitted cover. Pursuant to the Collateral and Haircut Policy, haircuts for the Additional Permitted Cover will be established and reviewed by ICE Clear Europe periodically and modified as necessary. Use of Additional Permitted Cover will also be subject to absolute and relative limits, as discussed above, under the Collateral and Haircut Policy.

For the reasons noted above, ICE Clear Europe believes that the acceptance of the Additional Permitted Cover is consistent with the requirements of Section 17A of the Act and regulations thereunder applicable to it.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will provide additional flexibility to Clearing Members by allowing the use, on an optional basis, of additional types of Permitted Cover. As a result, ICE Clear Europe does not believe the changes will adversely affect the cost to clearing members or other market participants of clearing services. The changes will otherwise not affect the terms or conditions of any cleared contract or the standards or requirements for participation in or use of the Clearing House. Accordingly, the changes should not, in the Clearing House's view, affect the availability of clearing or access to clearing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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–ICEEU–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2016–004 and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04504 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9460]

In the Matter of the Review of the Designation of Al-Qa'ida in the Arabian Peninsula (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, the Secretary of State hereby determines that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: February 25, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–04604 Filed 3–1–16; 8:45 am]

BILLING CODE 4710–AD–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0036]

Southeastern Pennsylvania Transportation Authority's Request for Positive Train Control Safety Plan Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that the Southeastern Pennsylvania Transportation Authority (SEPTA) submitted to FRA its Positive Train Control Safety Plan (PTCSP) Revision 0.7, dated August 31, 2015, under a cover letter dated October 16, 2015. SEPTA requests that FRA approve its PTCSP and issue a PTC System Certification for SEPTA's Advanced Civil Speed Enforcement System II (ACSES II), under 49 CFR 236.1009 and 236.1015.

DATES: FRA will consider communications received by April 1, 2016 before taking final action on the PTCSP. Comments received after that date will be considered as far as practicable.

ADDRESSES: All communications concerning this proceeding should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, P.E., Senior Scientific Technical Advisor at (202) 493–1332, *Mark.Hartong@dot.gov;* or Mr. David Blackmore, Railroad Safety Program Manager for Advanced Technology at (312) 835–3903, *David.Blackmore@dot.gov.*

SUPPLEMENTARY INFORMATION: In its PTCSP, SEPTA asserts that its ACSES II is designed as a vital overlay PTC system as defined in 49 CFR 236.1015(e)(2). The PTCSP describes SEPTA's ACSES II implementation and the associated ACSES II safety processes, safety analyses, and test, validation, and verification processes used during development of ACSES II. The PTCSP also contains SEPTA's operational and support requirements and procedures. SEPTA's PTCSP and the accompanying request for approval and system certification are available for review online at *www.regulations.gov* (Docket No. FRA–2010–0036) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding SEPTA's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Privacy Act Notice

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 26, 2016.

Robert C. Lauby,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2016–04580 Filed 3–1–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in West Sacramento and Sacramento, CA; Chapel Hill and Durham, NC; North Charleston, SC; and cities along the San Francisco to San Jose, CA corridor. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Downtown/Riverfront Streetcar Project, West Sacramento and Sacramento, CA. *Project sponsor:* Sacramento Area Council of Governments. *Project description:* The proposed project would construct a 3.3-mile streetcar extending from the West Sacramento Civic Center to the Midtown entertainment and retail district in Sacramento. The project would include 12 westbound and 13 eastbound stations, two traction power facilities, and a maintenance and storage facility. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact, dated February 12, 2016. *Supporting documentation:* Environmental Assessment/Initial Study, dated May 2015.

2. *Project name and location:* Durham-Orange Light Rail Transit Project, Chapel Hill and Durham, NC. *Project sponsor:* Research Triangle Regional Public Transportation Authority. *Project description:* The proposed project would provide a 17.1-mile high capacity light rail transit line between the University of North Carolina Hospitals in southwest Chapel Hill and Alston Avenue in East Durham. The project would operate primarily within an exclusive guideway and includes 17 stations, a rail operations maintenance facility, and related infrastructure. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; project-level air quality conformity; and Final Environmental Impact Statement/Record of Decision, dated February 11, 2016.

3. *Project name and location:* North Charleston Regional Intermodal Transportation Facility, North Charleston, SC. *Project sponsor:* Charleston Area Regional Transportation Authority (CARTA). *Project description:* The proposed project would replace the existing Charleston Amtrak Station with construction of a new intermodal transportation hub serving Amtrak intercity rail, Southeastern Stages intercity bus, and CARTA local and commuter bus. *Final agency actions:* Section 4(f) determination; a Section 106 Memorandum of Agreement, dated November 24, 2015; project-level air quality conformity; and Finding of No Significant Impact, dated February 2, 2016. *Supporting documentation:* Environmental Assessment, dated November 2015.

4. *Project name and location:* Peninsula Corridor Electrification Project (PCEP), municipalities along the San Francisco to San Jose, CA corridor. *Project sponsor:* Peninsula Corridor Joint Powers Board. *Project description:* The PCEP would implement capacity improvements along a 51-mile section of the Caltrain Commuter Rail Line from San Francisco to San Jose. The PCEP includes installation of an Overhead Contact System, installation of electrical traction power facilities, construction of new tracks, platform improvements, and the purchase of 90 Electric Multiple Units. The PCEP was previously the subject of a Finding of No Significant Impact, dated December 17, 2009. FTA completed a re-evaluation of the PCEP due to additional traction power facility locations, additional right-of-way acquisitions, and electrical safety zone easements. This notice only applies to the discrete actions taken by FTA at this time, as described below. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. *Final agency actions:* Section 106 finding of no adverse effect and FTA determination that neither a supplemental environmental impact statement nor a supplemental environmental assessment is necessary. *Supporting documentation:* Re-evaluation, dated February 11, 2016.

Lucy Garliauskas,

Associate Administrator Planning and Environment.

[FR Doc. 2016–04486 Filed 3–1–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2016–0007]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) renewed approval for an existing collection of information for brake fluid labeling in 49 CFR 571.116, ''Motor Vehicle Brake Fluids.'' Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This existing collection involves labeling requirements for manufacturers and packagers of brake fluids, as well as packagers of hydraulic system mineral oils. The information to be collected will be used to and/or is necessary to insure the following: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and, the containers are properly disposed of when empty.

DATES: Comments must be received on or before May 2, 2016.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice, and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays. Telephone: 1–800–647–2251.

Instructions: All submissions must include the docket number for this document. Please identify the collection of information for which a comment is provided by referencing the OMB Control Number, 2127–0521. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Hallan, (202) 366–9146, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment 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, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How 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, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Labeling of Motor Vehicle Brake Fluid Containers in 49 CFR 571.116

OMB Control Number: 2127–0521

Form Numbers: This collection of information uses no standard form.

Type of Request: Extension of a currently approved collection of information.

Summary of the Collection of Information: In 49 CFR 571.116 (Federal Motor Vehicle Safety Standard No. 116, ''Motor Vehicle Brake Fluid''), there are performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. In Section 5.2.2 of the standard, there are also labeling requirements for manufacturers and packagers of brake fluids, as well as packagers of hydraulic system mineral oils.

Description of the Need for the Information and the Use of the Information: Properties of these fluids and their use necessitate the package labeling information specified in this standard. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to ensure: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Without this labeling requirement, there could be improper use or storage of these brake fluids, which would have dire safety consequences for the operators of vehicles or the equipment in which they are used.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): We estimate that the collection of information affects 200 respondents annually, which are manufacturers and packagers of brake fluids and hydraulic mineral oils.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The estimated annual burden is as follows:

Estimated Number of Respondents: 200.

Estimated Number of Responses (labels): 70,000,000.

Estimated Total Annual Burden: 7000 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

[FR Doc. 2016–04567 Filed 3–1–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the General Motors Corporation's (GM) petition for an exemption of the Chevrolet Bolt vehicle line in accordance with 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2017 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 30, 2015, GM requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Chevrolet Bolt vehicle line beginning with MY 2017. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the MY 2017 Chevrolet Bolt vehicle line. GM stated that it will install the PASS-Key III+ antitheft device as standard equipment on its MY 2017 Chevrolet Bolt vehicle line. The PASS-Key III+ is a passive, transponder based, electronic engine immobilizer antitheft device. GM stated that a keyless ignition system will also be installed on its Chevrolet Bolt vehicle line. Key components of its PASS-Key III+ system will include an electronically-coded ignition key (remote key fob), a PASS-Key III+ controller module, engine control module (ECM), immobilizer exciter module, radio frequency (RF) receiver, low frequency antennas (LF) and a passive antenna module. The remote key fob incorporates buttons that are designed to perform normal remote keyless door entry functions. GM stated that the device will provide protection against unauthorized use (*i.e.,* starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights or horn alarm).

GM's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided information on the specific tests it uses to validate the integrity, durability and reliability of the PASS-Key III+ device and believes that the device is reliable and durable since the components must operate as designed after each test. GM also stated that the design and assembly processes of the PASS-Key III+ subsystem and components are validated for 10 years of vehicle life and 150,000 miles of performance.

The PASS-Key III+ device is designed to be active at all times without direct intervention by the vehicle operator (*i.e.,* no separate intentional action to turn on the security system is needed to achieve protection). GM stated that activation of the device occurs when the operator pushes the Engine Start/Stop switch to the ''OFF'' position. Deactivation of the immobilizer device occurs when a valid electronic key which resides in a remote key fob and matching immobilization code is verified, allowing the engine to start and continue normal operations. Specifically, GM stated that when the operator pushes the Engine Start/Stop switch to begin vehicle operation, the vehicle transmits randomly generated data and a vehicle identifier through three low-frequency antennas (within the passenger compartment of the vehicle) that are controlled by the passive antenna module. The electronic key receives the data and if the vehicle identifier matches the vehicle's programmed key, the electronic key will calculate a response to the vehicle using the challenge and secret information that was shared between the key and the vehicle. The electronic key will then transmit a response through the RF channel to a vehicle mounted receiver which conveys the information to the PASS-Key III+ control module. The PASS-Key III+ control module compares the received response with an internally calculated response. GM stated that if the values match, the system will allow the vehicle to enter functional modes and transmit a fixed code pre-release password to the engine controller over the serial data bus enabling computation and communication of a response. If a valid key is not detected, the system will not transmit a password to the engine controller to allow operation of the vehicle.

GM stated that the PASS-Key III+ device has been designed to enhance the functionality and theft protection provided by its first, second and third generation PASS-Key, PASS-Key II, and PASS-Key III devices. GM also referenced data provided by the American Automobile Manufacturers Association (AAMA) in support of the effectiveness of GM's PASS-Key devices in reducing and deterring motor vehicle theft. Specifically, GM stated that the AAMA's comments referencing the agency's Preliminary Report on ''Auto Theft and Recovery Effects of the Anti-Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984'', (Docket 97–042; Notice 1), showed that between MYs 1987 and 1993, the Chevrolet Camaro and Pontiac Firebird vehicle lines experienced a significant theft rate reduction after installation of a Pass-Key like antitheft device as standard equipment on the vehicle lines.

GM also noted that theft data have indicated a decline in theft rates for vehicle lines equipped with comparable devices that have received full exemptions from the parts-marking requirements. GM stated that the theft data, as provided by the Federal Bureau of Investigation's National Crime Information Center (NCIC) and compiled by the agency, show that theft rates are lower for exempted GM models equipped with the PASS-Key like systems than the theft rates for earlier models with similar appearance and construction that were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III devices on other GM models, and the advanced technology utilized in PASS-Key III+, GM believes that the PASS-Key

III+ device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

GM stated that it believes that PASS-Key III+ devices will be more effective in deterring theft than the parts-marking requirements, the agency should find that installation of the PASS-Key III+ device on the Chevrolet Bolt vehicle line is sufficient to qualify it for full exemption from the parts-marking requirements.

Based on the evidence submitted by GM, the agency believes that the antitheft device for the Chevrolet Bolt vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that GM has provided adequate reasons for its belief that the antitheft device for the Chevrolet Bolt vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information GM provided about its device.

GM's proposed device lacks an audible or visible alarm therefore, this device cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. GM compared its proposed device to other devices NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM compared its device to those antitheft devices installed on the Chevrolet Corvette, Chevrolet Camaro and Pontiac Firebird vehicle lines, which have all been granted parts-marking exemptions by the agency. Using an average of three model years' data (2011–2013), theft rates for the Chevrolet Corvette, Chevrolet Camaro and the Pontiac Firebird vehicle lines are 1.2698 and 2.7032 respectively. GM has not produced the Pontiac Firebird vehicle line since MY 2002. Therefore, no current theft rate data exist for this vehicle line.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the Chevrolet Bolt vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

(Signature page, Grant of Petition for Exemption, MY 2017 Chevrolet Bolt)

[FR Doc. 2016–04568 Filed 3–1–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2016–0022]

Notice of Funding Opportunity for the Department of Transportation's Nationally Significant Freight and Highway Projects (FASTLANE Grants) for Fiscal Year 2016

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The Fixing America's Surface Transportation Act (FAST Act) established the Nationally Significant Freight and Highway Projects (NSFHP) program to provide Federal financial assistance to projects of national or regional significance and authorized the program at $4.5 billion for fiscal years (FY) 2016 through 2020, including $800 million for FY 2016 to be awarded by the Secretary of Transportation. The Department will also refer to NSFHP grants as Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants. The purpose of this notice is to solicit applications for FY 2016 grants for the NSFHP program. The Department also invites interested parties to submit comments about this notice's contents to public docket DOT–OST–2016–0022 by June 1, 2016.

DATES: Applications must be submitted by 8:00 p.m. EDT on April 14, 2016. The Grants.gov ''Apply'' function will open by March 15, 2016.

ADDRESSES: Applications must be submitted through *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the Office of the Secretary via email at *FASTLANEgrants@dot.gov.* For more information about highway projects,

please contact Crystal Jones at (202) 366–2976. For more information about maritime projects, please contact Robert Bouchard at (202) 366–5076. For more information about rail projects, please contact Scott Greene at (202) 493–6408. For all other questions, please contact Howard Hill at (202) 366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. Additionally, the Department will regularly post answers to questions and requests for clarifications as well as information about webinars for further guidance on DOT's Web site at *www.transportation.gov/FASTLANE grants.*

SUPPLEMENTARY INFORMATION: This notice solicits applications for the NSFHP program for FY 2016. Each section of this notice contains information and instructions relevant to the application process for NSFHP grants, and the applicant should read this notice in its entirety to submit eligible and competitive applications.

Table of Contents

A. Program Description

The Nationally Significant Freight and Highway Projects (NSFHP) program, as established by the Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94, section 1105 (23 U.S.C. 117), will provide Federal financial assistance to freight and highway projects of national or regional significance. The Department will also refer to NSFHP grants as Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants. The NSFHP program provides dedicated, discretionary funding for projects that address critical freight issues facing our nation's highways and bridges and for the first time in the U.S. Department of Transportation's 50-year history, establishes broad, multiyear eligibilities for freight infrastructure.

To better adapt to population growth, compete in the global economy, and meet the needs of consumers and industry, the United States needs a strong multimodal transportation system. *Beyond Traffic 2045: Trends and Choices (Beyond Traffic),*[1] the Department's 30-year framework for the future, outlines changing local and global patterns, including population and employment growth in burgeoning megaregions and significant growth in freight movement by ton and value. The report affirms the need to address freight bottlenecks that severely constrain system performance and capacity. The Department's draft National Freight Strategic Plan,[2] released in October 2015, further explores these challenges for freight transportation and identifies strategies to address impediments to the flow of goods throughout the nation.

The NSFHP program provides an opportunity to address nationally or regionally significant challenges across the nation's transportation system including improving the safety, efficiency, and reliability of the movement of freight and people; generating national or regional economic benefits and increasing the United States' global competitiveness; reducing highway congestion and bottlenecks; enabling more efficient intermodal connections; minimizing delays at international borders; improving inadequate first and last mile segments; modernizing port facilities to meet 21st Century demands, including connections between ports and their surface transportation systems; enhancing the resiliency of critical intermodal infrastructure and helping protect the environment; improving grade crossings; improving roadways vital to national energy security; and addressing the impact of population growth on the movement of people and freight. The program also offers resources to advance highway and bridge projects on the National Highway System, including those that improve mobility through added capacity on the Interstate or address needs in a national scenic area. Recognizing the interconnected and multimodal nature of the nation's transportation system, the Department will give additional consideration to nationally or regionally significant multimodal and multijurisdictional projects.

The Department will prioritize projects that also enhance personal mobility and accessibility. Such projects include, but are not limited to, investments that better connect people to essential services such as employment centers, health care, schools and education facilities, healthy food, and recreation; remove physical barriers to access; strengthen communities through neighborhood redevelopment; mitigate the negative impacts of freight movement on communities; and support workforce development, particularly for disadvantaged groups, which include low-income groups, persons with visible and hidden disabilities, elderly individuals, and minority persons and populations. The Department may consider whether a project's design is likely to generate benefits for all users of the proposed project, including non-driving members of a community adjacent to or affected by the project.

B. Federal Award Information

The FAST Act authorizes the NSFHP program at $4.5 billion for fiscal years (FY) 2016 through 2020, including $800 million [3] for FY 2016 to be awarded by DOT on a competitive basis to projects of national or regional significance that meet statutory requirements. NSFHP grants may be used for the construction, reconstruction, rehabilitation, acquisition of property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, equipment acquisition, and operational improvements directly related to system performance. NSFHP grants may also fund developmental phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities, provided the project meets statutory requirements.

The Department will divide grants under the NSFHP program into large and small projects. (Refer to section C.3.ii.for a definition of large and small projects.) For large projects, the FAST Act specifies that NSFHP grants must be at least $25 million. For small projects, the grants must be at least $5 million. For both large and small projects, maximum NSFHP awards may not exceed 60 percent of future eligible project costs. Ten percent of available funds, approximately $76 million in FY 2016, are reserved for small projects. Applicants are strongly encouraged to submit applications only for eligible award amounts.

Pursuant to the FAST Act, not more than $500 million in aggregate of the $4.5 billion authorized for NSFHP

[1] *https://www.transportation.gov/BeyondTraffic.*

[2] *https://www.transportation.gov/freight/NFSP.*

[3] Funds are subject to the overall Federal-aid highway obligation limitation, and funds in excess of the obligation limitation provided to the program are distributed to the States. While $800 million was authorized for FY 2016, only $759.2 million is available for award. For additional information see FAST Act § 1102 (f) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016, Public Law 114–113, div. L § 120.

grants over fiscal years 2016 to 2020 may be used for grants to freight rail, water (including ports), or other freight intermodal projects that make significant improvements to freight movement on the National Highway Freight Network. Only the non-highway portion(s) of multimodal projects count toward the $500 million maximum. Improving freight movement on the National Highway Freight Network may include shifting freight transportation to other modes, thereby reducing congestion and bottlenecks on the National Highway Freight Network. The Federal share for projects that count toward the $500 million maximum may fund only elements of the project that provide public benefit. Grade crossing and grade separation projects do not count toward the $500 million maximum for freight rail, port, and intermodal projects.

The FAST Act directs at least 25 percent of the funds provided for NSFHP grants, $190 million in FY 2016, are to be used for projects located in rural areas, as defined in Section C.3.iv. If the Department does not receive enough qualified applications to fully award the 25 percent reserved for rural projects, the Department may use the excess funding for non-rural awards. DOT must consider geographic diversity among grant recipients, including the need for a balance in addressing the needs of urban and rural areas.

The FAST Act allows an NSFHP grant recipient to use NSFHP funds granted to pay the subsidy and administrative costs necessary to receive credit assistance for the associated project under the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') program.

C. Eligibility Information

To be selected for an NSFHP grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project that meets the Minimum Project Size Requirement.

1. Eligible Applicants

Eligible applicants for NSFHP grants are (1) a State or group of States; (2) a metropolitan planning organization that serves an urbanized area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals; (3) a unit of local government or group of local governments; (4) a political subdivision of a State or local government; (5) a special purpose district or public authority with a transportation function, including a port authority; (6) a Federal land management agency that applies jointly with a State or group of States; (7) a tribal government or a consortium of tribal governments; or (8) a multi-State or multijurisdictional group of public entities. Multiple States or jurisdictions that submit a joint application must identify a lead applicant as the primary point of contact. Each applicant in a joint application must be an Eligible Applicant. Joint applications must include a description of the roles and responsibilities of each applicant and must be signed by each applicant.

2. Cost Sharing or Matching

NSFHP grants may be used for up to 60 percent of future eligible project costs. Other Federal assistance may satisfy the non-Federal share requirement for an NSFHP grant, but total Federal assistance for a project receiving an NSFHP grant may not exceed 80 percent of the future eligible project costs. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue funded programs, private funds or other funding sources of non-Federal origins. If a Federal land management agency applies jointly with a State or group of States and that agency carries out the project, then Federal funds that were not made available under titles 23 or 49 of the United States Code may be used for the non-Federal share. Unless otherwise authorized in statute, local cost-share may not be counted as non-Federal share for both the NSFHP and another Federal program. For any project, the Department cannot consider previously incurred costs or previously expended or encumbered funds towards the matching requirement. Matching funds are subject to the same Federal requirements described in Section F.2 as awarded funds.

3. Other

i. Eligible Project

Eligible projects for NSFHP grants are: Highway freight projects carried out on the National Highway Freight Network (23 U.S.C. 167); Highway or bridge projects carried out on the National Highway System (NHS) including projects that add capacity on the Interstate System to improve mobility or projects in a national scenic area; railway-highway grade crossing or grade separation projects; or a freight project that is (1) an intermodal or rail project, or (2) within the boundaries of a public or private freight rail, water (including ports), or intermodal facility. A project within the boundaries of a freight rail, water (including ports), or intermodal facility must be a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility and must significantly improve freight movement on the National Highway Freight Network. For a freight project within the boundaries of a freight rail, water (including ports), or intermodal facility, Federal funds can only support project elements that provide public benefits.

ii. Eligible Project Costs

Eligible costs under the NSFHP program include development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other pre-construction activities, as well as construction, reconstruction, rehabilitation, acquisition of real property, environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements directly related to system performance.

iii. Minimum Project Size Requirement

For the purposes of determining whether a project meets the minimum project size requirement, the Department will count all future eligible project costs under the award and some related costs incurred before selection for an NSFHP grant. Previously incurred costs will be counted toward the minimum project size requirement only if they were eligible project costs under Section C.3.ii. and were expended as part of the project for which the applicant seeks funds. Although those previously incurred costs may be used for meeting the minimum project size thresholds described in this Section, they cannot be reimbursed with NSFHP grant funds, nor will the count toward the project's required non-Federal share.

a. Large Projects

The minimum project size for large projects is the lesser of $100 million; 30 percent of a State's FY 2015 Federal-aid apportionment if the project is located in one State; or 50 percent of the larger participating State's FY 2015 apportionment for projects located in more than one State. The following chart identifies the minimum total project cost for projects for FY 2016 for both single and multi-State projects.

State [4]	One-State minimum (millions)	Multi-State minimum* (millions)
Alabama	$100	$100
Alaska	100	100
Arizona	100	100

State [4]	One-State minimum (millions)	Multi-State minimum* (millions)
Arkansas	$100	$100
California	100	100
Colorado	100	100
Connecticut	100	100
Delaware	49	82
Dist. of Col	46	77
Florida	100	100
Georgia	100	100
Hawaii	49	82
Idaho	83	100
Illinois	100	100
Indiana	100	100
Iowa	100	100
Kansas	100	100
Kentucky	100	100
Louisiana	100	100
Maine	53	89
Maryland	100	100
Massachusetts	100	100
Michigan	100	100
Minnesota	100	100
Mississippi	100	100
Missouri	100	100
Montana	100	100
Nebraska	84	100
Nevada	100	100
New Hampshire	48	80
New Jersey	100	100
New Mexico	100	100
New York	100	100
North Carolina	100	100
North Dakota	72	100
Ohio	100	100
Oklahoma	100	100
Oregon	100	100
Pennsylvania	100	100
Rhode Island	63	100
South Carolina	100	100
South Dakota	82	100
Tennessee	100	100
Texas	100	100
Utah	100	100
Vermont	59	98
Virginia	100	100
Washington	100	100
West Virginia	100	100
Wisconsin	100	100
Wyoming	74	100

** For multi-State projects, the minimum project size is largest of the multi-State minimums from the participating States.*

b. Small Projects

A small project is an eligible project that does not meet the minimum project size described in Section C.3.iii.a.

iv. Rural/Urban Area

The NSFHP statute defines a rural area as an area outside an Urbanized Area [5] with a population of over 200,000. In this notice, urban area is defined as inside an Urbanized Area, as a designated by the U.S. Census Bureau, with a population of 200,000 or more.[6] Cost share requirements and minimum grant awards are the same for projects located in rural and urban areas. The Department will consider a project to be in a rural area if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located in a rural area. Rural and urban definitions differ in some other DOT programs, including TIFIA and the FY 2016 TIGER Discretionary Grants Program.

v. Application Limit

To encourage applicants to prioritize their NSFHP submissions, each eligible applicant may submit no more than three applications. The three-application limit applies only to applications where the applicant is the lead applicant. There is no limit on applications for which an applicant can be listed as a partnering agency. If a lead applicant submits more than three applications as the lead applicant, only the first three received will be considered. The NSFHP and the FY 2016 TIGER Discretionary Grant programs have independent application limits. Applicants applying to both the NSFHP and the FY 2016 TIGER Discretionary Grants program may apply for the same project to both programs (noted in each application), but must timely submit separate applications that independently address how the project satisfies applicable selection criteria for the relevant grant program. Although a project may be eligible for award under both programs, the same application is unlikely to be responsive to both programs' notices of funding opportunity because the purposes and selection criteria of the programs differ.

vi. Project Components

An application may describe a project that contains more than one component, and may describe components that may be carried out by parties other than the applicant. Applicants should clearly identify all highway, bridge, and freight related components comprising the total project. DOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C; (2) independently aligns well with the selection criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of DOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. All project components that are presented together in a single application must demonstrate a relationship or connection between them. (See Section D.2.f. for Required Approvals).

Applicants should be aware that, depending upon the relationship between project components and upon applicable Federal law, DOT funding of only some project components may make other project components subject to Federal requirements as described in Section F.2.

DOT strongly encourages applicants to identify in their applications the project components that have independent utility and separately detail costs and requested NSFHP funding for each component. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses selection criteria.

D. Application and Submission Information

1. Address

Applications must be submitted through *www.Grants.gov.* Instructions for submitting applications can be found at *www.transportation.gov/FASTLANEgrants.*

2. Content and Form of Application

The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424C (Budget Information for Construction Programs), cover page, and the Project Narrative. More detailed information about the cover page and Project Narrative follows.

i. Cover Page Including the Following Chart:

[4] For purposes of determine total project cost threshold, funds allocated to Puerto Rico will be treated as fund apportioned to a State. Project cost threshold for Puerto Rico will be based on 30 percent of funds allocated in FY 2015.

[5] For Census 2010, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau Web site at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/.* For the purposes of the NSFHP program, Urbanized Areas with populations fewer than 200,000 will be considered rural.

[6] See *www.transportation.gov/FASTLANEgrants* for a list of Urbanized Areas with a population of 200,000 or more.

Project Name.	
Previously Incurred Project Cost	$.
Future Eligible Project Cost	$.
Total Project Cost	$.
NSFHP Request	$.
Total Federal Funding (including NSFHP)	$.
Are matching funds restricted to a specific project component? If so, which one?	Yes/no.
Is the project or a portion of the project currently located on National Highway Freight Network	Yes/no.
Is the project or a portion of the project located on the National Highway System • Does the project add capacity to the Interstate system? • Is the project in a national scenic area?	Yes/no (for each question).
Do the project components include a railway-highway grade crossing or grade separation project?	Yes/no.
Do the project components include an intermodal or freight rail project, or freight project within the boundaries of a public or private freight rail, water (including ports), or intermodal facility?	Yes/no.
If answered yes to either of the two component questions above, how much of requested NSFHP funds will be spent on each of these projects components?	
State(s) in which project is located.	
Small or large project	Small/Large.
Also submitting an application to TIGER for this project?	Yes/no.
Urbanized Area in which project is located, if applicable.	
Population of Urbanized Area.	
Is the project currently programmed in the: • TIP. • STIP. • MPO Long Range Transportation Plan. • State Long Range Transportation Plan. • State Freight Plan?	Yes/no (*please specify in which plans the project is currently programmed*).

ii. Project Narrative

The application must include information required for DOT to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide data and evidence of project merits in a form that is verifiable or publicly available. DOT may ask any applicant to supplement data in its application, but expects applications to be complete upon submission.

DOT recommends that the project narrative adhere to the following basic outline to clearly address the program requirements and make critical information readily apparent. In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps, and graphics, as appropriate to make the information easier to review. DOT recommends that the project narrative be prepared with standard formatting preferences (*i.e.*, a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins.) The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portion that may exceed the 25-page limit are supporting documents to support assertions or conclusions made in the 25-page project narrative. If possible, Web site links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants must clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different DOT financial assistance program may be referenced and described as unchanged. DOT recommends using appropriately descriptive final names (*e.g.*, ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments. DOT recommends applications include the following sections:

a. Project Description including a description project size including previously incurred expenses to show the project meets minimum project size requirements, a description of what requested NSFHP and matching funds will support, how the project is nationally or regionally significant, information on the expected users of the project, a description of the transportation challenges the project aims to address, and how the project will address these challenges. The description should include relevant data for before and after the project is built, such as passenger and freight volumes, congestion levels, infrastructure condition, and safety experience, including citations for data sources. Examples of potentially relevant data can be found at *www.transportation.gov/FASTLANEgrants*, but DOT encourages applicants to identify the most relevant information for their project.

b. Project Location including a detailed description of the proposed project and geospatial data for the project, as well as a map of the project's location and its connections to existing transportation infrastructure. If the project is located within the boundary of a Census- designated Urbanized Area, the application must identify the Urbanized Area.

c. Project Parties including information about the grant recipient and other affected public and private parties who are involved in delivering the project, such as ports, terminal operators, freight railroads, shippers, carriers, freight-related associations, third-party logistics providers, and the freight industry workforce.

d. Grant Funds, Sources and Uses of Project Funds including information to demonstrate the viability and completeness of the project's financing package, assuming the availability of the requested NSFHP grant funds. The applicant should show evidence of stable and reliable capital and (as appropriate) operating fund commitments sufficient to cover estimated costs; the availability of contingency reserves should planned capital or operating revenue sources not materialize; evidence of the financial condition of the project sponsor; and evidence of the grant recipient's ability to manage grants. At a minimum, applicants must include:

(i) Future eligible cost, as defined in Section C.3.ii–iii.

(ii) Availability and commitment of all committed and expected funding sources and uses of all project funds for future eligible project costs, including the identity of all parties providing funds for the project and their percentage shares; any restrictions attached to specific funds; compliance or a schedule for compliance with all conditions applicable to each funding source, and, to the extent possible, funding commitment letters from non-Federal sources.

(iii) Federal funds already provided and the size, nature, and source of the required match for those funds, as well as pending or past Federal funding requests for the project. This information should demonstrate that the requested NSFHP funds do not exceed 60 percent of future eligible project costs and that total Federal funding will not exceed 80 percent of future eligible project costs. This information should also show that local share for the NSFHP grant is not counted as the matching requirement for another Federal program.

(iv) A detailed project budget containing a breakdown of how the funds will be spent. That budget should estimate—both dollar amount and percentage of cost—the cost of work for each project component. If the project will be completed in individual segments or phases, a budget for each individual segment or phase should be included. Budget spending categories should be broken down between NSFHP, other Federal, and non-Federal sources, and this breakdown should also identify how each funding source will share in each activity.

(v) Amount of requested NSFHP funds that will be spent on highway, bridge, freight intermodal or freight rail, port, grade crossing or grades separation project components.

e. Cost-Effectiveness analysis should demonstrate that the project is likely to deliver its anticipated benefits at reasonable costs. Applicants should delineate each of their project's expected outputs and costs, preferably in the form of a complete Benefit-Cost Analysis (BCA), to enable the Department to consider cost-effectiveness (small projects) or determine whether the project is cost effective (for large projects). The primary economic benefits from projects eligible for NSFHP grants are likely to include time savings for passenger travel and freight shipments, improvements in transportation safety (less frequent accidents and the resulting reductions in fatalities, injuries, and property damage), reduced damages from emissions of greenhouse gases and criteria air pollutants, and savings in maintenance costs to public agencies. Applicants are strongly encouraged to submit a BCA in support of each project for which they seek funding that quantifies each of these benefits, provides monetary estimates of their economic value, and compares the properly-discounted present values of these benefits to the project's estimated costs. Where applicants cannot adequately monetize benefits, they are urged to identify non-monetary measures for other categories of benefits (examples below) to assist the Department in making cost-effectiveness and other determinations about projects.

Many projects are likely to generate other categories of benefits that are more difficult to quantify and value in economic terms, but are nevertheless important considerations in determining whether a proposed project is cost-effective. These may include impacts such as improving the reliability of passenger travel times or freight deliveries, reducing recurring delays at critical transportation bottlenecks, improvements to the existing human and natural environments surrounding the project, increased access and mobility, benefits to safety and public health, stormwater runoff mitigation, and noise reduction. Applicants should identify each category of impact or benefits that is not already included in the estimated dollar value of their project's benefits (as described above), and wherever possible provide numerical estimates of the magnitude and timing of each of these additional impacts.

For the purpose of evaluating cost-effectiveness, project costs should include those for constructing, operating, and maintaining the proposed project, including a detailed breakdown of those costs by spending category, the expected timing or schedule for costs in each category, and any contingency or other allowances for unanticipated costs. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values are available in DOT's guidance for conducting BCAs for projects seeking funding under the NSFHP program (see *www.transportation.gov/FASTLANEgrants*).

Applicants for freight projects within the boundaries of a freight rail, water (including ports), or intermodal facility should also quantify the benefits of their proposed projects for freight movements on the National Highway Freight Network, and should demonstrate that the Federal share of the project funds only elements of the project that provide public benefits.

f. Project Readiness including information to demonstrate that the project is reasonably expected to begin construction in a timely manner. For a large project, the Department cannot award a project that is not reasonably expected to begin construction within 18 months of obligation of funds for the project. The Department will determine that large projects with a construction start date beyond September 30, 2019 are not reasonably expected to begin construction within 18 months of obligation. Obligation occurs when a selected applicant and DOT enter a written project specific agreement and is generally after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Depending on the nature of pre-construction activities included in the awarded project, the Department may obligate funds in phases.

Preliminary engineering and right-of-way acquisition activities, such as environmental review, design work, and other preconstruction activities, do not fulfill the requirement to begin construction within 18 months of obligation for large projects.

To assist the Department's project readiness determination, the Department will consider information provided in this Section D.2.ii.d. (Grant Funds, Sources and Uses of Project Funds) in addition to the following information:

(i) Technical Feasibility. The technical feasibility of the project should be demonstrated by engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the NSFHP application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants must include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

(ii) Project Schedule. The applicant must include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the STIP), start and completion of NEPA and other environmental reviews and approvals including permitting; design completion; right of way acquisition;

approval of plan, specification and estimate (PS&E); procurement; State and local approvals; project partnership and implementation agreements including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(a) All necessary activities will be complete to allow grant funds to be obligated sufficiently in advance of the statutory deadline, and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(b) the project can begin construction quickly upon receipt of a NSFHP grant, and that the grant funds will be spent expeditiously once construction starts; and

(c) all property and/or right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR part 24 and other legal requirements or a statement that no acquisition is necessary.

(iii) Required Approvals

(a) Environmental Permits and Reviews: As noted in Section D.2.ii.f.iii above, the application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State and local requirements and completion of the NEPA process. Although Section C.3.vi (Project Components) of this notice encourages applicants to identify independent project components, those components may not be separable for the NEPA process. In such cases, the NEPA review for the independent project component may have to include evaluation of all project components as connected, similar, or cumulative actions, as detailed at 40 CFR 1508.25. In addition, the scope of the NEPA decision may affect the applicability of the Federal requirements on the project described in the application. Specifically, the application should include:

(1) Information about the NEPA status of the project. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, or any other NEPA documents prepared. If the NEPA process is underway but not complete, the application must detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination.

(2) Information on reviews, approvals, and permits by other agencies. An application must indicate whether the proposed project requires reviews or approval actions by other agencies,[7] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and or demonstrate compliance with any other applicable Federal, State, or local requirements. Applicants should provide a Web site link or other reference to copies of any reviews, approvals, and permits prepared.

(3) Environmental studies or other documents—preferably through a Web site link—that describe in detail known project impacts, and possible mitigation for those impacts.

(4) A description of discussions with the appropriate DOT modal administration field or headquarters office regarding compliance with NEPA and other applicable environmental reviews and approvals.

(5) A description of public engagement to date about the project including the degree to which public comments and commitments have been integrated into project development and design.

b. State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as local government funding commitments or TIF approval. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project is broadly supported.

c. State and Local Planning. The planning requirements of the operating administration administering the NSFHP project will apply,[8] including intermodal projects located at airport facilities.[9] Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included. If the project is not included in the relevant planning documents at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document. To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202).

Because projects have different schedules, the construction start date for each NSFHP grant will be specified in the project-specific agreements signed by relevant modal administration and the grant recipients and will be based on critical path items identified by applicants in response to items (iv)(a) through (c) above, and be consistent with other relevant State or local plan, including bicycle and pedestrian plans, economic development plans, local land-use plans, and water and coastal zone management plans.

(iv) Assessment of Project Risks and Mitigation Strategies. Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify the material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake in order to mitigate those risks. Information provided in response

[7] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

[8] In accordance with 23 U.S.C. 134 and § 135, all projects requiring an action by the Federal Highway Administration (FHWA) must be in the metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive a NSFHP grant until it is included in such plans. Projects not currently included in these plans can be amended by the State and metropolitan planning organization (MPO). Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans in order to receive a NSFHP grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would to include the projects in TIPs or a State Freight Plan that conforms to the requirements Section 70202 of Title 49 prior to the start of construction. Port planning guidelines are available at StrongPorts.gov.

[9] Projects at grant obligated airports, must be compatible with the FAA-approved Airport Layout Plan (ALP), as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: Must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

to Section D.2.ii.f.i–iv above should be referenced in developing this assessment. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks. DOT will consider projects that contain risks, but expects the applicant to clearly and directly describe achievable mitigation strategies.

The applicant, to the extent they are unfamiliar with the Federal program, should contact DOT modal field or headquarters offices as found at *www.transportation.gov/FASTLANEgrants* for information on what steps are pre-requisite to the obligation of Federal funds in order to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. DOT may not make an NSFHP grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time DOT is ready to make an NSFHP grant, DOT may determine that the applicant is not qualified to receive an NSFHP grant and use that determination as a basis for making an NSFHP grant to another applicant.

4. Submission Dates and Timelines

i. Deadline

Applications must be submitted by 8:00 p.m. EDT April 14, 2016. The Grants.gov ''Apply'' function will open by March 15, 2016. The Department has determined that an application deadline fewer than 60 days after this notice is published is appropriate because the accelerated timeline is necessary to satisfy the statutory 60-day Congressional notification requirement, as well as to ensure the timely obligation of available funds.

To submit an application through Grants.gov, applicants must:

a. Obtain a Data Universal Numbering System (DUNS) number:

b. Register with the System Award for Management (SAM) at *www.sam.gov*;

c. Create a Grants.gov username and password; and

d. The E-business Point of Contact (POC) at the applicant's organization must respond to the registration email from Grants.gov and login at Grants.gov to authorize the POC as an Authorized Organization Representative (AOR).

Please note that there can only be one AOR per organization.

Please note that the Grants.gov registration process usually takes 2–4 weeks to complete and late applications that are the result of failure to register or comply with Grants.gov applicant requirements in a timely manner will not be considered. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html*. If interested parties experience difficulties at any point during the registration or application process, please call the Grants.gov Customer Service Support Hotline at 1(800) 518–4726, Monday-Friday from 7:00 a.m. to 9:00 p.m. EDT.

ii. Consideration of Application

Only applicants who comply with all submission deadlines described in this notice and submit applications through Grants.gov will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

Applicants interested in applying are encouraged to email *FASTLANEgrants@dot.gov* no later than March 25, 2016 with applicant name, State in which project is located, approximate total project cost, and amount of the NSFHP grant request, and a 2–3 sentence project description. DOT seeks this early notification of interest to inform the Department's allocation of resources for application evaluations and to facilitate timely and efficient awards.

iii. Late Applications

Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties outlined in Section 4.iv.

iv. Late Application Policy

Applicants experiencing technical issues with Grants.gov that are beyond the applicant's control must contact *FASTLANEgrants@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

a. Details of the technical issue experienced

b. Screen capture(s) of the technical issues experienced along with corresponding Grants.gov ''Grant tracking number''

c. The ''Legal Business Name'' for the applicant that was provided in the SF–424

d. The AOR name submitted in the SF–424

e. The DUNS number associated with the application

f. The Grants.gov Help Desk Tracking Number

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After DOT staff review all information submitted and contact the Grants.gov Help Desk to validate reported technical issues, DOT staff will contact late applicants to approve or deny a request to submit a late application through Grants.gov. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

For a small project to be selected, the Department will evaluate the cost effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out.

For a large project to be selected, the Department will determine that the project generates national or regional economic, mobility, or safety benefits; is cost-effective; contributes to one or more of the goals described in 23 U.S.C. 150; is based on the results of preliminary engineering; has one or more stable and dependable funding or financing sources to construct, maintain, and operate and contingency amounts to cover unanticipated cost increases; cannot be easily and efficiently completed without other Federal funding or financial assistance; and is reasonably expected to begin construction no later than 18 months after the date of obligation.

i. Merit Criteria

For both large and small projects, the Department will consider the extent to which the project addresses the following criteria:

a. Economic Outcomes

Improving the efficiency and reliability of the surface transportation

system at the regional or national level to increase the global economic competitiveness of the United States, including improving connectivity between freight modes of transportation, improving roadways vital to national energy security, facilitating freight movement across land border crossings, and addressing the impact of population growth on the movement of people and freight.

b. Mobility Outcomes

Improving the movement of people and goods by maintaining highways, bridges, and freight infrastructure in a state of good repair, enhancing the resiliency of critical surface transportation infrastructure, and significantly reducing highway congestion and bottlenecks.

c. Safety Outcomes

Achieving a significant reduction in traffic fatalities and serious injuries on the surface transportation system, as well as improving interactions between roadway users, reducing the likelihood of derailments or high consequence events, and improving safety in transporting certain types of commodities.

d. Community and Environmental Outcomes

How and whether the project mitigates harm to communities and the environment, extends benefits to the human and natural environment, or enhances personal mobility and accessibility. This includes reducing the negative effects of existing infrastructure, removing barriers, avoiding harm to the human and natural environment, and using design improvements to enhance access (where appropriate) and environmental quality for affected communities. Projects should also reflect meaningful community input provided during project development.

ii. Other Review Criteria

a. Partnership and Innovation

Demonstrating strong collaboration among a broad range of stakeholders or using innovative strategies to pursue primary outcomes listed above including efforts to reduce accelerate delivery delays. Additional consideration will be given for the use of innovative and flexible designs and construction techniques or innovative technologies.

b. Cost Share

NSFHP grants must have one or more stable and dependable sources of funding and financing to construct, maintain, and operate the project, subject to the parameters in Section C.2. Applicants should provide sufficient information to demonstrate that the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor. Additional consideration will be given to the use of nontraditional financing, as well as the use of non-Federal contributions. The Department may consider the form of cost sharing presented in an application. Firm commitments of cash that indicate a complete project funding package and demonstrate local support for the project are more competitive than other forms of cost sharing.

2. Review and Selection Process

i. DOT Review

DOT will review all eligible applications received before the application deadline. The NSFHP process consists of a Technical Evaluation phase and Senior Review. In the Technical Evaluation phase, teams will, for each project determine whether the project satisfies statutory requirements and rate how well it addresses selection criteria. The Senior Review Team will consider the applications and the technical evaluations to determine which projects to advance to the Secretary for consideration. Evaluations in both the Technical Evaluation and Senior Review Team phases will place projects into rating categories, not assign numerical scores. The Secretary will select the projects for award. A Control and Calibration Team will ensure consistency across project evaluations and appropriate documentation throughout the review and selection process. The FAST Act requires Congressional notification, in writing, at least 60 days before making a NSFHP grant.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce awarded projects by posting a list of selected projects at *www.transportation.gov/FASTLANEgrants.* Following the announcement, the Department will contact the point of contact listed in the SF 424 to initiate negotiation of a project specific agreement.

2. Administrative and National Policy Requirements

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201. Additionally, applicable Federal laws, rules and regulations of the relevant modal administration administering the project will apply to the projects that receive NSFHP grants, including planning requirements, Stakeholder Agreements, Buy America compliance, and other requirements under DOT's other highway, transit, rail, and port grant programs. A project carried out under this NSFHP program will be treated as if the project is located on a Federal-aid highway. For an illustrative list of the applicable laws, rules, regulations, executive orders, policies, guidelines, and requirements as they relate to an NSFHP, please see *http://www.ops.fhwa.dot.gov/freight/infrastructure/nsfhp/fy2016_gr_exhbt_c/index.htm.*

3. Reporting

i. Progress Reporting on Grant Activity

Each applicant selected for an NSFHP grant must submit the Federal Financial Report (SF–425) on the financial condition of the project and the project's progress, as well as an Annual Budget Review and Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the NSFHP program.

ii. Reporting of Matters Related to Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of

time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Office of the Secretary via email at *FASTLANEgrants@dot.gov.* For more information about highway projects, please contact Crystal Jones at (202) 366–2976. For more information about maritime projects, please contact Robert Bouchard at (202) 366–5076. For more information about rail projects, please contact Scott Greene at (202) 493–6408. For all other questions, please contact Howard Hill at (202) 366–0301. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, up to the application deadline, DOT will post answers to common questions and requests for clarifications on DOT's Web site at *www.transportation.gov/FASTLANEgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions.

H. Other Information

1. Public Comment

The FAST Act authorized the NSFHP program through FY 2020. This notice solicits applications for FY 2016 only. Because this is the first year implementing the NSFHP program, the Department invites interested parties to submit comments about this notice's contents, the Department's implementation choices within the legal bounds of the program, as well as suggestions for clarification in future NSFHP rounds. The Department seeks input on whether the information requested in applications is reasonable and clear, additional merit criteria should be considered, additional public engagement is necessary for specific stakeholder groups, and the program sufficiently targets nationally or regionally significant projects. The Department may consider the submitted comments and suggestions when developing subsequent NSFHP notices and program guidance, but submitted comments will not affect the program's evaluation and selection process for FY 2016 awards. Applications or comments about specific projects should not be submitted to the docket. Any application submitted to the document will not be reviewed. Comments should be sent to DOT–OST–2016–0022 by June 1, 2016, but, to the extent practicable, the Department will consider late-filed comments.

2. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Anthony R. Foxx,

Secretary.

[FR Doc. 2016–04610 Filed 3–1–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0745]

Agency Information Collection: Request for Certificate of Veteran Status Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on February 17, 2016, which contained errors. The notice incorrectly stated the title. This document corrects the errors by updating the title.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492.

Correction

In FR Doc. 2016–03208, published on February 17, 2016, at 81 FR 8130, make the following correction. On page 8130, in the second column, the notice should read as follows:

Agency Information Collection (Request for Certificate of Veteran Status) Activity Under OMB Review.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 1, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0745'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0745.''

SUPPLEMENTARY INFORMATION:

Title: Request for Certificate of Veteran Status.

OMB Control Number: 2900–0745.

Type of Review: Revision of a currently approved collection.

Abstract: Applicants complete VA form 26–8261a to apply for a position as a designate fee appraiser or compliance inspector. VA will use the data collected

to determine the applicant's experience in the real estate valuation field.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 63879 on October 21, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 4 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 25.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–04513 Filed 3–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 2, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601.

OMB Control Number: 2900–0216.

Type of Review: Revision of an approved collection.

Abstract: VA Form 21P–601 is used to gather the information necessary to determine a claimant's entitlement to accrued benefits. Accrued benefits are amounts of VA benefits due, but unpaid, to a beneficiary at the time of his or her death. Benefits are paid to eligible survivors based on the priority described in 38 U.S.C. 5121(a). When there are no eligible survivors entitled to accrued benefits based on their relationship to the deceased beneficiary, the person or persons who bore the expenses of the beneficiary's last illness and burial may claim reimbursement for these expenses from accrued amounts.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,920 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 15,840.

By direction of the Secretary:

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–04514 Filed 3–1–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 41 March 2, 2016

Part II

Department of Education

34 CFR Part 300
Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities; Proposed Rules

DEPARTMENT OF EDUCATION

34 CFR Part 300

[Docket ID ED–2015–OSERS–0132]

RIN 1820–AB73

Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations under Part B of the Individuals with Disabilities Education Act (IDEA) governing the Assistance to States for the Education of Children with Disabilities program and the Preschool Grants for Children with Disabilities program. With the goal of promoting equity in IDEA, the regulations would establish a standard methodology States must use to determine whether significant disproportionality based on race and ethnicity is occurring in the State and in its local educational agencies (LEAs); clarify that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities; clarify requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found; and require that LEAs identify and address the factors contributing to significant disproportionality as part of comprehensive coordinated early intervening services (comprehensive CEIS) and allow such services for children from age 3 through grade 12, with and without disabilities.

DATES: We must receive your comments on or before May 16, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for finding a rule on the site and submitting comments, is available on the site under ''How to use Regulations.gov'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:*

The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about these proposed regulations, address them to Kristen Harper, U.S. Department of Education, 550 12th Street SW., Room 5109A, Potomac Center Plaza, Washington, DC 20202–2600.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kristen Harper, U.S. Department of Education, 550 12th Street SW., Room 5109A, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–6109.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The purpose of these proposed regulations is to promote equity in IDEA. The specific purposes are to (1) help ensure States appropriately identify significant disproportionality based on race and ethnicity in the State and LEAs of the State with regard to identification of children as children with disabilities, the placement of children in particular educational settings, and the incidence, duration, and type of disciplinary actions (including suspensions and expulsions); and (2) help States and LEAs address and reduce significant disproportionality in the State and the LEAs identified. Specifically, the proposed regulations will help to ensure that States meaningfully identify LEAs with significant disproportionality, and that States assist LEAs in ensuring that children with disabilities are properly identified for services, receive necessary services in the least restrictive environment, and are not disproportionately removed from their educational placements due to disciplinary removals. These proposed regulations specifically address the well-documented and detrimental over-identification of certain students for special education services, with particular concern that over-identification results in children being placed in more restrictive environments and not taught to challenging academic standards. At the same time, there have been significant improvements in the provision of special education, particularly with regard to placing children in general education classrooms with appropriate supports and services, and a commitment to instruction tied to college- and career-ready standards for all children, all of which should play a positive role in improving student outcomes. Therefore, the intention of these proposed regulations is not to limit services for children with disabilities who need them; rather, their purpose is to ensure that children are not mislabeled and receive appropriate services.

To accomplish this end, these proposed regulations would establish a standard methodology that each State must use in its annual determination under IDEA section 618(d) (20 U.S.C. 1418(d)) of whether significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State. IDEA does not define ''significant disproportionality,'' and, in the Department's August 2006 IDEA Part B regulations, the Department left the matter to the discretion of the States. Since then, States have adopted different methodologies, and, as a result, far fewer LEAs are identified as having significant disproportionality than the disparities in rates of identification, placement, and disciplinary removal across racial and ethnic groups would suggest. There is a need for a common methodology for determinations of significant disproportionality in order for States and the Department to better identify and address the complex, manifold causes of the issue and ensure compliance with the requirements of IDEA.

Further, these proposed regulations would clarify ambiguities in the existing regulations concerning significant disproportionality in the discipline of children with disabilities. Data and research show that children of color with disabilities are more likely to be suspended and expelled than white children with disabilities, and that suspensions are associated with negative student outcomes such as lower academic performance, higher rates of dropout, failures to graduate on time, decreased academic engagement, future disciplinary exclusion, and interaction with the juvenile justice system. (Lamont et al, 2013; Council of State Governments, 2011; Lee, Cornell, Gregory, & Xitao, 2011; Losen and Skiba, 2010; Brooks, Shiraldi & Zeidenberg, 2000; Civil Rights Project, 2000.)

In order to improve the review of LEA policies, practices, and procedures when significant disproportionality is found, the Department is also proposing to clarify IDEA's requirements regarding their review and, when appropriate, revision.

Finally, to help address and reduce significant disproportionality when it is found in an LEA, the proposed regulations would expand the scope of and strengthen the remedies required under IDEA. Under section 618(d) of IDEA (20 U.S.C. 1418(d)), if a State determines that significant disproportionality is occurring in an LEA, the State must require the LEA to reserve the maximum amount of funds to provide comprehensive CEIS to serve children in the LEA, particularly children in those racial or ethnic groups that were significantly overidentified. The proposed regulations would require that LEAs identify and address the factors contributing to significant disproportionality as part of the implementation of comprehensive CEIS and would expand the authorized use of funds reserved for these services to serve children from age 3 through grade 12, with and without disabilities.

Please refer to the *Background* section of this notice of proposed rulemaking for a detailed discussion of these proposals and their purposes.

Summary of the Major Provisions of This Regulatory Action

As described below, the proposed regulations would require States to use a standard methodology to identify significant disproportionality in the State and in its LEAs, including the use of: A risk ratio or, if appropriate given the populations in an LEA, an alternate risk ratio; a reasonable risk ratio threshold; and a minimum cell size of not more than 10 as the standard methodology to determine whether there is significant disproportionality based on race or ethnicity in the State and its LEAs.

States would retain discretion to determine the risk ratio threshold above which disproportionality is significant, so long as that threshold is reasonable and based on advice from their stakeholders, including their State Advisory Panels. States would set risk ratio thresholds for three categories of analysis:

- The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;
- The placement of children with disabilities in particular educational settings; and
- The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

These regulations would also provide States with flexibility in determining whether significant disproportionality exists, even if a risk ratio exceeds the risk ratio threshold established by the State. States have the flexibility to choose to identify an LEA as having significant disproportionality only after an LEA exceeds a risk ratio threshold for up to three prior consecutive years. In addition, a State need not identify an LEA with significant disproportionality if the LEA is making reasonable progress in lowering its risk ratios, where reasonable progress is determined by the State.

The proposed regulations would clarify that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions of children with disabilities, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities.

Under these proposed regulations, States would also have to provide for the review and, if appropriate, revision of an LEA's policies, practices, and procedures used in the identification or placement of children with disabilities in every year in which an LEA is determined to have significant disproportionality based upon race or ethnicity. Reporting of any revisions to an LEA's policies, practices, and procedures would have to comply with the confidentiality provisions of FERPA, its implementing regulations in 34 CFR part 99, and section 618(b)(1) of IDEA.

Finally, the proposed regulations would expand the student populations that may receive comprehensive CEIS when an LEA has been identified with significant disproportionality. Funds reserved for these services under section 618(d)(2)(B) of IDEA (20 U.S.C. 1418(d)(2)(B)) could be used to serve children from age 3 through grade 12, with and without disabilities. Under current regulation, comprehensive CEIS may only serve children without disabilities, from kindergarten through grade 12. The proposed regulations would also require that, as part of implementing these services, an LEA must identify and address the factors contributing to the significant disproportionality.

The Department also intends to monitor and assess these regulations once they are final to ensure they have the intended goal of improving outcomes for all children. To that end, the Department will publicly establish metrics by which to assess the impact of the regulations. These might include a comparison of risk ratios to national averages and across States. We welcome public comment on appropriate metrics to use to monitor these regulations.

Please refer to the *Significant Proposed Regulations* section of this notice of proposed rulemaking for a detailed discussion of these proposals.

Costs and Benefits

As further detailed in the *Regulatory Impact Analysis,* we estimate that the total cost of these regulations over ten years would be between $47.5 and $87.18 million, plus additional transfers between $298.4 and $552.9 million. The major benefits of these proposed regulations, taken as a whole, include ensuring a standard methodology for determining significant disproportionality based on race and ethnicity in the State and the LEAs in the State with regard to identification of children as children with disabilities, the placement of children in particular educational settings, and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions; ensuring increased transparency on each State's definition of significant disproportionality; establishing an increased role for stakeholders through State Advisory Panels in determining States' risk ratio thresholds; reducing the use of potentially inappropriate policies, practices, and procedures as they relate to the identification of children as children with disabilities, placements in particular educational settings for these children, and the incidence, duration, and type of disciplinary removals from

placements, including suspensions and expulsions; and promoting and increasing comparability of data across States in relation to the identification, placement, or discipline of children with disabilities by race or ethnicity. Additionally, the Department believes that expanding the eligibility of children ages three through five to receive comprehensive CEIS would give LEAs flexibility to use IDEA Part B funds reserved for comprehensive CEIS to provide appropriate services and supports at earlier ages to children who might otherwise later be identified as having a disability, which could reduce the need for more extensive special education and related services for such children at a later date.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations and directed questions. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You also may inspect the comments in person in Room 5109A, Potomac Center Plaza, 550 12th Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

IDEA Requirements Regarding Racial and Ethnic Disparities

Under IDEA Part B, the Department provides grants to States, outlying areas, and freely associated States, as well as funds to the Department of the Interior, to assist them in providing special education and related services to children with disabilities. There are four key purposes of the Part B regulations in 34 CFR part 300: (1) To ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities; and (4) to assess and ensure the effectiveness of efforts to educate children with disabilities.

The overrepresentation of children from racial, cultural, ethnic, and linguistic minority backgrounds in special education programs has been a national concern for four decades. (Donovan & Cross, 2002.) When children of color are identified as children with disabilities at substantially higher rates than their peers, there is a strong concern that some of these children may have been improperly identified as children with disabilities, to their detriment. Misidentification interferes with a school's ability to provide children with appropriate educational services. (Albrecht, Skiba, Losen, Chung & Middleberg, 2012.) The overidentification of children of color in special education, in particular, raises concerns of potential inequities in both educational opportunities and outcomes. Overidentification may differentially diminish the opportunities of children of color to interact with teachers and others within the larger school context, especially when education is provided in separate settings. Research has found that African American, Hispanic/Latino, and American Indian/Alaska Native children and English language learners have a greater chance of receiving placements in separate educational settings than do their peers. (De Valazuela, Copeland, Huaqing Qi, and Park, 2006.) Nationally, Black/African-American, Asian, and Native Hawaiian and Other Pacific Islander children with disabilities (ages 6 through 21) were less likely than their White peers to be inside the regular classroom 80 percent or more of the day (56 percent, 57 percent, 54 percent, and 65 percent, respectively) during the 2012–2013 school year (SY). (36th Annual Report to Congress, 2014.)

In issuing these proposed regulations, the Department's goal is to promote equity in IDEA. We want to be clear that our intention is not to deny special education services to children who need them. It is, however, to ensure that children who need special education services receive them in the least restrictive settings. It is also to ensure that children who do not have disabilities and do not need special education services are not inappropriately identified as such, and to ensure that those children receive proper educational supports through the general education system.

Congress first addressed racial and ethnic disparities in identification for special education in the IDEA Amendments of 1997 (1997 Amendments). It found that ''[g]reater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates of minority children with disabilities,'' Public Law 105–17, section 601(c)(8)(A) (1997), codified at 20 U.S.C. 1400(c)(12)(A), and noted that ''more minority children continue to be served in special education than would be expected from the percentage of minority students in the general education population.'' Public Law 105–17, section 601(8)(B)(1997), codified at 20 U.S.C. 1400(c)(12)(B).

The 1997 Amendments added the requirement that States collect and examine data to determine if significant disproportionality based on race was occurring in the identification and placement of children with disabilities. Public Law 105–17, section 618(c)(1) (1997). If States found significant disproportionality, Congress required them to review, and, if appropriate, revise the policies, practices, and procedures used in identification and placement. Public Law 105–17, section 618(c)(2) (1997).

In 2004, Congress again found that greater efforts were needed to address misidentification of children of color with disabilities, and it specifically found that ''African-American children are identified as having [intellectual disabilities] or emotional disturbance at rates greater than their White counterparts;'' that ''[i]n the 1998–1999

school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities;'' and that ''[s]tudies have found that schools with predominately White students and teachers have placed disproportionately high numbers of minority students into special education.'' Public Law 108–446, section 601(c)(12) (2004), codified at 20 U.S.C. 1400(c)(12)(C)–(E).

Accordingly, in the Individuals with Disabilities Education Improvement Act of 2004, Congress expanded the provision on significant disproportionality in four respects: (1) Added ''ethnicity'' to section 618(d)(1) as a basis upon which to determine significant disproportionality (in addition to race); (2) added section 618(d)(1)(C) to require that States determine if significant disproportionality is occurring with respect to the incidence, duration, and type of disciplinary actions, including suspensions and expulsions; (3) added section 618(d)(2)(B) to require the mandatory use of funds for comprehensive CEIS; and (4) added 618(d)(2)(C) to require that LEAS publicly report on the revision of policies, practices, and procedures.

In addition to changes to the significant disproportionality provision in section 618(d) of IDEA, Congress added a requirement that States, using quantifiable indicators, monitor LEAs for disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. Public Law 108–446, section 616(a)(3)(C)(2004), codified at 20 U.S.C. 1416(a)(3).

As such, IDEA currently requires each State to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and its LEAs in any of three categories of analysis:

- The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA (identification);
- The placement of children with disabilities in particular educational settings (placement); and
- The incidence, duration, and type of disciplinary actions, including suspensions and expulsions (disciplinary removals).

Section 618(d)(1) of IDEA (20 U.S.C. 1418(d)(1)).

If a State determines that an LEA has significant disproportionality based on race and ethnicity with respect to identification or placement, then the State must: (1) Provide for the review and, if appropriate, revision of policies, practices, and procedures used in the identification or placement to ensure that its policies, practices, and procedures comply with the requirements of IDEA; (2) require any LEA identified with significant disproportionality to reserve the maximum amount of funds under section 613(f) of IDEA (20 U.S.C. 1413(f)) to provide comprehensive CEIS to serve children in the LEA, particularly children in those groups that were significantly overidentified; and (3) require the LEA to publicly report on the revision of those policies, practices, and procedures. Section 618(d)(2) of IDEA (20 U.S.C. 1418(d)(2)). These requirements are separate and distinct from the requirement that States report in their State Performance Plans/Annual Performance Reports on the percent of LEAs with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. Section 616(a)(3)(C) of IDEA; 20 U.S.C. 1416(a)(3)(C); § 300.600(d)(3).

Finally, section 613(f)(1) of IDEA (20 U.S.C. 1413(f)(1)) allows LEAs to voluntarily use up to 15 percent of their IDEA Part B funds (less any reduction by the LEA in local expenditures for the education of children with disabilities pursuant to § 300.205) to develop and implement CEIS,[1] which may include interagency financing structures, for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

It is against this background that the Department issues this notice of proposed rulemaking (NPRM) to require a standard methodology for States to use in identifying significant disproportionality on the basis of race and ethnicity in the State and the LEAs of the State and to strengthen the statutory remedies whenever LEAs are identified. There are four parts to the Department's proposal: A standard methodology that States must use to determine significant disproportionality; a clarification that the statutory remedies apply to disciplinary removals; a clarification that the review and revision of policies, practices, and procedures occur every year and be consistent with the Family Education Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its implementing regulations in 34 CFR part 99 and section 618(b)(1) of IDEA; and an expansion of the allowable and required uses of IDEA Part B funds for comprehensive CEIS.

I. Establishing a Standard Methodology States Must Use To Determine Significant Disproportionality

A. Definitions of Significant Disproportionality

Neither IDEA nor its implementing regulations in 34 CFR part 300 define the term ''significant disproportionality.'' While section 607(a) of IDEA (20 U.S.C. 1406(a)) explicitly authorizes the Department to issue regulations to ensure compliance with the statute, the Department has previously left the matter to the States. In the preamble to the 2006 IDEA Part B regulations, we stated that, ''[w]ith respect to the definition of significant disproportionality, each State has the discretion to define the term for the LEAs and for the State in general. Therefore, in identifying significant disproportionality, a State may determine statistically significant levels.'' 71 FR 46540, 46738 (Aug. 14, 2006).

Thereafter, in Office of Special Education Programs (OSEP) Memorandum 07–09, April 24, 2007, the Office of Special Education and Rehabilitative Services (OSERS) stated that ''[w]ith one important caveat, each State has the discretion to define what constitutes significant disproportionality for the LEAs in the State and for the State in general. The caveat is that a State's definition of 'significant disproportionality' needs to be based on an analysis of numerical information and may not include considerations of the State's or LEA's policies, practices, and procedures.''

The Department, in short, has historically afforded States discretion in establishing methodologies for identifying significant disproportionality. States, in turn, have adopted a range of methodologies, including different methods for calculating disparities between racial and ethnic groups, different considerations for the duration of those

[1] For the sake of clarity and consistency, we refer to ''comprehensive CEIS'' when an LEA provides coordinated early intervening services by mandate under section 618(d)(2)(B) (20 U.S.C. 1418(d)(2)(B)). When an LEA voluntarily provides these services under section 613(f) (20 U.S.C. 1413(f)), we refer to them as ''CEIS.''

disparities, and different mechanisms for excluding LEAs from any determination of whether significant disproportionality exists.

B. The 2013 GAO Study on Racial and Ethnic Overrepresentation in Special Education

In February 2013, the Government Accountability Office (GAO) issued a study entitled ''INDIVIDUALS WITH DISABILITIES EDUCATION ACT—Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education (GAO–13–137).'' The GAO found that, in SY 2010–2011, States required about two percent of all school districts that received IDEA funding to use 15 percent of IDEA Part B funds for comprehensive CEIS to address significant disproportionality on the basis of race and ethnicity. Of a total of more than 15,000 districts nationwide, only 356 LEAs (roughly two percent of LEAs) were required to provide comprehensive CEIS. The GAO found that ''the discretion that States have in defining significant disproportionality has resulted in a wide range of definitions that provides no assurance that the problem is being appropriately identified across the nation.'' Further, the GAO found that ''the way some states defined overrepresentation made it unlikely that any districts would be identified and thus required to provide early intervening services.'' (GAO, 2013.)

To better understand the extent of racial and ethnic overrepresentation in special education and to promote consistency in how States determine which LEAs are required to provide comprehensive CEIS, the GAO recommended that the Department ''develop a standard approach for defining significant disproportionality to be used by all States'' and added that, ''this approach should allow flexibility to account for state differences and specify when exceptions can be made.'' (GAO, 2013.)

C. Actions Taken by the Department Since the GAO Study

Like the GAO, the Department is concerned that the wide range of methodologies used to determine significant disproportionality creates significant challenges in assessing whether the problem of racial and ethnic disparities is being addressed. In fact, based on data collected by the Department's OSEP and Office for Civil Rights, the Department is concerned that many States are not identifying LEAs with large disparities in identification, placement, and discipline, thereby depriving a number of children of the remedies enumerated in statute, including comprehensive CEIS, for populations who are overidentified. Accordingly, in recent years the Department has taken a number of steps intended to address this problem.

In a report to the President published in May 2014, the My Brother's Keeper Task Force identified disparities in special education as a significant challenge that should be addressed. In June 2014, the Department published a request for information (RFI) inviting public comment on the GAO's recommendation that the Department adopt a standard methodology for determining significant disproportionality. 79 FR 35154 (June 19, 2014).

The 95 commenters responding to the RFI generally fell into two broad categories: Civil rights and advocacy organizations, and SEA representatives. For the most part, civil rights and advocacy organizations strongly urged the Department to require a standard methodology that would offer States flexibility and at the same time decrease inter-State variability in methodologies for determining significant disproportionality. Most SEA representatives, in contrast, did not support the adoption of a standard methodology and asserted that a single methodology would be unlikely to fit the circumstances of different States.

SEA representatives also noted that there are a large number of districts in the country that vary greatly in population, number of children served, geographic size, student needs, per pupil expenditures, and range of services offered. These commenters noted that some States have established ''intermediate school districts'' that only serve children with disabilities and that there is a high incidence of disability among children in some communities because of environmental factors. These commenters argued that, in such instances, a standard methodology for determining significant disproportionality might unintentionally identify LEAs that have disparities in enrollment rather than LEAs that actually have disparities based on race and ethnicity in the identification, placement, or disciplinary removal of children with disabilities.

Other commenters argued that comprehensive CEIS (as outlined in the current regulations) may be ineffective as a tool to address significant disproportionality, since States often identify the same LEAs every year even after comprehensive CEIS has been employed. One commenter, representing an SEA, stated that clearer guidance regarding appropriate uses of funds for comprehensive CEIS would support more widespread implementation of multi-tiered systems of support. Other commenters, including an SEA representative and a group representing special education administrators, noted that States could not presently use comprehensive CEIS under section 618(d) of IDEA to provide services and support to children with disabilities even if they represent groups with significant disproportionality with respect to disciplinary removal and placement because of the limited population of children eligible for CEIS in section 613(f) of IDEA.

Finally, the Department also undertook its own review of the State procedures for identifying LEAs with significant disproportionality. We reviewed methodologies for the 50 States, the District of Columbia, and the U.S. Virgin Islands, including whether States used the same or different methods across the three categories of analysis under section 618(d)(1) of IDEA (20 U.S.C. 1418(d)(1)) (identification, placement, and disciplinary removal).[2] Additional information regarding the various methodologies currently in use is available in the IDEA Data Center's Methods for Assessing Racial/Ethnic Disproportionality in Special Education: A Technical Assistance Guide (Revised), published at *https://ideadata.org/files/resources/54480c2b140ba0665d8b4569/54c90646150ba0e04f8b457c/idc_ta_guide_for_508-051614/2015/01/28/idc_ta_guide_for_508-051614.pdf*. We examined the results of the States' various methodologies for determining significant disproportionality by reviewing the LEAs identified based on the SY 2012–2013 IDEA section 618 data. We also analyzed data on the rates of identification, placement, and disciplinary removals submitted by the States under section 618. Further, we conducted a review of research to better understand the extent and nature of racial and ethnic disparities in special education. Through these efforts, the Department found the following.

1. Risk Ratio Is the Most Common Method of Determining Significant Disproportionality

At the time of our review, 45 States used one or more forms of the risk ratio method to determine significant disproportionality. As there are a

[2] As part of the SY 2013–2014 State Supplement Survey (SSS), each State was required to submit to the Department the methodology it uses to determine significant disproportionality.

number of different ways to calculate risk ratios for the purpose of identifying significant disproportionality, as well as alternatives to the risk ratio method, we provide an overview and background on how States are identifying LEAs with significant disproportionality.

''Standard'' Risk Ratio

The ''standard'' risk ratio method compares the likelihood, or ''risk,'' that children in a particular racial or ethnic group in an LEA will be identified for special education and related services to the likelihood that children in a comparison group, usually all other children in the LEA, will be identified for special education and related services. For example, if an LEA serves 100 Black/African-American children and 15 of them are identified as being a student with a disability, the ''risk'' for Black/African-American children to be identified as a student with a disability would be 15 percent (15/100 = 15 percent). A risk ratio would then compare this ''risk'' for Black/African-American children to the ''risk'' for all non-Black/African-American children in the LEA. A risk ratio calculation can also be used to compare the relative risk of placement in a particular setting or disciplinary removal. (Bollmer, Bethel, Garrison-Morgan & Brauen, 2007.) At the time of our review, 21 States used the ''standard'' form of the risk ratio method.

Generally, a risk ratio of 1.0 indicates that children in a given racial or ethnic group are no more likely than children from all other racial or ethnic groups to be identified for special education and related services, be identified with a particular impairment, be placed in a particular educational setting, or face disciplinary removals from placement. A risk ratio greater than 1.0 indicates that the risk for the racial or ethnic group is greater than the risk for the comparison group. Accordingly, a risk ratio of 2.0 indicates that one group is twice as likely as other children to be identified, placed, or disciplined in a particular way; a risk ratio of 3.0 indicates that one group is three times as likely as other children to be identified, placed, or disciplined in a particular way; etc.

For example, consider an LEA that serves 5,000 children, 1,000 of whom are Black/African-American. In total, there are 450 children with disabilities in the LEA, 150 of whom are Black/African-American. As such, the likelihood, or ''risk,'' of any particular Black/African-American student in the LEA being identified as having a disability is 15 percent (150 Black/African-American children with disabilities/1000 Black/African-American children in the LEA * 100 = 15 percent). The likelihood of any non-Black/African-American student in the LEA being identified as having a disability is 7.5 percent (300 non-Black/African-American children with disabilities/4,000 non-Black/African-American children in the LEA * 100 = 7.5 percent). As such, in the standard version of the calculation, the risk ratio for Black/African-American children being identified as children with disabilities in this LEA would be 2.0 (15 percent of Black/African-American children identified with disabilities/7.5 percent of non-Black/African-American children with disabilities = 2.0).

TABLE 1—EXAMPLE STANDARD RISK RATIO CALCULATION FOR IDENTIFICATION OF BLACK/AFRICAN-AMERICAN CHILDREN IN AN LEA

	Black/African-American children	Non-Black/African-American children	Total children
Children with disabilities	150	300	450
All children (with and without disabilities)	1,000	4,000	5,000
Risk	150/1,000 = 15 percent	300/4,000 = 7.5 percent	N/A
Risk ratio	15 percent/7.5 percent = 2.0	N/A	N/A

Risk ratios provide little information regarding racial and ethnic disparities when the risk to a racial or ethnic group of interest is zero. In this last example, if zero Black/African-American children were identified with a disability, and the risk to non-Black/African-American children remained at 7.5 percent, the risk ratio for Black/African-American children being identified as children with disabilities would be zero (0/7.5 percent). This ratio would remain zero, irrespective of the risk to non-Black/African-American children, despite the appearance of some disparity in identification of non-Black/African-American children. While a risk ratio of zero is a fully valid and reasonable result of these calculations, it cannot, in the absence of other information, provide context about the gaps in identification rates across racial or ethnic groups.

Further, risk ratios cannot be calculated when the risk to a comparison group is zero, or when there are no children in a comparison group. In the above scenario, if the risk of identification for Black/African-American children remains at 15 percent, but the risk to non-Black/African-American children is zero, the State cannot calculate a risk ratio for the identification of Black/African-American children because it is not possible to divide a number by zero (15 percent divided by 0 is undefined). The result would be the same if there were no non-Black/African-American children in the LEA, though the issue would arise one step earlier in the calculation of the risk for non-Black/African-American children rather than in the calculation of the risk ratio itself.

Alternate Risk Ratio

The use of the alternate risk ratio is one method for calculating risk ratios when there is an insufficient number of children in the comparison group at the LEA level to provide meaningful results (*e.g.,* an LEA in which there are only 5 non-White children). (Bollmer et al. 2007.) Seven states use the alternate risk ratio method to compare the risk of a subgroup in the LEA to the risk of all other subgroups in the State.

For example, consider an LEA that serves 500 children, including 495 American Indian/Alaska Native children. We assume that the LEA serves 100 children with disabilities and only one of them is not American Indian/Alaska Native. We could calculate a risk for American Indian/Alaska Native children by dividing the number of American Indian/Alaska Native children identified as children with disabilities (99) by the total number of American Indian/Alaska Native children in the LEA (495) and determine a risk of 20 percent (99/495 = 20 percent). However, when we attempt to calculate the ''risk'' for non-American Indian/Alaska Native children, we notice that the total number of non-American Indian/Alaska Native children in the LEA (5) is sufficiently small that it is unlikely to generate stable risk calculations from year to year in the comparison group. As such, we need to use an alternate risk ratio calculation for non-American

Indian/Alaska Native children. In this case, States would look at what the State-wide risk is for non-American Indian/Alaska Native children. In this example, we will assume the State-wide risk for non-American Indian/Alaska Native children is 15 percent. We then compare the risk for American Indian/Alaska Native children in the LEA to the risk for non-American Indian/Alaska Native children Statewide to calculate the ''alternate risk ratio'' of 1.33 (20 percent/15 percent = 1.33).

TABLE 2—EXAMPLE ALTERNATE RISK RATIO CALCULATION OF IDENTIFICATION FOR AMERICAN INDIAN/ALASKA NATIVE CHILDREN IN AN LEA

	American Indian/ Alaska Native children in LEA	Non-American Indian/Alaska Native children in LEA	Non-American Indian/Alaska Native children Statewide
Children with Disabilities	99	1	30,000
All Children (with and without disabilities).	495	5	200,000
Risk	99/495 = 20 percent	N/A Below minimum cell size	30,000/200,000 = 15 percent
Alternate Risk Ratio	20 percent/15 percent = 1.33	N/A	N/A

Weighted Risk Ratio

Separately, the Department also found that 25 States used a weighted risk ratio method, which addresses challenges associated with variances in LEA demographics by using State-level demographics to standardize LEA-level distributions of race and ethnicity. When using a weighted risk ratio method, the risk to each racial and ethnic group within the comparison group is multiplied by a weight that reflects that group's proportionate representation within the State (*e.g.,* if one racial or ethnic group comprises only five percent of children Statewide, the risk for that racial or ethnic group in each LEA will only comprise five percent of the calculated risk for the other groups). Stated mathematically, the weighted risk ratio is calculated as follows:

$$Weighted\ Risk\ Ratio = \frac{(1-p_a)R_a}{\sum_{n \neq a} p_n R_n}$$

where R_a is the LEA-level risk for racial or ethnic group a and p_a is the State-level proportion of children from racial or ethnic group a. R_n is the LEA-level risk for the n-th racial or ethnic group and p_n is the State-level proportion of children from the n-th racial or ethnic group.

For example, consider a State with a population of school children that is 70 percent White, 10 percent Hispanic/Latino, and 20 percent Black/African-American. Within that State, LEA A has 10,000 children and very different demographics—1,000 White children, 8,000 Hispanic/Latino children, and 1,000 Black/African-American children. Of them, 20 White children (2 percent), 80 Hispanic/Latino children (1 percent), and 50 Black/African-American children (5 percent) are identified for special education and related services. In order to calculate the weighted risk ratio, the State would first weight the risks for the various racial or ethnic groups in the LEA by the proportion of total students Statewide that are in the same racial or ethnic group. They would then divide the weighted risks similar to the procedure in the standard risk ratio. The weighted risk ratio of identification for White children in the LEA is 0.55. The standard risk ratio, however, is 1.38.

In LEA B, where demographics are more similar to the State—8,000 White children, 1,000 Hispanic/Latino children, and 1,000 Black/African-American children—and the risk of identification for each group is the same as in LEA A (there are 160 White children, 10 Hispanic/Latino children, and 50 Black/African-American children with disabilities), the standard risk ratio of identification for White children is 0.67. However, the weighted risk ratio for LEA B would be 0.55, same as LEA A.

TABLE 3—EXAMPLE STANDARD AND WEIGHTED RISK RATIO CALCULATION OF IDENTIFICATION FOR WHITE CHILDREN IN TWO LEAS

	White children in LEA A	Comparison group (i.e., Hispanic/ Latino and Black/African-American children) in LEA A	White children in LEA B	Comparison Group (i.e., Hispanic/ Latino and Black/African-American children) in LEA B
Percentage of LEA enrollment.	10 percent	80 percent Hispanic/Latino; 10 percent Black/African-American.	80 percent	10 percent Hispanic/Latino; 10 percent Black/African-American.
Number of children	1000	8000 Hispanic/Latino + 1000 Black/African-American = 9000.	8000	1000 Hispanic/Latino + 1000 Black/African-American = 2000.
Number of children with a disability.	20	80 Hispanic/Latino + 50 Black/African-American = 130.	160	10 Hispanic/Latino + 50 Black/African-American = 60.
Risk	20/1000 = 2 percent	(80 + 50)/(8000 + 1000) = 1.4 percent.	160/8000 = 2 percent	(10 + 50)/(1000 + 1000) = 3 percent.
Risk ratio	2 percent/1.4 percent = 1.38.	Not applicable	2 percent/3 percent = 0.67.	Not applicable.
Weighted risk[a]	(20/1000) × (1 − 0.7) = 0.6 percent.	*For Hispanic/Latino* (80/8000) × 0.1 = 0.1 percent. *For Black/African-American* (50/1000) × 0.2 = 1 percent.	(160/8000) × (1 − 0.7) = 0.60 percent.	*For Hispanic/Latino* (10/1000) × 0.1 = 0.1 percent. *For Black/African-American* (50/1000) × 0.2 = 1 percent.

TABLE 3—EXAMPLE STANDARD AND WEIGHTED RISK RATIO CALCULATION OF IDENTIFICATION FOR WHITE CHILDREN IN TWO LEAS—Continued

	White children in LEA A	Comparison group (i.e., Hispanic/Latino and Black/African-American children) in LEA A	White children in LEA B	Comparison Group (i.e., Hispanic/Latino and Black/African-American children) in LEA B
Weighted risk ratio	0.6 percent/(0.1 percent + 1 percent) = 0.55.	Not applicable	0.6 percent/(0.1 percent + 1 percent) = 0.55.	Not applicable.

[a] Assumes racial and ethnic representation at the State level is 70 percent White, 10 percent Hispanic/Latino, and 20 percent Black/African-American.

Risk Difference

Fewer than five States use the risk difference method, which is similar to the risk ratio method in approach and simplicity. While both compare the risk for a racial or ethnic group of interest to the risk for a comparison group (generally, children in all other racial and ethnic groups in the LEA), the risk difference method provides a percentage point difference between the two risks, while the risk ratio method provides a quotient. For example, in an LEA where 15 percent of Black/African-American children are identified with emotional disturbance and 10 percent of children in all other racial and ethnic groups are identified with emotional disturbance, the risk difference is 5 percentage points.

TABLE 4—EXAMPLE RISK DIFFERENCE CALCULATION OF DISCIPLINE FOR BLACK/AFRICAN-AMERICAN CHILDREN IN AN LEA

	Black/African-American children	Non-Black/African-American children
Percent of children suspended fewer than 10 days.	15 percent	10 percent.
Risk Difference	15 percent − 10 percent = 5 percent	N/A.

The Department found that approximately five States used a variation of risk difference in which they compared the risk of an outcome for a racial or ethnic group to the risk of an outcome to a State, local, or national population.

Difference and Relative Difference in Composition

Fewer than five States use a composition method as part of their significant disproportionality methodology. The composition method compares a racial or ethnic group's representation among all children identified, placed, or disciplined to the racial or ethnic group's representation in another context, such as LEA enrollment.

Consider, for example, an LEA where American Indian/Alaskan Native children represent 24 percent of all children with disabilities suspended or expelled from school for fewer than 10 days in a given year but only represent 8 percent of the LEA's enrollment. Using the composition method, a State calculates the difference in composition by subtracting representation in LEA enrollment (8 percent) from representation in out-of-school suspensions and expulsions of fewer than 10 days (24 percent). A positive figure—16 percentage points in this case—is indicative of overrepresentation.

TABLE 5—EXAMPLE CALCULATIONS OF DIFFERENCE IN COMPOSITION FOR DISCIPLINE FOR AMERICAN INDIAN/ALASKA NATIVE, BLACK/AFRICAN-AMERICAN, AND WHITE CHILDREN IN AN LEA

	American Indian/Alaska Native	Black/African-American	White
Percent of children suspended fewer than 10 days	24	36	40
Percent of total enrollment	8	32	60
Difference in composition	24 − 8 = +16	36 − 32 = +4	40 − 60 = −20

Alternatively, a State may calculate the relative difference in composition by dividing the representation in LEA enrollment by representation in out-of-school suspensions and expulsions of fewer than 10 days (24 percent/8 percent). A number greater than one—3.0 in this case—is indicative of overrepresentation.

TABLE 6—EXAMPLE CALCULATION OF A RELATIVE DIFFERENCE FOR DISCIPLINE IN COMPOSITION IN AN LEA

	American Indian/Alaska Native	Black/African-American	White
Percent of children suspended fewer than 10 days	24	36	40
Percent of total enrollment	8	32	60
Relative difference in composition	24/8 = 3.0	36/32 = 1.1	40/60 = 0.7

2. *Most States Use Risk Ratio Thresholds to Differentiate Disproportionality From Significant Disproportionality*

The 45 States using the risk ratio method or one of its variations define a risk ratio threshold, over which disproportionality is considered significant. The Department found that the most common risk ratio threshold used by States was 4.0 (16 States), with 7 States each using 3.0 or 5.0.

Fewer than five States use the E-formula method to establish thresholds, which shift based on the size of the LEA analyzed. This approach can be used to develop thresholds for the risk ratio method, or for the composition method. (IDEA Data Center 2014.) The E-Formula, when used with a composition method, is:

$$E = A + \sqrt{A * \frac{(100-A)}{N}},$$

where A is the percentage of the same ethnic minority group in the LEA enrollment, N is the total special education enrollment in the LEA, and E is the maximum percentage (the resulting threshold) of the total special education enrollment in an LEA allowed for a specific ethnic minority group. For example, consider a State using a composition method, analyzing an LEA where 10 percent of the population consists of Black/African-American children and the total number of children with disabilities in the LEA is 1,000. Based on the E-formula, the threshold for that LEA for the identification of Black/African-American children would be 10.9 percent (*i.e.,* 10 + Sqrt [(100 × 90/1000)] = 10.9). In this case, a State would find an LEA to have significant disproportionality if the risk of identification for Black/African-American children exceeded 10.9 percent. (IDEA Data Center 2014.)

3. Many States Have Minimum Cell Size Requirements

The Department also found that a number of States restrict their assessment of significant disproportionality to include only those LEAs that have sufficient numbers of children to generate stable calculations. When an LEA has a particularly small number of children in a particular racial or ethnic group, relatively small changes in enrollment could result in large changes in the calculated risk ratio.

For example, if an LEA identified non-American Indian/Alaska Native children as being children with disabilities at a rate of 15 percent and had identified one of its four American Indian/Alaska Native children as having a disability, its calculated risk ratio would be 1.67 (25 percent divided by 15 percent). However, if one additional American Indian/Alaska Native student with a disability moved into the LEA, the risk ratio would increase to 2.67 (40 percent divided by 15 percent). Alternatively, if the American Indian/Alaska Native student with a disability left the LEA, the risk ratio would decrease to zero. Given the statutory consequences associated with being identified as having significant disproportionality, States have sought to minimize such large variations based on small changes in enrollment.

Overall, 30 States and the District and Columbia reported using some form of minimum cell size requirement—where the cell is generally defined as the number of children for the racial or ethnic group of interest, the number of children in the comparison group, or both—to accomplish this goal.

Of the States that use minimum cell size requirements, 11 use more than one cell definition. For example, nine States prescribe minimum cell sizes for both the number of children with disabilities in the racial or ethnic group being analyzed and the number of children with disabilities in the comparison group. That is, if an LEA does not have a sufficiently large population of children with disabilities in both the racial and ethnic group of interest and in the comparison group, the LEA will be excluded from any determination of significant disproportionality.

Some States define the cell in other ways, including the number of children enrolled in the LEA in the racial or ethnic group being analyzed (seven States) and the total number of children with disabilities enrolled in the district (1 State and the District of Columbia).

Of the 18 States that use the most common cell size definition—the number of children with disabilities in the racial or ethnic group being analyzed—9 States use a minimum cell size of 10 and 4 States use a minimum cell size of 30.

In general, the use of a minimum cell size will eliminate a certain number of LEAs from all or parts of a State's analysis. For example, if a State sets a minimum cell size of 10, any LEA with fewer than 10 children in the particular group being analyzed will be eliminated from the analysis of significant disproportionality. As the minimum cell size increases, the number of LEAs eliminated from the analysis also increases. However, while smaller minimum cell sizes increase the number of LEAs being analyzed, they also increase the chances that small changes in enrollment will trigger a finding of significant disproportionality. (IDEA Data Center, 2014.) Note again the previous example in which a one-student change in the LEA's enrollment caused a large increase in the LEA's calculated risk ratio.

4. Many States Use Multiple Years of Data To Determine Significant Disproportionality

Another way States have identified significant disproportionality in LEAs with small numbers of children is to identify an LEA only after its risk ratio is above a certain threshold for a number of consecutive years (*e.g.,* two or three years). Identifying an LEA as having significant disproportionality only if it is above a threshold for multiple, consecutive years is a way of separating LEAs that have high risk ratios that are statistical anomalies from those in which there are persistent underlying problems.

For example, LEAs with generally low levels of disproportionality may experience an unexpectedly high level of disproportionality in one year due to factors that do not represent the kind of consistent, underlying problems in identification, placement, or disciplinary removals that may be addressed through comprehensive CEIS or revisions to policies, practices, and procedures. LEAs with consistent, high levels of disproportionality are more likely to need a revision of policies, practices and procedures, and, potentially, comprehensive CEIS, to address the underlying factors contributing to those high levels. (Bollmer, Bethel, Munk & Bitterman, 2014.)

Of the 23 States that use multiple years of data, 13 States require an LEA to exceed the threshold for three consecutive years before finding significant disproportionality, while 9 States require 2 consecutive years. One State requires an LEA to exceed the threshold for four consecutive years prior to making a determination.

5. Low Overall Identification of Significant Disproportionality Across All States and All Methodologies Used

The Department reviewed the frequency with which States identified significant disproportionality using IDEA section 618 data, and, during SY 2012–2013, 28 States and the District of Columbia identified any LEAs with significant disproportionality. Together, these States identified 491 LEAs (3 percent of LEAs nationwide), somewhat higher than the 356 LEAs identified in SY 2010–2011. The majority of the identified LEAs were in a small number

of States—75 percent of all identified LEAs were located in seven States: California (10 percent of all LEAs identified), Indiana (12 percent), Louisiana (16 percent), Michigan (4 percent), New York (16 percent), Ohio (11 percent), and Rhode Island (6 percent). Based on the Department's Digest of Education Statistics, these seven States accounted for only 20 percent of all regular school districts [3] in the country. (2011–12 and 2012–13.)

Of the States that identified LEAs with significant disproportionality, the Department determined that 11 States identified LEAs in only one category of analysis. For example, Alabama, Arkansas, Connecticut, Delaware, and Virginia only identified significant disproportionality with respect to identification with a particular impairment. Only the District of Columbia and four States—Georgia, Indiana, Mississippi, and New York—identified LEAs with significant disproportionality in all three categories of analysis.

6. Overrepresentation and Under-Identification of Children of Color in Special Education

While decades of research, Congress, and GAO have found that the overrepresentation of children of color among children with disabilities is a significant problem, some experts and respondents to the June 2014 RFI have noted that under-identification in special education is a problem for children of color in a number of communities. These experts and respondents highlight the possibility that policies and practices intended to reduce overrepresentation may exacerbate inequity in special education by reducing access to special education and related services for children of color. (Morgan, P.L., Farkas, G., Hillemeier, M.M., Mattison, R., Maczuga, S., Li, H. & Cook, M., 2015.) Many of these experts suggest that, when taking into account differential exposure to various risk factors for disability, there is little to no evidence of over-identification for special education.

Based on child count data submitted by the States under Section 618 of the IDEA, racial and ethnic minorities are identified as being children with disabilities at a higher rate than their white peers. (U.S. Department of Education and U.S. Census Bureau, 2013.) In SY 2012–2013, for example, Black/African-American children were 2.1 times as likely as all other children to receive special education and related services for an emotional disturbance. American Indian/Alaska Native children were 1.8 times more likely than all other racial or ethnic groups to receive special education and related services for specific learning disabilities.

At the LEA level, racial and ethnic disparities in special education are more pronounced. For example, while nationally Black/African-American children were 2.1 times more likely than their peers to be identified as having an emotional disability, the Department found that more than 1,500 individual LEAs identified at least one racial or ethnic group as having an emotional disability at 3 times or more the rate of other children in that LEA for 3 or more consecutive years (SY 2011–2012, SY 2012–2013, and SY 2013–2014).

The rate of identification of children as children with disabilities varies across racial and ethnic groups both nationally and locally. However, as noted by numerous researchers, various racial and ethnic groups may have differential exposure to a number of other risk factors for disability including, but not limited to, low socioeconomic status, low birth weight, and lack of health insurance. (Morgan, P.L., *et al.,* 2015.)

Morgan, *et al.,* (2015) compared Black/African-American, Hispanic/Latino, and other children of color to their White peers with respect to identification for one of five impairments (learning disabilities, speech or language impairments, intellectual disabilities, health impairments, and emotional disturbance). After controlling for a number of covariates, the authors found that children of color were less likely than otherwise similar White, English-speaking children to be identified as having disabilities (in some cases, by up to 75 percent).

While this study used nationally representative data from the Early Childhood Longitudinal Study—Kindergarten (ECLS–K), there were some limitations to the analysis. The authors studied a single cohort of children, limiting their ability to detect the impacts of external effects, such as changes in State or Federal policy, that may have impacted the findings. Additionally, the study was unable to include controls for local-level variation (*e.g.,* school to school), which prior research (Hibel, Farkas, and Morgan 2010) has shown can mitigate such findings of under-identification.

A separate study examined the influence of school- and district-level characteristics—specifically racial and ethnic composition and economic disadvantage—on the likelihood of special education identification for Black/African-American and Hispanic/Latino children. (Ramey, 2015.) The author found that, on average, schools and districts with larger Black/African-American and Hispanic/Latino populations had lower rates of Black/African-American and Hispanic/Latino children receiving services under IDEA for emotional disturbances or other health impairment. Further, the author found that, in less disadvantaged districts, there is a negative correlation between the percentage of Black/African-American children in a school and receipt of IDEA services. On average, Black/African-American children in these more affluent school districts were less likely to receive IDEA services as the percentage enrollment of Black/African-American children' increases. By contrast, the author found no significant association between Black/African-American enrollment and the likelihood of receiving IDEA services in more disadvantaged districts. Based on this review of recent research, and the analysis of child count data, the Department found clear evidence that overrepresentation on the basis of race and ethnicity continues to exist at both the national and local levels. The Department's review of research found that overrepresentation and under-identification by race and ethnicity are both influenced by factors such as racial isolation and poverty. However, research that investigates whether overrepresentation and under-identification of children of color in special education co-occur at the local level is inconclusive. The Department has included a directed question to specifically request public comment on strategies to prevent the under-identification of children of color in special education.

At the same time, the review also demonstrates that any effort to identify significant disproportionality in LEAs should be designed to ensure that children with disabilities receive the special education and related services that they need and not create incentives for LEAs not to identify children as children with disabilities or to place them in inappropriate educational settings. It is important to do so to ensure that all children have the opportunity to participate and succeed in the general education curriculum to the greatest extent possible.

In addition, variation across States in how they measure and determine

[3] Regular school districts include both independent districts and those that are a dependent segment of a local government. Independent charter schools and other agencies are not included.

significant disproportionality inherently hampers efforts at national analyses. While all of the methodologies currently being used by States have strengths and weaknesses, the application of a standard methodology will help increase our understanding of these effects in LEAs across the country and may, in time, help strengthen our understanding of the variations in rates of identification, placement, and disciplinary removals of children with disabilities of different racial and ethnic groups while also identifying best practices in reducing inappropriate practices nationwide.

D. The Proposed Standard Methodology

To determine whether significant disproportionality on the basis of race and ethnicity is occurring in the State or the LEAs of the State, the Department proposes to require States to use a standard methodology that consists of specific methods for calculating racial or ethnic disparities, specific metrics that the States must analyze for racial and ethnic disparities, limitations on the minimum cell sizes State may use to exclude LEAs from any determinations of significant disproportionality, and specific flexibilities States may consider when making determinations of significant disproportionality.

Accordingly, to determine significant disproportionality, we propose to require States to use the risk ratio method or the alternate risk ratio method (if the total number of children in the comparison group within the LEA is fewer than 10 or if the risk for the comparison group is zero, respectively).

We propose that States calculate the risk ratio, or alternate risk ratio, for each category of analysis using the following long-standing section 618 data reporting as noted by the Department in OSEP Memorandum 08–09 (July 28, 2008) and established, following notice and comment, in OMB-approved data collections 1875–0240 and 1820–0517:

- Identification of children ages 3 through 21 as children with disabilities;
- Identification of children ages 3 through 21 as children with intellectual disabilities, specific learning disabilities, emotional disturbance, speech or language impairments, other health impairments, and autism;
- Placement, including disciplinary removals from placement, of:

(1) Children ages 6 through 21 inside a regular class less than 40 percent of the day,

(2) Children ages 6 through 21 inside a regular class no more than 79 percent of the day and no less than 40 percent of the day,

(3) Children ages 6 through 21 inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools,

(4) Children ages 3 through 21 in out-of-school suspensions and expulsions of 10 days or fewer,

(5) Children ages 3 through 21 in out-of-school suspensions and expulsions of more than 10 days,

(6) Children ages 3 through 21 in in-school suspensions of 10 days or fewer,

(7) Children ages 3 through 21 in in-school suspensions of more than 10 days, and

(8) Disciplinary removals in total.

We propose to require States to calculate the risk ratio or alternate risk ratio, as appropriate, based on a minimum cell size no greater than 10 children when analyzing identification and based on a minimum cell size no greater than 10 children with disabilities when analyzing disciplinary removal and placement. In all cases, especially those in which States opt to use a minimum cell size less than 10, States must be aware of, and conduct their analyses consistently with the confidentiality provisions of FERPA, its implementing regulations in 34 CFR part 99, and the reporting requirements of section 618(b) of IDEA.

Under the proposed regulations, States may select risk ratio thresholds appropriate to their individual needs, provided that: (a) The thresholds are reasonable and (b) the thresholds are developed based on advice from stakeholders, including State Advisory Panels. Further, risk ratio thresholds would be subject to Departmental monitoring and enforcement for reasonableness. We propose to allow States to select different risk ratio thresholds for different categories of analysis (*e.g.,* 3.5 for intellectual disability and 4.0 for emotional disturbance). However, the use of different thresholds for different racial and ethnic groups, may violate applicable requirements of federal statutes and the Constitution.

Finally, we propose that, although States would still be required to calculate risk ratios for their LEAs to determine significant disproportionality on an annual basis, States would have the flexibility to identify as having significant disproportionality only those LEAs that exceed their risk ratio threshold(s) for up to three prior consecutive years. We also propose to allow States not to identify LEAs that exceed the risk ratio threshold if they are making reasonable progress, as determined by the State, in lowering risk ratios from the preceding year.

II. Clarification That Statutory Remedies Apply to Disciplinary Removals

When a State finds significant disproportionality based on race or ethnicity with respect to identification or placement, IDEA and its implementing regulations require a set of remedies intended to address the significant disproportionality. The State must: (1) Provide for the review, and, if appropriate, revision of policies, practices, and procedures to ensure that they comply with the requirements of IDEA; (2) require any LEA identified with significant disproportionality to reserve 15 percent of IDEA Part B funds to provide comprehensive CEIS to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified; and (3) require the LEA to publicly report on the revision of policies, practices, and procedures. Section 618(d)(2) of IDEA (20 U.S.C. 1418(d)(2)); 34 CFR 300.646(b).

When Congress added discipline to section 618(d)(1) in 2004, it made no specific corresponding change to the introductory paragraph of section 618(d)(2). Therefore, although States are required under section 618(d)(1) to collect and examine data to determine if significant disproportionality is occurring with respect to the incidence, duration, and type of disciplinary actions in their State and their LEAs, the required actions set forth in section 618(d)(2) are not explicitly applied if a State determines that there is significant disproportionality with respect to ''disciplinary actions.'' The Department believes that this has resulted in a statutory ambiguity because disciplinary actions are generally removals of the student from his or her placement for varying lengths of time and may constitute a change in placement under certain circumstances. (See section 615(k) of IDEA.)

The Department has, therefore, previously taken the position that the required remedies in section 618(d)(2) apply when there is significant disproportionality in identification, placement, or any type of disciplinary removal from placement. (See 71 FR 46540, 46738 (August 14, 2006); OSEP Memorandum 07–09, April 24, 2007; OSEP Memorandum 08–09, July 28, 2008; June 3, 2008, letter to Ms. Frances Loose, Supervisor, Michigan Office of Special Education and Early Intervention.) We propose to adopt that long-standing interpretation into the Part B regulations.

III. Clarification of the Review and Revision of Policies, Practices, and Procedures

As a consequence of a State determination of significant disproportionality in an LEA, a State must provide for the review and, if

appropriate, revision of policies, practices, and procedures to ensure compliance with the requirements of IDEA. Section 618(d)(2)(A) of IDEA (20 U.S.C. 1418(d)(2)(A)). In cases where it is appropriate to make revisions to policies, practices, or procedures, the LEA must publicly report on those revisions. Section 618(d)(2)(C) of IDEA (20 U.S.C. 1418(d)(2)(C)).

Consistent with the plain language of section 618(d)(2)(A), the Department has previously interpreted the statute to require States to provide for a review of policies, practices, and procedures for compliance with the requirements of IDEA. See OSEP Memorandum 07–09. However, the Department notes that this guidance did not clearly explain that States must provide for this review in every year in which the LEA is identified with significant disproportionality.

If significant disproportionality is found in identification, placement, or discipline, a review of policies, practices, and procedures in that area must take place to ensure compliance with the IDEA. Additionally, in accordance with their responsibility under 34 CFR 300.201, in providing for the education of children with disabilities, LEAs must have in effect policies and procedures and programs that are consistent with the State's child find policies and procedures established under 34 CFR 300.111. Therefore, LEAs identified with significant disproportionality with respect to identification must continue to properly implement the State's child find policies and procedures. An annual review of policies, practices, and procedures that includes a review for compliance with the State's child find policies and procedures is intended to prevent such LEAs from inappropriately reducing the identification of children as children with disabilities.

To ensure that LEAs identified in multiple years review their policies, practices, and procedures every year in which they are identified with significant disproportionality, we propose that the regulation clarify that the review of policies, practices, and procedures must take place in every year in which the LEA is identified with significant disproportionality.

Further, as our proposed standard methodology allows States the flexibility to select a minimum cell size lower than 10, we propose to add language reminding States that public reporting of LEA revisions of policies, practices, and procedures must be consistent with the confidentiality provisions of FERPA, its implementing regulations in 34 CFR part 99, and section 618(b)(1) of IDEA.

IV. Expanding the Scope of Comprehensive Coordinated Early Intervening Services

Under section 613(f)(1) of IDEA (20 U.S.C. 1413(f)(1)), an LEA may voluntarily use up to 15 percent of its IDEA Part B funds to provide CEIS to children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade three) who have not been identified as needing special education or related services but who need additional academic or behavioral support to succeed in a general education environment.

The activities that may be included in implementing these services are: (1) Professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and (2) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. Section 613(f)(2) of IDEA (20 U.S.C. 1413(f)(2)).

Section 618(d)(2)(B) of IDEA (20 U.S.C. 1418(d)(2)(B)) provides that, in the case of a determination of significant disproportionality, the State or the Secretary of the Interior must require any LEA so identified to reserve 15 percent of its Part B (section 611 and section 619) subgrant, the maximum amount of funds under section 613(f), to provide comprehensive CEIS to serve children in the LEA, particularly children in those groups that were significantly overidentified. Congress did not define ''comprehensive,'' nor did it explain how ''comprehensive CEIS'' differs from ''CEIS'' in section 613(f) of IDEA (20 U.S.C. 1413(f)). The Department's current regulations in 34 CFR 300.646(b)(2) only clarify that funds reserved for comprehensive CEIS must be used to serve particularly, but not exclusively, children from those groups that were significantly overidentified.

In OSEP Memorandum 07–09, the Department previously interpreted the terms ''CEIS'' and ''comprehensive CEIS'' to apply to children in kindergarten through grade 12 who are not currently identified as needing special education and related services but who need additional academic and behavioral support to succeed in a general education environment. Thus, we interpreted IDEA as not allowing an LEA identified with significant disproportionality to use funds reserved for comprehensive CEIS to serve preschool children ages three through five, with or without disabilities, or children with disabilities in kindergarten through grade 12. We also did not interpret IDEA as requiring the State, as part of implementing comprehensive CEIS, to identify and address the factors contributing to the significant disproportionality. We now propose to amend the current regulation to interpret the term ''comprehensive'' in section 618(d)(2)(B) of IDEA to allow any LEA identified with significant disproportionality to expand the use of funds reserved for comprehensive CEIS to serve children from age 3 through grade 12, with and without disabilities.

As part of the IDEA Part B LEA Maintenance of Effort (MOE) Reduction and CEIS data collection, States are required to report on the total number of children that received CEIS during the reporting period, and the number of children who received CEIS during the two school years prior to the reporting period and received special education and related services during the reporting year. This is consistent with the information LEAs are required to report to States under IDEA section 613(f)(4) and 34 CFR 300.226(d). After these regulations are final, the Department is planning to provide guidance on what States must report in the LEA MOE Reduction and CEIS data collection and what LEAs must report to meet the requirement in IDEA section 613(f)(4) and 34 CFR 300.226(d).

We also propose to require the LEA, as part of implementing comprehensive CEIS services, to identify and address the factors contributing to the significant disproportionality. These factors may include a lack of access to scientifically based instruction, and they may include economic, cultural, or linguistic barriers to appropriate identification, placement, or disciplinary removal. Comprehensive CEIS may also include professional development and educational and behavioral evaluations, services, and supports. Requiring LEAs to carry out activities to identify and address the factors contributing to the significant disproportionality is consistent with the statutory requirement that LEAs must use funds reserved for comprehensive CEIS to serve children in the LEA, particularly children in those groups that were significantly overidentified. Comprehensive CEIS funds must be used to carry out activities to identify and address the factors contributing to the significant disproportionality. Although not specifically prohibited, we generally would not expect LEAs to use

these funds to conduct an evaluation to determine whether a child has a disability or to provide special education and related services already identified in a child's IEP.

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Summary of Proposed Changes

These proposed regulations address what States must do to identify and address significant disproportionality based on race and ethnicity occurring in States and LEAs in the States.

These proposed regulations would—

- Add §§ 300.646(b) and 300.647(a) and (b) to provide the standard methodology that States must use to determine whether there is significant disproportionality based on race or ethnicity in the State and its LEAs;
- Add § 300.647(c) to provide the flexibilities that States, at their discretion, may consider when determining whether significant disproportionality exists. States may

choose to identify an LEA as having significant disproportionality after an LEA exceeds a risk ratio threshold for up to three consecutive years. A State also has the flexibility not to identify an LEA with significant disproportionality if the LEA is making reasonable progress in lowering the risk ratios even if they are still above the State's risk ratio thresholds, where reasonable progress is defined by the State;

- Amend current § 300.646(b) (proposed § 300.646(c)) to clarify that the remedies in section 618(d)(2) of IDEA are triggered if a State makes a determination of significant disproportionality with respect to disciplinary removals from placement;
- Amend current § 300.646(b)(1) and (3) (proposed § 300.646(c)(1) and (2)) to clarify that the review of policies, practices, and procedures must occur in every year in which an LEA is identified with significant disproportionality, and that LEA reporting of any revisions to policies, practices, and procedures must be in compliance with the confidentiality provisions of FERPA, its implementing regulations in 34 CFR part 99, and section 618(b)(1) of IDEA; and
- Amend current § 300.646(b)(2) (proposed § 300.646(d)) to define which student populations may receive comprehensive CEIS when an LEA has been identified with significant disproportionality. Comprehensive CEIS may be provided to children from age 3 through grade 12, regardless of whether they are children with disabilities. The proposed regulations would require that, as part of implementing the comprehensive CEIS, an LEA must identify and address the factors contributing to the significant disproportionality.

Significant Proposed Regulations

We group major issues according to subject, with sections of the proposed regulations in parentheses. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

I. A Standard Methodology for Determining Significant Disproportionality

Risk Ratios (Proposed § 300.646(b); § 300.647(a)(2); § 300.647(a)(3); § 300.647(b)(6))

Statute: Section 618(d)(1) of IDEA (20 U.S.C. 1418(d)(1)) requires every State that receives IDEA Part B funds to collect and examine data to determine if significant disproportionality based on race or ethnicity exists in the State or the LEAs of the State. IDEA does not define ''significant disproportionality'' or instruct how data must be collected and examined.

Current Regulations: Current § 300.646(a) imposes the same requirement as the statute and does not define ''significant disproportionality'' or instruct how data must be collected or examined.

Proposed Regulations: Proposed § 300.646(b) would require that States use a standard methodology to determine whether significant disproportionality based on race or ethnicity exists in the State or in the LEAs of the State.

Proposed § 300.647(b) would require the use of risk ratios as part of the standard methodology for determining significant disproportionality.

Proposed § 300.647(a)(2) would define ''risk'' as the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a particular racial or ethnic group within an LEA. Risk is calculated by dividing the number of children from a given racial or ethnic group identified with a disability, placed, or disciplined in the LEA by the total number of children from that racial or ethnic group enrolled in schools in the LEA.

Proposed § 300.647(a)(3) would define ''risk ratio'' as the risk of an outcome for one racial or ethnic group in an LEA as compared to the risk of that outcome for all other racial and ethnic groups in the same LEA. Risk ratio is calculated by dividing the risk for children in one racial or ethnic group within an LEA by the risk of that same outcome for all other racial or ethnic groups within that LEA.

Reasons: The Department proposes to require the use of this common analytical method for determining significant disproportionality to increase transparency in LEA identification across States for LEA, State, and Federal officials, as well as the general public. The Department proposes to require that States use the most common analytical method in use among the States during SY 2013–2014. Based on the SY 2013–14 SSS, 45 States use one or more forms of the risk ratio and, of these, 39 use the risk ratio as their sole method for determining significant disproportionality.

We acknowledge that most of the methods currently in use by States, including the risk ratio, have benefits and drawbacks. In selecting a method, the Department prioritized methods that LEAs and members of the public could easily interpret and those that would create the least disturbance in States' current methodologies for determining significant disproportionality. At the same time, we closely examined each method's strengths and weaknesses in identifying disparities by race and ethnicity.

The risk ratio is the method that would create the least burden for States and provide the public with information that is easily interpreted (a comparison of the risk of an outcome). We also found that the potential drawbacks of the risk ratio method's utility in identifying disparities (*i.e.,* volatility when applied to small populations, inability to calculate when risk to a comparison group is zero) can be minimized through the use of minimum cell sizes, multiple years of data, and, when needed, alternative forms of the risk ratio.

In examining other methods, the Department found none that contain a balance of transparency, limited burden, and utility similar to the risk ratio. With respect to transparency and ease of comprehension, the alternate risk ratio (identical to the risk ratio, but with State-level data as the comparison group), the risk difference (another comparison of the risk of an outcome), and the composition methods (a comparison of representation in two contexts) are similar to the risk ratio. Additionally, the alternate risk ratio and risk difference methods can be used when risk to an LEA-level comparison group is zero. However, these methods are rarely used among the States.

Further, the alternate risk ratio method uses State-level data in place of LEA-level data to compare risk to racial and ethnic groups. In cases where LEA-level data are available and reliable, the Department determined that these numbers are preferable to State data. While the weighted risk ratio method is used in approximately half of the States, it is relatively more complex because it uses State-level demographic information to add weights to the standard risk ratio.

Of the possible methodologies that the Department might require States to use, we believe that the risk ratio would provide the greatest utility while resulting in the least burden on, and disturbance of, States' current methodologies for determining significant disproportionality.

Categories of Analysis (Proposed § 300.647(b)(3) and (4))

Statute: Section 618(d)(1) of IDEA (20 U.S.C. 1418(d)(1)(A)–(C)) requires States to determine whether significant disproportionality based on race or ethnicity exists in the State or the LEAs of the State with respect to identifying children as children with disabilities; identifying children as children with

disabilities in accordance with a particular impairment; placing children with disabilities in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Current Regulations: Current § 300.646(a) includes the same requirements as the statute.

Proposed Regulations: Proposed § 300.647(b)(3)(i)–(ii) and (b)(4)(i)–(viii) would provide additional specificity to the three categories of analysis required by IDEA and current § 300.646(a). These sections would impose no new data collection requirements upon States. Rather, the regulations would require States to use data they already collect, analyze, and report to the Department to identify significant disproportionality in LEAs.

For each of the enumerated racial and ethnic groups in an LEA, States would calculate the risk ratio for the identification of children ages 3 through 21 as children with disabilities and the risk ratio for identification of children ages 3 through 21 as children with—

- Intellectual disabilities;
- Specific learning disabilities,
- Emotional disturbance;
- Speech or language impairments;
- Other health impairments; and
- Autism.

For children with disabilities in each racial and ethnic group, States would calculate the risk ratio for placements into particular educational settings, including disciplinary removals—

- For children ages 6 through 21, inside a regular class more than 40 percent of the day and less than 79 percent of the day;
- For children ages 6 through 21, inside a regular class less than 40 percent of the day;
- For children ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;
- For children ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer;
- For children ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days;
- For children ages 3 through 21, in-school suspensions of 10 days or fewer;
- For children ages 3 through 21, in-school suspensions of more than 10 days; and
- For children ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

Reasons: It is the Department's intention to create greater uniformity among States in the metrics used to make determinations of significant disproportionality and, at the same time, disturb States' current operations as little as possible. The calculations we would require reflect the guidance for collecting and analyzing data for determining significant disproportionality that was provided to the States in the July 28, 2008, OSEP Memorandum 08–09 to Chief State School Officers and State Directors of Special Education. These calculations also have been established, following notice and comment, in OMB-approved data collections 1875–0240 and 1820–0517.

As explained in OSEP Memorandum 08–09, the Department does not deem disproportionality for a given metric to be significant when there are very small numbers of children involved, as is the case with certain impairments, including deaf-blindness, developmental delay, hearing impairments, multiple disabilities, orthopedic impairments, traumatic brain injuries, and visual impairments. The Department's proposed § 300.647(b)(3)(ii) includes 6 of the 13 impairments listed in 34 CFR 300.8(c), representing nearly 93 percent of all children with disabilities in SY 2012. (36th Annual Report to Congress, 2014.)

Similarly, the Department does not propose to require States to analyze data for children who received special education and related services in homebound or hospital settings, correctional facilities, or in private schools (as a result of parental placement of the child in a private school) because those numbers are typically very small and an LEA generally has little, if any, control over these placements.

The OSEP Memorandum 08–09 provides further justification of the Department's new requirements regarding calculation of significant disproportionality for placement. As IDEA requires children with disabilities to be placed in the least restrictive environment (LRE), the first placement option to be considered is the regular classroom with appropriate supplementary aides and services. For that reason, the Department proposes that States analyze disparities in placement in the regular classroom for less than 79 percent of the day, which is one of the long-standing categories States use to report educational environment data under section 618 of IDEA.

As States are currently required to annually collect and submit these data to the Department under section 618(a)(1) of IDEA, the Department anticipates that using these data to determine significant disproportionality will take minimal additional capacity.

Risk Ratio Thresholds (Proposed § 300.647(a)(4); § 300.647(b)(1); § 300.647(b)(2) and (6))

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 300.647(a)(4) would define ''risk ratio threshold'' as the threshold over which disproportionality based on race or ethnicity is significant under proposed § 300.646(a) and (b).

Proposed § 300.647(b)(1) would require States to set reasonable risk ratio thresholds for each of the categories described in the proposed §§ 300.647(b)(3) and (4). Proposed § 300.647(b)(1)(i) would require that risk ratio thresholds are based on advice from stakeholders, including their State Advisory Panels. Proposed § 300.647(b)(1)(ii) would require that risk ratio thresholds be subject to monitoring and enforcement for reasonableness by the Secretary, consistent with section 616 of the Act.

Proposed § 300.647(b)(2) would require States to apply the risk ratio thresholds to risk ratios (or alternate risk ratios, as appropriate) to each of the categories described in the proposed § 300.647(b)(3) and (4) and to the following racial and ethnic groups within each category: Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only, American Indian/Alaska Native; Asian; Black/African American; Native Hawaiian or Other Pacific Islander; White; and two or more races.

Proposed § 300.647(b)(6) would require States to identify as having significant disproportionality any LEA where the risk ratio for any racial or ethnic group in any category of analysis in proposed § 300.647(b)(3) and (4) is above the risk ratio threshold set by the State for that category.

Reasons: Using a risk ratio to determine significant disproportionality necessitates setting a threshold that marks the boundary between disproportionality and significant disproportionality.

The Department proposes limitations and requirements for establishing risk ratio thresholds to address current State practices. These proposed regulations are also intended to encourage States to differentiate LEAs with some disproportionality from LEAs with significant disproportionality. It is noteworthy that in SY 2012–2013, 21 States did not identify significant disproportionality in any LEAs. Given the degree of disproportionality across all States, the Department is concerned that a number of States using risk ratios may have, intentionally or

unintentionally, set thresholds high enough to effectively nullify the statutory requirement that they identify LEAs with significant disproportionality.

To address this, proposed § 300.647(b)(1)(ii) requires that a risk ratio threshold be reasonable and subject to Departmental monitoring and enforcement. By requiring that States abide by a standard of reasonableness, the Department may initiate enforcement action against a State that selects an unreasonable risk ratio threshold.

There are a number of factors that may influence whether a risk ratio threshold is reasonable for the State. For example, the Department may determine that a State has selected a reasonable threshold if it is likely to lead to a reduction in disparities on the basis of race or ethnicity or if it results in identification of LEAs in greatest need of intervention.

By contrast, the Department may determine that a State has selected an unreasonable risk ratio threshold if it avoids identifying any LEAs (or significantly limits the identification of LEAs) with significant disparities in order to, for example, preserve State or LEA capacity that would otherwise be used for a review of policies, practices, and procedures and reserving IDEA Part B funds for comprehensive CEIS, or to protect LEAs from needing to implement comprehensive CEIS.

While a number of States rely on statistical significance tests and confidence intervals to set risk ratio thresholds, there may be some cases in which these may be unreasonable when compared with racial and ethnic disparities in the LEAs of the State. In States with non-normal distributions of LEA risk ratios, individual LEAs that significantly deviate from the typical range of risk ratios in other LEAs in the State (*i.e.,* outliers), or a small number of total LEAs, a risk ratio threshold set two standard deviations above the Statewide average risk ratio may fail to identify LEAs in which significant racial or ethnic discrepancies exist in the identification, placement, and/or discipline of students with disabilities. Solely because a risk ratio threshold is the result of an objective calculation does not guarantee that the resulting threshold itself would be considered reasonable when it is compared to the racial and ethnic disparities taking place at the LEA level.

Further, for States that identified no LEAs with significant disproportionality in SY 2012–2013, a standard of reasonableness will help to determine whether the State's choice of risk ratio threshold was appropriate. For example, selection of a risk ratio threshold that results in no determination of significant disproportionality may nonetheless be reasonable if a State has little or no overrepresentation on the basis of race or ethnicity. Put another way, a risk ratio threshold under which no LEAs are determined to have significant disproportionality could be reasonable if there is little or no overrepresentation on the basis of race or ethnicity in the LEAs of the State, much less significant disproportionality.

In a case where a State does have some degree of racial or ethnic disparities, a risk ratio threshold that results in no determination of significant disproportionality may nonetheless be reasonable if none of its LEAs are outliers in a particular category when compared to other LEAs nationally. There are many ways that a State might make this comparison, and we provide one example here.

For identification, we used IDEA section 618 data to, first, calculate a national median risk ratio based on LEA-level risk ratios, and, second, identify outlier LEAs based on the national median. The Department repeated this procedure for placement and disciplinary removal to develop 15 risk ratio thresholds, as outlined in Table 7.

TABLE 7—NUMBER AND PERCENTAGE OF LEAS EXCEEDING A RISK RATIO THRESHOLD, EQUALING TWO MEDIAN ABSOLUTE DEVIATIONS ABOVE THE MEDIAN OF ALL LEAS,[ab] IN SY 2011–12, SY 2012–13, AND SY 2013–14

Metrics used to measure three categories of analysis (identification, placement, and disciplinary removals)	Risk ratio threshold (based on two median absolute deviations above the median for LEA risk ratios[c]	Percent of LEAs[d] exceeding the risk ratio threshold for three years (SY 2011–12, SY 2012–13, and SY 2013–14)
All disabilities	1.67	16.7
Autism	2.41	11.9
Emotional disturbance	2.96	9.2
Intellectual disabilities	2.48	12.8
Other health impairments	2.38	11.5
Specific learning disabilities	1.97	15.2
Speech or language impairments	2.03	10.6
Inside regular class 40 percent through 79 percent of the day	.....	.....
Inside regular class less than 40 percent of the day	1.65	5.1
Separate settings	2.13	3.1
In-school suspensions ≤10 days	1.97	3.5
In-school suspensions >10 days	2.94	0.5
Out-of-school suspensions/expulsions ≤10 days	2.01	5.7
Out-of-school suspensions/expulsions >10 days	3.00	1.3
Total removals	1.87	6.9

[a] N = 17,371 LEAs.
[b] Excludes LEAs in one State, for any of the identification metrics, and all but one LEA in a second State, for the disciplinary removal metrics.
[c] Medians and MADs exclude risk ratios of 0.
[d] Only includes LEAs with outlier risk ratios for those racial and ethnic groups with at least 10 children.

Additional information regarding the Department's example may be found at *http://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/index.html.*

In proposing § 300.647(b)(1)(ii), it is the Department's intention that the States' selection of risk ratio thresholds be subject to a Departmental monitoring and enforcement for reasonableness. If

the Department identifies a State that may have an unreasonable threshold, it would notify the State and request clarification regarding how the State believes the selection of risk ratio thresholds is reasonable. If a State provides an insufficient response, the Department would notify the State that it is not in compliance with the IDEA regulation requiring the State to set a reasonable risk ratio threshold, and the Department would take an enforcement action that is appropriate and authorized by law. Enforcement actions range from requiring a corrective action plan, imposing special conditions on the State's IDEA Part B grant, designating the State as a high-risk grantee, or withholding a portion of the State's IDEA Part B funds. The Department anticipates that the requirement of reasonableness in proposed § 300.647(b)(1) will not only help ensure the statutory requirement is meaningful but will also result in States requiring those LEAs with the largest disparities to direct resources to identify and correct practices that may violate not just IDEA but also Federal civil rights laws that prohibit discrimination on the basis of race, color, and national origin, such as Title VI of the Civil Rights Act of 1964. Nothing in this proposed regulation will limit or insulate an LEA or SEA from enforcement action under other statutes. Proposed § 300.647(b)(1) would require States to select reasonable risk ratio thresholds that effectively identify LEAs with large racial and ethnic disparities, so that their policies, practices, and procedures may be reviewed consistent with section 618(d)(2)(A) of IDEA. This valuable self-examination may, depending upon the factual circumstances in the State or the LEA, reduce the risk of further compliance concerns.

Proposed § 300.647(b)(1)(i) would clarify the role of the State Advisory Panel in determining the risk ratio thresholds. Under section 612(a)(21)(D) of IDEA (20 U.S.C. 1412(a)(21)(D)), State Advisory Panels have among their duties a responsibility to ''advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618.'' As the selection of risk ratio thresholds will affect the data SEAs will submit to the Department under section 618 of IDEA—including the LEAs identified with significant disproportionality and the reason for the identification—the State Advisory Panel should have a meaningful role in advising the SEA on these selections.

Proposed § 300.647(b)(1) would clarify that States may set a different risk ratio threshold for each of the categories in proposed § 300.647(b)(3) and (4). States may need different thresholds in order to reasonably identify significant disproportionality for categories with different degrees of disparity. For example, if the LEAs in a State, on average, identify any one racial or ethnic group for emotional disturbance at a rate three times that of all other children but use disciplinary removals for any one racial or ethnic group at a rate five times that of all other children, the State may find it difficult to set a single threshold that would be reasonable for both emotional disturbance and disciplinary removals.

In directed question 9, the Department has requested public comment on the proposed requirements regarding the development and application of risk ratio thresholds. The use of different risk ratio thresholds for different racial and ethnic groups may be constitutionally impermissible.

Lastly, proposed § 300.647(b)(2) would provide a complete list of the racial and ethnic groups that each State must analyze as part of the approach to defining and identifying significant disproportionality. This list of racial and ethnic groups is the same list of groups required for States' current IDEA section 618 data submissions, as explained in the Department's Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education. 72 FR 59266 (October 19, 2007).

Again, within these guidelines, there are many ways a State may set reasonable risk ratio thresholds. For example, States may choose an appropriate value based on previous experience with particular thresholds (*e.g.,* if, in the past, LEAs with risk ratios above 2.5 were, after a review of policies, practices, and procedures, found to be non-compliant with the requirements of IDEA, while those under that threshold were generally not), or they may calculate the value using a data analysis that complies with proposed § 300.647(b)(2).

Minimum Cell Sizes (Proposed § 300.647(b)(3) and (4))

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 300.647(b)(3) and (4) would require a minimum cell size no greater than 10 for risk ratio calculations. Specifically, to determine significant disproportionality in identification, States would calculate, for each LEA, risk ratios for all racial and ethnic groups that include a minimum number of children not larger than 10. To determine significant disproportionality in placement, including disciplinary removals from placement, States would calculate, for each LEA, risk ratios for all racial and ethnic groups that include a minimum number of children with disabilities not larger than 10.

Reasons: The proposal to use a minimum cell size no greater than 10 would ensure that States examine as many racial and ethnic groups for significant disproportionality in as many LEAs as possible while minimizing the effect that minor variations in the number of children in a given racial or ethnic group, or in the comparison group, have on LEAs risk ratios.

For example, the graduation of a relatively small number of children with disabilities, while not reflecting any change in the policies, practices, and procedures of the LEA, could result in a large change in the calculated risk ratio for a particular category of analysis, particularly if those graduating children represented a sizable proportion of the total number of children with disabilities in a given racial or ethnic group.

The minimum cell size included in proposed § 300.647(b)(3) and (4) would allow States to exclude certain LEAs from a determination of significant disproportionality based on the number of children in the racial or ethnic group of interest and the number of children with disabilities in the racial or ethnic group of interest. For example, if an LEA has fewer than 10 Hispanic/Latino children, then the State may choose to exclude that LEA from a determination of whether significant disproportionality exists in the identification of Hispanic/Latino children. If an LEA has fewer than 10 Hispanic/Latino children with disabilities, then the State may choose to exclude that LEA from a determination of whether significant disproportionality exists in the placement or disciplinary removal of Hispanic/Latino children with disabilities.

Selecting an appropriate minimum number of children necessary to include an LEA in the State's analysis of significant disproportionality can be difficult. If the minimum cell size is too small, more LEAs would be included in the analysis, but the likelihood of dramatic, statistically anomalous, changes in risk ratio from one year to the next would increase. By contrast, if the minimum number is set too high, a larger number of LEAs would be excluded from the analysis and States would not identify as many LEAs with significant disparities as there might be.

Current research demonstrates that a minimum cell size of 10 provides for a reasonable analysis without excluding too many LEAs from a determination of whether significant disproportionality on the basis of race exists. (Bollmer, et al., 2007; IDEA Data Center 2014).

Alternate Risk Ratios (Proposed § 300.647(a)(1); § 300.647(b)(5))

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 300.647(b)(5) would require States to use the alternate risk ratio in place of the risk ratio when, for any analysis category, an LEA has fewer than 10 children in the comparison group—all other racial and ethnic groups in the LEA—or the risk for children in all other racial and ethnic groups is zero.

Proposed § 300.647(a)(1) would define ''alternate risk ratio.'' Like risk ratio, alternate risk ratio measures the risk of an outcome for one racial or ethnic group in the LEA, but compares it to the risk of that outcome for all other racial and ethnic groups in the State, not all other racial and ethnic groups in the LEA. An alternate risk ratio is calculated by dividing the risk for children in one racial or ethnic group within an LEA by the risk of that same outcome for all other racial or ethnic groups within the State.

Reasons: As explained in the discussion of minimum cell sizes, a risk ratio can produce more volatile results when applied to small numbers. Setting an appropriate minimum cell size is one way of addressing this limitation when there are too few children in the racial or ethnic group of interest. However, when an LEA has too few children in the comparison group—fewer than 10—experts recommend the use of the alternate risk ratio. (Bollmer, et al., 2007.) With the alternate risk ratio, the State population replaces the LEA population for the comparison group, permits the calculation, and produces results that are less volatile. Further, a risk ratio cannot be calculated at all if there are no children in the comparison group, or if the risk to children in the comparison group is zero (because a number cannot be divided by zero). In these specific cases, the Department has proposed to require States to use the alternate risk ratio as the method for measuring disparities in the LEA.

Flexibilities (Proposed § 300.647(c))

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 300.647(c) would provide States with additional flexibility in making determinations of significant disproportionality. In proposed § 300.647(c)(1), although States would still calculate annual risk ratios for their LEAs, they would have the flexibility to identify only those LEAs that exceed the risk ratio threshold for a number of consecutive years, but no more than three.

Proposed § 300.647(c)(2) would allow States not to identify LEAs that exceed the risk ratio threshold if they demonstrate reasonable progress, as determined by the State, in lowering the risk ratio for the group and category from the immediate preceding year.

Reasons: It is the Department's intention to reduce the likelihood that LEAs will be inappropriately identified with significant disproportionality by allowing States the flexibility to identify only those LEAs showing significant racial and ethnic disparities over a number of consecutive years. Measures of disproportionality can be variable if the number of children included in the analysis is small, as may be the case in small LEAs or in LEAs with a small racial or ethnic subgroup. However, LEAs are less likely to be identified based on volatile data if multiple years of data are taken into consideration. (IDEA Data Center, 2014.)

This flexibility also adopts an existing common practice among States. Based on the SY 2013–14 SSS, 23 States require that LEAs exceed a specified level of disparity for multiple years for at least one category of analysis for at least one racial or ethnic group before the LEA is identified as having significant disproportionality. Of these 23 States, 13 require 3 consecutive years of risk ratios exceeding an established threshold. The Department proposes to allow States to use up to three prior consecutive years of data before an LEA is identified, which reflects the current most common practice among the States. States using this flexibility must use data from prior school years to determine whether any LEAs in their State should be identified as having significant disproportionality in the first (or second, as appropriate) year after the proposed regulation is adopted.

Finally, with this regulation, the Department intends to empower States to focus their attention on those LEAs in which the level of disproportionality is not decreasing. We intend to allow States to leave undisturbed IDEA Part B funds that may be achieving the goal of reducing disparities in certain LEAs, as evidenced by reasonable progress determined by the State, in lowering their risk ratio, even though the LEA has a risk ratio that exceeds the State's risk ratio threshold.

II. Clarification That Statutory Remedies Apply to Disciplinary Actions (Proposed § 300.646(a)(3) and (c))

Statute: Section 618(d)(1)(C) of IDEA (20 U.S.C. 1418(d)(1)(C)) specifies that a State must provide for the collection and examination of data with respect to the incidence, duration, and type of disciplinary actions, including suspension and expulsions, to determine if significant disproportionality with respect to race and ethnicity is occurring in the State or the LEAs of the State. Section 618(d)(2) of IDEA (20 U.S.C. 1418(d)(2)) specifies the actions a State must take if it finds significant disproportionality based on race or ethnicity in the identification of children as children with disabilities or in their placement in particular educational settings. A State must provide for the review and, if appropriate, revision of the policies, practices, and procedures used in the identification or placement to ensure that these policies, practices, and procedures comply with the requirements of IDEA. The State must also require any LEA identified with significant disproportionality to reserve 15 percent of its IDEA Part B subgrant to provide comprehensive CEIS to children in the LEA, particularly children in those groups that were significantly overidentified, and require the LEA to publicly report on the revision of policies, practices, and procedures.

Current Regulations: Current § 300.646(a)(1) and (b)(1) restate the statute largely verbatim. Current § 300.646(a)(1) requires LEAs to provide comprehensive CEIS particularly, but not exclusively, to children in those groups that were significantly overidentified.

Proposed Regulations: Proposed § 300.646(a)(3) would clarify that disciplinary actions under IDEA are considered removals from current placement, which is consistent with current § 300.530. Proposed § 300.646(c) would clarify that the State must implement the statutory remedies in section 618(d)(2) to address significant disproportionality with respect to disciplinary removals from placement.

Reasons: Ensuring that States implement the statutory remedies will help address significant disproportionality in disciplinary removals from placement.

Proposed § 300.646(c) is based, in part, on the use of the term ''placement'' in the introductory paragraph of section 618(d)(2). The Department reads the term ''placement'' to include

disciplinary removals of children with disabilities from their current placement, in accordance with section 615(k)(1) of IDEA (20 U.S.C. 1415(k)(1)). A disciplinary removal of up to 10 school days is considered a removal from placement under section 615(k)(1)(B)(''[s]chool personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities)''), while a disciplinary removal from placement that exceeds 10 school days is considered a change in placement under section 615(k)(1)(C).

To the extent that section 618(d)(2) of IDEA specifies the remedies that States and LEAs must implement following a determination of significant disproportionality with respect to placement, the Department seeks to clarify that these remedies also follow a determination of significant disproportionality with respect to disciplinary removals from placement of any duration.

This reading of ''placement'' aligns with OSERS' prior interpretations and guidance both on this issue—as outlined in the OSEP Questions and Answers on Discipline Procedures, Revised June 2009—and the determination required under section 618(d)(1).

III. Clarification of the Review and Revision of Policies, Practices, and Procedures (§ 300.646(c))

Statute: Section 618(d)(2)(A) (20 U.S.C. 1418(d)(A)) requires the State or the Secretary of Interior to provide for the review, and if appropriate, revision of policies, practices, and procedures to ensure compliance with the requirements of IDEA. Section 618(d)(2)(C) (20 U.S.C. 1418(d)(C)) requires LEAs identified as having significant disproportionality to publicly report on any revisions to policies, practices, and procedures.

Current Regulation: Current § 300.646(b)(1) and (3) restate the statute largely verbatim.

Proposed Regulation: Proposed § 300.646(c)(1) would clarify that the review of policies, practices, and procedures must be conducted in every year in which any LEA is identified as having significant disproportionality.

Proposed § 300.646(c)(2) would restate the statutory requirement that, in the case of a determination of significant disproportionality, the LEA must publicly report on the revision of policies, practices, and procedures and add new language requiring that the report be consistent with the confidentiality provisions of FERPA and its implementing regulations in 34 CFR part 99, and section 618(b)(1) of IDEA.

Reasons: While the Department interprets section 618(d)(2)(A) of IDEA to require States to provide for an annual review of policies, practices, and procedures resulting from a determination of significant disproportionality, the requirement that LEAs identified in multiple years must review their policies, practices, and procedures every year in which they are identified with significant disproportionality is not sufficiently clear in the current regulation.

When LEAs review and revise their policies, practices, and procedures, and publicly report on those revisions, there is a risk of disclosing personally identifiable information, particularly if the subgroup under examination is particularly small (*e.g.,* 10 American Indian/Alaska Native children in an LEA, five of whom are children with disabilities). To reduce the risk of disclosing personally identifiable information, we have proposed § 300.646(c)(2) to clarify that LEA reporting on the revision of policies, practices, and procedures be consistent with the confidentiality provisions of FERPA, its implementing regulations in 34 CFR part 99, and section 618(b)(1) reporting requirements.

IV. Expanding the Scope of Comprehensive Coordinated Early Intervening Services (§ 300.646(d))

Statute: Section 618(d)(2)(B) (20 U.S.C. 1418(d)(2)(B)) requires any LEA identified as having significant disproportionality to reserve the maximum amount of funds under section 613(f) to provide comprehensive CEIS to serve children in the LEA, ''particularly children in those groups that were significantly overidentified.''

Current Regulation: There are minor differences between the statutory language and current § 300.646(b)(2). Current § 300.646(b)(2) requires comprehensive CEIS for children in the LEA, ''particularly, but not exclusively, children that were significantly overidentified.''

Proposed Regulation: Proposed § 300.646(d)(1) and (2) would amend current § 300.646(b)(2) to require the State to permit an LEA identified with significant disproportionality to provide comprehensive CEIS to preschool children ages 3 through 5, with or without disabilities, and children with disabilities in kindergarten through grade 12. The proposed regulation would also require the LEA, as part of implementing comprehensive CEIS, to identify and address the factors contributing to the significant disproportionality, which may include a lack of access to evidence-based instruction and economic, cultural, or linguistic barriers to appropriate identification, placement, or disciplinary removal.

Proposed § 300.646(d)(3) would prohibit LEAs from limiting the provision of comprehensive CEIS to children with disabilities.

In directed question 10, the Department has requested public comment regarding restrictions on the use of comprehensive CEIS for children already receiving services under Part B of the IDEA.

Reasons: We have determined it is appropriate to expand the population of children that can be served with IDEA Part B funds reserved for comprehensive CEIS to include children with disabilities (while prohibiting the exclusive use of comprehensive CEIS for children with disabilities) and preschool children with and without disabilities. We have also determined that it is appropriate to require LEAs, in implementing comprehensive CEIS, to identify and address the factors contributing to the significant disproportionality.

Regarding the use of comprehensive CEIS for children with disabilities, commenters responding to the June 2014 RFI noted that providing comprehensive CEIS only to children without disabilities is unlikely to address racial and ethnic disparities in the placement or disciplinary removal of children with disabilities. Commenters specifically questioned how comprehensive CEIS could address significant disproportionality in an LEA as to placement if IDEA Part B funds reserved for comprehensive CEIS can only be used for children who are not currently identified as needing special education and related services.

The Department agrees with the commenters and proposes to allow LEAs to use IDEA Part B funds reserved for comprehensive CEIS to serve children with disabilities in order to provide services that address factors contributing to significant disproportionality related to placement, including disciplinary removals from placement. However, recognizing the statutory emphasis on early behavioral and academic supports and services before children are identified with a disability, the Department proposes to prohibit LEAs from limiting services solely to children with disabilities.

Regarding the use of comprehensive CEIS for preschool children, the Department notes that there is robust research supporting the conclusion that the early childhood years are a critical period in the development of children's language, social, and cognitive skills. (National Research Council and Institute of Medicine, 2000.) A child's early years set the foundation for later school success. Providing engaging and supportive learning opportunities as early as possible, particularly for children with and at risk for, delays and disabilities, can change developmental trajectories and set children on a path for achieving expected developmental and learning outcomes. Participation in preschool programs is also associated with significantly lower rates of special education services between the ages of 6 and 18. (Reynolds et al., 2001.) When young children enter kindergarten with skills behind their same age peers, they often have difficulty catching up and instead fall further behind.

Disparities in early literacy skills put many children at risk for diminished later school success. By 18 months of age, gaps in language development have been documented when comparing children from low-income families to their more affluent peers. (Fernald, Marchman, & Weisleder 2013; Hart and Risely, 1995.) Additionally, scores on reading and math were lowest for first-time kindergartners in households with incomes below the Federal poverty level and highest for those in households with incomes at or above 200 percent of the Federal poverty level. (Mulligan, Hastedt, & McCarroll, 2012.) Racial disparities have also been identified in the early literacy and math skills of children entering kindergarten with White children, on average, having higher reading and math scores than children of color with the exception of Asian children. (Mulligan, Hastedt, & McCarroll, 2012.)

Research has underscored the critical role high-quality preschool programs can play to help address these disparities by providing a variety of rich early learning experiences and individualized supports needed to foster children's development and learning. However, Black/African-American children and children from low-income families are the most likely to be in low-quality settings and the least likely to be in high-quality settings. (Center for American Progress, 2014.) In one large State, Hispanic/Latino children make up two-thirds of children entering kindergarten, but, of all racial and ethnic groups, are least represented in the State's preschool programs. (Valdivia, 2006.)

Additionally, research suggests that there are racial disparities in the receipt of early intervention and early childhood special education services. For example, researchers found that racial disparities emerged by 24 months of age. African-American children are almost five times less likely to receive early intervention services under Part C of IDEA, and by 48 months of age, African-American children are disproportionately underrepresented in preschool special education services. (Feinberg et al., 2011; Rosenberg et al., 2008; Morgan et al., 2012.) Providing high-quality early intervention services can increase children's language, cognitive, behavioral, and physical skills and improve their long-term educational outcomes. (Morgan, Farkas, Hillemeir & Maczuga, 2012.)

Finally, data indicate that specific groups of children are being disproportionately expelled and suspended from their early learning settings, a trend that has remained virtually unchanged over the past decade. Children most in need of the benefits of preschool programs are the ones most often expelled from the system. Recent data indicate that African-American boys make up 18 percent of preschool enrollment but 48 percent of preschoolers suspended more than once. Hispanic/Latino and African-American boys combined represent 46 percent of all boys in preschool but 66 percent of their same-age peers who are suspended (see *http://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf*). While more research is needed to understand the impacts of disciplinary removal on preschool children, research shows the detrimental impacts on their older peers. Expulsion and suspension early in a child's education predicts expulsion or suspension in later grades. (Losen and Skiba, 2010.) Children who are expelled or suspended are as much as 10 times more likely to experience academic failure and grade retention. (Lamont et al., 2013.)

Using IDEA Part B funds to provide comprehensive CEIS to preschool children with or without disabilities may help improve early intervening services available and over time reduce significant disproportionality. Specifically, IDEA Part B funds reserved for comprehensive CEIS could be used to implement program-wide models of interventions, such as positive behavioral interventions and supports and response to intervention, to increase the quality of the learning environment for all preschool children and provide explicit instruction and individualized interventions for those who need additional support.

Comprehensive CEIS could also be used to increase the capacity of the workforce to support all children's cognitive, social-emotional, and behavioral health. For example, early childhood personnel could receive specific professional development on promoting children's social-emotional and behavioral health or ensuring that children with disabilities receive appropriate accommodations to support their full participation in inclusive classrooms.

Additionally, comprehensive CEIS could be used to train preschool program staff to conduct developmental screenings and make appropriate referrals to ensure that children are linked to services and receive supports as early as possible, minimizing the negative impact of developmental delays and maximizing children's learning potential. Using IDEA Part B funds to provide comprehensive CEIS to preschool children with and without disabilities may help provide high-quality preschool services and promote targeted workforce professional development focused on promoting the social-emotional and behavioral health of all children.

Requiring LEAs to use funds reserved for comprehensive CEIS to carry out activities to identify and address the factors contributing to the significant disproportionality may ensure that LEAs are using these funds to focus on activities designed to address the significant disproportionality. Directing LEAs to target the use these funds in this manner is consistent with the statutory purpose of the reservation of funds, which is to serve children in the LEA, particularly children in those groups that were significantly overidentified.

In sum, we believe that allowing LEAs also to use IDEA Part B funds to provide comprehensive CEIS to preschool children ages three through five, with or without disabilities, to children with disabilities in kindergarten through grade 12, and requiring LEAs to identify and address factors contributing to the significant disproportionality, is consistent with the purposes of the statutory remedies, which are designed to assist LEAs in addressing significant disproportionality in identification, placement, and disciplinary removal.

Directed Questions

The Department seeks additional comment on the questions below.

(1) The Department notes that a number of commenters responding to the RFI expressed concern that the use

of a standard methodology to determine significant disproportionality may not be appropriate for certain types of LEAs.

How should the proposed standard methodology apply to an LEA that may be affected by disparities in enrollment of children with disabilities (*e.g.,* LEAs that house schools that only serve children with disabilities and school systems that provide specialized programs for children with autism or hearing impairments, etc.)?

(2) The Department is particularly interested in comments regarding strategies to address the shortcomings of the risk ratio method, which the Department has proposed to require States to use to determine significant disproportionality. While this method is the most common method in use among the States, the Department is aware that other methods may have advantages and disadvantages. Risk ratios are influenced by the number of children in an LEA and in the racial or ethnic group of interest. In cases where the risk to a comparison group is zero, it is not possible to calculate a risk ratio. The Department has proposed a number of strategies to address the drawbacks of the risk ratio, including a minimum cell size and flexibility with regard to the number of years of data a State may take into account prior to making a determination of significant disproportionality. In addition, the Department has proposed that States use an alternate risk ratio in specific circumstances when the risk ratio cannot be calculated.

Should the Department allow or require States to use another method in combination with the risk ratio method? If so, please state what limitation of the risk ratio method does the method address, and under what circumstances should the method be allowed or required.

(3) The Department has proposed to require States to determine whether there is significant disproportionality with respect to the identification of children as children with intellectual disabilities, specific learning disabilities, emotional disturbance, speech or language impairments, other health impairments, and autism. Because the remaining impairments described in section 602(3) of IDEA typically have very small numbers of children, the Department does not deem disproportionality in the number of children with these impairments to be significant.

Similar to impairments with small numbers of children, should the Department exclude any of the six impairments included in the proposed § 300.647(b)(3)? If so, which impairments should be removed from consideration? Alternatively, should the Department include additional impairments in § 300.647(b)(3)?

(4) Consistent with OSEP Memorandum 08–09, the Department has proposed to require States to determine whether there is significant disproportionality with respect to self-contained classrooms (*i.e.,* placement inside the regular classroom less than 40 percent of the day) and separate settings (*i.e.,* separate schools and residential facilities), as these disparities suggest that a racial or ethnic group may have less access to the LRE to which they are entitled under section 612(a)(5) of IDEA.

Should the Department also require States to determine whether there is significant disproportionality with respect to placement inside the regular classroom between 40 percent and 79 percent of the day, as proposed in this NPRM?

(5) The Department has proposed to require States to develop risk ratio thresholds that comply with specific guidelines (*i.e.,* States must select a reasonable threshold and consider the advice of stakeholders). We have proposed these guidelines in lieu of a mandate that all States use the same risk ratio thresholds. At this time, the Department does not intend to set mandated risk ratio thresholds and proposes that States should retain the flexibility to select risk ratio thresholds that best meet their needs. However, we seek the public's perspective on whether a federally-mandated threshold is appropriate and, if so, what that threshold should be. This information may inform potential future regulatory efforts to address racial and ethnic disparities under section 618(d) of IDEA. As noted above, the Department has no intention to set a federally-mandated threshold through this current regulatory action. Further, we seek the public's perspective as to what risk ratio thresholds the Department might consider as ''safe harbor'' when reviewing State risk ratio thresholds for reasonableness.

Should the Department, at a future date, mandate that States use the same risk ratio thresholds? If so, what risk ratio thresholds should the Department mandate? What is the rationale or evidence that would justify the Department's selection of such risk ratio thresholds over other alternatives? Lastly, what safe harbor should the Department create for risk ratio thresholds that States could voluntarily adopt with the knowledge that it is reasonable pursuant to this proposed regulation? Public comments regarding this last question may be used to inform future guidance regarding the development of risk ratio thresholds and the Department's approach to reviewing risk ratio thresholds for reasonableness.

(6) The Department has proposed to require States to make a determination of whether significant disproportionality exists in each LEA, for each racial and ethnic group with 10 children (for purposes of identification) and 10 children with disabilities (for purposes of placement and discipline).

Does the Department's proposed minimum cell size of 10 align with existing State privacy laws, or would the proposal require States to change such laws?

(7) The Department has proposed to require that States use the alternate risk ratio method only in situations where the total number of children in a comparison group is less than 10 or the risk to children in a comparison group is zero.

Are there other situations, currently not accounted for in the proposed regulations, where it would be appropriate to use the alternate risk ratio method? In these situations, should the Department require or allow States the option to use the alternate risk ratio method?

(8) The Department has proposed to require States to make a determination of whether significant disproportionality exists in the State and the LEAs of the State using a risk ratio or alternate risk ratio. The statutory requirement in section 618(d)(1) of IDEA applies to the Secretary of the Interior and States, as that term is defined in section 602(31) of IDEA (which includes each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas). However, the Department notes that, for some of these entities, performing a risk ratio or alternate risk ratio calculation in accordance with these proposed regulations may not be possible because of the lack of a comparison group of sufficient size (at least 10 children for purposes of identification and at least 10 children with disabilities for purposes of placement or disciplinary removals). As such, the Department is interested in seeking comments on how to require entities, whose population is sufficiently homogenous to prevent the calculation of a risk ratio or alternate risk ratio, to identify significant disproportionality.

(9) The proposed regulation permits States to set different risk ratio thresholds for different categories of analysis (*e.g.,* for intellectual disabilities, a risk ratio threshold of 3.0 and for specific learning disabilities, a

risk ratio threshold of 2.0). The Department is interested in seeking comments on whether the proposed regulation should include additional restrictions on developing and applying risk ratio thresholds.

Should the Department allow or require States to use another approach in developing and applying risk ratio thresholds? Are there circumstances under which the use of different risk ratio thresholds for different racial and ethnic groups (within the same category of analysis) could be appropriate and meet constitutional scrutiny? Further, are there circumstances under which the use of different risk ratio thresholds for different categories of analysis could result in an unlawful disparate impact on racial and ethnic groups?

(10) The Department has proposed to require States to identify significant disproportionality when an LEA has exceeded the risk ratio threshold or the alternate risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio for the group and category from the immediate preceding year. While States would have flexibility to define ''reasonable progress''—by establishing uniform guidelines, making case by case determinations, or other approaches—the Department's proposal would only allow States to withhold an identification of significant disproportionality in years when an LEA makes discernable progress in reducing their risk ratio. The Department is interested in seeking comments on whether to place additional restrictions on State flexibility to define ''reasonable progress''.

(11) Research indicates that some LEAs may under-identify children of color. While the focus of these regulations is on overrepresentation, the Department specifically requests comments on how to support SEAs and LEAs in preventing under-identification, and ways the Department could ensure that LEAs identified with significant disproportionality with respect to identification properly implement their States' child find policies and procedures.

What technical assistance or guidance might the Department put in place to ensure that LEAs identified with significant disproportionality do not inappropriately reduce the identification of children as children with disabilities or under-identify children of color in order to avoid a designation of significant disproportionality? How could States and LEAs use data to ensure that children with disabilities are properly identified?

(12) The Department has proposed to require States to use comprehensive CEIS to identify and address the factors contributing to significant disproportionality. The Department is interested in seeking comments on whether additional restrictions on the use of funds for comprehensive CEIS are appropriate for children who are already receiving services under Part B of the IDEA.

(13) The Department intends to monitor and assess these regulations once they are final to ensure they have the intended goal of improving outcomes for all children.

What metrics should the Department establish to assess the impact of the regulations once they are final?

Please explain your views and reasoning in your responses to all of these questions as clearly as possible, provide the basis for your comment, and provide any data or evidence, wherever possible, to support your views.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only upon a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this Regulatory Impact Analysis we discuss the need for regulatory action, alternatives considered, the potential costs and benefits, net budget impacts,

assumptions, limitations, and data sources.

Need for These Regulations

As we set out in detail in our preamble, the overrepresentation of children of color in special education has been a national concern for more than 40 years. In its revisions of IDEA, Congress noted the problem and put a mechanism in place through which States could identify and address significant disproportionality on the basis of race and ethnicity for children with disabilities.

Again, after review of its data, if a State finds any significant disproportionality based on race and ethnicity, it must provide for the review and, if appropriate, revision of the policies, practices, and procedures used for identifying or placing children; require the LEA to publicly report on any revisions; and require the LEA to reserve 15 percent of its IDEA Part B subgrant to provide comprehensive CEIS to children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified.

IDEA does not define ''significant disproportionality,'' and, in our August 2006 regulations, the Department left the matter to the discretion of the States. Since then, States have adopted different methodologies across the country, and, as a result, far fewer LEAs are identified as having significant disproportionality than the disparities in rates of identification, placement, and disciplinary removal across racial and ethnic groups would suggest, as noted by the GAO study and supported by the Department's own data analysis. There is a need for a common methodology for determinations of significant disproportionality in order for States and the Department to better identify and address the complex, manifold causes of the issue and ensure compliance with the requirements of IDEA.

In addition, there is a need to expand comprehensive CEIS to include children from age 3 through grade 12, with and without disabilities, and to require LEAs to provide comprehensive CEIS to identify and address factors contributing to the significant disproportionality. The current allowable uses of comprehensive CEIS funds do not allow LEAs to direct resources to those children directly impacted by inappropriate identification nor does it allow LEAs to provide early intervening services to preschool children, which could reduce the need for more extensive services in the future. Therefore, expanding the provision of comprehensive CEIS to preschool children allows LEAs to identify and address learning difficulties in early childhood, reducing the need for interventions and services later on.

Alternatives Considered

The Department reviewed and assessed various alternatives to the proposed regulations, drawing from internal sources and from comments submitted in response to the June 2014 RFI.

Commenters responding to the RFI recommended that the Department address confusion about two IDEA provisions intended to address racial and ethnic disparities in identification for special education: (1) Section 618(d) of IDEA, under which States must collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State in identification, placement and disciplinary removals and (2) section 612(a)(24) of IDEA, under which States must have in effect policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities. Commenters requested that the Department develop a single definition such that ''significant disproportionality'' and ''disproportionate representation'' would have the same meaning to reduce confusion and bring these two provisions of the law into greater alignment. The Department examined these statutory provisions, along with a third provision addressing racial and ethnic disparities, section 612(a)(22)(A) of IDEA, which requires States to examine data to determine if LEAs have significant discrepancies in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to such rates for nondisabled children within such agencies. The Department determined that efforts to define these three concepts-–significant disproportionality, disproportionate representation, and significant discrepancy–-to remove their distinguishing characteristics and increase their alignment could contravene the relevant statutory provisions.

Commenters also recommended that the Department create a model methodology for determining significant disproportionality against which State methodologies would be evaluated and approved or rejected. The Department determined that such a strategy would not clarify for States the minimum requirements for making determinations of significant disproportionality and would significantly delay the States' implementation of an approved methodology. In addition, the Department had concerns that such an approach would increase burden on many States in the event that initial submissions of a methodology were rejected, creating the need for additional State submissions.

Internally, the Department considered an alternate definition of risk ratio threshold that would have limited States to using a range of numerical thresholds, not to exceed a maximum set by the Department. The Department posited that such limitations might assist States in identifying more LEAs with significant disproportionality where large disparities in identification, placement and disciplinary removal exist. The Department, however, acknowledges concerns raised in certain comments to the June 2014 RFI that mandated thresholds might fail to appropriately account for wide variations between States, including LEA sizes and populations. The Department is also aware that, in the case of the identification of children with disabilities, setting risk ratio thresholds too low might create an adverse incentive—encouraging LEAs to deny children from particular racial or ethnic groups access to special education and related services to prevent a determination of significant disproportionality. Given these competing concerns, the Department asks a directed question in this NPRM regarding the strengths and weaknesses of mandating specific risk ratio thresholds. The Department also considered allowing States to continue to use the weighted risk ratio method. The proposed regulations, however, limit the States to the risk ratio and, if appropriate, the alternate risk ratio methodologies, specify the conditions under which each must be utilized, and disallow the use of the weighted risk ratio. The Department's purpose in directing States to use the risk ratio and alternate risk ratio methods are (1) to improve transparency with respect to determinations of significant disproportionality across States through the use of a common analytical method and (2) to limit the burden of a transition to a new method for States as 41 States already use some form of the method. While a number of States currently use the weighted risk ratio method, that method fails to provide LEAs and the public with a transparent comparison between risk to a given racial or ethnic group and its peers, as

the risk ratio and alternate risk ratio methodologies do. Instead, with a weighted risk ratio approach, the comparison is adjusted by adding different weights to each racial and ethnic group, typically based on State-level representation and is intended to improve risk ratio reliability when size of certain racial and ethnic groups are small. Given that the Department's proposal already includes three mechanisms for addressing risk ratio reliability—(1) the alternate risk ratio, (2) the allowance for using up to three consecutive years of data before making a significant disproportionality determination, and (3) the minimum cell size requirement—the Department determined that the potential benefits of the weighted risk ratio method were exceeded by the costs associated with complexity and decreased transparency.

The Department also considered maintaining the current regulations and continuing to allow States full flexibility to use their own methodology for significant disproportionality determinations. However, given that 22 States plus the Virgin Islands identified no LEAs with significant disproportionality in 2012–2013 and the evidence of some degree racial and ethnic disparity among LEAs in every State, the Department determined that the a standard methodology would help States to fulfill their statutory obligations under IDEA.

Discussion of Costs, Benefits and Transfers

The Department has analyzed the costs of complying with the proposed requirements. Due to the considerable discretion the proposed regulations would provide States (*e.g.,* flexibility to determine their own risk ratio thresholds, whether LEAs have made reasonable progress reducing significant disproportionality), we cannot evaluate the costs of implementing the proposed regulations with absolute precision. However, we estimate that the total cost of these regulations over ten years would be between $47.5 and $87.1 million, plus additional transfers between $298.4 and $552.9 million. These estimates assume discount rates of three to seven percent. Relative to these costs, the major benefits of these proposed requirements, taken as a whole, would include: Ensuring increased transparency on each State's definition of significant disproportionality; establishing an increased role for State Advisory Panels in determining States' risk ratio thresholds; reducing the use of potentially inappropriate policies, practices, and procedures as they relate to the identification of children as children with disabilities, placements in particular educational settings for these children, and the incidence, duration, and type of disciplinary removals from placements, including suspensions and expulsions; and promoting and increasing comparability of data across States in relation to the identification, placement, or discipline of children with disabilities by race or ethnicity. Additionally, the Department believes that expanding the eligibility of children ages three through five to receive comprehensive CEIS would give LEAs flexibility to use additional funds received under Part B of IDEA to provide appropriate services and supports at earlier ages to children who might otherwise later be identified as having a disability, which could reduce the need for more extensive special education and related services for such children at a later date.

Benefits

The Department believes this proposed regulatory action to standardize the methodology States use to identify significant disproportionality will provide clarity to the public, increase comparability of data across States, and draw attention to how States identify and support LEAs with potentially inappropriate policies, practices, and procedures as they relate to the identification, placement, and discipline of children with disabilities. The Department further believes that methodological alignment across States will improve upon current policy, which has resulted in numerous State definitions of significant disproportionality of varying complexity that may be difficult for stakeholders to understand and interpret. The wide variation in definitions and methodologies across States under current policy also makes it difficult for stakeholders to advocate on behalf of children with disabilities, and for researchers to examine the extent to which LEAs have adequate policies, practices, and procedures in place to provide appropriate special education and related services to children with disabilities. We believe that a standardized methodology will accrue benefits to stakeholders in reduced time and effort needed for data analysis and a greater capacity for appropriate advocacy. Additionally, we believe that the standardized methodology will accrue benefits to all children (including children with disabilities), by promoting greater transparency and supporting the efforts of all stakeholders to enact appropriate policies, practices, and procedures that address disproportionality on the basis of race or ethnicity.

Requiring that States set reasonable risk ratio thresholds based on the advice from State Advisory Panels will also give stakeholders an increased role in setting State criteria for identifying significant disproportionality. The Department hopes that this will give States and stakeholders an opportunity, and an incentive, to thoughtfully examine existing State policies and ensure that they appropriately identify LEAs with significant and ongoing discrepancies in the identification of children with disabilities, their placements in particular educational settings, and their disciplinary removals. Further, we hope that States will also take this opportunity to consult with their State Advisory Panels on the States' approaches to reviewing policies, practices, and procedures, to ensure that they comply with the IDEA and that States are prepared and able to provide appropriate support.

In addition, there is widespread evidence on the short- and long-term negative impacts of suspensions and expulsions on student academic outcomes. In general, suspended children are more likely to fall behind, to become disengaged from school, and to drop out of a school. (Lee, Cornell, Gregory, & Xitao, 2011; Brooks, Shiraldi & Zeidenberg, 2000; Civil Rights Project, 2000.) The use of suspensions and expulsions is also associated with an increased likelihood of contact with the juvenile justice system in the year following such disciplinary actions. (Council of Statement Governments, 2011.)

The Department believes that suspensions and expulsions can often be avoided, particularly if LEAs utilize appropriate school-wide interventions, and appropriate student-level supports and interventions, including proactive and preventative approaches that address the underlying causes or behaviors and reinforce positive behaviors. We believe that the proposed regulation clarifies each State's responsibility to implement the statutory remedies whenever significant disproportionality in disciplinary removals is identified and will prompt States and LEAs to initiate reform efforts to reduce schools' reliance on suspensions and expulsions as a core part of their efforts to address significant disproportionality. In so doing, we believe that LEAs will increase the number of children participating in the general education curriculum on a regular and sustained basis, thus accruing benefits to children and society through greater educational gains.

Under section 613(f) of IDEA and 34 CFR 300.226, LEAs are not authorized to voluntarily use funds for CEIS to serve children with disabilities or children ages three through five. By clarifying that comprehensive CEIS can be used to also support children with disabilities and children ages three through five, the proposed regulation will allow LEAs to direct resources in a more purposeful and impactful way to improve outcomes for those children in subgroups that have been most affected by significant disproportionality. For example, LEAs would be able to use comprehensive CEIS to expand the use of Multi-Tiered Systems of Support, which could help LEAs determine whether children identified with disabilities have access to appropriate, targeted supports and interventions to allow them to succeed in the general education curriculum. Additionally, by expanding the eligibility of children ages three through five to receive comprehensive CEIS, LEAs identified as having significant disproportionality will have additional resources to provide high-quality early intervening services, which research has shown can increase children's language, cognitive, behavioral, and physical skills, and improve their long-term educational outcomes. LEAs could use funds reserved for comprehensive CEIS to provide appropriate services and supports at earlier ages to children who might otherwise be identified later as having a disability, which could reduce the need for more extensive special education and related services at a later date.

While the Department cannot, at this time, meaningfully quantify the economic impacts of the benefits outlined above, we believe that they are substantial and outweigh the estimated costs of these proposed rules.

The following section provides a detailed analysis of the estimated costs of implementing the proposed requirements contained in the new regulation.

Number of LEAs Newly Identified

In order to accurately estimate the fiscal and budgetary impacts of this proposed regulation, the Department must estimate not only the costs associated with State compliance with these proposed regulations, but also the costs borne by any LEAs that would be identified as having significant disproportionality under this new regulatory scheme that would not have been identified had the Department not regulated. However, at this time, the Department does not know, with a high degree of certainty, how many LEAs would be newly identified in future years. Given that a large proportion of the cost estimates in this section are driven by assumptions regarding the number of LEAs that SEAs might identify in any given year, our estimates are highly sensitive to our assumptions regarding this number. In 2012–2013, the most recent year for which data are available, States identified 449 out of approximately 17,000 LEAs nationwide as having significant disproportionality. For purposes of our estimates, the Department used this level of identification as a baseline, only estimating costs for the number of LEAs over 449 that would be identified in future years.

The proposed regulations largely focus on methodological issues related to the consistency of State policies and do not require States to identify LEAs at a higher rate than they currently do. As such, it is possible that these proposed regulations may not result in any additional LEAs being identified as having significant disproportionality. However, we believe that this scenario is unlikely and therefore would represent an extreme lower bound estimate of the cost of this proposed regulation.

We believe it is much more likely that the necessary methodological changes required by this proposed regulation will provide States and advocates with an opportunity to make meaningful and substantive revisions to their current approaches to identifying and addressing significant disproportionality. To the extent that States and State Advisory Panels, as part of the shift to the new standard methodology, establish risk ratio thresholds that identify more LEAs than they currently do, it is likely that there will be an increase in the number of LEAs identified nationwide. We do not specifically know what risk ratio thresholds States will set in consultation with their State Advisory Panels and therefore do not know the number of LEAs that would be identified by such new thresholds. However, for purposes of these cost estimates, we assume that such changes would result in 400 additional LEAs being identified each year nationwide. This number represents an approximately ninety percent increase in the number of LEAs identified by States each year. The Department assumes that changes in State policy are potential and likely outcomes of these proposed regulations; therefore, the number of new LEAs that may potentially be identified should be reflected in our cost estimates.

To the extent that States identify fewer than 400 additional LEAs in each year or that the number of LEAs identified decreases over time, the estimates presented below will be overestimates of the actual costs. For a discussion of the impact of this assumption on our cost estimates, see the Sensitivity Analysis section of this Regulatory Impact Analysis.

Cost of State-Level Activities

The proposed regulations would require every State to use a standard methodology to determine if significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, the placement in particular educational settings of these children, and the incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions. The proposed regulations require States to set a risk ratio threshold, above which LEAs would be identified as having significant disproportionality, and provide States the flexibility to: (1) Use up to three years of data to make a determination of significant disproportionality, and; (2) consider, in making determinations of significant disproportionality, whether LEAs have made reasonable progress at reducing disproportionality. Finally, this regulation would clarify that LEAs must identify and address the factors contributing to significant disproportionality when implementing comprehensive CEIS.

State-level Review and Compliance With the New Rule

The extent of the initial burden placed on States by the proposed regulation will depend on the amount of staff time required to understand the new regulation, modify existing data collection and calculation tools, meet with State Advisory Panels to develop a risk ratio threshold, draft and disseminate new guidance to LEAs, and review and update State systems that examine the policies, practices, and procedures of LEAs identified as having significant disproportionality.

To comply with the proposed regulations, States would have to take time to review the proposed regulations, determine how these proposed regulations would affect existing State policies, practices, and procedures, and plan for any actions necessary to comply with the new requirements. To estimate the cost per State, we assume that State employees involved in this work would likely include a Special Education Director ($63.04), a Database Manager ($52.32), two Management Analysts ($44.64), and a Lawyer

($61.66), at 16 hours each for a total one-time cost for the 50 States, the District of Columbia, Puerto Rico, the Bureau of Indian Education (BIE), Guam, American Samoa, and the Virgin Islands of $238,610.[4]

Since no State currently calculates significant disproportionality using the exact methodology being proposed in this regulation, each State would need to modify its data collection tools. To estimate the cost per State, we assume that State employees would likely include a Database Manager ($52.32) and a Management Analyst ($44.64) at 16 hours each for a total one-time cost for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands of $86,880. While we recognize that these costs will vary widely from State to State, we believe that this total represents an appropriate estimate of the costs across all States.

States would also need to draft, issue, and disseminate new guidance documents to LEAs regarding these regulatory changes, including a discussion of any new data collection tools or processes and revised procedures for identifying and notifying LEAs. We assume States would have to communicate changes in policy and would likely use a mixture of teleconferences, webinars, and guidance documents to ensure that LEAs understand and comply with revised policies. To estimate the cost per State, we assume that State employees would likely include a Special Education Director ($63.04) for 3 hours, 5 Management Analysts ($44.64) for 16 hours, 2 Administrative Assistants ($25.69) for 8 hours, a Computer Support Specialist ($35.71) for 2 hours, and 2 lawyers ($61.66) for 16 hours, for a total one-time cost for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands of $348,090.

Additionally, proposed changes under § 300.646(d) would require LEAs identified as having significant disproportionality to use funds reserved for comprehensive CEIS to identify and address the factors contributing to significant disproportionality. States would have to review their existing processes to ensure that LEAs are provided with appropriate support to identify such contributing factors and use funds for comprehensive CEIS in ways that are appropriately targeted to address such contributing factors. To estimate the cost per State, we assume that State employees involved in these activities would likely include a Special Education Director ($63.04) for 4 hours, 2 Management Analysts ($44.64) for 16 hours, an Administrative Assistant ($25.69) for 2 hours, and a Manager ($51.50) for 8 hours for a total one-time cost for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands of $120,070.

Under the new regulations, States must also determine a risk ratio threshold based on the advice of stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of IDEA. In order to estimate the cost of implementing these requirements, we assume that the average State would likely initially meet this requirement in Year 1 and revisit the thresholds every five years thereafter. We further assume that the meetings with the State Advisory Panels would include at least the following representatives from the statutorily required categories of stakeholders: one parent of a child with disabilities; one individual with disabilities; one teacher; one representative of an institution of higher education that prepares special education and related services personnel; one State and one local education official, including an official who carries out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act; one Administrator of programs for children with disabilities; one representative of other State agencies involved in the financing or delivery of related services to children with disabilities; one representative of private schools and public charter schools; one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; one representative from the State child welfare agency responsible for foster care; and one representative from the State juvenile and adult corrections agencies. To estimate the cost of participating in these meetings for the required categories of stakeholders, we assume that each meeting would require eight hours of each participant's time (including preparation for and travel to and from the meeting and the time for the meeting itself) and use the following national median hourly wages[5] for full-time State and local government workers employed in these professions: postsecondary education administrators, $44.28 (1 stakeholder); primary, secondary, and special education school teachers, $35.66[6] (1 stakeholder); State social and community service managers, $32.86 (5 stakeholders); local social and community service managers, $37.13 (1 stakeholder); other management occupations, $40.22 (1 stakeholder); elementary and secondary school education administrator, $42.74 (1 stakeholder).[7] For the opportunity cost for the parent and individual with disabilities, we use the average median wage for all workers of $17.09. We also assume that State staff would prepare for and facilitate each meeting, including the Special Education Director ($63.04) for 2 hours, one State employee in a managerial position ($51.50) for 16 hours, one Management Analyst ($44.64) for 16 hours, and one Administrative Assistant ($25.69) for 16 hours. Based on these participants, we estimate that consultation with the State Advisory Panels would have a cumulative one-year cost of $294,760 for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands.

Annual Calculation of Risk Ratios and Notification of LEAs

In addition to the initial costs outlined above, States would incur annual costs associated with calculating risk ratios, making determinations of significant disproportionality, and notifying LEAs of determinations.

Proposed § 300.647 would require every State to annually calculate significant disproportionality for each LEA using a risk ratio or alterative risk ratio method in every category of analysis (as defined in this notice of proposed rulemaking) that meets the minimum cell size (with the minimum cell size being a number, 10 or lower, determined by the State). States would then be required to identify LEAs above the risk ratio threshold with significant disproportionality. When making a determination of significant

[4] Unless otherwise noted, all hourly wages are loaded wage rates and are based on median hourly earnings as reported in the May 2014 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (see *http://www.bls.gov/oes/current/999201.htm*) multiplied by an employer cost for employee compensation of 1.57 (see *http://www.bls.gov/news.release/ecec.toc.htm*).

[5] Wages in this section do not reflect loaded wage rates.

[6] Hourly earnings were estimated using the annual salary for this job classification as reported in the May 2014 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (see *http://www.bls.gov/oes/current/999201.htm*) divided by the number of workdays and hours per day assuming 200 workdays and 8 hours per day.

[7] Hourly earnings were estimated using the annual salary for this job classification as reported in the May 2014 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (see *http://www.bls.gov/oes/current/999201.htm*) divided by the number of work weeks and hours per week assuming 52 weeks and 40 hours per week.

disproportionality, States would be allowed to use three years of data, and take into account whether LEAs demonstrate reasonable progress at reducing significant disproportionality. To estimate the annual cost per State, we assume that State employees involved in this calculation would likely include 3 Management Analysts ($44.64) for 24 hours and one Administrative Assistant ($25.69) for 6 hours for an annual cost of $188,620 for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands.

After identifying LEAs with significant disproportionality, States would have to notify LEAs of their determination. We assume that a State employee in a managerial position ($51.50) would call each identified LEA with the assistance of one Administrative Assistant ($25.69) and take approximately 15 minutes per LEA. If we assume 400 new LEAs are identified with significant disproportionality, the annual cost would be $7,720.

Review and Revision of Policies, Practices, and Procedures

States are required to provide for the review and, if appropriate, the revision of policies, practices, and procedures related to the identification, placement, and discipline of children with disabilities to ensure the policies, practices, and procedures comply with requirements of IDEA and publicly report any revisions. We assume States will ensure LEAs are complying with these requirements though desk audits, meetings or phone calls with LEAs, analysis of data, or sampling of IEPs and evaluations. To estimate the annual cost at the State level, we assume that State employees would likely include one Special Education Director ($63.04) for 0.5 hours, one State employee in a managerial position ($51.50) for 1 hour, one Administrative Assistant ($25.69) for 1 hour, and 2 Management Analysts ($44.64) for 6 hours for each LEA. If we assume 400 new LEAs are identified with significant disproportionality each year, the annual cost would be $150,620 for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands.

Many States require LEAs identified with significant disproportionality to review their policies, practices, and procedures related to the identification, placement, and discipline of children with disabilities to ensure the policies, practices, and procedures comply with requirements of IDEA. We assume this would require LEAs to examine data, identify areas of concern, visit schools, review IEPs and evaluations, and review any other relevant documents. To estimate the annual cost to review policies, practices, and procedures at the LEA level, we assume that LEA employees would likely include one District Superintendent ($85.74) for 5 hours, one local employee in a managerial position ($58.20) for 60 hours, one local Special Education Director ($66.52) for 20 hours, two local Administrative Assistants ($28.43) for 15 hours, four Special Education teachers ($58.47 [8]) for 2 hours, and two Education Administrators ($70.37 [9]) for 8 hours for each LEA. If we assume 400 new LEAs are identified with significant disproportionality, the annual cost to LEAs would be $3,079,030.

After reviewing their policies, practices, and procedures related to the identification, placement, and discipline of children with disabilities, LEAs are required, if appropriate, to revise those policies, practices, and procedures to ensure they comply with requirements of IDEA. We assume LEAs will have to spend time developing a plan to change any policies, practices, and procedures identified in their review based on relevant data. To estimate the annual cost to revise policies, practices, and procedures we assume that LEA staff would likely include one District Superintendent ($85.74) for 2 hours, one local employee in a managerial position ($58.20) for 60 hours, one local Special Education Director ($66.52) for 20 hours, and two local Administrative Assistants ($28.43) for 8 hours for each LEA. If we assume half of the new LEAs identified with significant disproportionality (200 LEAs) would need to revise their policies, practices, and procedures the annual cost would be $1,089,730.

Planning for and Tracking the Use of Funds for Comprehensive CEIS

LEAs identified with significant disproportionality are required by statute to reserve 15 percent of their IDEA Part B allocation for comprehensive CEIS. Any LEAs fitting into this category would also have to plan for the use of funds reserved for comprehensive CEIS. To estimate the annual cost of planning for the use of IDEA Part B funds for comprehensive CEIS, we assume that LEA employees involved in such activities would likely include one District Superintendent ($85.74) for 1 hour, one local employee in a managerial position ($58.20) for 16 hours, one local Special Education Director ($66.52) for 4 hours, and one local Budget Analyst ($49.97) for 24 hours for each LEA. If we assume 400 new LEAs are identified with significant disproportionality, the annual cost would be $992,890.

LEAs reserving IDEA Part B funds for comprehensive CEIS will also have to track the actual use of those funds. We assume LEAs will have to commit staff time to ensure they are meeting the fiscal requirements associated with the use of funds for comprehensive CEIS. To estimate the annual cost of tracking the use of funds for comprehensive CEIS, we assume that one local Budget Analyst ($49.97) would be required for 8 hours for each LEA. If we assume 400 new LEAs are identified with significant disproportionality, the annual cost would be $159,900.

LEAs providing comprehensive CEIS are also currently required to track the number of children served under comprehensive CEIS and the number of children served under comprehensive CEIS who subsequently receive special education and related services during the preceding 2–year period. To estimate the annual cost of tracking children receiving services under comprehensive CEIS, we assume that LEA employees would likely include one Database Manager ($50.63) for 40 hours and one local Administrative Assistant ($28.43) for 8 hours for each LEA. If we assume 400 new LEAs are identified with significant disproportionality, the annual cost would be $901,020.

States are required to annually review each LEA's application for a subgrant under IDEA Part B. As noted above, LEAs identified with significant disproportionality are required to reserve 15 percent of their Part B allocations for comprehensive CEIS and many States require LEAs to reflect that reservation as part of their application for IDEA Part B funds. To estimate the annual cost stemming from State reviews of LEA applications to ensure compliance for all newly identified LEAs, we assume that State employees would likely include one Management Analyst ($44.64) and take .25 hours for each LEA. If we assume 400 new LEAs are identified with significant

[8] Hourly earnings were estimated using the annual salary for this job classification as reported in the May 2014 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (see *http://www.bls.gov/oes/current/999201.htm*) divided by the number of work days and hours per day assuming 200 workdays and 8 hours per day.

[9] Hourly earnings were determined using the annual salary for this job classification as reported in the May 2014 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (see *http://www.bls.gov/oes/current/999201.htm*) divided by the number of work weeks and hours per week assuming 52 weeks and 40 hours per week.

disproportionality, the annual cost would be $4,460.

Federal Review of State Risk Ratio Thresholds

Under proposed § 300.647(b)(1)(ii), the risk ratio thresholds established by States would be subject to monitoring and enforcement by the Department. At this time, the Department expects that it would conduct monitoring of all States in the first year that States set the thresholds and then monitor the thresholds again in any year in which a State changes its risk ratio thresholds. To estimate the annual cost of reviewing risk ratio thresholds, we assume that Department staff involved in such reviews would likely include one management analyst at the GS–13 level ($73.95 [10]), and take 1 hour each for the 50 States, the District of Columbia, Puerto Rico, BIE, Guam, American Samoa, and the Virgin Islands. If we assume the Department would have to review every State in year one, 25 States in year 2, 10 States in year 3, and 5 States in each year thereafter, the average annual cost over the ten year time horizon would be $771.50.

Transfers

Under IDEA, LEAs identified with significant disproportionality are required to reserve 15 percent of their IDEA Part B allocation for comprehensive CEIS. Consistent with the Office of Management and Budget Circular A–4, transfers are monetary payments from one group to another that do not affect total resources available to society; therefore, this reservation constitutes a transfer. Using data collected under section 618 from the SY 2011–12, the Department estimates that 15 percent of the average LEA section 611 and section 619 subgrant allocation will be $106,220. Assuming 400 new LEAs are identified with significant disproportionality each year, the total annual transfer would be $42,488,000. It is important to note that these formula funds would not be subgranted to new entities, but rather that the beneficiaries of these funds would change. As noted elsewhere in this NPRM, the proposed regulations clarify that funds reserved for comprehensive CEIS can be used to provide services to children with disabilities. To the extent that LEAs use their funds reserved for comprehensive CEIS to provide services to these children, the total amount of the transfer will be lower than what is estimated here.

Sensitivity Analysis

As noted elsewhere in the Discussion of Costs, Benefits, and Transfers, the estimated costs associated with this proposed regulation are highly sensitive to the Department's assumption regarding the total number of LEAs nationwide that States will identify in each year. For purposes of the estimates outlined above, the Department assumed that 400 additional LEAs above the baseline of 449 would be identified in each year. However, since we do not know how many LEAs States will actually identify as a result of the proposed changes, for purpose of this sensitivity analysis, we develop and present what we consider to be reasonable upper- and lower-bound estimates. To establish a reasonable lower-bound, we estimate that no additional LEAs above the baseline number would be identified in the out years. We believe that this would represent an extreme lower bound for the likely costs of this proposed regulation because we consider it highly unlikely that there would be no additional LEAs identified. As noted above, the Department's choice of 400 LEAs is based on a view that at least some, if not most, States will take advantage of the opportunity presented by the transition to the standard methodology to set thresholds that identify more LEAs. We believe that this assumption of 400 LEAs above baseline represents the most reasonable estimate of the likely costs associated with these proposed rules. In order to estimate an upper bound, the Department assumes that States could set much more aggressive thresholds for identifying LEAs with significant disproportionality, ultimately identifying an additional 1,200 LEAs above baseline each year. As with the estimate of 400 LEAs, it is important to note that the proposed regulation itself would not require States to identify additional LEAs. Rather, the Department is attempting to estimate a range of potential State-level responses to the proposed regulation, including making proactive decisions to shift State policies related to identification of LEAs. In the table below, we show the impact of these varying assumptions regarding the number of additional LEAs identified on the estimated costs. Costs and transfers outlined in this table are calculated at a 3 percent discount rate.

TABLE 8—SENSITIVITY OF COST ESTIMATES TO NUMBER OF ADDITIONAL LEAS ASSUMED TO BE IDENTIFIED

Category	Costs		
	0 LEAs	400 LEAs	1,200 LEAs
State-level review and compliance with the new rule (modifying data collection tools, meeting with State Advisory Panels, drafting and issuing guidance to LEAs)	$1,508,620	$1,508,620	$1,508,620
Annual calculation of risk ratios and notification of LEAs	2,454,359	2,554,807	2,755,702
Review and, if necessary, revision of policies, practices, and procedures	0	56,205,180	168,615,538
Planning for and tracking the use of funds for comprehensive CEIS	0	26,782,849	80,348,546
Category	**Transfers**		
Reservation of funds for comprehensive CEIS	0	552,867,164	1,658,601,491

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

[10] This loaded hourly wage rate is based on the hourly earnings of a GS–13 step 3 federal employee in Washington, DC. (See: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/16Tables/html/DCB_h.aspx*).

• Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 300.646 Disproportionality.)

• Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. These proposed regulations would affect all LEAs, including the estimated 17,371 LEAs that meet the definition of small entities. However, we have determined that the proposed regulations would not have a significant economic impact on these small entities.

Pursuant to this proposed regulatory action, if States chose to increase their level of accountability with respect to disproportionality on the basis of race and ethnicity, there would be increasing costs for LEAs that have been identified with significant disproportionality as defined by the State. Nonetheless, based on the limited information available, the Secretary does not believe that the effect of these changes would be significant. The number of new LEAs identified with significant disproportionality will depend upon the extent to which States exercise their flexibility to determine reasonable progress made by LEAs at reducing significant disproportionality, the number of years of data used to make determinations of significant disproportionality, and the risk ratio thresholds set by the State. There are no increased costs associated with this regulatory action for LEAs that are not identified with significant disproportionality.

Paperwork Reduction Act of 1995

This NPRM contains information collection requirements that are subject to be reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). These proposed regulations contain information collection requirements that are approved by OMB under OMB control number 1820–0689; these proposed regulations do not affect the currently approved data collection.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: February 19, 2016.

John B. King, Jr.,

Acting Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

■ 2. Section 300.646 is revised to read as follows:

§ 300.646 Disproportionality.

(a) *General.* Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.

(b) *Methodology.* The State must apply the methods in § 300.647 to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State under paragraph (a) of this section.

(c) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant

disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must—

(1) Provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act.

(2) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR part 99, and section 618(b)(1) of the Act.

(d) *Comprehensive coordinated early intervening services.* The State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

(1) In implementing comprehensive coordinated early intervening services an LEA—

(i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports; and

(ii) Must identify and address the factors contributing to the significant disproportionality, which may include a lack of access to scientifically based instruction and economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings, including disciplinary removals.

(2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) or (b) of this section, including—

(i) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(ii) Children with disabilities.

(3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities.

(Authority: 20 U.S.C. 1413(f); 20 U.S.C. 1418(d)).

■ 3. Section 300.647 is added to read as follows:

§ 300.647 Determining significant disproportionality.

(a) *Definitions*—(1) *Alternate risk ratio* is a calculation performed by dividing the risk for children in one racial or ethnic group within an LEA by the risk for children in all other racial or ethnic groups in the State.

(2) *Risk* is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group, calculated by dividing the number of children from a specified racial or ethnic group experiencing that outcome by the total number of children from that racial or ethnic group enrolled in the LEA.

(3) *Risk ratio* is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

(4) *Risk ratio threshold* is a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant under § 300.646(a) and (b).

(b) *Significant disproportionality determinations.* In determining whether significant disproportionality exists in a State or LEA under § 300.646(a) and (b), the State must—

(1) Set a reasonable risk ratio threshold for each of the categories described in paragraphs (b)(3) and (4) of this section that is:

(i) Developed based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and

(ii) Subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act;

(2) Apply the risk ratio threshold determined in paragraph (b)(1) of this section to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs (b)(3) and (4) of this section and the following racial and ethnic groups:

(i) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;

(ii) American Indian or Alaska Native;

(iii) Asian;

(iv) Black or African American;

(v) Native Hawaiian or Other Pacific Islander;

(vi) White; and

(vii) Two or more races;

(3) Calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section that includes a minimum number of children not to exceed 10, with respect to:

(i) The identification of children ages 3 through 21 as children with disabilities; and

(ii) The identification of children ages 3 through 21 as children with the following impairments:

(A) Intellectual disabilities;

(B) Specific learning disabilities;

(C) Emotional disturbance;

(D) Speech or language impairments;

(E) Other health impairments; and

(F) Autism.

(4) Calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section that includes a minimum number of children with disabilities not to exceed 10, with respect to the following placements into particular educational settings, including disciplinary removals:

(i) For children with disabilities ages 6 through 21, inside a regular class more than 40 percent of the day and less than 79 percent of the day;

(ii) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;

(iii) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;

(iv) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer;

(v) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days;

(vi) For children with disabilities ages 3 through 21, in-school suspensions of 10 days or fewer;

(vii) For children with disabilities ages 3 through 21, in-school suspensions of more than 10 days; and

(viii) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer;

(5) Calculate an alternate risk ratio with respect to the categories described in paragraphs (b)(3) and (4) of this section if—

(i) The total number of children in all other racial and ethnic groups within the LEA is fewer than 10; or

(ii) The risk for children in all other racial and ethnic groups within the LEA is zero; and

(6) Except as provided in paragraph (c) of this section, identify as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs (b)(3) and (4) of this section that exceeds the risk ratio threshold set by the State for that category.

(c) *Flexibility.* A State is not required to identify an LEA as having significant disproportionality based on race or ethnicity under § 300.646(a) and (b) until—

(1) The LEA has exceeded the risk ratio threshold set by the State for a racial or ethnic group in a category described in paragraph (b)(3) or (4) of this section for three prior consecutive years preceding the identification; and

(2) The LEA has exceeded the risk ratio threshold or the alternate risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio for the group and category from the immediate preceding year.

Authority: 20 U.S.C. 1418(d).

[FR Doc. 2016–03938 Filed 3–1–16; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 41 March 2, 2016

Part III

Department of Agriculture

Rural Utilities Service
Rural Housing Service
Rural Business-Cooperative Service
Farm Service Agency

7 CFR Parts 25, 1703, 1709, et al.
Environmental Policies and Procedures; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

Rural Utilities Service

7 CFR Parts 1703, 1709, 1710, 1717, 1720, 1721, 1724, 1726, 1737, 1738, 1739, 1740, 1753, 1774, 1775, 1779, 1780, 1781, 1782, 1784, and 1794

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1924, 1940, 1942, 1944, 1948, 1951, 1955, 1970, and 1980

Rural Housing Service

7 CFR Parts 3550, 3555, 3560, 3565, 3570, and 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4274, 4279, 4280, 4284, 4287, 4288, and 4290

RIN 0575–AC56

Environmental Policies and Procedures

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture comprised of the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS), hereafter referred to as the Agency, has unified and updated the environmental policies and procedures covering all Agency programs by consolidating two existing Agency regulations that implement the National Environmental Policy Act (NEPA) and other applicable environmental requirements. These final rules supplement the regulations of the Council on Environmental Quality (CEQ), the regulations of the Advisory Council on Historic Preservation (ACHP), associated environmental statutes, Executive Orders and Departmental Regulations. The majority of the changes to the existing rules relate to the categorical exclusion provisions in the Agency's procedures for implementing NEPA. These changes consolidate the provisions of the Agency's two current NEPA rules, and better conform the Agency's regulations, particularly for those actions listed as categorical exclusions, to the Agency's current activities and recent experiences and to CEQ's Memorandum for Heads of Federal Departments and Agencies entitled ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act'' issued on November 23, 2010.

DATES:

Effective date: The effective date for the final rule is April 1, 2016.

Applicability date: For proposals that had a complete application submitted on or prior to April 1, 2016, either 7 CFR part 1794 or 7 CFR part 1940, subpart G, applies, as applicable. If the application was not complete prior to April 1, 2016, then 7 CFR part 1970 applies.

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SUPPLEMENTARY INFORMATION:

I. Introduction and Background

This section describes NEPA requirements, including the different levels of environmental review and how the Agency makes a determination regarding the appropriate level of environmental review. It also describes the Agency's mission and its existing NEPA-implementing regulations.

A. National Environmental Policy Act

NEPA (Pub. L. 91–190, 42 U.S.C. 4321–4370) established a national environmental policy to, among other things, ''create and maintain conditions under which man and nature can exist in productive harmony'' (42 U.S.C. 4331(a)); sets goals for the protection, maintenance, and enhancement of the environment; and provides a process for carrying out the policy and working toward those goals. NEPA also created the Council on Environmental Quality (CEQ), which was later directed, by Executive Order, to promulgate binding regulations to guide all Federal agencies in preparation of agency-specific regulations for implementing NEPA (Executive Order No. 11514, ''Protection and Enhancement of Environmental Quality'' [March 5, 1970], as amended by Executive Order No. 11991, ''Relating to Protection and Enhancement of Environmental Quality'' [May 24, 1977]). The CEQ regulations are found at 40 CFR parts 1500–1508 (available online at: *https://ceq.doe.gov/ceq_regulations/Council_on_Environmental_Quality_Regulations.pdf*) and are referenced in this preamble.

As set forth in CEQ's NEPA-implementing regulations, the NEPA process requires different levels of environmental review and analysis of Federal agency actions, depending on the nature of the proposed action and the context in which it would occur. The three levels of analysis are: Categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS).

A CE is a category of actions that each Federal agency determines, by regulation, does not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's procedures must provide for ''extraordinary circumstances'' in which a normally categorically excluded action may have a significant environmental effect. Examples of Agency CEs are routine financial transactions including but not limited to loans for purchase of real estate or equipment and small-scale construction. Even if a proposed action is classified by an agency as a CE, such proposed action is still screened for any extraordinary circumstances that would indicate a potential to have significant impacts. The CEs outlined in this rule are expected to have no or minimal environmental effects; however, extraordinary circumstances could include environmental effects limited or prohibited by other statutes, such as the Endangered Species Act or the National Historic Preservation Act, in a particular Federal action. If a CE applies, and the Federal agency determines that there are no extraordinary circumstances, the agency typically documents that determination in the project file. If, however, a CE applies and the agency determines that there are extraordinary circumstances, the agency would proceed to prepare an EA or an EIS.

An EA is prepared to determine whether the impacts of a particular proposal might be significant (40 CFR 1508.9). In an EA, the Federal agency briefly describes the need for the proposal, alternatives to the proposal, and the potential environmental impacts of the proposed agency action and alternatives to that action, including the no action alternative. An EA results in either a Finding of No Significant

Impact (FONSI) or a determination that the environmental impact may be significant and therefore an EIS is required.

A Federal agency is required to prepare an EIS for any major Federal action that may significantly affect the quality of the human environment (NEPA, 42 U.S.C. 4332(2)(C)). The EIS must include a detailed evaluation of: (1) The environmental impacts of the proposed action; (2) any adverse environmental effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and (5) any irreversible and irretrievable commitments of resources. NEPA requires that this evaluation be started once a proposal is concrete enough to warrant analysis and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect the consideration of environmental values.

B. Agency's Mission

By statutory authority, the Agency is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. The Agency supports these communities in a dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and new markets.

To achieve its mission, the Agency provides Federal financial assistance (including direct loans, grants, certain cooperative agreements, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. Like all Federal agencies, the Agency is responsible for determining the appropriate level of review for every proposed action it takes. As part of the Agency's environmental review responsibilities under NEPA, the Agency's responsible official examines an individual proposed action to determine whether it qualifies for a CE under the Agency's NEPA regulations. The Agency's process is consistent with that described in guidance issued by CEQ in 2010 on establishing, applying, and revising CEs (''Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act'' (CEQ CE Guidance) (75 FR 75628)). This guidance states:

> ''When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation'' in an EA or EIS (75 FR 75631).

The Agency requires applicants to describe their proposals in sufficient detail to enable the Agency to determine the required level of NEPA review. If the proposed action does not fall within an established CE or if there are extraordinary circumstances associated with the proposed action, the Agency's responsible official then determines if the action is one that normally requires the preparation of an EA or EIS. Those types of actions are specified in the Agency's final regulations.

If a proposed action, which is not a CE, does not normally require the preparation of an EIS, the Agency's responsible official will proceed to prepare an EA to determine if the potential environmental impacts of the proposed action may be significant. If the Agency concludes, based on the EA, that the impacts would not be significant, the Agency will prepare and issue a FONSI. If, however, the Agency concludes that the impacts may be significant, the Agency's responsible official will proceed to issue a notice of intent to prepare an EIS.

The Agency's procedures for determining whether to apply a CE or to prepare an EA or EIS and the manner in which those determinations are documented are set forth in the Agency's final NEPA regulations. To achieve the Agency's mission and to improve the delivery of its programs, the Agency consolidated and updated the existing environmental regulations into these final regulations to eliminate confusion between the two sets of NEPA regulations within the Agency, to promote consistency, and to facilitate NEPA reviews.

C. Existing Agency NEPA Regulations

Each Federal agency's NEPA implementing procedures are specific to the actions taken by that agency and supplement the CEQ regulations (40 CFR 1507.3). Both RBS/RHS and RUS have promulgated Agency NEPA regulations. The Agency also completes various other review requirements for its programs under the umbrella of NEPA, including historic preservation reviews under 16 U.S.C. 470f of the National Historic Preservation Act, and consultation on federally-listed species under 16 U.S.C. 1536 of the Endangered Species Act.

The environmental policies and procedures that had been utilized by RBS and RHS to implement NEPA were published as a final rule by the Farmers Home Administration (FmHA) on January 30, 1984 (7 CFR part 1940, subpart G, 49 FR 3724) and were amended on September 19, 1988 (53 FR 36266). RBS and RHS are successor agencies to FmHA, which ceased to exist on October 20, 1994, pursuant to The Agricultural Reorganization Act of 1994 (Pub. L. 103–354). Also pursuant to this Act, the farm programs under FmHA were transferred to the Farm Service Agency (FSA) that was established by the 1994 USDA reorganization.

RUS was established as part of the same 1994 USDA reorganization that established RBS and RHS, and is comprised of Rural Electrification Administration (REA), Electric and Telecommunications Programs combined with the Water and Waste Program from the former FmHA. The environmental policies and procedures that had been applicable to RUS programs were published as a final rule on March 13, 1984, by the REA (7 CFR part 1794, 49 FR 9544), were revised and published as a final rule in 1998 (63 FR 68648) to accommodate the 1994 USDA reorganization, and have been amended through 2003 (68 FR 45157).

The Agency's existing regulations for implementing NEPA needed to be updated to reflect the Agency's current structure and programs, CEQ guidance documents, and Executive Orders. In addition, the Agency consolidated the Agency's approach to environmental reviews for all assistance programs within the USDA Rural Development mission area to promote consistency, rather than having separate NEPA procedures for RBS/RHS and RUS.

Under this final rule, 7 CFR part 1970 replaces 7 CFR part 1794 for RUS and 7 CFR part 1940, subpart G, for RBS and RHS. While 7 CFR part 1940, subpart G, no longer applies to RBS and RHS, it will continue to apply to FSA.

D. Rulemaking Process

The Agency published a notice of proposed rulemaking related to environmental policies and procedures on February 4, 2014 (79 FR 6740). At

that time, comments on the proposed rule were due no later than April 7, 2014. In response to a request, the Agency extended the comment period from April 7, 2014 to May 7, 2014 (79 FR 18482). The Agency received over 500 written comment letters from organizations and individuals during the public comment period. The Agency considered the comments individually and collectively and has modified the proposed rule in response to comments, as discussed more fully below.

II. Purpose of Final Agency Environmental Regulations

Under 7 CFR part 1970, subparts A through D, the Agency consolidates, simplifies, and updates the NEPA rules promulgated separately by RBS/RHS and RUS. Although some substantive policy changes were made to reflect recent environmental policies established by Executive Orders and CEQ guidance, the Agency's main goal is to update and merge the two sets of regulations, rather than to promulgate new rules or requirements. The Agency has determined that a consolidated environmental rule will be easier to read, understand, and use. In preparing the consolidated rule, the Agency sought to combine the requirements from both part 1940, subpart G, and part 1794 to eliminate redundancy; promote consistency among the RBS, RHS, and RUS programs; and reduce confusion on the part of applicants for Agency financial assistance programs and the public.

The final changes are intended to (1) better align the Agency's regulations with the CEQ NEPA regulations and recent guidance, (2) update the provisions with respect to current technologies (*e.g.,* renewable energy) and recent regulatory requirements, (3) promote consistency among the Agency's programs, and (4) reflect Agency practice.

The consolidation encompasses the CEs currently in part 1940, subpart G, and in part 1794. In addition, the Agency has modified and expanded its list of CEs in a manner consistent with CEQ regulations and guidance. CEQ encourages the development and use of CEs and has identified them as an ''essential tool'' in facilitating NEPA implementation so that more resource-intensive EAs and EISs can be ''targeted toward proposed actions that truly have the potential to cause significant environmental impacts'' (CEQ CE Guidance, 75 FR 75631). Appropriate reliance on CEs provides a reasonable, proportionate, and effective analysis for many proposed actions, thereby helping agencies reduce paperwork (40 CFR 1508.4) and delay (40 CFR 1508.5).

The final rule outlines the processes the Agency will use to ensure that Agency actions comply with NEPA and other applicable environmental requirements in order to make better decisions based on an understanding of the environmental consequences of proposed actions, and take actions that protect, restore, and enhance the quality of the human environment. In this rule, NEPA review includes all applicable environmental review requirements such as those under the Endangered Species Act and the National Historic Preservation Act.

III. Comments Received and Agency Responses

The Agency received over 500 written comment letters from organizations and individuals. Almost all comment letters were submitted by rural electric cooperatives and associated organizations and were related to the application of the proposed rules to the RUS Electric Program. Approximately 70 commenters expressed support for the detailed comments submitted by the National Rural Electric Cooperative Association (NRECA), although several included additional substantive comments.

EarthJustice and the Natural Resources Defense Council (NRDC) also submitted detailed comments related to the RUS Electric Program. Comments were submitted by the Council for Rural and Affordable Housing, the National Association of Credit Specialists (NACS), and the Center for Equal Opportunity related to other aspects of the proposed regulations. Table 1 shows the major categories of comments received.

Major comment category	Affected NEPA rule sections
Definition of and NEPA compliance for loan-servicing actions and lien sharing	§ 1970.6, § 1970.8, § 1970.53.
CEs, including definition of extraordinary circumstances, proposed CE definitions, and inclusion of additional actions as CEs.	§ 1970.52, § 1970.53, § 1970.54.
EAs, including resources needed to determine appropriate level of NEPA documentation, use of environmental reports, public comment period, and supplementation.	§ 1970.101, § 1970.102, § 1970.103.
EISs, including actions that require preparation of an EIS and procurement of environmental professional services for EIS preparation support.	§ 1970.151, § 1970.152.
Authority to consider and impose mitigation measures	§ 1970.16.
General NEPA compliance policy issues	§ 1970.4, § 1970.5, § 1970.9, § 1970.13, § 1970.14.

The Agency received no comments on the following sections of the proposed rule and, in the final rule, is not making any substantive changes beyond those discussed in the Notice of Proposed Rulemaking: In subpart A, §§ 1970.1, 1970.3, 1970.10, 1970.11, 1970.12, 1970.15, 1970.17, and 1970.18; in subpart B, §§ 1970.51 and 1970.55; in subpart C, § 1970.104; and in subpart D, §§ 1970.153, 1970.154 and 1970.155. The responses to comments in this section of the Preamble do not reflect minor changes made in the final rule for purposes of clarity, format, or readability. These changes are summarized in Section IV of the Preamble.

A. Procedural Comments

Comment: NRECA requested the Agency extend the public comment period for 60 days.

Response: The Agency extended the comment period on the proposed rule for 30 days, to May 7, 2014 (79 FR 18482).

Comment: NRECA, with numerous rural electric cooperatives expressing support for the NRECA comments (referred to hereinafter as NRECA et al.), also requested the Agency to modify the proposed rules and reissue them as a revised draft for additional public comment.

Response: The responses to the public comments received on the proposed rule do not require and have not resulted in extensive changes to the proposed rule. A number of the changes clarify and reflect Agency practice under current Agency regulations. In addition, the public had a total of 60 days to submit comments on the proposed rule which, as noted, resulted in the receipt of over 500 comment letters. For these reasons, the Agency has determined that the public has had a sufficient opportunity to review and comment on the proposed rule and that

issuance of a revised draft is not warranted.

B. General Comments on Proposed Rule

Comment: A commenter stated that the proposed rule (§§ 1970.4, 1970.6, and 1970.14) appears to equate Native Hawaiians with Indian tribes, which is incorrect since the former classification is racial/ethnic while the latter is tribal.

Response: The references to Native Hawaiians, Native Alaskans, and Indian tribes used in the proposed rule are consistent with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.,* and applicable regulations (36 CFR part 800). For this reason, the Agency retains its proposed language and has made no modification to the proposed rule in response to this comment.

C. Modifications Related to Servicing Actions and Lien Sharing

Comments: A substantial majority (approximately 90%) of the comments received on the proposed rule were in response to proposed § 1970.8, ''Actions requiring environmental review''—specifically proposed §§ 1970.8(b)(2) and (b)(2)(iii) relating to loan-servicing actions and lien sharing, respectively. These comments also referred to the related definition for loan-servicing actions in proposed § 1970.6. While the primary intent of the proposed rule was to consolidate the environmental rules of the three agencies (RBS, RHS, and RUS) that are under the Rural Development mission area, the overwhelming majority of the comments on these sections were directed at RUS's Electric Program with respect to its borrowers.

The commenters had opposing viewpoints with respect to their recommendations for the definition and Agency handling of loan-servicing actions and lien sharing as a ''major Federal action.'' Some commenters wanted the definition of loan-servicing to be expanded and to include more Agency actions, such as ''lien accommodations, lien subordinations and lien releases'' and that such actions should be included as ''major Federal actions.'' They argued that when RUS chooses to share, subordinate, or release its lien on the assets of an existing borrower to allow that borrower to obtain new financing for new generation capacity (the example cited most often), RUS is providing that borrower with financial assistance that furthers the new generation project.

Other commenters, however, wanted the list of actions requiring environmental review in § 1970.8 to exclude most loan-servicing actions because they are actions that ''involve no reasonably foreseeable physical changes in the real world and are therefore unlikely to have the potential to significantly affect the human environment.'' They also argued that RUS lacks sufficient Federal control and responsibility over any subsequent lien sharing for actions to be undertaken by borrowers that involve no direct Agency financial assistance. They stated that the proposed rule should define as ''major Federal actions'' only those actions likely to have an effect on the environment and that involve appropriate Federal involvement, control and responsibility. One commenter was not clear as to whether lien accommodations, lien subordinations, and lien releases are included within the definition of financial assistance or the definition of loan-servicing actions.

Of the commenters arguing to include loan-servicing actions as Federal actions requiring environmental review, and to expand the definition of loan-servicing, several of the commenters asserted that, in addition to all agency ''consents'' being loan-servicing actions, the regulation should further clarify that all ''approvals'' are also Federal actions, including approvals issued pursuant to existing loan contracts and mortgages. These commenters also stated that the definition should include decisions to grant a trust indenture that ''allows third parties to take over administration of the loan contracts and mortgages governing an existing borrower's debt.'' The commenters' concerns appeared to focus on the use of coal and its effects.

In contrast, a substantial number of other commenters stated that neither consents nor approvals should be Federal actions for purposes of NEPA. These commenters stated that consents and approvals routinely provided by RUS under its contractual agreements and security instruments do not involve construction and do not have the potential to foreseeably change the use of the property. Additionally, these commenters concluded that such actions were ''unlikely to have the potential to significantly affect the human environment'' and should not be considered major Federal actions. As one lender stated in its comments, loan-servicing actions aid lenders in facilitating the technicalities of their respective financing arrangements and, ''by their very nature are not major federal actions'' because they are routine in nature and ''certainly lack the potential to meet the NEPA standard of significantly affecting the human environment.''

Several commenters stated that the proposed rule did not articulate any rationale or justification for the ''180 degree shift'' in the Agency's departure from its longstanding policy. Since 1998, RUS's environmental regulations specifically stated that ''[a]pprovals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of [the RUS NEPA regulations] and the provisions of [the RUS NEPA regulations] shall not apply to the exercise of such approvals'' (7 CFR 1794.3).

Response:

Introduction

The Agency's response to these comments addresses the following: (1) Use of the term ''major Federal action'' in the proposed rule; (2) a clarification and description of ''loan-servicing actions'' which includes processes for the collection of debt, methods for modifying existing debt, lien releases of security instruments, approvals and consents, and decisions related to the use of different security instruments, including trust indentures; and (3) the extent to which lien sharing and lien subordination require NEPA review.

It is important to note that loan-servicing actions and lien sharing are very different matters. In addition, lien sharing (also referred to as a lien accommodation) is different from lien subordination. Lien sharing and lien subordination are treated differently under the Agency's final environmental rule as explained more fully below. For clarity, the Agency has modified and added to the definitions in § 1970.6 and has modified § 1970.8, which describes actions requiring environmental review.

This response also provides additional detail on the Agency's final position on loan-servicing and loan security actions, including some historical background on the unique nature of the RUS Electric and Telecommunications Programs and the process by which the Agency monitors and administers the financial assistance until the end of a grant or until a loan or loan guarantee is paid in full. This discussion further supports the clarifications to §§ 1970.6 and 1970.8 in the final rule.

Major Federal Actions

The Agency has concluded based on comments received that it inadvertently introduced confusion by using the term ''major Federal action'' in proposed § 1970.8. Commenters seemed to interpret the use of that term as shorthand for ''major Federal action significantly affecting the quality of the human environment'' and thus as an

indication that the Agency proposed to prepare an EIS for all actions described in proposed § 1970.8(b). That was not the Agency's intention and the Agency has deleted the word ''major'' in the final rule to avoid confusion.

NEPA requires Federal agencies to prepare an EIS for ''major Federal actions significantly affecting the quality of the human environment. . .'' 42 U.S.C. 4332(C). The CEQ regulations define ''major Federal action'' as including actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly. 40 CFR 1508.18.

Thus, actions over which a Federal agency has sufficient control and responsibility are Federal actions to which NEPA applies and for which environmental review is required. However, only those major Federal actions significantly affecting the quality of the human environment must be the subject of an EIS.

Agency actions that could have significant environmental impacts will be the subject of an EIS as described in § 1970.151. Agency actions that will not individually or cumulatively have a significant environmental impact are listed as CEs in §§ 1970.53–1970.55. Agency actions not within these categories will be the subject of an EA as described in § 1970.101. Actions over which the Agency does not have sufficient control and responsibility are not Federal actions and thus are not subject to NEPA.

Servicing Actions

The Agency has determined that the definition and treatment of loan-servicing actions needs further clarification in this final rule. The terminology itself is the first area of clarification. Although the comments received and the discussion thus far refer to ''loan-servicing'', it is recognized that the concept of servicing is not restricted to loans, but applies to guarantees and grants as well although the particular servicing actions may differ. Therefore, ''loan-servicing'' and ''loan-servicing action'' have been changed to ''servicing'' and ''servicing action''.

Proposed § 1970.6 defined ''loan-servicing actions'' as ''[a]ll Agency actions on a particular loan after loan closing or, in the case of guaranteed loans, after the issuance of the loan guarantee, including, but not limited to transfers, assumptions, consents, or leases of Agency-owned real property obtained through foreclosure.'' In addition, proposed § 1970.8(b)(2) stated that ''[c]ertain loan-servicing actions'' are ''major Federal actions.'' After review of its servicing actions, the Agency has determined that the definition of the term ''loan-servicing actions'' needs to be revised in accordance with the plain meaning, industry usage, and to be more inclusive as noted above. Specifically, the Agency is clarifying that servicing actions are routine, ministerial, or administrative actions that are expected to occur as part of providing the particular type of financial assistance. As such, these actions fall within the original review of the financial assistance request, are not in and of themselves Federal actions requiring NEPA review, and will not be subject to new or additional NEPA reviews. The final rule reflects this clarification. This is consistent with past Agency pattern and practice, other federal agencies, industry standards, and the nature of servicing loans, loan guarantees, and grants after a financial assistance decision has been approved. Additional background in support of the change to servicing actions in the final rule is provided below. While the comments and the discussion below focus on RUS Electric and Telecommunications Programs, the final rule applies to all programs within the USDA Rural Development mission area that provide financial assistance.

NEPA is a procedural and planning statute under which Federal agencies are required to integrate the consideration of environmental values in their decision-making processes. Based on Agency experience and lending industry standards, its servicing actions involve routine, ministerial, or administrative standard actions related to direct financial assistance for which an appropriate NEPA review has already been conducted and on which a funding commitment decision has already been made. That is, the life cycle of financial assistance includes routine, ministerial, or administrative servicing activities that are conducted until the grant purpose ends or until a loan or loan guarantee is paid in full in accordance with the terms and conditions of its financial assistance documents, including security instruments. Servicing actions are an integral part of the Agency's obligation and responsibility for extending, managing, monitoring, servicing, and collecting its debt and assuring that its collateral is maintained. NEPA reviews for subsequent routine, ministerial, or administrative servicing actions would be not only duplicative of the NEPA review originally conducted for the financial assistance decision, but also unnecessary because these actions have no potential to affect the human environment.

This definition of servicing actions is consistent with lending industry standards and Agency practice. In the lending industry, usage of the term ''loan-servicing'' relates to collection, disbursement, billing, and payments made to service a debt. The U.S. Treasury Department, Financial Management Service, *Managing Federal Receivables, A Guide for Managing Loans and Administrative Debt* (May 2005), states that basic servicing includes: Billing the debtor, processing and crediting payment, monitoring the account, timely responding to borrower inquiries, and providing agency management with regular aggregate reports on receivables and debt collection reports. Compromising, adjusting, reducing or charging-off debts or claims and modifying or releasing the terms of security instruments, leases, contracts, and agreements, are also routine collection activities available to the Agency pursuant to Section 1981(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)), the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, 3711–3720E). The Office of Management and Budget (OMB) requires federal lending agencies to vigorously pursue debt collection (OMB Circular A–129, *Policies for Federal Credit Programs and Non-Tax Receivables* (Jan. 2013)). It was not the Agency's intent in the draft rule to make these actions separate Federal actions requiring separate NEPA review.

As stated previously, the Agency reviewed its servicing actions, including its administrative ''back office'' actions. These servicing actions do not involve new projects, substantive changes to a project, new construction not reviewed under the original request for financial assistance, or a change in the use of the property that was the purpose of the original financial assistance. These servicing actions are for projects or facilities previously receiving financial assistance and the appropriate environmental review was conducted for the action prior to the time financial assistance was made. As a lender and as part of its due diligence and rural development mission, the Agency analyzes and assesses the risk that the proposed project will not be completed and that a loan would not be repaid. The Agency has specific statutory tools to deal with the risk of default after the funds have been advanced. The need for such servicing actions is known and contemplated at the time the financing is made and these actions are

considered part of one action, *i.e.,* providing financial assistance. The life cycle of financial assistance includes all of these activities from loan origination through final repayment and, in the case of a grant, through completion of the original purpose, evaluation of such purpose, and closeout of the grant. As a result, the Agency is clarifying that servicing actions are included within the original review of the financing and will not be subject to new or additional NEPA reviews in this final rule. As mentioned previously, this is consistent with past Agency pattern and practice, industry standards, and the nature of servicing loans, loan guarantees, and grants after financial assistance has been provided. This is consistent with the practices of the U.S. Department of Justice, the major collector of delinquent debt on behalf of the Federal government.

Actions on Delinquent Debt of Financially Troubled Borrowers

The Agency considers debt restructuring, as referred to by many commenters, as a generic term for actions authorized by statute, as previously discussed, including compromising, adjusting, reducing, or charging-off debts or claims, and modifying or releasing the terms of security instruments, leases, contracts, and agreements (Section 1982(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(b)). In addition, many RD program regulations provide for specific workout options for financially troubled borrowers, such as debt rescheduling, consolidation, writedown, extended terms and/or reduced interest rates. All of these actions are included within the definition of servicing actions. Most often, when repayment of debt is in jeopardy, default, or a borrower is experiencing financial distress, some form of compromising, adjusting, reducing, or charging-off debts or claims is requested after the project is already completed. These actions are intended to avoid default on existing debt, improve the borrower's repayment ability, and maximize recovery to the Agency. Such actions relate specifically to financial assistance already made and advanced, and would not require separate environmental review. If, however, the Agency were asked to provide new financial assistance along with such debt restructuring, a new environmental review would be required for the new financial assistance.

Prepayments and Lien Releases of Security Instruments

When a borrower pays its debt in full or in part, the acceptance of the funds and any releasing of the secured lien is ministerial and non-discretionary. A majority of the Agency programs have agreements or promissory notes that allow prepayments. Generally, in the lending industry, a borrower has a right to prepay its debt in full or in part unless specifically prohibited in writing. When a borrower prepays its debt it is exercising its contractual rights. The Agency simply accepts the funds in a prepayment in accordance with the terms of the agreement or promissory note. As such, prepayments are included in the definition of servicing actions. Furthermore, the Agency is required generally by state law to release the applicable security instrument since it no longer has any debt that is secured. For this reason, a lien release is a ministerial action and not a separate action requiring a NEPA review. The term ''lien release'' is also included in the definition of servicing actions under ''modifying or releasing the terms of security instruments, leases, contracts, and agreements.''

Consents and Approvals

Consents and approvals the Agency may give pursuant to its contractual documents and security instruments are included within the definition of servicing actions. They are routine, ministerial, or administrative in nature. Further, they are assumed as part of the Agency's decision on its initial approval of financial assistance and the Agency's subsequent monitoring and administration of its debt and collateral, and have no potential to affect the quality of the human environment within the meaning of NEPA. For these reasons, no additional NEPA analysis and documentation is required.

The United States Court of Appeals, seventh Circuit has held that RUS, as a lending agency, can only protect itself and compensate for borrowers' risk of default by setting terms and conditions on its extension of financial assistance. See *Wabash Valley Power Assoc.* v. *Rural Electrification Administration,* 988 F. 2d 1480 (7th Cir. 1993). In Circular A–129, *Policies for Federal Credit Programs and Non-Tax Receivables* (January 2013), OMB advises agencies to have contractual agreements that include all covenants and restrictions necessary to protect the Federal Government's interest. RUS has established a unique contractual relationship with its borrowers and its general scheme of consents and approvals are made to assure that its collateral is maintained during the term of its loan or loan guarantee.

RUS's Electric Program provides system financing to furnish and improve electric services to rural Americans in rural areas, as defined at 7 U.S.C. 901 *et seq.* Additionally by statute, RUS is required to certify that a loan will be repaid in the time agreed upon and is adequately secured. As such, RUS's contractual provisions and security instruments are focused on assuring that the loan funds are used for statutory purposes in rural areas and steps are taken to protect RUS's security. Since 1998, the existing RUS environmental regulation has specifically stated that ''[a]pprovals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of [the RUS NEPA regulations] and the provisions of [the RUS NEPA regulations] shall not apply to the exercise of such approvals.'' (7 CFR 1794.3).

The Agency agrees with the substantial majority of commenters who believe that providing consents and approvals per se, does not make those consents or approvals additional or new Federal actions that have the potential to affect the quality of the human environment within the meaning of NEPA. To the contrary, RUS has reviewed the consents and approvals it may give pursuant to its contractual documents and security instruments and has determined that they are routine, ministerial, or administrative in nature and consistent with standard lending practices to protect collateral and maintain its first lien position. For example, consents and approvals for depreciation rates, accounting compliance, rates to members (sufficient to pay debt), contracts for operation and management, patronage refunds, transmission agreements, termination of franchises and territory, contracts for power supply and requirements or contracts for financial transactions all involve actions to protect the security of and repayment to the Federal Government. The Agency, as a lender, agrees with the substantial majority of commenters that its consents and approvals are not separate actions requiring environmental review, and in fact are known and contemplated within the context of standard lending processes and practices at the time the Agency decides whether or not to provide financial assistance. Therefore, these actions are included in the definition of servicing actions for a loan, loan guarantee, or grant. This is

consistent with RUS's past and current administrative pattern and practice.

Trust Indentures

Contrary to some commenters' assertions, RUS's decision to use a trust indenture as a security instrument is not a Federal action. Rather, as explained below, a trust indenture documents what collateral secures the debt and how the collateral will be maintained. As such, it is simply a documentation of the financial assistance decision, not a separate decision subject to additional NEPA analysis and documentation. The original provision of financial assistance is the Federal action.

Historically, RUS's Electric Program did not provide project financing but provided 100% system financing and took a secured first lien on an electric borrower's entire utility system through a system-wide mortgage. In the late 1960s and thereafter, due to limited RUS funding and because the utility industry is so capital intensive, most RUS borrowers began financing all or a part of their capital needs with commercial lenders. The use of trust indentures became more prevalent with RUS borrowers as RUS became unable to finance 100% of all of its borrowers' capital needs as it had in the past. A few commenters took issue with the use of trust indentures by some RUS borrowers, asserting that under an indenture, a trustee ''take[s] over'' ''governing an existing borrower's debt,'' and that RUS delegates its administrative tasks to third parties. The Agency disagrees with this assertion, which is a misunderstanding of an indenture. A trust indenture, as used by lenders, is simply a shared security instrument.

The Administrator of RUS, for example, is required by the Rural Electrification Act to insure and certify that prior to making a loan, the security for the loan is reasonably adequate and that such loan will be repaid within the time agreed (7 U.S.C. 904). RUS has historically required its loans to be secured in order for them to be repaid according to the terms and conditions of its loan documents. A trust indenture secures the assets of a borrower for lenders in case of a default and sets terms (*i.e.,* financial ratios) for the debt to be secured once a lender has agreed to make a loan or guarantee a loan. The indenture trustee neither takes over the role of any lender nor governs the existing borrower's debt. The trustee's duties are ministerial and non-discretionary prior to a default.

As a result, the Agency also disagrees with the commenter's assertion that RUS delegates its administrative tasks to third parties. This, again, is a misunderstanding of the nature of a security instrument, whether a mortgage or an indenture. If RUS is the actual lender or guarantor, the appropriate environmental review will be conducted for the project at the time a decision is made on whether or not to provide financial assistance. The type and use of security instruments, such as trust indentures, does not have any effect on the environmental review process completed at the time RUS makes a decision on whether or not to provide financial assistance. The use of an indenture by RUS and a borrower does not ''outsource its decision-making authority.''

The Agency does not agree that the use of a trust indenture ''should itself trigger environmental review as appropriate.'' As stated previously, a trust indenture is merely one form of a security instrument that is executed and delivered to document and secure a debt after a determination is made to provide financial assistance. Just like a promissory note that documents repayment of the debt, a trust indenture documents what collateral secures the debt and how the collateral will be maintained.

Lien Sharing

The Agency has included a definition of lien sharing (referred to in comments as a lien accommodation) in the final rule. Lien sharing is an agreement between lenders to pro-rata payment on shared secured collateral without priority preference (see § 1970.6). As discussed below, it is not considered to be a servicing action. If, however, the Agency were asked to provide new financial assistance along with a request to share its lien, a new environmental review would be required.

The Agency agrees with commenters who argued that the Agency has no authority or control and responsibility over future actions to be taken as a result of a private lender's request for lien sharing and thus has clarified in the final rule (§ 1970.8(d)) that lien sharing is not a Federal action to which NEPA applies.

Any lien sharing for RBS, RHS and certain RUS programs would occur as part of the original request for financial assistance. These programs generally provide financial assistance for specific projects. The security for these projects relies on the project's revenues and assets for repayment of its debt. As a project financier, the Agency's focus is on the borrower, the Agency's security interest, and on the project financed until the financial assistance is repaid in full.

A project requires 100% funding in order to be completed to serve rural America. If the Agency does not fund the entire project, it is possible that it will need to ''share'' a first lien on the project with other lenders. Therefore, the sharing of the lien has already been anticipated and considered. As such, the appropriate NEPA review has been performed prior to the approval of financial assistance for the original loan or loan guarantee.

Lien sharing for RUS Electric and other Telecommunications Programs is unique. In these programs, RUS provides system-wide financial assistance to borrowers for furnishing and improving electric service to persons in rural areas and for the construction and improvement of facilities for telecommunication service in rural areas. It should be noted that there are instances where system-wide liens are taken in the Water and Waste Disposal Program. RUS relies on all of the borrower's revenues, and repayment is secured by a lien on all of the borrower's electric and telecommunications assets (*i.e.,* its entire utility system) at the time the first loan or loan guarantee is made. In addition, RUS takes a secured first lien on all assets subsequently acquired by the borrower. RUS typically makes multiple loans and loan guarantees to its borrowers. RUS tries to maximize repayment where repayment terms are initially set for 35 years and each subsequent loan or guarantee extends the term of its system-wide first lien for another 35 years. In these programs, lien sharing is expected after initial loans and loan guarantees are made.

In addition, for the Electric and Telecommunications Programs, RUS is not a lender of last resort. When considering its financial needs and timing of its projects, a borrower has options and choices that are solely within the borrower's discretion. The borrower can determine to seek financing from any lender at any time for any project. RUS has no influence or control over the outcome of these private transactions.

As RUS borrowers have utilized non-Federal lenders and incurred additional non-Federal debt, RUS could be over secured at any time during the long-term repayment period and RUS has become a minority debt holder. In order for RUS's Electric and Telecommunications Programs' borrowers to effectively and efficiently manage their business operations and financing, they have contractually agreed to give RUS a long-term secured first system-wide lien on all assets and all after-acquired assets, but they

reasonably expect and have relied on RUS to share its lien to facilitate the use of non-Federal funds for financing infrastructure.

In 1993, at the request of a private lender providing financing to an Electric Program borrower for a capital investment and as a result of legislation (7 U.S.C. 936e), Congress directed the USDA Secretary to expeditiously either offer to share the Federal Government's lien on the borrower's (if equity exceeds 110%) system or offer to subordinate the government's lien on the assets financed by the private lender. In the mandate to share the Federal Government's first lien, Congress intended for RUS's Electric and Telecommunications Programs' borrowers to have access to private-sector financing for facilitating infrastructure development. Congress also stated clearly that any regulations implementing this requirement were to focus only on maintaining reasonably adequate security for a RUS loan or loan guarantee. Sharing its first lien also shares the risk of lending with other lenders. RUS shares its lien on a pro-rata basis. The actual ''sharing'' only occurs following a default and enforcement remedy against the system or in the bankruptcy proceedings. Currently, RUS's Electric Program has a default rate of 0.04%. It is clear that Congress intended the sharing of the Federal Government's system-wide first lien to facilitate the use of non-Federal funds to finance infrastructure and that RUS's primary interests are repayment of the borrowers' debt. In following this Congressional mandate, and in actual practice as stated above, RUS lacks significant discretion and control or responsibility related to sharing its secured system-wide first liens and, as discussed below, any subsequent activities taken between the borrower and a non-Federal lender.

Some commenters suggested that RUS can ''influence the type of generation its borrowers construct or acquire;'' the Agency does not agree with this statement. RUS's Electric Program has approximately 550 borrowers, of which approximately 40 are involved in generation and most of those are not currently building new generation. Since 2003, RUS has provided 100% direct financing to a borrower for one coal plant and to two borrowers to purchase minority interests in coal-based generation facilities constructed by investor-owned utilities. RUS can only determine what projects or facilities for which it will provide financial assistance and cannot substitute its business judgment for that of its borrowers with regard to projects or facilities for which the borrower seeks to use non-Federal financing.

RUS routinely consents to private-lender requests for sharing its lien unless it would adversely affect RUS's financial interests, *i.e.,* the borrower cannot repay its RUS loans or guarantees due to the new loan. If a RUS Electric Program borrower borrows non-Federal funds or places a lien on its system without RUS sharing, RUS's remedy is to sue the borrower for contractual breach or refuse to provide the borrower with any additional RUS financial assistance. RUS cannot directly control whether the borrower accepts private-sector financing and what it does with that financing.

For there to be a Federal action to which NEPA applies, there must be Federal control and responsibility. In the lien sharing context, the non-Federal lender provides the financial assistance and sets its own terms and conditions for the project it finances. Negotiation of any terms or conditions are between the lender and its borrower, and the non-Federal lender makes its own risk and security assessments. RUS cannot choose its borrowers' lender and is not a party to the lender's loan contracts or decision making. RUS's consent is not a prerequisite to construction, nor can RUS require the borrower to consider alternatives, change locations, or prevent, alter, or manage construction of the project. Because RUS does not have any permitting or independent regulatory authority, it has insufficient legal or regulatory control over what, where, or when a project will be constructed. In addition, RUS is a lender and not a regulator; therefore, the Agency does not have sufficient control and responsibility over the non-Federal lenders or borrowers or the non-Federally financed project to trigger NEPA review. All of those non-Federally funded projects are instead under the regulatory control and oversight of applicable Federal and state environmental agencies, laws, and regulations.

Therefore, in consideration of all the comments on this matter, the Agency has concluded that it does not have sufficient control and responsibility over projects or facilities that it does not finance. Simply sharing its first lien with a non-Federal lender is not a Federal action for purposes of NEPA, and such sharing does not ''Federalize'' the project.

Lien Subordination

Unlike lien sharing, lien subordination is a Federal action subject to NEPA review. Lien subordination is addressed in Circular A–129, *Policies for Federal Credit Programs and Non-Tax Receivables* (January 2013), where OMB advises Federal agencies not to subordinate the Federal Government's interest since a subordination increases the risk of loss to the government because non-Federal lenders would have first claim on a borrower's assets. The Agency agrees that subordinating its lien is different from lien sharing, and is to be used sparingly since it imposes greater financial risk to the Agency since other creditors would have first claim on the borrower's assets. The Agency considers Subordination to be a form of financial assistance and will require the appropriate environmental review. The Agency has clarified this in the final rule (§ 1970.8), and has included a new definition of lien subordination (§ 1970.6).

Joint Ownership

Some commenters suggested changes to the percent of ownership thresholds for Federal actions (as described in § 1970.8(c)), or that there be additional flexibility in environmental review requirements at certain ownership levels. Response: The provisions in § 1970.8(c) are unchanged from those in 7 CFR 1794.20, based on the Agency's experience that the approach used has proven reasonable and not a burden to applicants. Furthermore, it is the Agency's experience that applicants having a minority interest in an action as defined in part 1794 and part 1970 is equivalent to having no control. Section 1970.8(c) remains unchanged in the final rule.

Approval of Planning Documents, Timing

Two commenters recommended that the Agency clarify that the approval of planning documents, such as construction work plans, is not a federal action subject to environmental review. Response: In accordance with 40 CFR 1505.1(b) and 1970.8(b)(1), the Agency has defined the Federal action and major decision point at which NEPA must be complete as the approval of financial assistance, not approval of planning documents (See 1970.8(b)(1)).

All of the Agency's programs require planning documents that, for example, define the purpose and need for the proposal, determine project eligibility, or address legal, financial, design, and environmental considerations during the underwriting process. Therefore, planning documents establish and define the basis for applications of financial assistance but are not major decision points for the purposes of NEPA and other environmental or historic preservation statutes and

regulations. That decision point is the approval of the request for financial assistance.

Another commenter asserted that the timing of the environmental review process could be changed to allow obligation of funds prior to completion of the environmental review. Response: The objective of NEPA and other statutes integrated into part 1970, are that Federal agencies consider the effects of their actions before decisions are made and before actions are taken. For example, in accordance with 40 CFR 1500.1(b), NEPA procedures must insure that environmental information is available to public officials and citizens *before* [emphasis added] decisions are made and *before* [emphasis added] actions are taken. In addition and in accordance with 36 CFR 800.1(c), the agency official must complete the section 106 process '*prior to the approval of any Federal funds* [emphasis added] on the undertaking.'' Based on these regulations and other requirements, the Agency has established that the approval of financial assistance is the Agency's major decision point prior to which the environmental review process must be completed. In addition, the timing of the environmental review process is addressed at § 1970.11, and this section remains unchanged from the proposed rule.

Guaranteed Loans

Comments suggested that the proposed rule does not go far enough when considering projects involving loan guarantees. One commenter said guaranteed lenders should not be included in the definition of ''applicants'', while another asserted that loan guarantee transactions have been erroneously included in the NEPA review process and should in fact be totally exempted from the process. Response: The Agency considers providing guaranteed loans as a form of financial assistance. This is consistent with Federal credit law and OMB policies (OMB Circular A–129). In addition, excluding Section 313A of the RE Act, as amended, part 1940, subpart G and part 1794 have classified guaranteed loans as ''Federal actions'' subject to NEPA since 1984.

Summary Revisions to Final Rule

In light of the discussion above, the Agency is revising proposed §§ 1970.6 and 1970.8 as described below. While the revisions address comments that primarily focused on RUS's Electric and Telecommunications Programs, as stated previously, the final rules apply to all financial assistance programs (*i.e.,* RBS, RHS and RUS) within the USDA Rural Development mission area.

The Agency is clarifying the definitions for financial assistance and servicing actions; and providing new definitions for lien sharing, lien subordination, loan, grant, loan guarantee, and cooperative agreement in the final rule (§ 1970.6). The definition of multi-tier action was revised to include similar Agency relending programs and actions. Both revised and new definitions are set forth in the regulatory text of this rule at § 1970.6.

In addition, the Agency is modifying § 1970.8 (1) to delete the word ''major'' from ''major Federal action'' to avoid confusion and to be consistent with CEQ regulations, (2) to make it clear that servicing actions do not require separate NEPA reviews, (3) to make it clear that lien sharing is not a Federal action for purposes of NEPA, and (4) to require that requests for lien subordination be subject to NEPA review. The Agency has revised § 1970.8(a) and (b) and added new paragraphs (d) and (e) as set forth in the regulatory text of this rule.

Further, the Agency has made conforming changes to § 1970.53(a) by deleting proposed § 1970.53(a)(1) referring to refinancing of debt and that portion of proposed § 1970.53(a)(5) that refers to servicing actions. As explained in detail in Section III.C, actions on debt are included in the definition of servicing actions in revised § 1970.6, and servicing actions are routine, ministerial, or administrative components of financial assistance and do not require separate NEPA review.

D. Specific Comments on Proposed Rule—Subpart A

Section 1970.4 Policies

Comment: One commenter requested that § 1970.4 be removed from the proposed rulemaking because it appeared to impose substantive obligations that are beyond the procedural mandate of NEPA as written, and likely to create ambiguity about the obligations of the Agency when implementing NEPA (*e.g.,* the borrower would be required, whenever practicable, to avoid or minimize ''adverse environmental impacts'' as well as to avoid conversion of wetlands and farmlands and development in floodplains (including 500-year floodplains)). The commenter also identified a perceived conflict between the use of the term ''practicable'' in § 1970.4(a) and another statement in the preamble of the proposed rule that stated that the modifier ''practicable'' is not to be used in the proposed rule in order to be consistent with CEQ regulations. Finally, this same commenter identified § 1970.4(g), related to reductions in greenhouse gas emissions (GHG), as another example of ambiguity being introduced into the process by requiring an evaluation of opportunities to reduce a project's potential emission of substantial quantities of GHG, where the Agency does not have the statutory authority under NEPA to require the reduction of GHG emissions. The commenter also stated that the Agency did not provide a clear definition of what would be considered a substantial quantity, and that, if the borrower were to exceed the unclear threshold, there would be no clear understanding on what reducing greenhouse gases to the ''maximum extent feasible'' would mean. The commenter recommended removal of this section entirely because the Agency does not have authority to require GHG reductions, and inclusion of this language is not consistent with CEQ regulations.

Response: The Agency has an obligation under NEPA to protect the environment and it is Agency policy to avoid funding projects with adverse environmental impacts and to minimize impacts where financial assistance is approved. The term ''adverse'' is not as broad as the commenter concludes, but rather is specific to the context of the various Executive Orders and statutes, such as Executive Order 11988 which is listed in § 1970.3(gg). While the term ''practicable'' is used in the rule language in § 1970.4 (''where a practicable alternative exists''), its use was explained in the preamble of the proposed rule that tied it directly to language found in Executive Order 11988; it is not specific to § 1970.4. Rather than prohibit the use of ''practicable'', the Agency simply noted in the preamble to the proposed rule that the Executive Order uses ''practicable'' while NEPA requires the term ''reasonable''. The terms are essentially interchangeable, as both involve the consideration of relevant constraints imposed by environmental, economic, legal, social and technological parameters (see also 7 CFR 1940.302(h) and 40 CFR 1505.2(b)). The Agency identified no inconsistency with use of the term ''practicable''.

Regarding the language related to GHG reductions, the insertion of this Executive Order language is not regulatory but reflects new USDA policies and is consistent with Executive Order 13514 on Federal Sustainability that requires the Federal government to reduce GHG pollution by 28 percent by 2020; and by an even more recent Executive Order 13693

signed by the President on March 19, 2015, calling for even greater reductions in GHG (40 percent from 2008 levels over the next decade). The inclusion of GHG emission reduction language was also recommended by CEQ. No change has been made to the regulations in response to the comments relating to § 1970.4. However, the Agency recognizes the ambiguity in some of the phrasing related to GHG reductions in particular, and has developed additional guidance for applicants to further clarify how GHG emissions are to be considered and evaluated in applicant proposals.

Comment: Many commenters stated that the policy statement regarding the need for electric generating facilities (which are identified as critical actions/facilities in § 1970.6) to avoid development within the 500-year floodplain exceeded the requirements of NEPA and Executive Order 11988 (Floodplain Management). Some commenters also wanted the Agency to recognize that many of the areas served are rural, less-developed, and much more prone to be within the 500-year floodplain than more urban and developed areas. Commenters stated that the Agency should recognize that adequate protection measures can be implemented in the 500-year floodplain without requiring burdensome practicability analyses, and that the Agency should change the rule to prohibit development within the 100-year floodplain instead of the 500-year floodplain. They also requested clarification on how an applicant is supposed to show ''demonstrated significant need'' to justify development within the floodplain.

Response: The proposed 500-year floodplain language is consistent with guidance from the Federal Interagency Floodplain Task Force to all Federal agencies in implementing Executive Order 11988. While Executive Order 11988 itself does not discuss critical actions within the 500-year floodplain, the Water Resources Council Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) do, in their discussion of Step 1 of the 8-step decision-making process. The definition of critical action is sufficiently comprehensive and consistent with the definition issued by FEMA in 44 CFR 9.4 (Floodplain Management and Protection of Wetlands, Definitions). The Agency does not consider the proposed language to be a prohibition. The statement—''unless there is a demonstrated, significant need for the proposal and no practicable alternative exists''—provides sufficient flexibility in considering specific project actions in the Agency's decision-making capacity. The key is that the applicant and Agency need to demonstrate that there is no practicable alternative to locating there, with the 8-step process essentially providing the means to do so. The facility would also have to be designed to a higher protection standard, and have flood evacuation plans, including identification of access roads that would be usable during a flood. The Agency wishes to maintain consistency with the Federal guidelines and has not changed the rule to prohibit development within the 100-year floodplain, instead of the 500-year floodplain, as requested. That said, the Agency also acknowledges that some of the phrasing in the rule may be too limiting and has eliminated the phrase ''there are no exceptions to this policy'' in the last sentence of § 1970.4(a). The revised language is consistent with the USDA Departmental Regulation 9500–3 (Land Use Policy, issued March 22, 1983), § 6(i), Responsibilities: ''When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or floodplains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon floodplains, unless (1) there is demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly or indirectly.''

Additionally, Executive Order 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, January 30, 2015) modifies and expands upon Executive Order 11988, establishing a new flood risk management standard, and acts to revise the Water Resources Council's Floodplain Management Guidelines. The Agency also wishes to be consistent with this Executive Order and associated standards and guidelines.

No other changes have been made to the regulation in response to these comments.

Section 1970.5 Responsible Parties

Comment: Many commenters recommended that the provision for applicants to cooperate with the Agency on achieving environmental goals as a requirement for financial assistance is not appropriate in the NEPA rule.

Response: The Agency has an obligation under NEPA to protect, restore and enhance the environment and it is Agency policy to avoid or minimize funding projects with adverse environmental impacts. The intent of part 1970 is to provide a necessary framework for the consideration of environmental impacts of its actions. There is no intent to condition financial assistance on anything other than the action under consideration and only those actions over which the Agency has control and responsibility. The proposed language in § 1970.5(b) was specifically provided to address uncooperative applicants and applicants which provide insufficient documentation on those projects requiring applicant-prepared documentation. In either instance, if the applicant does not provide a complete information package, the Agency cannot complete the necessary environmental impact analysis and process the application. For these reasons, no changes were made to the regulation in response to these comments.

Section 1970.6 Definitions

Comment: Many commenters requested clarification on the definition of loan-servicing actions.

Response: These comments have been addressed in a separate discussion relating to NEPA compliance for loan-servicing actions in Section III.C of this preamble.

Comment: Another commenter requested clarification of the definition for ''previously disturbed or developed land,'' specifically as it related to another description of previously disturbed land found elsewhere in the preamble. This commenter also requested clarification on what is considered mitigation under the proposed regulations and recommended that a definition of mitigation be included in § 1970.6. A third commenter was confused about whether the categories of ''environmental reports'' currently used by RUS will continue to be used.

Response: The Agency agrees that the definition of previously disturbed or developed land should be clarified and has modified the language accordingly. With respect to mitigation, the Agency did not include a definition in § 1970.6 in the final rule because it considers the definition of mitigation found in the CEQ regulations at 40 CFR 1508.20 as the controlling definition and there is no need for duplication. However, the Agency will provide further clarification and examples of types of mitigation in guidance documents for applicants; this guidance will be available on the Agency's Web site. See also related

comments and responses in § 1970.16 Mitigation.

Regarding use of the term ''environmental report,'' the Agency has reconsidered and decided to continue to use this term. In the final rule, the term ''environmental report'' (ER) is being used to apply only to the environmental documentation required for CEs classified in § 1970.54. A definition of environmental report has been added to the final rule (§ 1970.6) to clarify its meaning and use.

Section 1970.8 Actions Requiring Environmental Review

Comment: All of the comments received on the proposed section, which comprised the majority of comments on the proposed rule, were in response to § 1970.8(b) relating to the inclusion of loan-servicing actions as ''major Federal actions.''

Response: These comments have been addressed in a separate discussion relating to NEPA compliance for loan-servicing actions in Section III.C of this preamble.

Section 1970.9(c) Levels of Environmental Review

Comment: Many commenters stated that the language used to describe ''connected actions'' in § 1970.9(c) went beyond what the CEQ regulations provide with respect to the Agency's use of the term ''closely related.'' While CEQ regulations describe ''connected actions'' to be ''closely related,'' CEQ goes on to provide three specific tests and does not use ''closely related'' as part of any test for determining whether an action is connected. Commenters were particularly concerned about fully integrated electric transmission systems where many projects that are not ''connected'' could be interpreted to be ''closely related'' because they occur near one another in time or space or are each solving different parts of a local or regional problem. The commenters recommended that the Agency only provide that the scope of analysis for EAs and EISs will include ''connected actions'' as defined by CEQ. Another commenter requested that the Agency clarify the roles and responsibilities of each entity, when multiple organizations are involved in developing a single environmental document, and also consider providing guidance on how to determine the analysis boundaries for connected actions.

Response: Section 1970.9(c) is fully consistent with the CEQ regulations at 40 CFR 1508.24, which requires a scope of actions that are closely related (*e.g.,* connected, similar, cumulative) to be analyzed in the same NEPA document in order to fully assess the potential combined and cumulative impacts of these actions. In particular, determining whether an action is ''connected'' involves considering whether an action would automatically trigger another action, would not or could not proceed unless other actions were taken previously or simultaneously, or are interdependent parts of a larger action (40 CFR 1508.24(a)(1)). However, to ensure clarity on the issue, the Agency has deleted the term ''closely related'' in § 1970.9(c) because, as noted by commenters, ''closely related'' is already included in the definition of ''scope'' under ''connected actions'' in 40 CFR 1508.25. In addition, while not all closely related actions may be connected actions under 40 CFR 1508.25, they could be similar or cumulative and, if so, should be analyzed in the same NEPA document, at least as part of a cumulative impact assessment.

As part of the scoping process and its responsibility to emphasize interagency cooperation and public involvement in evaluating the environmental considerations of its actions, the Agency will work with all appropriate entities on jointly funded, specific actions in determining the scope of analysis for each action to be considered in preparing a single environmental document. Determining the scope of each action applies to CEs as well as EAs and EISs. CEQ has issued guidance to ensure that connected actions and related actions with cumulatively significant impacts are considered in the same NEPA document, including CEs (*Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,* 75 FR 75628).

The Agency will request additional information, on an as-needed basis and using its discretion and expertise, from the applicant and other agencies to determine the scope of the action to be analyzed. Respective roles and responsibilities would also be defined, possibly through a memorandum of understanding or similar document. No additional Agency guidance is necessary at this time.

The Agency has made a similar conforming change to § 1970.51(b)(3) to clarify the applicability of a CE relative to cumulative actions.

Section 1970.9(d) Levels of Environmental Review

Comment: A commenter stated that the submittal of construction work plans by an applicant is a form of application for funding and, in accordance with § 1970.9(d), will require environmental documentation at the time of submittal (''the Agency may request any additional environmental information at or prior to the time of approval''). However, the proposed rule does not clearly state what environmental documentation is required when submitting a construction work plan. As noted in § 1970.6, projects identified in construction work plans can have long lead times, which means they can change in scope over time or may never occur. As a result, the commenter stated that multiple unavoidable revisions would need to be made to NEPA documents for projects contained in construction work plans and requested that § 1970.9(d) in the final rule require that only a determination of future NEPA requirements be made for these projects.

Response: The Agency understands that the processing requirements for construction work plans/loan designs are different than the single project/single application/single loan process more typical of many Agency programs. Construction work plans, for example, are a prerequisite to a loan application for some programs. The Agency also understands that construction work plan descriptions of projects often lack sufficient information to provide a preliminary NEPA classification, and this is the reason that the Agency may request additional information on multi-year project construction as specified in § 1970.9(d). Such requests could include information on project construction (*e.g.,* percent pole replacement on transmission line rebuilds) or maps/other environmental resource information to correctly classify a project. The Agency expects that this type of information can be gathered through public database searches, *e.g.,* facility locations relative to federally-designated critical habitat, federally-owned/managed lands, tribal lands, etc. The final rule language does state that additional environmental information may be required at this stage of the financial assistance application process, recognizing that different types of documentation are required at various stages in the application and approval process. For example, if after review of a construction work plan, the Agency determines that a proposed action may be eligible for a CE under § 1970.54, the Agency would ask the applicant to provide an environmental report (see below) in order to determine if there were extraordinary circumstances that would prevent the application of the CE.

The Agency is now using the term ''environmental report,'' previously required by RUS in support of both CEs that required the preparation of ERs and EAs, as the environmental documentation that is required to support a proposed action's classification as a CE classified in § 1970.54, and only a CE. A new definition of environmental report has been added to § 1970.6. If the Agency determines the proposed action should be the subject of an EA, the Agency would ask the applicant to prepare the EA in accordance with § 1970.102. No changes have been made to the rule language except to the final sentence in § 1970.9 to clarify that any request for additional environmental information would occur prior to the time of loan approval.

Section 1970.13 Consideration of Alternatives

Comment: A commenter recommended that the Agency consider a full range of alternative solutions to a given need, and to consider alternatives such as energy efficiency and distributed generation where the need is generation- or transmission-based. The commenter stated that not only are these solutions economically and technically feasible, they are often the easiest to procure and cost the least.

Response: The Agency will consider all reasonable alternatives to the proposed action, where reasonable alternatives would include those that meet the underlying purpose and need to which the Agency is responding. No change has been made to the regulation in response to this comment. However, the Agency has developed additional guidance relating to alternative development and analysis for electric generation and transmission projects that addresses the need to consider a full range of alternatives, including load management, energy conservation, and other generation technologies (*e.g.,* natural gas, nuclear, wind, solar). This guidance is available on the Agency's Web site.

Section 1970.14 Public Involvement

Comment: A commenter stated that non-Federal parties under proposed § 1970.14 may try to utilize the proposed rules simply to block the development of certain properties (*e.g.,* housing for low-income, elderly and disabled persons).

Response: Public involvement is an important component of the NEPA process. That participants in the NEPA process may oppose a proposed action is not a valid reason to curtail public involvement. Blocking a proposed action can be achieved when the Federal agency fails to comply with NEPA, including failing to ensure public comments are sought and considered. This rule does not provide a formal appeal process per se, but one objective of NEPA and other related environmental statutes, regulations, and Executive Orders, is to provide for public involvement activities. Section 1970.14 provides for these public involvement processes. No change has been made to the regulation in response to this comment.

Section 1970.16 Mitigation

Comment: Commenters questioned the Agency's authority to consider and impose mitigation measures. They stated that the Agency should recognize that its ability to impose substantive mitigation requirements must be based on some other legal authority and not as a function of NEPA which is a procedural statute. They also stated that, while agencies must analyze possible mitigation measures, those measures need not be legally enforceable, funded or even in final form to comply with NEPA's procedural requirement, as recognized in a CEQ 2011 guidance letter referenced by the commenters. The CEQ letter stated that agencies should not commit to mitigation measures if there are insufficient legal authorities or if it is not reasonable to foresee the availability of sufficient resources to perform or ensure performance of mitigation.

Response: Although NEPA is a procedural statute, the Agency notes that it also has an action-forcing component in Section 102(2)(c). Further, courts have recognized that the absence of a discussion of possible mitigation in NEPA documents undermines this action-forcing component. Additionally, 40 CFR 1505.3(a) and (b) state that agencies shall ''include appropriate conditions in grants, permits or other approvals'' and ''condition funding of actions on mitigation''.

Under its organic statutes, the Agency has authority to impose reasonable terms and conditions on its provision of financial assistance. As a condition to receiving financial assistance, the Agency can require substantive mitigation measures to reduce potential environmental impacts. Mitigation measures, for the purposes of NEPA, do not include those measures that are otherwise required by Federal, state, or local statutes or regulations.

Regarding the request to add a definition of mitigation to § 1970.5, the Agency does not see a need because it would simply duplicate the definition of mitigation already included in the CEQ regulations at 40 CFR 1508.20. However, the Agency has developed examples of types of mitigation (*e.g.,* spatial or temporal construction restrictions based on the presence of endangered species) to include in Agency guidance documents available on its Web site. Such guidance also addresses the development and use of formal mitigation plans by applicants and the Agency, to include oversight roles and responsibilities for mitigation implementation. No changes to the regulation have been made in response to this comment.

E. Specific Comments on Proposed Rule—Subpart B

Section 1970.51 Applying CEs

Comment: Commenters stated that the Agency exceeded CEQ requirements in the discussion of cumulative actions and cumulative effects as discussed in § 1970.51(b)(3). They state that CEQ requires an agency to consider cumulative actions but does not apply any ''related to'' standard. Rather, the courts consider a number of factors to help determine whether an action is a cumulative action that should be considered with a proposed action. Commenters requested that the expanded scope of analysis be removed and the Agency simply incorporate or refer to the CEQ requirement.

Response: With respect to the language in § 1970.51(b)(3) relating to cumulative actions and effects, the Agency agrees that the proposed rule language needs further clarification. The Agency has clarified § 1970.51(b)(3) to better describe the applicability of a CE relative to cumulative effects, consistent with 40 CFR 1508.25(a)(2).

However, it is important to point out that the purpose of § 1970.51(b)(3) is to ensure that connected actions and related actions with cumulative significant impacts are considered in the same NEPA analysis, including a CE. An applicant may not split up one proposed action into smaller parts in an effort to qualify for a CE, rather than preparing an EA (or an EIS). CEQ has issued guidance which specifically addresses this potential occurrence:

''When developing a new or revised categorical exclusion, Federal agencies must be sure the proposed category captures the entire proposed action. Categorical exclusions should not be established or used for a segment or an interdependent part of a larger proposed action. The actions included in the category of actions described in the categorical exclusion must be stand-alone actions that have independent utility''. *Final Guidance for Federal Departments and Agencies on Establishing, Applying, and*

Revising Categorical Exclusions under the National Environmental Policy Act (75 FR 75632).

The Agency recognizes that applicant proposals may be related (such as for integrated infrastructure), although not connected. As long as the proposals have independent utility, they would not be considered as connected actions. However, if the proposals, taken together, could have cumulatively significant impacts, the Agency would be required to prepare an EA (or an EIS). No other changes have been made to the regulation in response to this comment.

Section 1970.52 Extraordinary Circumstances

Comment: One commenter requested clarification on whether the crossing of a waterbody with a special use designation would qualify as a CE under the proposed rulemaking.

Response: Based on the information provided, a state special use water designation would fall within the definition of extraordinary circumstances in § 1970.52(b)(4)((v), areas having formal Federal or state designations. The Agency would need additional information on the specific project before making a determination as to whether application of a CE was appropriate. The critical issue is whether there is an ''adverse effect'' on ''specially designated waters'' from the crossing, not simply its presence.

Comment: Another commenter requested a definition of the term ''important'' as it relates to sensitive resources in § 1970.52, clarification as to whether the presence of a sensitive resource or the occurrence of an adverse impact will trigger an EA, and asked whose opinion would be used to determine the trigger for an EA—the Agency or the agency which had regulatory authority over the sensitive resource in question.

Response: The term ''important'' is not used in § 1970.52. It is used in the preamble to the draft regulations, in the context of important farmland. Important farmland is defined by the USDA Natural Resources Conservation Service in Departmental Regulation 9500–3, and reference to important farmland is also currently included in the existing Agency rules at 7 CFR 1794.6 and 7 CFR 1940.304.

The presence of an extraordinary circumstance would typically require the preparation of an EA to determine whether the proposed action could pose significant environmental impacts. However, the Agency also recognizes that there may be a situation where a sensitive resource is present, but it is clear there would be no environmental impacts from the proposed action. Thus, the trigger for an EA or an EIS would be present if the Agency, after consultation with the appropriate regulatory or natural resource agency, concludes the impacts would be significant. Therefore, determining effects to the listed resource or situation in § 1970.52 is based on both the presence of a special resource *and* the proposal's potential to cause significant adverse environmental effects on that resource. Section 1970.52(c) has been deleted and Section 1970.52(a) revised to clarify that a higher level of NEPA review would be triggered ''in the *event* of an extraordinary circumstance,'' rather than ''in the *presence* of an extraordinary circumstance.''

It is the Agency's sole responsibility to determine whether to prepare an EA (or an EIS) and not apply a categorical exclusion. As needed, the Agency could consult with the appropriate agency with expertise on the resource to assist in the determination.

Section 1970.53 CEs Involving No or Minimal Disturbance Without an Environmental Report

Comment: Many commenters stated that the proposed rule included no discussion of how the Agency would document the CE process at the time the decision is made, thereby putting the Agency's determination at risk of being classified as a post-hoc rationalization in any subsequent litigation. The commenters also stated that the Agency should require concise documentation supporting CE decisions but also not impose too onerous a burden on documentation.

Response: It is important to clarify that there are two types of documentation related to CEs. First, for those CEs listed in § 1970.53, applicants are not expected to submit any environmental documentation in most situations. The Agency, however, reserves the right to request additional documentation from applicants if needed to support their determinations. For those CEs listed in § 1970.54, CEs involving small-scale development, applicants are required to submit an environmental report to the Agency. The titles of these two subsections have been edited to clarify whether an environmental report is required, *e.g.,* § 1970.53 CEs involving no or minimal disturbance without an environmental report and § 1970.54 CEs involving small-scale development with an environmental report. Section 1970.54 identifies the minimum documentation requirements an applicant must provide. The Agency has developed applicant guidance for preparing an environmental report required for these actions. This guidance is available on the Agency's Web site.

Second, for all CEs, the Agency will prepare internal documentation for its files to demonstrate that, prior to a decision to approve an action with a CE, the Agency considered the potential for extraordinary circumstances and determined whether the application of a CE was appropriate in the circumstances. The Agency's internal documentation will include a description of the proposed action, rationale for why the proposed action fits within a CE, and confirmation that no extraordinary circumstances exist. The details associated with this Agency requirement are addressed in internal Agency guidance for staff. Such Agency guidance has been developed and includes a CE form that will be used by Agency staff to document application of CEs. No change has been made to the final regulation in response to this comment.

Comment: A commenter stated that some actions in § 1970.53 have the potential to result in adverse impacts and should require documentation. This commenter used an example of financial assistance that enabled an existing coal plant to continue operations, which could result in greater impacts than enabling the same coal plant to expand operation at greater capacity than before. The commenter recommended that the Agency require environmental documentation for RUS's loan-servicing actions and for its loans for upgrades to generation facilities because many of these actions have the potential for extraordinary circumstances.

Response: Routine financial transactions that provide financial assistance to existing businesses or other entities to facilitate their continuing operations (with no expansion of size or capacity) are categorically excluded under § 1970.53(a) because they do not impose or facilitate the imposition of any new environmental impacts. If the Agency had been involved in the financing for the original construction of the facility, a NEPA document would likely have been prepared at that time. Financial assistance for the expansion of an existing coal plant, as described in the comment, would not qualify for a CE under § 1970.53. The Agency's position on loan-servicing actions, in general, is addressed in the discussion under § 1970.8 and in Section III.C. No change has been made to the regulation based on these comments.

Comment: A commenter recommended that the Agency expand the list of CEs in § 1970.53, involving no

or minimal disturbance, to clearly include the collocation of telecommunications facilities and promote deployment of distributed antenna systems and small cell networks. The commenter stated that collocation of telecommunications facilities on existing infrastructure accelerates deployment of broadband networks without the need to develop duplicative, potentially environmentally disruptive new sites. The commenter provided examples from other agency regulations, including a similar U.S. Department of Energy (DOE) CE at 10 CFR part 1021 Appendix B4.7.

Response: The Agency agrees with the commenter and has added a new CE at § 1970.53(d)(5) in the final rule to categorically exclude the collocation of telecommunications equipment and deployment of distributed antenna systems and small cell networks provided that the latter technologies are not attached to and will not cause adverse effects to historic properties. Related revisions were also made in the final rule to § 1970.53(d)(1), which categorically excludes upgrading and rebuilding existing telecommunication facilities (both wired and wireless) or the addition of aerial telecommunication cables to electric power lines, and the new § 1970.53(d)(2), which categorically excludes burying facilities for communication purposes in previously developed, existing rights-of-way. Additional language has been added to this CE to indicate that its use is intended for areas already committed to urbanized development or rural settlements. The Agency has determined that adding additional aerial cables on existing electric power lines, whether at distribution or transmission voltages, has minimal or no potential for affecting environmental resources. Constuction activities related to adding an additional cable to existing structures, based on Agency experience and other Federal agency practice, typically occur on previously disturbed, existing rights-of-way similar to routine maintenance activities by utility crews.

Section 1970.53(a) Routine Financial Actions

CE § 1970.53(a)(1) [Related to Refinancing of Debt]

Comment: Many commenters recommended that the Agency revise the CE in three ways: (1) Clarify that the debt refinancing covered by the CE is limited to when RUS provides the refinancing or continues to extend credit to the borrower under the refinancing; (2) clarify that because debt refinancing may be undertaken in a debt restructuring, the Agency should include both debt refinancing and debt restructuring in the CE; and (3) remove the proviso that the CE does not apply if the applicant is using refinancing as a means to avoid compliance with environmental requirements. Rather, the commenters stated, the Agency should use the ''extraordinary circumstances'' review to ensure that refinancing or restructuring does not include a feature that makes the exclusion inappropriate. Other commenters asked for clarification on what refinancing actions are covered by this CE, and requested that the proposed rule specify that debt refinancing may require an environmental review, depending on both the nature and purpose of the refinancing.

Response: Based on the number of comments received, this section requires clarification. The Agency reviewed the nature of and use of refinancing. Prepayments, as previously discussed, are different from refinancing. ''Refinancing'' to simply change an interest rate is a servicing action. There are no changes in the scope of the project as originally approved and financed, or no new projects or facilities requiring a new NEPA review. RBS, RHS and RUS each have limited or no authority to ''refinance'' in this manner.

Another type of refinancing occurs if the Agency provides financial assistance to pay off all or a portion of existing debt and the refinancing involves new projects or facilities. At the time the Agency makes a decision to refinance and to provide financial assistance for the new project or facility, the appropriate NEPA review would occur in accordance with § 1970.8(b)(1).

Yet another type of refinancing or other financial assistance involves financing provided by a non-Federal lender and is generally referred to as ''up-front,'' ''bridge,'' ''construction,'' or ''interim'' financing. These actions usually involve short-term temporary financing. The purpose of the temporary financing is that it provides a bridge to and is to be replaced by the Agency at a specified time. The Agency's financial assistance is a replacement of the temporary financing with permanent long-term financing. In all of these cases, the Agency knows in advance that the applicant will request permanent long-term Agency financial assistance, and the applicant and the Agency conduct the appropriate NEPA review before any Agency financial assistance is approved. These actions are covered under § 1970.8(1),'' providing financial assistance.'' For these reasons, the Agency is deleting ''refinancing of debt'' as a CE in § 1970.53(a).

Debt restructuring is a generic term that includes compromising, adjusting, reducing, or charging-off debts or claims and other debt workout options. These types of actions are also included within the definition of servicing action in § 1970.6. However, if additional financial assistance is requested along with any such actions, the Agency would undertake the appropriate NEPA review at that time.

CE § 1970.53(a)(5) [Related to Loan-Servicing Actions]

Comment: A commenter identified a potential inconsistency between § 1970.9(c) which requires the Agency to complete a single environmental document evaluating an applicant's proposal and other activities within the scope of analysis, and § 1970.53(a)(5), which the commenter says seems to allow (and in fact requires under some circumstances) at least two separate reviews. The commenter stated that the Agency cannot take an action but defer some portion of the NEPA analysis to a subsequent review. If what the Agency intends is that an appropriate environmental analysis will occur for a separate and later Agency action, the Agency should remove references to ''such actions'' and ''separate environmental review'' in this CE. Commenters also expressed confusion about the Agency's reference to ''such actions [not being] ripe for immediate review'' and whether it was referring to a loan-servicing action or to reasonably foreseeable construction or changes in operation. Further, as noted in Section III.C, many commenters did not agree with the Agency's inclusion of loan-servicing actions as major Federal actions requiring NEPA analysis.

Response: As explained in Section III.C, servicing actions are directly related to financial assistance and do not require separate NEPA review. Sections 1970.6 and 1970.8 have been revised to clarify the definition and treatment of servicing actions, and conforming changes have been made to § 1970.53(a)(5). Specifically, the Agency is removing servicing actions as a CE in § 1970.53(a)(5) in the final rule. Other revisions to proposed § 1970.53(a)(5), re-numbered as § 1970.53(a)(4) in the final rule, include removal of the last sentence relating to actions not being ripe for immediate review to help eliminate any confusion related to this matter.

With respect to § 1970.9, there is no inconsistency between § 1970.9 and § 1970.53(a)(5) in the proposed rule.

Section 1970.9 simply explains the three types of NEPA reviews: CE, EA and EIS. Subsection (c) notes that, for each type, the Agency will evaluate the proposal and closely related actions in the same NEPA document. Proposed § 1970.53(a)(5) described one type of action that is categorically excluded from formal NEPA documentation, although not NEPA review. To the extent that separate reviews are required, they would occur at different times and under different circumstances. See also the discussion of modifications to § 1970.9(c), above.

Comment: A commenter was unable to find where § 1970.53(a) covered subsequent loans for project cost overruns and recommended that, if it was not covered, then it needed to be cited as a CE without documentation.

Response: Providing subsequent loans for project cost overruns was not specifically addressed in the draft rule but has been added to the final rule as a CE without documentation. Additional funding for a cost overrun would involve financial assistance and thus is subject to NEPA review. However, a request for additional funding to address a cost overrun where there is no substantial change to the original proposal would be eligible for a CE, and added as a new CE in § 1970.53(a)(5). This addition is consistent with the CE currently included in 7 CFR 1794.21(c)(4).

CE § 1970.53(c) Minor Construction Proposals

Comment: One commenter stated that the 15-acre land-clearing threshold for minimal disturbance under proposed § 1970.53(c)(9) should be applied to all proposed actions. Therefore, if less than 15 acres of land clearing was required for a project, it would fall under proposed § 1970.53(c)(9).

Response: Proposed § 1970.53(c)(9) refers to only land clearing operations (*e.g.,* timber harvesting) that would not include any site development activities after the land was cleared. This CE does not apply to any site development activities that may occur on the land after it was cleared. CEs in § 1970.54, CEs involving small-scale development with an environmental report, use a 10-acre threshold. The use of this 10-acre limit is based on the current threshold of 10 acres currently found in § 1794.21(a)(22), which allows construction of facilities and buildings involving no more than 10 acres of physical disturbance. The Agency has made no change to the final regulation with respect to that threshold value. To eliminate any confusion over the 15-acre limit for land clearing in CE § 1970.53(c)(9), the Agency has revised this CE to clarify that it refers to biomass harvesting and has moved the CE to 1970.54(a)(10).

Comment: A commenter requested that the replacement of existing water and sewer lines in the same trench should be considered as a CE without documentation, citing reasons that there will be no new disturbance of additional area and the new lines are just replacing the older existing ones with no new additional connections.

Response: The Agency agrees and has added a new CE under § 1970.53(c) (specifically, § 1970.53(c)(6) in the final rule) that allows for the replacement of existing water and sewer lines under certain conditions. Any improvements or expansion of an existing utility network, which could include additional ground disturbance or trigger new growth or development, would remain a CE under § 1970.54(b)(2) but would require the preparation of an environmental report.

Proposed CE § 1970.53(c)(7) Related to New Utility Service Connections

Comment: A commenter recommended that the Agency make clear that its proposed rules are technology-neutral and include wireless technologies. The commenter stated that the proposed rules are inconsistent in their treatment of telecommunications facilities and do not uniformly track the language of the existing rules, which could confuse the interpretation of the new rules. Some examples were provided by the commenter (*e.g.,* reference to utility service connections), where use of ''utility'' as a substitute for ''power lines, substations, or telecommunications facilities'' may introduce ambiguity. The commenter also recommended that the Agency consider adopting environmental rules that have already proven effective by other Federal agencies.

Response: It is the Agency's intent that wireless telecommunications infrastructure be included in the broader term ''utility'' and that wireless telecommunications infrastructure would be eligible for this and other CEs if the criteria are met. The proposed rule included a class of CEs relating to energy or telecommunication proposals. The Agency has clarified in the final rule (see § 1970.53(d)(1)) that telecommunications facilities include both wired and wireless telecommunications infrastructure and they would also be eligible for CEs, similar to other utilities, as long as the criteria were met. In addition, the Agency has included in the new § 1970.53(d)(2) additional types of facilities for communication purposes as discussed elsewhere in the rule.

CE § 1970.53(c)(2) and § 1970.54(c)(12) Related to Pollution Prevention

Comment: Many commenters requested that these two CEs be amended to apply to activities done for purposes of ''pollution control'' in addition to ''pollution prevention'' so as to apply to pollution control devices more generally. The commenters requested that these CEs also apply to decommissioning and shutdown measures, in addition to repairs, upgrades, modifications, or enhancement.

Response: The Agency agrees and has added activities done for purposes of ''pollution control.'' However, the Agency disagrees that these CEs should be made applicable to decommissioning and shutdown measures. Because Agency loans are associated with assets as collateral, it is unlikely that the Agency could provide financial assistance for an asset with no remaining useful life and that asset could not serve as collateral for the Agency, which are the conditions which must be met for this CE.

CE § 1970.53(c)(2), § 1970.53(d)(9), and § 1970.54(c)(12)

Comments: Many commenters requested that the Agency revise ''energy efficiency'' to ''energy efficiency, including heat rate efficiency'' to ensure that projects to upgrade or modify units to improve heat rate efficiencies, or to return those efficiencies to the original design rates, are covered in the CE. They stated that improvements to heat rate efficiencies allow a generator to generate the same amount of electricity using less fuel and thus generate and emit fewer pollutants. Therefore, these projects are unlikely to have significant environmental effects and should be included in these CEs.

Response: The Agency agrees and has revised language in the Final Rule to add ''heat rate efficiency'' to the phrase ''energy efficiency'' as appropriate.

CE § 1970.53(d)(1) Related to Energy or Telecommunication Proposals (Pole Replacements)

Comment: The commenter noted a potential contradiction between proposed § 1970.53(d)(1) and § 1794.22(a)(5) in the existing RUS regulations. According to the commenter, because some pole replacements and uprating projects using phase raisers and associated reconductoring involve minimal environmental disturbance or risk, these activities should fit within a CE that

would not require environmental documentation by the applicant.

Response: The Agency agrees that no documentation would be necessary for this CE and has included it within § 1970.53 which includes no applicant documentation requirements. This is a change from what is currently in § 1794.22(a)(5) which requires an environmental report. The renumbered and final § 1970.53(d)(3) uses a component of the existing § 1794.22(a)(5) to encompass pole replacement (less than 20 percent), which the Agency has determined, based on past experience, does not result in significant impact to environmental resources. Rather than retain the 20 percent threshold reference used in § 1794.22(a)(5), the Agency added provisions similar to an existing CE promulgated by the U.S. Bureau of Land Management relating to upgrading of existing facilities which involve no additional disturbance outside the right-of-way boundary. Such provisions help ensure there is no potential for significant impact and there is no need for additional documentation.

CE § 1970.53(d)(2) Related to Electric Distribution Lines

Comment: Commenters requested clarification on the definition of ''rebuilding'' as used in this CE. They identified various examples of types of actions and asked whether the Agency would consider them as ''rebuilding'' or not, such as: (1) The re-spanning of existing overhead line and overhead-to-underground conversions; and (2) rebuilding in existing disturbed utility rights-of-way (transmission lines, roads, pipelines), and in or adjacent to existing buried utility or pipeline rights-of-way.

Response: The Agency agrees that the term ''rebuilding'' warrants further clarification and has revised this CE to describe what ''rebuilding'' includes, *i.e.,* pole replacements within existing rights-of-way similar to an existing CE promulgated by the U.S. Bureau of Land Management relating to upgrading of existing facilities which involve no additional disturbance outside the right-of-way boundary. Such provisions help ensure there is no potential for significant impact and there is no need for additional documentation. In addition, the CE does not include overhead-to-underground conversions. These changes were made to the renumbered and final § 1970.53(d)(4).

CE § 1970.53(d)(9) Related to Environmental Improvements

Comment: Many commenters stated that the conditions imposed in this CE would prevent its use for the installation of most or all pollution control devices by stipulating the CE cannot apply if the improvement results in an increase in pollutant emissions, effluent discharges, or waste products. The commenters provided examples of some pollution control devices that reduce emissions of one type of pollutant but increase an emission or discharge of another pollutant or waste product. They stated that a CE, rather than a longer and more resource-intensive EA, is appropriate even if installation of a pollution control device at a facility allows it to remain in operation longer and delays introduction of other sources of electric generation that might emit fewer pollutants. They requested that the Agency recognize that installation of these pollution control devices usually occurs in close coordination with the appropriate permitting authorities and that the Agency should defer to these permitting authorities in determining whether the activities are unlikely to have significant environmental effects or not. The commenters requested that the Agency rewrite the CE to encompass pollution control devices more broadly; specifically that the CE should apply to the installation of pollution control devices consistent with applicable Federal, tribal, state or local requirements or that are approved by relevant permitting authorities or consistent with existing permits, similar to a Department of Homeland Security CE that applies to pollution prevention and pollution control equipment. These commenters further recommended that the Agency include as a CE a borrower's proposal to shut down, decommission, or remove an asset from service in order to meet operational or pollution control targets.

In contrast, other commenters stated that the Agency's decision to fund the addition, replacement, or upgrade of pollution control equipment at existing electric generation facilities is environmentally significant and should be subject to NEPA review. Specific concerns included the effect that such actions can have on extending the working life of a facility with environmental impacts that would not otherwise be financially viable. These commenters recommended that loans for facilities under this CE should entail full environmental review for significant actions and, at a minimum, require environmental documentation where a CE is applied.

Response: With respect to the comments suggesting that the installation of any pollution control device should be categorically excluded without qualification, the Agency has determined that such actions could have significant environmental impacts unless limitations are in place. While installation of pollution control devices is typically done in coordination with permitting agencies, that fact does not excuse the Agency from complying with NEPA. In addition, the fact that a permitting agency may authorize installation of pollution control equipment does not indicate that the action would have no significant environmental impacts. Permitting agencies only determine whether applicable regulatory standards are met, not whether environmental impacts could be significant.

Although the renumbered and final § 1970.53(d)(11) requires that the proposed action not cause an increase in pollutant emissions, effluent discharges, or waste products, a CE in § 1970.54(c)(12) applies to modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility and that are undertaken for the purpose of improving energy efficiency, promoting pollution prevention, safety, reliability, or security. Thus, installation of a pollution control device that would not meet the requirements of § 1970.53(d)(11) could still be eligible for a CE under § 1970.54(c)(12). To support the application of this CE, the applicant would be required to prepare and submit an environmental report. Such documentation would likely include waste management plans and required permits to verify proper handling and disposal of wastes. The Agency has determined that the conditions included in § 1970.53(d)(11) and the documentation requirements of § 1970.54(c)(12) provide the Agency with sufficient assurance that no significant impact would occur as a result of a proposal to install pollution control equipment.

Regarding the suggestion that § 1970.53(d)(11) include actions when the borrower shuts down or decommissions or removes an asset from service to meet operational or pollution control targets, the Agency does not provide financing for decommissioning as discussed above. For this reason, the Agency has not included decommissioning as a CE.

With respect to the comments suggesting that the addition, replacement, or upgrade of pollution control equipment at existing electric generation facilities should be the subject of a full environmental review, the Agency believes that the conditions included in this CE (*i.e.,* proposal does not result in a change to the design capacity or function of the facility and

does not result in an increase in pollutants) are sufficient to ensure that such actions would not result in significant environmental impacts. There are numerous factors that influence the useful life of a facility. It is a complicated issue and also subject to Federal and state control and jurisdiction. It would be difficult for the Agency to determine whether its financial assistance for an addition, replacement, or upgrade of pollution control equipment directly contributed to an extension of useful life, or simply was used to meet environmental requirements. As such, the Agency does not believe it is appropriate to require full environmental review.

§ 1970.54 CEs Involving Small-Scale Development With an Environmental Report

Comment: A commenter requested the Agency to provide additional guidance for documentation requirements to address CE decisions proposed in § 1970.54 and to maintain the current criteria in § 1794.21 and § 1794.22. This commenter also described how the Agency currently requires the applicant to prepare and submit a project description or environmental report for projects that meet appropriate criteria for a CE; and referred to checklists the Agency had used in the past, and guidance previously provided in RUS Bulletin 1974–600 which documents the categories of projects requiring an environmental report. Another commenter identified the CE documentation that should be included (a description of proposed action, the rationale for why the action fits within a CE, and confirmation that no extraordinary circumstances exist), and stated that with respect to the particular actions relevant to this commenter, the use of a construction work plan is the most efficient means for documentation. Another commenter recommended that the Agency develop a NEPA questionnaire, perhaps similar to DOE's Smart Grid Investment Grant Program, for submittal with construction work plans—allowing Agency staff to determine what level of NEPA review will be required, and to satisfy the requirements contained in § 1970.9(a); and that environmental documents should only be required for projects that are realized. This commenter also stated that the use of a questionnaire was mentioned in the preamble for the proposed rule but not included in the rule language itself, and encouraged the Agency to formalize a NEPA questionnaire or short evaluation format that could be used in place of the RUS environmental report referred to in the existing RUS regulations.

Response: The proposed rule suggested the elimination of the use of environmental reports in lieu of a form of ''environmental documentation'' that had been unnamed at the time; however, in the final rule, the Agency recognizes that continued use of an environmental report (which was required by RUS in part 1794) will be an efficient way to capture the necessary information and serve as the required CE documentation. The Agency has developed guidance for preparing environmental reports (ERs) for CEs described in § 1970.54. This guidance is available on the Agency's Web site. The information to be captured will be consistent with the documentation content requirements identified by the commenter. Program specific guides and forms are not published as part of the final rule but will be available on agency Web sites as separate guidance to applicants.

CE § 1970.54(b)(1) Related to Small-Scale Corridor Development

Comment: The commenter recommended that the construction of roads, sidewalks, etc., in existing areas should be moved to § 1970.53 as a CE without documentation. Similar to the argument for replacing existing utility lines in the same trench area, the re-construction or overlay of roads in an existing right-of-way does not require the disturbance of additional area and thus would not impact the environment.

Response: The construction or repair of roads, streets and sidewalks would likely include new ground disturbance with the potential for significant environmental impact, depending on what resources may be present and potentially affected. The difference between § 1970.54(b)(1) and previous CEs that did not require documentation is that § 1970.54(b)(1) includes ''construction'' while the other CEs included re-construction, replacement or restoration activities. Section 1970.53(c)(3) does categorically exclude proposals involving minimal external modifications, restoration, and replacement in kind. For these reasons, no change has been made to this section in response to this comment.

CE § 1970.54(b)(3) Related to Small-Scale Corridor Development

Comment: A commenter stated that the documentation requirements associated with § 1970.54(b)(3), relating to utility line replacement required by a non-Agency road re-construction project, will hold up road construction for the Agency for at least 2 months and has the potential to back up road construction into the next year putting budgets at risk given the review requirements, including a minimum 30-day public comment period. The commenter also pointed out that even if a NEPA review were required for the road re-construction activity undertaken by non-Agency applicants, the non-Agency applicant is under no obligation to share the studies with the utilities that are required to move their lines because of the road re-construction. Any additional review required by the Agency related to utility replacement or relocation would duplicate the NEPA review by the non-Agency lead which is the opposite of the intent of proposed part 1970.

Response: This particular CE envisions that the replacement of utility lines is necessitated by road reconstruction activities that have been undertaken by others (*e.g.,* state or Federal transportation agency). The use of a CE (rather than an EA) for the utility replacement portion of the work is expected to shorten the current review process such that it should not take two months; as a CE, it would not require a 30-day public comment period. Thus, it is unlikely that road construction would be delayed by the application of this CE. The Agency requirement for an environmental report would ensure that no extraordinary circumstances would be present in such projects, given that ground disturbing activities would be involved. In the event that the associated road reconstruction does include its own separate NEPA review, the applicant could further streamline the CE documentation process by referencing and providing the documentation prepared by the project (road construction) proponent as part of the environmental report required by the Agency. No change has been made to this section in response to this comment.

With regard to the commenter's assertion that a non-Agency applicant is under no obligation to share the studies with the utilities that are required to move their lines because of the road re-construction, the Agency has never experienced the reluctance to share environmental studies, nor has it ever been denied, upon request, copies of such studies. In most if not all cases, the environmental studies referenced are being prepared for either a state or Federal agency and once the studies are submitted to that agency, the study is public information (unless the studies contain information that is being withheld from disclosure to the public because, for example, it contains data about the location, character, or

ownership of a historic property). If an applicant experiences a reluctance to share relevant studies, the applicant is encouraged to contact the Agency and Agency staff will request copies from the state or Federal agency involved in the activity.

CE § 1970.54(c) Related to Small-Scale Energy Proposals

Comment: Commenters requested revision and clarification for several of the CEs within this category relating to the proposed distance limits on small-scale energy proposals (*e.g.,* transmission lines). They stated that the Agency is disregarding its own experience and instead relying on the experience of another agency (*i.e.,* DOE) in determining the threshold distance limits, when there is no evidence that there are problems with the limits included in the existing RUS regulations, *e.g.,* the existing 25-mile transmission line limit in § 1794.22(a)(1) as compared to the 10-mile limit in proposed § 1970.54(c)(2). Commenters did not agree that the proposed regulations needed to be consistent with DOE regulations and did not find compelling reasons for changing the existing CE requirements such as those contained in § 1794.22(a)(1). The commenters recommended that the Agency rely on its own experience and remove the new length restrictions.

Response: In proposing the new limits, the Agency saw merit in developing regulations consistent with the DOE regulations on this matter, such as benefiting from DOE's experience that transmission lines within certain limits have not resulted in significant environmental impacts. However, the commenters are correct that the Agency's own decades-long experience with several of the CEs justifies use of the existing limitations, and the Agency agrees that RUS' administrative record provides a lengthy historical context. After further consideration, the Agency is reverting to the original language and threshold distance values in § 1794.22(a)(1) to replace the limits in proposed § 1970.54(c)(2). These limits for new construction are also being used, for consistency, to support the threshold distance in § 1970.54(c)(3) related to reconstruction. In general, reconstruction and minor relocations would have less impact than new construction.

F. Specific Comments on Proposed Rule—Subpart C

Section 1970.101 General

Comment: A commenter stated that the Agency will not have the resources available to engage in the level of consultation needed to meet the requirements of § 1970.101(c), which requires the Agency to determine the proper level of classification of the applicant's proposal; and § 1970.103, which requires the Agency to identify any unique environmental requirements associated with the applicant's proposal. The commenter requests additional guidance on how the Agency will determine ''the proper classification of an applicant's proposal.''

Response: The Agency currently expends resources to properly classify an applicant's proposal under the existing NEPA regulations. The Agency expects the promulgation of the updated NEPA regulations to decrease the number of environmental reviews and to streamline the reviews that are undertaken. One intent of the revised NEPA regulations is to streamline the Agency NEPA process, particularly for CEs; this will likely decrease the Agency's paperwork burden and review times and conserve Agency resources. Applicants also can help conserve Agency resources by fully describing the action for which they are seeking financial assistance and by submitting complete information packages, as addressed in the final rule. No change has been made to the proposed regulation in response to this comment.

Section 1970.102 Preparation of EAs

Comment: A commenter requested that the Agency clarify the language used in the preamble relating to environmental reports and whether these categories of reports will still be used by RUS. Under the existing RUS regulations, environmental reports are prepared by applicants and normally serve as the EA (or CEs if appropriate) following RUS review and approval. In addition, the commenter requested that the Agency provide guidance regarding when the 14-day or 30-day public comment period will be used. In particular, the commenter asked why, as in the example provided in the preamble to the draft regulation (79 FR at 6755), a 14-day comment period would be needed if ''there is no public concern.''

Response: Under the existing RUS regulations, environmental reports are prepared by applicants in support of both CEs and EAs; for EAs, the environmental report normally served as the EA following RUS review and approval as the commenter described. Under the final rule, the Agency has specifically eliminated the requirement for environmental reports for EAs. Applicants are required to prepare EAs when an EA is required (§ 1970.5(b)(3)(iv)(C)). However, under the final rule, the environmental documentation that applicants are required to prepare for certain CEs are being referred to as environmental reports. A definition of environmental report has been added to § 1970.6 to clarify this term. With respect to the comment period, the Agency may believe that there is ''likely no public concern'' (which would make a 14-day comment period appropriate), but would not know for sure until the EA was made available for public review. The preamble language in the proposed rule also provided an example of when a 30-day review period would be appropriate (79 FR at 6755). No change has been made to the proposed regulation in response to this comment. The Agency has developed guidance on effective public involvement that addresses review and comment periods on EAs. That guidance will be made available on its Web site.

Section 1970.103 Supplementing EAs

Comment: Many commenters recommended that the Agency revise its standards for supplementing an EA to be consistent with CEQ regulations and the Agency's standards for supplementing an EIS, by replacing inconsistent language in the first sentence with the language used in § 1970.155(a)(1) and (2). They stated that 1970.103 strays from the CEQ regulation in several ways, including: (1) The proposed supplemental EA language omits the word ''significant'' and only uses the phrase ''new relevant environmental information''; (2) the proposed supplemental EA provision that supplementation may be necessary after issuance of an EA or FONSI differs from CEQ regulations, and language in § 1970.155 provides that supplementing only occurs before the action is taken; and (3) the provision governing supplemental EAs omits a key phrase in CEQ regulations where the changes or new information (to be considered) are ''relevant to environmental concerns.'' Commenters requested that the Agency include exclusions providing that a supplemental analysis is not required where new information or new circumstances result in a lessening of adverse environmental impacts previously evaluated without causing other impacts that are significant and were not previously evaluated. One commenter also stated that there does not appear to be any definition of what constitutes a substantial change, and requested additional guidance on this topic. Of particular concern to one commenter was a situation where the

changes are related to project modifications made at the direction of a landowner or a state public utility commission (*e.g.,* as part of regulatory process to build new transmission facilities and the associated routing considerations).

Response: The Agency disagrees that there is any inconsistency between the cited regulations. The language in § 1970.155 is consistent with the CEQ regulations at 40 CFR 1502.9(c). The language in § 1970.103 does not need to be consistent with either § 1970.155 or the CEQ regulations because it addresses supplementing EAs, which is not addressed in either the CEQ regulations or in § 1970.155. Further, § 1970.103 notes that new information *may* require supplementation, but supplementation is not always required. The word ''significant'' is used in § 1970.155 because it refers to supplementation of EISs and is consistent with the CEQ regulations; ''substantial'' change is a more appropriate term relating to an EA than ''significant.'' Whether a change is considered ''substantial'' will depend on the circumstances. In addition, by using the term ''relevant environmental information,'' the Agency intends that any new information must be relevant to the potential environmental impacts of the proposal that was the subject of the EA.

With respect to the suggestion that supplementing an EA not be required where new information or new circumstances result in a lessening of adverse environmental impacts, the Agency notes that such a determination would not be possible unless an evaluation of previously evaluated impacts and potential new impacts were conducted. In other words, the Agency must prepare a supplemental EA in order to evaluate whether new information or circumstances would result in an increase or a decrease in environmental impacts as compared to those previously evaluated.

The Agency has clarified § 1970.103 to state that supplementing an EA may be required after the issuance of an EA or FONSI, but before the action has been implemented. No other changes have been made in the final rule relating to § 1970.103 in response to this comment.

G. Specific Comments on Proposed Rule—Subpart D

Section 1970.151 General

Comment: A commenter disagreed with the exclusion of ''other than gas-fired combustion turbines, of more than 50 average MW output, and all associated electric transmission facilities'' from ''new electric generating facilities'' in the non-exclusive list of Agency actions for which an EIS is required. The commenter stated that the impacts from natural gas can be significant and points to the emissions of greenhouse gases and the recent boom in hydraulic fracturing as concerns that should be taken into account.

Response: In accordance with § 1970.101, the potential impacts of natural gas combustion turbines would be evaluated in an EA. If, on the basis of the EA, the Agency determines that the environmental impacts could be significant, an EIS will be prepared. The preparation of an EA is consistent with current RUS regulations at § 1794.25(a)(1). Because all previous Agency EAs for gas-fired combustion turbines of more than 50 average MW output have resulted in FONSIs, an EA—not an EIS—is the appropriate level of NEPA review.

Comment: A commenter stated that proposed § 1970.151 is as flawed as proposed § 1970.8(b) in that the Agency has determined an EIS is required without any analysis of whether such actions listed are a ''major Federal action.'' Rather, the commenter states that the Agency should decide on a case-by-case basis as to whether the action is a major Federal action before requiring an EIS. With respect to the exception for gas-fired turbines in § 1970.151(b)(4), the commenter states that ''gas-fired turbine'' may not be an inclusive enough term and offers a more appropriate term of ''gas-fired prime movers'' to include gas-fired turbines and gas engines.

Response: The Agency agrees that the use of the term ''gas-fired prime movers'' (defined as gas-fired turbines and gas engines) is more inclusive and appropriate for this section and has changed the language in the final rule (§ 1970.151(b)(4)). In addition, the Agency is modifying the language in this section to make it clear that the Agency will prepare an EIS for new electric generating facilities including all new associated electric transmission facilities, except for gas-fired prime movers. This change is intended to clarify the scope of the proposed action to be analyzed in an EIS.

However, the Agency does not agree to the requested change in identifying specific actions that require an EIS. Section 1970.151 follows the CEQ regulations that require agencies to identify classes of action that normally require EISs (40 CFR 1507.3(b)(2)(i)). In addition, as noted in the CEQ regulations, ''major reinforces but does not have a meaning independent of significantly'' (40 CFR 1508.18). No other change has been made to this section in response to this comment.

Section 1970.152 EIS Funding and Professional Services

Comment: Commenters stated that applicants should be capable of securing outside professional environmental services for EISs without using the Federal procurement process, and want the rule to be clear that Federal Acquisition Regulations do not apply.

Response: The Agency agrees that applicants may and should secure outside environmental professional services for EISs without the use of or reliance on the Federal procurement process. The Agency does support the use of a third-party contracting process as described in Question 16 in CEQ's *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (46 FR 18026) where CEQ stated that the ''Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.'' While the Agency's policy and standard practice is to solicit and procure professional services of qualified contractors under a third-party contracting process that is consistent with 40 CFR 1506.5(c), the Agency reserves the right to consider alternate procurement methods. To avoid any conflicts of interest, the Agency maintains responsibility for selecting the contractor, in accordance with 40 CFR 1506.5(c), and the applicant must not initiate any procurement of professional services without written prior approval of the Agency. This has been clarified in the final rule.

IV. Section-by-Section Analysis of the Final Agency NEPA Regulation

This section provides a detailed discussion of the final Agency NEPA rule. For each section, the changes made to the final rule are briefly described, along with the reason for the change. In most cases, the reason for the change is addressed in Section III in response to public comments. In a few instances, the Agency has initiated the change, such as to include Executive Orders and a Departmental Regulation that were either overlooked in the proposed rule or issued since publication of the proposed rule, provide further clarification of an important point, or correct a previous oversight. Overall, the final rule includes the same language as the proposed rule language which, in turn, is the same as an existing regulation or includes only minor modifications. This section only

includes those sections of the final rule that have been revised since publication of the proposed rule.

A. Subpart A—Environmental Policies

Authority (§ 1970.3)

The Agency has included references to Executive Orders 13653, ''Preparing the United States for the Impacts of Climate Change'', 13690, ''Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input'', and 13693, ''Planning for Federal Sustainability in the Next Decade'' in the final rule. Executive Order 13653 was not included in the proposed rule, and Orders 13690 and 13693 were issued by the President in January 2015 and March 2015, respectively, after publication of the proposed rule.

Definitions and Acronyms (§ 1970.6)

The Agency has revised the definitions of applicant, guaranteed lender, financial assistance, servicing actions, and previously disturbed or developed land in the final rule in order to provide further clarification in response to public comments. In particular, a definition of servicing actions has been added to clarify what actions are included (*e.g.,* consents and approvals). Although not in response to public comments, the Agency has changed ''loan-servicing actions'' to the more inclusive ''servicing actions'' to cover routine post-financial assistance actions related to guarantees, grants and cooperative agreements too. The Agency has also added definitions in the final rule for the following new terms to help clarify commenter confusion over their use in the proposed rule: Cooperative agreement, environmental report, grant, loan, loan guarantee, lien sharing, and lien subordination. The Agency added a definition of substantial improvement as this term is used in regard to flood impact evaluations; it added a definition of cooperative agreement as these have been added as a type of financial assistance; it also added a definition of average megawatt to substantiate the use of this term in defining classes of actions. The Agency revised the definition of guaranteed lender to make it clear that the Federal Financing Bank (FFB) is not a guaranteed lender for the purposes of this regulation because RUS prepares the appropriate NEPA documentation, performs underwriting, and collects and services the loans for FFB, which is unlike the typical guarantor role for other Agency programs. Finally, the Agency added two significant new programs and three existing programs to the list of programs in the definition of multi-tier action; the new programs are the Energy Efficiency and Conservation Loan Program and the Rural Energy Savings Program, and the existing programs are Section 313A of the Rural Electrification Act of 1936, Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes, the Rural Microentrepeneur Assistance Program, and the Rural Business Development Grant Program.

Actions Requiring Environmental Review (§ 1970.8)

The Agency has revised § 1970.8(a) and (b) to: (1) Delete the word ''major'' when referring to a Federal action to avoid confusion; and (2) require that requests for lien subordination be the subject of NEPA review. The Agency also added new paragraphs (d) and (e) to make it clear that lien sharing is not a Federal action for purposes of NEPA (unless additional financial assistance is included in the request for lien sharing) and that servicing actions do not require separate NEPA reviews as discussed above. With respect to servicing actions, the Agency has determined that such actions are routine, ministerial or administrative actions that occur as part of the monitoring and administering of financial assistance. Thus, the Agency determined that these subsequent actions fall within the original environmental review of the financial assistance application and will not be the subject of new or additional NEPA reviews. Accordingly, the Agency revised § 1970.8(b)(2) to: (1) Eliminate loan-servicing actions and related examples of consents and approvals and lien sharing as actions requiring NEPA review; (2) further clarify which post-financial assistance actions are considered Federal actions (*e.g.,* lien subordination); and (3) add one new action requiring NEPA review—one that includes a substantial change in scope of projects receiving financial assistance not previously considered (§ 1970.8(b)(2)(iii)).

Levels of Environmental Review (§ 1970.9)

In response to public comment, the Agency clarified in the final sentence in § 1970.9(d) that any request for additional environmental information would occur prior to financial assistance being made.

Public Involvement (§ 1970.14)

Text was moved from § 1970.153(a)(2) to § 1970.14(d)(2) regarding the applicant's responsibility to obtain proof of publication of notices to clarify that this responsibility applies to all levels of environmental review.

B. Subpart B—NEPA Categorical Exclusions

Applying CEs (§ 1970.51)

The Agency has clarified the language in § 1970.51(b)(3) to better describe the applicability of a CE relative to a cumulative action, consistent with 40 CFR 1508.25(a)(2).

Extraordinary Circumstances (§ 1970.52)

The Agency added text to paragraph (b)(4)(iii) to explain the circumstances under which an alternatives analysis is or is not required.

The Agency modified paragraph (b)(4)(iv) to delete reference to specific executive orders relating to floodplains, consistent with Agency rulemaking procedures. Language was also added to this paragraph to include a reference to substantial improvements and explain requirements related to purchasing structures within floodplains.

CEs Involving No or Minimal Disturbance Without an Environmental Report (§ 1970.53)

The Agency added text to the introduction to explain how certain actions in this section will be identified by the Agency as requiring no further review under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act.

1970.53(a) Routine Financial Actions

The Agency deleted proposed § 1970.53(a)(1) referring to refinancing of debt and significantly modified proposed § 1970.53(a)(5) to eliminate servicing actions as a CE because they are not Federal actions separate from the original Federal financing, so they do not need a CE. As explained in Section III, ''refinancing'' of debt to change interest rate without additional financing is included in the definition of servicing actions in final § 1970.6, and servicing actions are routine, ministerial, or administrative components of financial assistance and do not require separate NEPA review. Language has been added to § 1970.53 (a)(2)(iii) to include replacement or conversion of equipment to enable use of renewable fuels. Section 1970.53(a)(5) (renumbered in the final rule as § 1970.53(a)(4)) has been revised so that it relates only to the sale or lease of Agency-owned real property.

The Agency has added back a CE (see § 1970.53(a)(5)) to address financial assistance for cost overruns where there is no change to the proposal as originally approved. While providing

additional financial assistance for cost overruns was not specifically addressed in the proposed rule, it is included in existing RUS regulations at 7 CFR 1794.21(c)(4).

The Agency has revised the language in § 1970.53(a)(7) to clarify that this CE is for a guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the sole purpose of (a) refinancing existing debt instruments of a lender organized on a not-for-profit basis, or (b) for the purpose of prepaying outstanding notes or bonds made to or guaranteed by the Agency. The Agency reviewed the actions under Section 313A(a) and determined that these refinancings were the primary types of actions taken under this statute. The primary refinancing done under Section 313A(a) involves outstanding bonds or notes of the not-for-profit lender itself. These were issued by the not-for-profit lender for projects or facilities already constructed. Prepayment of outstanding bonds or notes of the Agency involves projects or facilities that previously were reviewed by the Agency for the appropriate environmental action when it provided the financial assistance. All other types of actions under Section 313A(a) will be a multi-tier action under § 1970.55.

1970.53(c) Minor Construction Proposals

The agency has revised § 1970.53(c)(1) to change ''location'' to ''geographic scope'' for clarity and to ensure location includes the scope of the minor amendments or revisions.

The Agency has revised § 1970.53(c)(2) in response to public comments to clarify that energy efficiency includes heat rate efficiency, and to add activities done for purposes of ''pollution control.'' Language was also added to this section to include replacement or conversion of equipment to enable use of renewable fuels. The Agency also deleted the terms ''fixtures'' and ''reconstruction'' to account for any potential Section 106 concerns.

The Agency has added a new CE (§ 1970.53(c)(6)), in response to public comments, that allows for the replacement of existing water and sewer lines under certain conditions. Any improvements or expansion of an existing utility network, which could include additional ground disturbance or trigger new growth or development, will remain a CE under § 1970.54(b)(2) and will require an environmental report. Proposed CEs in § 1970.53(c)(6) through (c)(8) have been renumbered as § 1970.53(c)(7) through (c)(9).

The Agency has revised the proposed § 1970.53(c)(9) in response to public comments, to clarify that this CE refers to the *harvesting* of no more than 15 acres of vegetative biomass under specific conditions. This clarification was made to eliminate any confusion over the 10-acre limit for site development in § 1970.54(a). The CE has been moved to § 1970.54(a)(10) to account for potential impacts not previously considered. Proposed § 1970.53(c)(10) for conversion of pastureland to agricultural production was deleted because it was determined not to be relevant to Agency programs.

1970.53(d) Energy or Telecommunication Proposals

The Agency has revised § 1970.53(d)(1), in response to public comments, to clarify the Agency's intent that wireless telecommunications infrastructure is included in the broader term under telecommunications ''facilities'' and that wireless telecommunications technologies are eligible for this and other CEs if the criteria are met. The term ''changes'' was also revised for clarification to ''upgrading or rebuilding.'' The addition or attachment of aerial cables ''for communication purposes'' to electric power lines also has been added to this CE. The phrase was part of § 1970.53(d)(3) in the proposed rule. In addition, references to changes to transmission lines were revised and moved to the renumbered 1970.53(d)(3).

Also in response to public comments, the Agency has added a new CE (see § 1970.53(d)(5)) for collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks. The final CE includes certain conditions related to the effects on historic properties.

The Agency also made conforming changes to the remaining CEs in § 1970.53(d) as follows:

- Added a new § 1970.53(d)(2) to create a separate CE for a portion of the old § 1970.53(d)(1). This was done for clarity. Changed the term ''telecommunication cables'' previously used in § 1970.53(d)(3) to ''facilities for communication purposes'' in § 1970.53(d)(2) to include smartgrid proposals.
- Revised § 1970.53(d)(4) (numbered as § 1970.53(d)(2) in the proposed rule), in response to public comments, to clarify what is meant by ''rebuilding'' of electric distribution lines. The final CE describes that ''rebuilding'' includes pole replacements within existing ROWs, but not overhead-to-underground conversions. The phrase ''telecommunication facilities'' was deleted and those actions were added to the final § 1970.53(d)(1). Language was also added to specify that actions eligible for this CE must not affect the environment beyond the previously developed, existing rights-of-way.
- Added language to § 1970.53(d)(7) (numbered as § 1970.53(d)(5) in proposed rule) to include installation adjacent to existing structures that would not affect the environment beyond the previously developed facility area and stated that the CE would not apply if there were adverse effects to historic properties.

The Agency has renumbered the subsequent CEs in § 1970.53(d)(6) through (9) as § 1970.53(d)(8) through (11) and made a minor edit to § 1970.53(d)(10) (numbered as § 1970.53(d)(8) in the proposed rule) for clarity. The term ''power'' was deleted between electric and transmission; the Agency determined it was redundant.

1970.53(e) Emergency Actions

Section 1970.53(e) was added to address actions necessary in emergency situations. This CE was inadvertently left out of the proposed rule. It was present in § 1794.21(a)(4) and § 1940.322(b). The subsequent CEs in § 1970.53(e) through (g) have been renumbered as § 1970.53(f) through (h).

CEs Involving Small-Scale Development With an Environmental Report (§ 1970.54)

1970.54(b) Small-Scale Corridor Development

The Agency deleted § 1970.54(b)(4)(''Construction of new distribution lines and associated facilities less than 69 kilovolts (kV)'') because it determined that this CE is addressed in § 1970.54(c)(2).

The Agency clarified proposed § 1970.54(b)(4)(formerly (b)(5)), which requires environmental documentation (*i.e.,* an environmental report), to help distinguish it from a similar CE in § 1970.53(d)(4) that does not require environmental documentation. Both CEs involve actions relating to telecommunications facilities. The Agency also revised this CE by adding ''new linear'' telecommunication facilities to provide more descriptive language and to distinguish it from § 1970.53(d)(1) and (d)(2). The previous term ''lines, cables'' was changed to ''facilities'' and the phrase ''and infrastructure'' was included for clarity.

1970.54(c) Small-Scale Energy Proposals

The Agency revised proposed § 1970.54 (c)(2) and (c)(3) in response to

public comments relating to the proposed distance limits on small-scale energy proposals (*e.g.,* transmission lines). The Agency has reverted to the language in the existing regulations and threshold distance values in § 1794.22(a)(1) to replace the limits in proposed § 1970.54(c)(2) and support the limit in final § 1970.54(c)(3).

The Agency added a new section 1970.54(c)(8) to include Agency programs that fund small biomass projects, and established an upper threshold for projects to qualify for a CE with report. Similarly, the Agency added ''geothermal heating or cooling projects'' to § 1970.54(c)(9) and (10)(formerly (c)(8) and (9)).

The Agency revised proposed § 1970.54(c)(13)(formerly (c)(12)) in response to public comments to clarify that energy efficiency includes heat rate efficiency, and to add activities done for purposes of ''pollution control.''

C. Subpart C—NEPA Environmental Assessments

Preparation of EAs (§ 1970.102)

The Agency modified proposed § 1970.102(b)(6)(ii) to include online publication of notices.

Supplementing EAs (§ 1970.103)

The Agency clarified proposed § 1970.103 to state that supplementing an EA may be required after the issuance of an EA or FONSI, but before the action has been implemented. No other changes have been made in the final rule relating to § 1970.103.

D. Subpart D—NEPA Environmental Impact Statements

General (§ 1970.151)

The Agency revised § 1970.151(b)(4), in response to public comments, to refer to ''gas-fired prime movers,'' which the Agency agrees is more inclusive and appropriate for this section. For clarity, the Agency also modified the text to make it clear that the scope of an EIS prepared for a new electric generating facility would include ''all associated electric transmission facilities.'' The Agency also added renewable systems (solar, wind, geothermal) as being excluded from this section. Commenters generally expressed that the Agency support renewable energy and encouraged the Agency to consider the actions that would encourage the use of renewable systems.

EIS Funding and Professional Services (§ 1970.152)

The Agency revised proposed § 1970.152(b), in response to public comments, to clarify its intent to use a ''third-party contracting process'' that is consistent with Question 16 of CEQ's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (46 FR 18026). Using this process, Federal procurement requirements will not apply to the Agency because it will incur no obligations or costs under the contract and will not procure anything under the contract. While the Agency intends to use the third-party contracting process, it reserves the right to consider alternate procurement methods. The Agency retains the responsibility for selecting the contractor, in accordance with 40 CFR 1506.5(c). The applicant may not initiate any procurement of professional services without written prior approval of the Agency.

Required Determinations

Executive Order 12866, Regulatory Planning and Review

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency determined that this regulation involves combining two existing intra-Agency regulations that supplement the NEPA procedures of the Council on Environmental Quality, the National Historic Preservation Act (NHPA) procedures of the Advisory Council on Historic Preservation, and the Endangered Species Act that are established bodies of technical regulations which the Agency must necessarily update routinely to keep the regulations operationally current. The Agency has concluded that the net effect of the rule will be beneficial due to the streamlining and updated adherence to statutes and, therefore, does not warrant preparation of a regulatory evaluation as the anticipated impact is positive.

Unfunded Mandates Reform Act

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

This final rule would consolidate and update the Agency's existing rules governing compliance with NEPA to better align the Agency's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current programs and regulatory requirements. The final rule would result in no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

In this rule, the Agency proposes amendments that modify and clarify procedures for considering the environmental effects of the Agency's actions within the agencies' decision making process, thereby enhancing compliance with the letter and spirit of NEPA. The Agency has reviewed 7 CFR part 1940, subpart G, ''Environmental Program'' and part 1794, ''Environmental Policies and Procedures'' and determined that this final rule qualifies for categorical exclusion (CE) under 7 CFR 1940.310(e)(3) and 7 CFR 1794.21(a)(1), because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, the Agency has determined that promulgation of this final rule is not a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA of 1969, 42 U.S.C. 4321 *et seq.,*

an Environmental Impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

The Agency has examined this final rule and determined, under E.O. 13132, ''Federalism,'' that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this final rule would not preempt State law and 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. No further action is required by E.O. 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this final rule will not have a significant economic impact on a substantial number of these small entities for the reasons explained below. Consequently, the Agency has not prepared a regulatory flexibility analysis. This determination is based on the purpose of this regulation, which is to update and streamline the environmental review for proposed actions, resulting in a decrease in the burdens associated with carrying out such reviews. The revisions included in this rule are expected to reduce the aggregate amount of environmental documentation required from applicants due primarily to decreased RUS CE documentation requirements and decreased numbers of EAs required for all programs. This results from: (1) New CEs based upon the Agency's extensive experience over many years under both existing Agency NEPA rules in completing EAs for those actions resulting in findings of no significant effect, and (2) reduction in the amount of information required under the RUS existing NEPA rule by applicants for CEs. In addition, the only impacts are on those who choose to participate in Agency programs, whereby small entity applicants will not be affected to a greater extent than individuals or large entity applicants.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The Agency analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Agency has not designated it as a significant energy action and therefore, does not require a Statement of Energy Effects under Executive Order 13211.

Executive Order 12372, Intergovernmental Review of Federal Programs

This rule is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials, because this rule provides general guidance on NEPA and related environmental reviews of applicants' proposals. Applications for Agency programs will be reviewed individually under E.O. 12372 as required by program procedures.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

In response to the publication of the proposed rule under this title, the Agency hosted a combined Tribal consultation webinar/toll-free teleconference with USDA's Farm Service Agency. The webinar and teleconference occurred on December 17, 2013, during the comment period of the proposed rule. This was a cost effective way to consult with tribes on this rule and allowed maximum participation from tribal leaders and/or their designees. This allowed the Agency to gain input from elected Tribal officials, or their designees, concerning the impact of the proposed rule on Tribal governments, Tribal producers and Tribal members. This session was intended to establish a baseline for future consultation on individual program actions.

Changes incorporated into the final rule, do not have any additional implications or substantial direct effects on one or more Indian Tribes, therefore no further Tribal consultation is necessary on the final rule. The policies contained in this rule do not have Tribal implications that preempt Tribal law. The Agency will continue to work directly with Tribes and Tribal applicants to improve access to Agency programs. This includes providing focused outreach to Tribes regarding the implementation of this final rule. Additionally, the Agency will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. For further information on the Agency's Tribal consultation efforts, please contact the Agency's Native American Coordinator at *aian@wdc.usda.gov* or 720–544–2911.

Programs Affected

The Agency's programs affected by this final rulemaking are shown in the Catalog of Federal Domestic Assistance (CFDA) with numbers as indicated:

CFDA No.	Program title
10.350	Technical Assistance to Cooperatives.
10.352	Value-Added Producer Grants.
10.405	Farm Labor Housing Loans and Grants.
10.411	Rural Housing Site Loans and Self-Help Housing Land Development Loans.
10.415	Rural Rental Housing Loans.
10.420	Rural Self-Help Housing Technical Assistance.
10.427	Rural Rental Assistance Payments.
10.433	Rural Housing Preservation Grants.
10.441	Technical and Supervisory Assistance Grants.
10.442	Housing Application Packaging Grants.
10.446	Rural Community Development Initiative.
10.760	Water and Waste Disposal Systems for Rural Communities.
10.761	Technical Assistance and Training Grants.
10.762	Solid Waste Management Grants.
10.763	Emergency Community Water Assistance Grants.
10.766	Community Facilities Loans and Grants.
10.767	Intermediary Relending Program.
10.768	Business and Industry Loans.
10.769	Rural Business Enterprise Grants.
10.770	Water and Waste Disposal Loans and Grants (Section 306C).
10.771	Rural Cooperative Development Grants.
10.773	Rural Business Opportunity Grants.
10.781	Water and Waste Disposal Systems for Rural Communities—ARRA.
10.788	Very Low to Moderate Income Housing Loans—Direct.
10.789	Very Low to Moderate Income Housing Loans—Guaranteed.
10.850	Rural Electrification Loans and loan guarantees.
10.851	Rural Telephone Loans and Loan guarantees.
10.854	Rural Economic Development Loans and Grants.
10.855	Distance Learning and Telemedicine Loans and Grants.
10.856	1890 Land Grant Institutions Rural Entrepreneurial Outreach Program.
10.857	State Bulk Fuel Revolving Fund Grants.
10.858	RUS Denali Commission Grants and Loans.
10.859	Assistance to High Energy Cost-Rural Communities.
10.861	Public Television Station Digital Transition Grant Program.
10.863	Community Connect Grant Program.
10.864	Grant Program to Establish a Fund for Financing Water and Wastewater Projects.
10.886	Rural Broadband Access Loans and Loan Guarantees.

All active CDFA programs can be found at *www.cdfa.gov* under Department of Agriculture, Rural Development. Programs not listed in this section or not listed on the CDFA Web site but are still being serviced by the Agency will nevertheless be covered by the requirements of this action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this rule has been approved by the Office of Management and Budget (OMB) under the currently approved OMB Control Number 0575–0197. The Agency has determined that changes contained in this regulatory action do not substantially change current data collection.

Review Under E-Government Act Compliance

The Agency 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.

List of Subjects

7 CFR Part 25

Community development, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1709

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

7 CFR Part 1710

Electric power, Electric power rates, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1720

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

7 CFR Part 1724

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1737

Loan programs—communication, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1738

Broadband, Loan programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Broadband, Grant programs—Communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1740

Grant programs—Digital televisions, Communications, Rural areas, Television.

7 CFR Part 1753

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1779

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1780

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds

7 CFR Part 1781

Community development, Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1782

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant programs—Agriculture, Insurance, Loan programs— Agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1784

Agriculture, Alaska, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Watersheds.

7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy Conservation, Housing, Housing Standards, Loan programs—Agriculture, Low and moderate income housing, Rural housing.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture.

7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—Housing and community development, Industrial park, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1944

Administrative practice and procedure, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Reporting requirements, Rural housing.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Planning, Rural areas, Transportation.

7 CFR Part 1951

Accounting servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1970

Administrative practice and procedure, Buildings and facilities, Environmental impact statements, Environmental protection, Grant programs, Housing, Loan programs, Natural resources, Utilities.

7 CFR Part 1980

Home improvement, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Equal credit opportunity, Fair housing, Grant programs—Housing and community development, Housing.

7 CFR Part 3555

Administrative practice and procedure, Conflict of interest, Credit, Fair housing, Flood insurance, Home improvement, Housing, Loan programs—housing and community development, Low and moderate income housing, Manufactured homes, Mortgages, Rural areas.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—Housing and community development, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3565

Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages.

7 CFR Part 3570

Accounting, Account servicing, Administrative practice and procedure, Conflicts of interests, Debt restructuring, Foreclosure, Fair Housing, Government

property management, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas, Sale of government acquired property, Subsidies.

7 CFR Part 3575

Community facilities, Guaranteed loans, Loan programs—Community Facilities.

7 CFR Part 4274

Community development, Economic Development, Loan programs—Business, Rural areas.

7 CFR Part 4279

Loan programs—Business and industry, Loan Programs—Rural development assistance, Rural areas.

7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

7 CFR Part 4284

Business and industry, Economic development, Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas,

7 CFR Part 4287

Loan Programs—Business and industry, Loan Programs—Rural development assistance, Rural areas

7 CFR Part 4288

Administrative practice and procedure, Biobased products, Energy, Reporting and recordkeeping requirements.

7 CFR Part 4290

Community development, Government securities, Grant programs—business, Reporting and recordkeeping requirements, Rural areas, Securities, Small business.

For the reasons set forth in the preamble, subtitle A, and chapters XVII, XVIII, XXXV and XLII of subtitle B, title 7, Code of Federal Regulations are amended as follows:

Subtitle A—Office of the Secretary of Agriculture

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391; Pub. L. 103–66, 107 Stat. 543; Pub L. 105–34, 111 Stat. 885; Sec. 766, Pub. L. 105–277, 112 Stat. 2681–37; Pub. L. 106–554 [Title I of H.R. 5562], 114 Stat. 2763.

Subpart G—Round II and Round IIS Grants

■ 2. Amend § 25.622 by revising paragraph (b) to read as follows:

§ 25.622 Other considerations.

* * * * *

(b) *Environmental review requirements.* Grants made under this subpart must comply with environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

Subtitle B—Regulations of the Department of Agriculture

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

■ 3. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart E—Distance Learning and Telemedicine Grant Program

■ 4. Revise § 1703.125(j) to read as follows:

§ 1703.125 Completed application.

* * * * *

(j) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant should use the ''Programmatic Environmental Assessment'', available from RUS, to assist in complying with the requirements of this section.

* * * * *

Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program

■ 5. Revise § 1703.134 (h) to read as follows:

§ 1703.134 Completed application.

* * * * *

(h) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant should use the ''Programmatic Environmental Assessment'', available from RUS, to assist in complying with the requirements of this section.

* * * * *

Subpart G—Distance Learning and Telemedicine Loan Program

■ 6. Revise § 1703.144 (h) to read as follows:

§ 1703.144 Completed application.

* * * * *

(h) *Environmental review requirements.* (1) The applicant must provide details of the project's impact on the environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled ''Environmental Impact of the Project.''

(2) The applicant should use the ''Programmatic Environmental Assessment'', available from RUS, to assist in complying with the requirements of this section.

* * * * *

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 7. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A—General Requirements

■ 8. Revise § 1709.17(a) and (c) to read as follows:

§ 1709.17 Environmental review.

(a) Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency in accordance with 7 CFR part 1970 prior to final

award approval. The Agency may require the selected applicant to submit additional information, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

* * * * *

Subpart B—RUS High Cost Energy Grant Program

■ 9. Revise § 1709.117(b)(12) to read as follows:

§ 1709.117 Application requirements.

* * * * *

(b) * * *

(12) *Environmental review requirements.* Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

■ 10. Revise § 1709.124(a) to read as follows:

§ 1709.124 Grant award procedures.

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete environmental review requirements in accordance with 7 CFR part 1970, and to meet other pre-award conditions.

* * * * *

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 11. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart C—Loan Purposes and Basic Policies

■ 12. Revise § 1710.117 to read as follows:

§ 1710.117 Environmental review requirements.

Borrowers are required to comply with the environmental review requirements in accordance with 7 CFR part 1970, and other applicable environmental laws, regulations and Executive orders.

Subpart D—Basic Requirements for Loan Approval

■ 13. Revise § 1710.152(d) to read as follows:

§ 1710.152 Primary support documents.

* * * * *

(d) *Environmental review requirements.* A borrower must comply with the environmental review requirements in accordance with 7 CFR part 1970.

Subpart F—Construction Work Plans and Related Studies

■ 14. Revise § 1710.250(i) to read as follows:

§ 1710.250 General.

* * * * *

(i) A borrower's CWP or special engineering studies must be supported by the appropriate level of environmental review documentation, in accordance with 7 CFR part 1970.

Subpart I—Application Requirements and Procedures for Loans

■ 15. Revise § 1710.501(c)(2)(iii) to read as follows:

§ 1710.501 Loan application documents.

* * * * *

(c) * * *

(2) * * *

(iii) Environmental review documentation in accordance with 7 CFR part 1970.

* * * * *

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 16. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 17. Revise § 1717.850(d) to read as follows:

§ 1717.850 General.

* * * * *

(d) *Environmental review requirements.* The environmental review requirements of 7 CFR part 1970 apply to applications for subordinations.

* * * * *

■ 18. Revise § 1717.855(f) to read as follows:

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities and certain other community infrastructure.

* * * * *

(f) Environmental documentation, in accordance with 7 CFR part 1970;

* * * * *

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

■ 19. The authority citation for part 1720 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 7 U.S.C. 940C.

■ 20. Add § 1720.16 to read as follows:

§ 1720.16 Environmental review requirements.

Guarantees made under this subpart are subject to the environmental review requirements in accordance with 7 CFR part 1970.

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

■ 21. The authority citation for part 1721 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 1921 *et seq.;* and 6941 *et seq.*

Subpart A—Advance of Funds

■ 22. Revise § 1721.1(c) to read as follows:

§ 1721.1 Advances.

* * * * *

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and shall also provide for those that cost in excess of $100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number. For a minor project not included in a RUS approved borrower's CWP or CWP amendment, the Borrower shall describe the project and do one of the following to satisfy RUS' environmental review requirements in accordance with 7 CFR part 1970:

(1) If applicable, state that the project is a categorical exclusion of a type described in § 1970.53 of this title; or

(2) If applicable, state that the project is a categorical exclusion of a type that normally requires the preparation of an environmental report (see § 1970.54 of this title) and then submit the

environmental report with the request for funds to be approved for advance.
* * * * *

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 23. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 24. Revise § 1724.9 to read as follows:

§ 1724.9 Environmental review requirements.

Borrowers must comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 25. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 26. Amend § 1726.14 to revise the definition of *approval of proposed construction* to read as follows:

§ 1726.14 Definitions.
* * * * *

Approval of proposed construction means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate environmental review requirements in accordance with 7 CFR part 1970.
* * * * *

■ 27. Revise § 1726.18 to read as follows:

§ 1726.18 Pre-loan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all environmental review requirements in accordance with 7 CFR part 1970, have been met.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

■ 28. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart C—The Loan Application

■ 29. Revise § 1737.22(b)(4) to read as follows:

§ 1737.22 Supplementary information.
* * * * *
(b) * * *
(4) Environmental review documentation in accordance with 7 CFR part 1970.
* * * * *

Subpart E—Interim Financing of Construction of Telephone Facilities

■ 30. Revise § 1737.41(b)(2)(iii) to read as follows:

§ 1737.41 Procedure for obtaining approval.
* * * * *
(b) * * *
(2) * * *
(iii) Evidence that the borrower has complied with the environmental review requirements in accordance with 7 CFR part 1970.
* * * * *

Subpart J—Financial Loan Approval Procedures

■ 31. Revise § 1737.90(a)(6) to read as follows:

§ 1737.90 Loan approval requirements.
(a) * * *
(6) All environmental review requirements must be met in accordance with 7 CFR part 1970.
* * * * *

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

■ 32. The authority citation for part 1738 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subpart D—Direct Loan Terms

■ 33. Revise § 1738.156(a)(8) to read as follows:

§ 1738.156 Other Federal requirements.
(a) * * *
(8) 7 CFR part 1970;
* * * * *

Subpart E—Application Review and Underwriting

■ 34. Revise § 1738.212(a)(8) to read as follows:

§ 1738.212 Network design.
(a) * * *
(8) Environmental review documentation prepared in accordance with 7 CFR part 1970; and
* * * * *

Subpart F—Closing, Servicing, and Reporting

■ 35. Revise § 1738.252(a) to read as follows:

§ 1738.252 Construction.

(a) Construction paid for with broadband loan funds must comply with 7 CFR part 1788, the environmental review requirements in accordance with 7 CFR part 1970, RUS Bulletin 1738–2, and any other guidance from the Agency.
* * * * *

PART 1739—BROADBAND GRANT PROGRAM

■ 36. The authority citation for part 1739 continues to read as follows:

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—Community Connect Grant Program

■ 37. Revise § 1739.15(d) and (l)(8) to read as follows:

§ 1739.15 Completed application.
* * * * *

(d) *System design.* A system design of the Project that is economical and practical, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs. In addition, a network diagram detailing the proposed system must be provided. The system design must also comply with the environmental review requirements in accordance with 7 CFR part 1970;
* * * * *
(l) * * *
(8) Environmental review documentation prepared in accordance with 7 CFR part 1970.
* * * * *

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

■ 38. The authority citation for part 1740 continues to read as follows:

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Pub. L. 108–447.

Subpart A—Public Television Station Digital Transition Grant Program

■ 39. Revise § 1740.9(k) to read as follows:

§ 1740.9 Grant application.

* * * * *

(k) *Environmental review requirements.* The applicant must provide details of the digital transition's impact on the human environment and historic properties, and comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 40. The authority citation for part 1753 continues to read as follows:

Authority: 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

Subpart D—Construction of Buildings

■ 41. Revise § 1753.25(f)(3) to read as follows:

§ 1753.25 General.

* * * * *

(f) * * *

(3) 7 CFR part 1970.

* * * * *

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 42. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A—General Provisions

■ 43. Revise § 1774.7 to read as follows:

§ 1774.7 Environmental requirements.

Grants made under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

■ 44. Revise § 1774.8(d) to read as follows:

§ 1774.8 Other Federal Statutes.

* * * * *

(d) 7 CFR part 1970.

* * * * *

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 45. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Provisions

■ 46. Revise § 1775.7 to read as follows:

§ 1775.7 Environmental requirements.

Grants made for the purposes in §§ 1775.36 and 1775.66 must comply with the environmental review requirements in accordance with 7 CFR part 1970.

■ 47. Revise § 1775.8(d) to read as follows:

§ 1775.8 Other Federal statutes.

* * * * *

(d) 7 CFR part 1970.

* * * * *

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

■ 48. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

■ 49. Revise § 1779.9 to read as follows:

§ 1779.9 Environmental review requirements.

Facilities financed under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970. In accordance with Agency guidance documents, the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. The lender must assist the Agency in ensuring that the borrower complies with the Agency's environmental review requirements and implements any mitigation measure identified in the environmental review document or Conditional Commitment for Guarantee.

■ 50. Revise § 1779.52(b)(3) to read as follows:

§ 1779.52 Processing.

* * * * *

(b) * * *

(3) Environmental review documentation in accordance with 7 CFR part 1970.

* * * * *

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 51. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart B—Loan and Grant Application Processing

■ 52. Revise § 1780.31(e) to read as follows:

§ 1780.31 General.

* * * * *

(e) During the earliest discussion with prospective applicants, the Agency will advise prospective applicants on environmental review requirements and evaluation of potential environmental impacts of the proposal. In accordance with 7 CFR part 1970, environmental review requirements shall be performed by the applicant simultaneously and concurrently with the proposal's engineering planning and design.

■ 53. Revise § 1780.33(f) introductory text to read as follows:

§ 1780.33 Application requirements.

* * * * *

(f) *Environmental review requirements.* The applicant must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

Subpart C—Planning, Designing, Bidding, Contracting, Construction and Inspection

■ 54. Revise § 1780.55 to read as follows:

§ 1780.55 Preliminary engineering reports and environmental review documentation.

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental review documentation must comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1781 RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND ADVANCES

■ 55. The authority citation for part 1781 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 56. Revise § 1781.11(g) to read as follows:

§ 1781.11 Other considerations.

* * * * *

(g) *Environmental review requirements.* Actions will be taken to comply with the environmental review requirements in accordance with 7 CFR part 1970. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by NRCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the NRCS environmental review fails to meet the requirements of 7 CFR part 1970. If the environmental impact statement or environmental assessment is satisfactory, the Agency should formally adopt the document in accordance with 7 CFR part 1970. If a determination is made that further analysis of the environmental impact is needed, the Agency will make necessary arrangements with the NRCS State Conservationist for such action to be taken before a loan is made.

* * * * *

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

■ 57. The authority citation for part 1782 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.

■ 58. Revise § 1782.9 to read as follows:

§ 1782.9 Environmental review requirements.

Servicing actions involving lease or sale of Agency-owned property must comply with the environmental review requirements in accordance with 7 CFR part 1970.

PART 1784—RURAL ALASKAN VILLAGE GRANTS

■ 59. The authority citation for part 1784 continues to read as follows:

Authority: 7 U.S.C. 1926d.

Subpart C—Application Processing

■ 60. Revise § 1784.22(d) and (n) to read as follows:

§ 1784.22 Other requirements.

* * * * *

(d) 7 CFR part 1970.

* * * * *

(n) Project planning, including engineering reports and environmental review documentation, to the maximum extent feasible, must address all water or waste disposal needs for a community in a coordinated manner with other community development projects and take into consideration information presented in available community strategic and comprehensive plans. Any reports or designs completed with funds must be consistent with sound engineering practices and USDA regulations, including 7 CFR part 1970.

■ 61. Revise § 1784.23(c), (d), and (f)(1) to read as follows:

§ 1784.23 Lead Agency Environmental Review.

* * * * *

(c) RUS will, to the extent possible and in accordance with 40 CFR 1506.2 and 7 CFR part 1970, participate with DEC, IHS, and ANTHC to cooperatively or jointly prepare environmental review documents so that one document will comply with all applicable laws.

(d) For projects administered by DEC and ANTHC, RUS agrees to participate as a cooperating agency in accordance with 40 CFR 1501.6 and 7 CFR part 1970, and relies upon those agencies' procedures for implementing NEPA as further described below.

* * * * *

(f) * * *

(1) *Rural Utilities Service Lead Agency.* If RUS is the lead agency, the environmental review process, including all findings and determinations, will be completed in accordance with 7 CFR part 1970.

* * * * *

PART 1794—[REMOVED AND RESERVED]

■ 62. Under 7 U.S.C 6941 *et seq.,* 42 U.S.C. 4231 *et seq.;* 40 CFR parts 1500–1508, and as discussed in the Preamble, the Department of Agriculture amends 7 CFR chapter XVII by removing and reserving part 1794.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS–COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1924—CONSTRUCTION AND REPAIR

■ 63. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Planning and Performing Construction and Other Development

■ 64. Revise § 1924.6(a)(9) to read as follows:

§ 1924.6 Performing development work.

* * * * *

(a) * * *

(9) *National Environmental Policy Act.* Loans and grants, including those being assisted under the HUD section 8 housing assistance payment program for new construction, must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

Exhibit I To Subpart A of Part 1924—[Amended]

■ 65. Amend section 300–1 of *Exhibit I To Subpart A* by removing ''subpart G of part 1940 of this chapter'' and adding in its place ''7 CFR part 1970''.

■ 66. In *Exhibit J to Subpart A:*

■ a. In Part A—Introduction, revise the introductory text of the third paragraph of section II, and section V.B.3 to read as follows:

■ b. In Part B, revise paragraph (C) and (D) of section I, the introductory text of section II, and the introductory text of section III to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation, and Set-Up

* * * * *

Part A—Introduction

* * * * *

II. * * *

7 CFR part 1970 applies on scattered sites, in subdivisions and rental projects with regard to the development, installation and set-up of manufactured homes. To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved will be considered as equivalent to one housing unit or lot. Because the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development, two of the purposes of this exhibit are to:

* * * * *

V. * * *

B. * * *

3. 7 CFR part 1970.

* * * * *

Part B—Construction and Land Development

I. * * *

C. The finished grade elevation beneath the manufactured home or the first floor elevation of the habitable space, whichever is lower, must be above the 100-year flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. As is stated in EO 11988 and 7 CFR part 1970, it is the Agency's policy not to approve or fund any proposal in a 100-

year floodplain area unless there is no practicable alternative to such a floodplain location.

D. Essential services such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

II. *Development on Scattered Sites and in Subdivisions.*—A. General. Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, subpart C of part 1924, and 7 CFR part 1970, and the applicable Agency/MPS or Model Building Codes acceptable to the Agency. Manufactured homes for development in a manufactured home community shall:

* * * * *

III. *Rental Housing Project Development.* A. General. Manufactured housing rental developments shall be planned and constructed in accordance with requirements of subpart C of part 1924; this subpart; 7 CFR part 1970, the Agency/MPS; and the requirements of subpart E of part 1944 of this chapter.

* * * * *

Subpart C—Planning and Performing Site Development Work

■ 67. Revise § 1924.106(a) introductory text and (a)(2) to read as follows:

§ 1924.106 Location.

(a) *General.* It is RHS's policy to promote compact community development and to finance projects that avoid or minimize conversion of wetlands or important farmlands, avoid unwarranted alterations or encroachment on floodplains, and avoid unwarranted adverse effects to historic properties (including those listed or eligible for listing on the National Register of Historic Places), when practicable alternatives exist to meet development needs; RHS is prohibited from financing development within the Coastal Barrier Resource System, or on a barrier island. A complete listing of the environmental review requirements is found in 7 CFR part 1970. In order to be eligible for RHS participation:

* * * * *

(2) The site must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

■ 68. In Exhibit C to subpart C, revise section I(A) to read as follows:

Exhibit C to Subpart C of Part 1924—Checklist of Visual Exhibits and Documentation for RRH, RCH and LH Proposals

* * * * *

I. * * *

A. *Environmental review requirements.* As requested by the Agency, the applicant is responsible for providing details of the project's potential impact on the human environment and historic properties, in accordance with 7 CFR part 1970. Guidance concerning the environmental review requirements is available at any Agency office or on the Agency's Web site.

* * * * *

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1940—GENERAL

■ 69. The authority citation for Part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart G—Environmental Program

■ 70. Revise § 1940.301(a) to read as follows:

* * * * *

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA or its successor agency under Public Law 103–354 decision-making process is also outlined. This subpart does not apply to programs administered by the Rural Housing Service or the Rural Business-Cooperative Service, which are subject to 7 CFR part 1970.

* * * * *

Subpart T—System for Delivery of Certain Rural Development Programs

■ 71. Revise § 1940.968(h)(2) to read as follows:

§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).

* * * * *

(h)* * *

(2) Environmental review requirements. Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

PART 1942—ASSOCIATIONS

■ 72. The authority citation for Part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

■ 73. Revise § 1942.2(b) to read as follows:

§ 1942.2 Processing applications.

* * * * *

(b) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Starting with the earliest discussions with prospective applicants or review of pre-applications and continuing through application processing, environmental issues must be considered.

* * * * *

■ 74. Revise § 1942.17(j)(7) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(7) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

■ 75. Revise § 1942.18(d)(1) and (2) to read as follows:

§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.

* * * * *

(d) * * *

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency's environmental review requirements are found at 7 CFR part 1970.

(2) Historic preservation. Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C 470), as implemented by 36 CFR part 800, and Executive Order 11593, ''Protection and Enhancement of the Cultural Environment.'' 7 CFR part 1970 sets forth procedures for the protection of historic and archaeological properties.

* * * * *

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

■ 76. Revise § 1942.105 to read as follows:

§ 1942.105 Environmental review requirements.

Loans made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

■ 77. Revise § 1942.126(l)(6)(i)(E) to read as follows:

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

* * * * *

(l) * * *

(6) * * *

(i) * * *

(E) Any applicable requirements of 7 CFR part 1970 have been met.

* * * * *

PART 1944—HOUSING

■ 78. The authority citation for Part 1944 continues to read as follows:

Authority: 5 U.S.C 301; 42 U.S.C. 1480.

Subpart B—Housing Application Packaging Grants

■ 79. Revise § 1944.66(c) to read as follows:

§ 1944.66 Administrative requirements.

* * * * *

(c) Grants made under the subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

Subpart I—Self-Help Technical Assistance Grants

■ 80. Revise § 1944.410(b)(1)(ii) and (c)(1) to read as follows:

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

* * * * *

(b) * * *

(1) * * *

(ii) Documentation required in accordance with 7 CFR part 1970.

* * * * *

(c) * * *

(1) If the applicant is eligible and after the State Director has returned the pre-application information and, as appropriate, the environmental review documentation required in 7 CFR part 1970 to the Area Office, the Area Director will, within 10 days, prepare and issue Form AD–622. The original Form AD–622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

■ 81. Revise § 1944.523 to read as follows:

§ 1944.523 Other administrative requirements.

The policies of 7 CFR part 1970 apply to grants made under this subpart regarding historic properties and environmental compliance.

■ 82. Revise § 1944.526(a)(5), (b)(1)(i), (b)(1)(ii), (c)(1)(i), and (c)(1)(ii) to read as follows:

§ 1944.526 Preapplication procedures.

(a) * * *

(5) Environmental review documentation in accordance with 7 CFR part 1970.

(b) * * *

(1) * * *

(i) Complete any required environmental review documentation in accordance with 7 CFR part 1970, and attach to the application.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

* * * * *

(c) * * *

(1) * * *

(i) Make a determination regarding the appropriate level of environmental review in accordance with 7 CFR part 1970.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

* * * * *

■ 83. Amend § 1944.531 to revise paragraph (c)(10), remove paragraphs (c)(11) and (c)(12), and redesignate paragraph (c)(13) as (c)(11), to read as follows:

§ 1944.531 Applications submission.

* * * * *

(c) * * *

(10) Environmental review documentation and historical and archaeological review in accordance with 7 CFR part 1970.

* * * * *

■ 84. Amend Exhibit B to Subpart K to revise paragraph A.4. to read as follows:

Exhibit B to Subpart K of Part 1944—Administrative Instructions for State Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Environmental review documentation in accordance with 7 CFR part 1970.

* * * * *

■ 85. Amend Exhibit C to Subpart K to revise paragraph A.4. to read as follows:

Exhibit C to Subpart K OF Part 1944—Instructions for District Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Environmental review documentation in accordance with 7 CFR part 1970.

* * * * *

Subpart N—Housing Preservation Grants

■ 86. Revise the section heading, introductory text, and paragraphs (a) and (d) of § 1944.672 to read as follows:

§ 1944.672 Environmental review requirements.

Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(a) The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings is classified as a Categorical Exclusion, pursuant to § 1970.53. As part of their pre-application materials, applicants shall submit environmental documentation in accordance with 7 CFR part 1970, for the geographical areas proposed to be served by the program. The applicant shall refer to Part 1944 Subpart N Exhibit F–1.

* * * * *

(d) When an HPG proposal does not qualify as a categorical exclusion under § 1970.53 and may require either an environmental report under § 1970.54 or an environmental assessment, the applicant will immediately contact the RHS office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the applicant, RHS must complete the environmental review process in accordance with 7 CFR part 1970, with the assistance of the applicant, as necessary.

* * * * *

■ 87. Revise § 1944.676(c) to read as follows:

§ 1944.676 Preapplication procedures.

* * * * *

(c) Grants made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

■ 88. The authority citation for Part 1948, subpart B continues to read as follows:

Authority: Sec. 601, Pub. L. 95–620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

■ 89. Revise § 1948.62(a) to read as follows:

§ 1948.62 Environmental review requirements.

(a) Issuance of grants and other actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

■ 90. Amend § 1948.84 by:

■ a. Revising paragraphs (d)(8), (e)(2), and (i)(13);

■ b. Removing paragraph (i)(14); and

■ c. Redesignating paragraphs (i)(15), (i)(16), and (i)(17) as (i)(14), (i)(15), and (i)(16) respectively.

The revisions read as follows:

§ 1948.84 Application procedure for site development and acquisition grants.

* * * * *

(d) * * *

(8) Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

(e) * * *

(2) Comply with environmental review requirements in accordance with 7 CFR part 1970;

* * * * *

(i) * * *

(13) Environmental review documentation in accordance with 7 CFR part 1970.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

■ 91. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

■ 92. Revise § 1951.210 to read as follows:

§ 1951.210 Environmental requirements.

Servicing actions as defined in § 1970.6 of this chapter are part of the financial assistance already provided and do not require additional NEPA review. Actions such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, must comply with the environmental review requirements in accordance with 7 CFR part 1970.

Subpart R—Rural Development Loan Servicing

■ 93. Revise § 1951.900 to read as follows:

§ 1951.900 OMB control number.

The information collection requirement obtained for this part is pending OMB approval at the time of this rule's publication in the **Federal Register**.

PART 1955—PROPERTY MANAGEMENT

■ 94. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart C—Disposal of Inventory Property—Consolidated Farm and Rural Development Act (CONACT) Real Property.

■ 95. Revise § 1955.136(a) introductory text to read as follows:

§ 1955.136 Environmental review requirements.

(a) Prior to a final decision on some disposal actions, the action must comply with the environmental review requirements in accordance with each agency's environmental policies and procedures. For Farm Service Agency actions the environmental policies and procedures are found in Subpart G of Part 1940 of this chapter and for Rural Development programs the environmental policies and procedures are found in 7 CFR part 1970.

* * * * *

■ 96. Revise § 1955.137(a)(3)(i) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

(a) * * *

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and non-program (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined, for farm loan program actions, in, paragraph 3b(1) and (2) of Exhibit C of subpart G of part 1940 for Farm Service Agency Programs and in 7 CFR part 1970, for Rural Development programs.

* * * * *

■ 97. Revise § 1955.140(a) to read as follows:

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property, other than Farm Loan Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with § 1955.107. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects related to Farm Service Agency program actions should also be considered pursuant to subpart G of part 1940 of this chapter. For Rural Development program actions, environmental review requirements must comply with 7 CFR part 1970. Any applicable State laws will be set forth in a State supplement and will be complied with in connection with the division of land. Subdivision of acquired property will be reported on Form RD 1955–3C, ''Acquired Property—Subdivision,'' in accordance with the FMI.

* * * * *

■ 98. Add part 1970 to read as follows:

PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—Environmental Policies

Sec.

Authority: 7 U.S.C. 6941 *et seq.,* 42 U.S.C. 4241 *et seq.;* 40 CFR parts 1500–1508; 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Environmental Policies

§ 1970.1 Purpose, applicability, and scope.

(a) *Purpose.* The purpose of this part is to ensure that the Agency complies with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), and other applicable environmental requirements in order to make better decisions based on an understanding of the environmental consequences of proposed actions, and take actions that protect, restore, and enhance the quality of the human environment.

(b) *Applicability.* The environmental policies and procedures contained in this part are applicable to programs administered by the Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS); herein referred to as ''the Agency.''

(c) *Scope.* This part integrates NEPA with other planning, environmental review processes, and consultation procedures required by other Federal laws, regulations, and Executive Orders applicable to Agency programs. This part also supplements the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500 through 1508. To the extent appropriate, the Agency will take into account CEQ guidance and memoranda. This part also incorporates and complies with the procedures of Section 106 (36 CFR part 800) of the National Historic Preservation Act (NHPA) and Section 7 (50 CFR part 402) of the Endangered Species Act (ESA).

§ 1970.2 [Reserved]

§ 1970.3 Authority.

This part derives its authority from a number of statutes, Executive Orders, and regulations, including but not limited to those listed in this section. Both the Agency and the applicant, as appropriate, must comply with these statutes, Executive Orders, and regulations, as well as any future statutes, Executive Orders, and regulations that affect the Agency's implementation of this part.

(a) National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(b) Council on Environmental Quality Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500 through 1508);

(c) U. S. Department of Agriculture, NEPA Policies and Procedures (7 CFR part 1b).

(d) Department of Agriculture, Enhancement, Protection and Management of the Cultural Environment (7 CFR parts 3100 through 3199);

(e) Archaeological and Historic Preservation Act of 1960, as amended, (16 U.S.C. 469 *et seq.*);

(f) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*);

(g) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(h) Clean Air Act (42 U.S.C. 7401 *et seq.*);

(i) Clean Water Act (Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*);

(j) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(k) Coastal Barrier Improvement Act (42 U.S.C. 4028 *et seq.*);

(l) Coastal Zone Management Act (16 U.S.C. 1456);

(m) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103) (CERCLA);

(n) Consolidated Farm and Rural Development Act, Sections 307(a)(6)(A) (7 U.S.C. 1927(a)(6)(A)) and 363 (7 U.S.C. 2006e);

(o) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(p) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(q) Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 *et seq.*);

(r) Housing and Community Development Act of 1992 (42 U.S.C. 542(c)(9));

(s) Migratory Bird Treaty Act (16 U.S.C. 703–711);

(t) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(u) National Trails System Act (16 U.S.C. 1241 *et seq.*);

(v) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*);

(w) Noise Control Act (42 U.S.C. 4901 *et seq.*);

(x) Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*);

(y) Resource Conservation and Recovery Act (42 U.S.C. 6901);

(z) Safe Drinking Water Act—(42 U.S.C. 300f *et seq.*);

(aa) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*);

(bb) Wilderness Act (16 U.S.C. 1131 *et seq.*);

(cc) Compact of Free Association between the United States and the Republic of the Marshall Islands and between the United States and the Federated States of Micronesia (Public Law 108–188);

(dd) Compact of Free Association between the United States and the Republic of Palau (Public Law 99–658);

(ee) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(ff) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(gg) Executive Order 11988, Floodplain Management;

(hh) Executive Order 11990, Protection of Wetlands;

(ii) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations;

(jj) Executive Order 12372, Intergovernmental Review;

(kk) Executive Order 13112, Invasive Species;

(ll) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments;

(mm) Executive Order 13287, Preserve America;

(nn) Executive Order 13016, Federal Support of Community Efforts along American Heritage Rivers;

(oo) Executive Order 13352, Facilitation of Cooperative Conservation;

(pp) Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management;

(qq) Executive Order 13653, Preparing the United States for the Impacts of Climate Change;

(rr) Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input;

(ss) Executive Order 13693, Planning for Federal Sustainability in the Next Decade;

(tt) Agriculture Departmental Regulation (DR) 5600–2, Environmental Justice;

(uu) Agriculture Departmental Regulation (DR) 9500–3, Land Use Policy;

(vv) Agriculture Departmental Regulation (DR) 9500–4, Fish and Wildlife Policy;

(ww) Agriculture Departmental Regulation (DR) 1070–001, U.S. Department of Agriculture (USDA) Policy Statement on Climate Change Adaptation; and

(xx) Agriculture Departmental Manual (DM) 5600–001, Environmental Pollution Prevention, Control, and Abatement Manual.

§ 1970.4 Policies.

(a) Applicants' proposals must, whenever practicable, avoid or minimize adverse environmental impacts; avoid or minimize conversion of wetlands or important farmlands (as defined in the Farmland Protection Policy Act and its implementing regulations issued by the USDA Natural Resources Conservation Service) when practicable alternatives exist to meet development needs; avoid unwarranted alterations or encroachment on floodplains when practicable alternatives exist to meet developmental needs; and avoid or minimize potentially disproportionate and adverse impacts to minority or low-income populations within the proposed action's area of impact. Avoiding development in floodplains includes avoiding development in the 500-year floodplain, as shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, where the proposed actions and facilities are defined as critical actions in § 1970.6. The Agency shall not fund the proposal unless there is a demonstrated, significant need for the proposal and no practicable alternative exists to the proposed conversion of the above resources.

(b) The Agency encourages the reuse of real property defined as brownfields per Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) where the reuse of such property is complicated by the presence or potential presence of a hazardous substance, pollutant, or other contaminant, provided that the level of such presence does not threaten human health and the environment for the proposed land use. The Agency will defer to the agency with regulatory authority under the appropriate law in determining the appropriate level of contaminant for a specific proposed land use. The Agency will evaluate the risk based upon the applicable regulatory agency's review and concurrence with the proposal.

(c) The Agency and applicant will involve other Federal agencies with jurisdiction by law or special expertise, state and local governments, Indian tribes and Alaska Native organizations, Native Hawaiian organizations, and the public, early in the Agency's environmental review process to the fullest extent practicable. To accomplish this objective, the Agency and applicant will:

(1) Ensure that environmental amenities and values be given appropriate consideration in decision making along with economic and technical considerations;

(2) At the earliest possible time, advise interested parties of the Agency's environmental policies and procedures and required environmental impact analyses during early project planning and design; and

(3) Make environmental assessments (EA) and environmental impact statements (EIS) available to the public for review and comment in a timely manner.

(d) The Agency and applicant will ensure the completion of the environmental review process prior to the irreversible and irretrievable commitment of Agency resources in accordance with § 1970.11. The environmental review process is concluded when the Agency approves the applicability of a Categorical Exclusion (CE), issues a Finding of No Significant Impact (FONSI), or issues a Record of Decision (ROD).

(e) If an applicant's proposal does not comply with Agency environmental policies and procedures, the Agency will defer further consideration of the application until compliance can be demonstrated, or the application may be rejected. Any applicant that is directly and adversely affected by an administrative decision made by the Agency under this part may appeal that decision, to the extent permissible under 7 CFR part 11.

(f) The Agency recognizes the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, will lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of humankind's world environment in accordance with NEPA, 42 U.S.C. 4321 *et seq.*

(g) The Agency will use the NEPA process, to the maximum extent feasible, to identify and encourage opportunities to reduce greenhouse gas (GHG) emissions caused by proposed Federal actions that would otherwise result in the emission of substantial quantities of GHG.

§ 1970.5 Responsible parties.

(a) *Agency.* The following paragraphs identify the general responsibilities of the Agency.

(1) The Agency is responsible for all environmental decisions and findings related to its actions and will encourage applicants to design proposals to protect, restore, and enhance the environment.

(2) If the Agency requires an applicant to submit environmental information, the Agency will outline the types of information and analyses required in guidance documents. This guidance is available on the Agency's Web site. The Agency will independently evaluate the information submitted.

(3) The Agency will advise applicants and applicable lenders of their responsibilities to consider environmental issues during early project planning and that specific actions listed in § 1970.12, such as initiation of construction, cannot occur prior to completion of the environmental review process or it could result in a denial of financial assistance.

(4) The Agency may act as either a lead agency or a cooperating agency in the preparation of an environmental review document. If the Agency acts as a cooperating agency, the Agency will fulfill the cooperating agency

responsibilities outlined in 40 CFR 1501.6.

(5) Mitigation measures described in the environmental review and decision documents must be included as conditions in Agency financial commitment documents, such as a conditional commitment letter.

(6) The Agency, guaranteed lender, or multi-tier recipients will monitor and track the implementation, maintenance, and effectiveness of any required mitigation measures.

(b) *Applicants.* Applicants must comply with provisions found in paragraphs (b)(1) through (8) of this section.

(1) Consult with Agency staff to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process.

(2) Where appropriate, contact state and Federal agencies to initiate consultation on matters affected by this part. This part authorizes applicants to coordinate with state and Federal agencies on behalf of the Agency. However, applicants are not authorized to initiate consultation in accordance with Section 106 of the National Historic Preservation Act with Indian tribes on behalf of the Agency. In those cases, applicants need the express written authority of the Agency and consent of Indian tribes in order to initiate consultation.

(3) Provide information to the Agency that the Agency deems necessary to evaluate the proposal's potential environmental impacts and alternatives.

(i) Applicants must ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the Agency office processing the application. Incomplete materials or delayed submittals may jeopardize consideration of the applicant's proposal by the Agency and may result in no award of financial assistance.

(ii) Applicants must clearly define the purpose and need for the proposal and inform the Agency promptly if any other Federal, state, or local agencies are involved in financing, permitting, or approving the proposal, so that the Agency may coordinate and consider participation in joint environmental reviews.

(iii) As necessary, applicants must develop and document reasonable alternatives that meet their purpose and need while improving environmental outcomes.

(iv) Applicants must prepare environmental review documents according to the format and standards provided by the Agency. The Agency will independently evaluate the final documents submitted. All environmental review documents must be objective, complete, and accurate in order for them to be finally accepted by the Agency. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents.

(A) Applicants are not generally required to prepare environmental documentation for proposals that involve Agency activities with no or minimal disturbance listed in § 1970.53. However, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist.

(B) For CEs listed in § 1970.54, applicants must prepare environmental documentation as required by the Agency; the environmental documentation required for CEs is referred to as an environmental report(ER).

(C) When an EA is required, the applicant must prepare an EA that meets the requirements in subpart C of this part, including, but not limited to, information and data collection and public involvement activities. When the applicant prepares the EA, the Agency will make its own independent evaluation of the environmental issues and take responsibility for the scope and content of the EA.

(D) Applicants must cooperate with and assist the Agency in all aspects of preparing an EIS that meets the requirements specified in subpart D of this part, including, but not limited to, information and data collection and public involvement activities. Once authorized by the Agency in writing, applicants are responsible for funding all third-party contractors used to prepare the EIS.

(4) Applicants must provide any additional studies, data, and document revisions requested by the Agency during the environmental review and decision-making process. The studies, data, and documents required will vary depending upon the specific project and its impacts. Examples of studies that the Agency may require an applicant to provide are biological assessments under the ESA, archeological surveys under the NHPA, wetland delineations, surveys to determine the floodplain elevation on a site, air quality conformity analysis, or other such information needed to adequately assess impacts.

(5) Applicants must ensure that no actions are taken (such as any demolition, land clearing, initiation of construction, or advance of interim construction funds from a guaranteed lender), including incurring any obligations with respect to their proposal, that may have an adverse impact on the quality of the human environment or that may limit the choice of reasonable alternatives during the environmental review process. Limitations on actions by an applicant prior to the completion of the Agency environmental review process are defined in CEQ regulations at 40 CFR 1506.1 and 7 CFR 1970.12.

(6) Applicants must promptly notify the Agency processing official when changes are made to their proposal so that the environmental review and documentation may be supplemented or otherwise revised as necessary.

(7) Applicants must incorporate any mitigation measures identified and any required monitoring in the environmental review process into the plans and specifications and construction contracts for the proposals. Applicants must provide such mitigation measures to consultants responsible for preparing design and construction documents, or provide other mitigation action plans. Applicants must maintain, as applicable, mitigation measures for the life of the loans or refund term for grants.

(8) Applicants must cooperate with the Agency on achieving environmental policy goals. If an applicant is unwilling to cooperate with the Agency on environmental compliance, the Agency will deny the requested financial assistance.

§ 1970.6 Definitions and acronyms.

(a) *Definitions.* Terms used in this part are defined in 40 CFR part 1508, 36 CFR 800.16, and this section. If a term is defined in this section and in one or both of the other referenced regulations, such term will have the meaning as defined in this subpart.

Agency. USDA Rural Development, which includes RBS, RHS, and RUS, and any successor agencies.

Applicant. An individual or entity requesting financial assistance including but not limited to loan recipients, grantees, guaranteed lenders, or licensees.

Average megawatt. The equivalent capacity rating of a generating facility based on the gross energy output

generated over a 12-month period or one year.

Construction work plan. An engineering planning study that is used in the Electric Program to determine and document a borrower's 2- to 4-year capital construction investments that are needed to provide and maintain adequate and reliable electric service to a borrower's new and existing members.

Cooperative agreement. For the purposes of this part, a cooperative agreement is a form of financial assistance in which the Agency provides funding that is authorized by public statute, not to be repaid, and for a purpose that includes substantial involvement and a mutual interest of both the Agency and the cooperator.

Critical action. Any activity for which even a slight chance of flooding would be hazardous as determined by the Agency. Critical actions include activities that create, maintain, or extend the useful life of structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; maintain irreplaceable records; or provide essential utility or emergency services (such as data storage centers, electric generating facilities, water treatment facilities, wastewater treatment facilities, large pump stations, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid death or serious injury in a flood.

Design professional. An engineer or architect providing professional design services to applicants during the planning, design, and construction phases of proposals submitted to the Agency for financial assistance.

Distributed resources. Sources of electrical power that are not directly connected to a bulk power transmission system, having an installed capacity of not more than 10 Mega volt-amperes (MVA), connected to an electric power system through a point of common coupling. Distributed resources include both generators (distributed generation) and energy storage technologies.

Emergency. A disaster or a situation that involves an immediate or imminent threat to public health or safety as determined by the Agency.

Environmental report. The environmental documentation that is required of applicants for proposed actions eligible for a CE under § 1970.54.

Environmental review. Any or all of the levels of environmental analysis described under this part.

Financial assistance. A loan, grant, cooperative agreement, or loan guarantee that provides financial assistance, provided by the Agency to an applicant. In accordance with 40 CFR 1505.1(b), the Agency defines the major decision point at which NEPA must be complete, as the approval of financial assistance.

Grant. A form of financial assistance for a specified purpose without scheduled repayment.

Guaranteed lender. The organization making, servicing, or collecting the loan which is guaranteed by the Agency under applicable regulations, excluding the Federal Financing Bank.

Historic property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (See 36 CFR 800.16(l)).

Indian tribe. An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (see 36 CFR 800.16(m)).

Lien sharing. Agreement to pro rata payment on shared secured collateral without priority preference.

Lien subordination. The circumstance in which the Agency, as a first lien holder, provides a creditor with a priority security interest in secured collateral.

Loan. The provision of funds by the Agency directly to an applicant in exchange for repayment with interest and collateral to secure repayment.

Loan guarantee. The circumstance in which the Agency guarantees all or a portion of payment of a debt obligation to a lender.

Loan/System design. An engineering study, prepared to support a loan application under this part, demonstrating that a system design provides telecommunication services most efficiently to proposed subscribers in a proposed service area, in accordance with the Telecommunications Program guidance.

Multi-tier action. Financial assistance provided by specific programs administered by the Agency, that provides financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or other organizations with similar financial arrangements who, in turn, provide financial assistance to eligible recipients. The entities or organizations receiving the initial Agency financial assistance are considered ''primary recipients.'' As the direct recipient of this financial assistance, ''primary recipients'' provide the financial assistance to other parties, referred to as ''secondary recipients'' or ''ultimate recipients.'' The multi-tier action programs include Housing Preservation Grants (42 U.S.C. 1490m), Multi-Family Housing Preservation Revolving Loan Fund (7 CFR part 3560), Intermediary Relending Program (7 U.S.C. 1932 note and 42 U.S.C. 9812), Rural Business Development Grant Program (7 U.S.C. 940c and 7 U.S.C. 1932(c)), Rural Economic Development Loan and Grant Program (7 U.S.C. 940c), Rural Microentrepreneur Assistance Program (7 U.S.C. 1989(a), 7 U.S.C. 2008s), Household Water Well System Grant Program (7 U.S.C. 1926e), Revolving Funds for Financing Water and Wastewater Projects (Revolving Fund Program) (7 U.S.C. 1926(a)(2)(B)), Energy Efficiency and Conservation Loan Program (7 U.S.C. 901), Section 313A, Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c–1), Rural Energy Savings Program (7 U.S.C. 8107a), and any other such programs or similar financial assistance actions to primary recipients as described above.

No action alternative. An alternative that describes the reasonably foreseeable future environment in the event a proposed Federal action is not taken. This forms the baseline condition against which the impacts of the proposed action and other alternatives are compared and evaluated.

Preliminary Architectural/Engineering Report. Documents prepared by the applicant's design professional in accordance with applicable Agency guidance for Preliminary Architectural Reports for housing, business, and community facilities proposals and for Preliminary Engineering Reports for water and wastewater proposals.

Previously disturbed or developed land. Land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas

that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

Servicing actions. All routine, ministerial, or administrative actions for Agency-provided financial assistance that do not involve new financial assistance, including, but not limited to:

(1) Advancing of funds, billing, processing payments, transfers, assumptions, refinancing involving only a change in an interest rate, and accepting prepayments;

(2) Monitoring collateral; foreclosure; compromising, adjusting, reducing, or charging off debts or claims; and modifying or releasing the terms of security instruments, leases, contracts, and agreements; and

(3) Consents or approvals provided pursuant to loan contracts, agreements, and security instruments.

Substantial improvement. Any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all ''public facilities'' as defined in the Disaster Relief Act of 1974) before the repair or improvement is started, or, if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term ''substantial improvement'' does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places. (*See* 44 CFR 59.1.)

Third-party contractor. Contractors for the preparation of EISs, under the Agency's direction, and paid by the applicant. Under the Agency's direction and in compliance with 40 CFR 1506.5(c), the applicant may undertake the necessary paperwork for the solicitation of a field of candidates. Federal procurement requirements do not apply to the Agency because it incurs no obligations or costs under the contract, nor does the Agency procure anything under the contract.

(b) *Acronyms.*

aMW—Average megawatt
CE—Categorical Exclusion
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CEQ—Council on Environmental Quality
EA—Environmental Assessment
ER—Environmental Report
EIS—Environmental Impact Statement
EPA—United States Environmental Protection Agency
ESA—Endangered Species Act
FEMA—Federal Emergency Management Agency
FONSI—Finding of No Significant Impact
GHG—Greenhouse Gas
kV—kilovolt (kV)
kW—kilowatt (kW)
MW—megawatt
MVA—Mega volt-amperes
NEPA—National Environmental Policy Act
NHPA—National Historic Preservation Act
NOI—Notice of Intent
RBIC—Rural Business Investment Company
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
ROD—Record of Decision
SEPA—State Environmental Policy Act
USDA—United States Department of Agriculture
USGS—United States Geological Survey

§ 1970.7 [Reserved]

§ 1970.8 Actions requiring environmental review.

(a) The Agency must comply with the requirements of NEPA for all Federal actions within the:

(1) United States borders and any other commonwealth, territory or possession of the United States such as Guam, American Samoa, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico; and

(2) Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, subject to applicable Compacts of Free Association.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, the provisions of this part apply to administrative actions by the Agency with regard to the following to be Federal actions:

(1) Providing financial assistance;

(2) Certain post-financial assistance actions with the potential to have an effect on the environment, including:

(i) The sale or lease of Agency-owned real property;

(ii) Lien subordination; and

(iii) Approval of a substantial change in the scope of a project receiving financial assistance not previously considered.

(3) Promulgation of procedures or regulations for new or significantly revised programs; and

(4) Legislative proposals (see 40 CFR 1506.8).

(c) For environmental review purposes, the Agency has identified and established categories of proposed actions (§§ 1970.53 through 1970.55, 1970.101, and 1970.151). An applicant may propose to participate with other parties in the ownership of a project. In such a case, the Agency will determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Only if there is such control and responsibility as described below will the Agency consider its action with regard to the project to be a Federal action for purposes of this part. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

(1) Five percent (5%) or less, the project is not considered a Federal action subject to this part;

(2) Thirty-three and one-third percent (33⅓%) or more, the project shall be considered a Federal action subject to this part;

(3) More than five percent (5%) but less than thirty-three and one-third percent (33⅓%), the Agency will determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that the Agency's action will be considered a Federal action subject to this part. In making this determination, the Agency will consider such factors as:

(i) Whether construction would be completed regardless of the Agency's financial assistance or approval;

(ii) The stage of planning and construction;

(iii) Total participation of the applicant;

(iv) Participation percentage of each participant; and

(v) Managerial arrangements and contractual provisions.

(d) Lien sharing is not an action for the purposes of this part.

(e) Servicing actions are directly related to financial assistance already provided, do not require separate NEPA review, and are not actions for the purposes of this part.

§ 1970.9 Levels of environmental review.

(a) The Agency has identified classes of actions and the level of

environmental review required for applicant proposals and Agency actions in subparts B (CEs), C (EAs), and D (EISs) of this part. An applicant seeking financial assistance from the Agency must sufficiently describe its proposal so that the Agency can properly classify the proposal for the purposes of this part.

(b) If an action is not identified in the classes of actions listed in subparts B, C, or D of this part, the Agency will determine what level of environmental review is appropriate.

(c) A single environmental document will evaluate an applicant's proposal and any other activities that are connected, interdependent, or likely to have significant cumulative effects. When a proposal represents one segment of a larger interdependent proposal being funded jointly by various entities, the level of environmental review will normally include the entire proposal.

(d) Upon submission of multi-year planning documents, such as Telecommunications Program Loan/System Designs or multi-year Electric Program Construction Work Plans, the Agency will identify the appropriate classification for all proposals listed in the applicable design or work plan and may request any additional environmental information prior to the time of loan approval.

§ 1970.10 Raising the level of environmental review.

Environmental conditions, scientific controversy, or other characteristics unique to a specific proposal can trigger the need for a higher level of environmental review than described in subparts B or C of this part. As appropriate, the Agency will determine whether extraordinary circumstances (see § 1970.52) or the potential for significant environmental impacts warrant a higher level of review. The Agency is solely responsible for determining the level of environmental review to be conducted and the adequacy of environmental review that has been performed.

§ 1970.11 Timing of the environmental review process.

(a) Once an applicant decides to request Agency financial assistance, the applicant must initiate the environmental review process at the earliest possible time to ensure that planning, design, and other decisions reflect environmental policies and values, avoid delays, and minimize potential conflicts. This includes early coordination with the Agency, all funding partners, and regulatory agencies, in order to minimize duplication of effort.

(b) The environmental review process must be concluded before completion of the obligation of funds.

(c) The environmental review process is formally concluded when all of the following have occurred:

(1) The Agency has reviewed the appropriate environmental review document for completeness;

(2) All required public notices have been published and public comment periods have elapsed;

(3) All comments received during any established comment period have been considered and addressed, as appropriate by the Agency;

(4) The environmental review documents have been approved by the Agency; and

(5) The appropriate environmental decision document has been executed by the Agency after paragraphs (c)(1) through (4) of this section have been concluded.

(d) For proposed actions listed in § 1970.151 and to ensure Agency compliance with the conflict of interest provisions in 40 CFR 1506.5(c), the Agency is responsible for selecting any third-party EIS contractor and participating in the EIS preparation. For more information regarding acquisition of professional services and funding of a third-party contractor, refer to § 1970.152.

§ 1970.12 Limitations on actions during the NEPA process.

(a) *Limitations on actions.* Applicants must not take actions concerning a proposal that may potentially have an environmental impact or would otherwise limit or affect the Agency's decision until the Agency's environmental review process is concluded. If such actions are taken prior to the conclusion of the environmental review process, the Agency may deny the request for financial assistance.

(b) *Anticipatory demolition.* If the Agency determines that an applicant has intentionally significantly adversely affected a historic property with the intent to avoid the requirements of Section 106 of the NHPA (such as demolition or removal of all or part of the property) the Agency may deny the request for financial assistance in accordance with section 110(k) of the NHPA.

(c) *Recent construction.* When construction is in progress or has recently been completed by applicants who can demonstrate no prior intent to seek Agency assistance at the time of application submittal to the Agency, the following requirements apply:

(1) In cases where construction commenced within 6 months prior to the date of application, the Agency will determine and document whether the applicant initiated construction to avoid environmental compliance requirements. If any evidence to that effect exists, the Agency may deny the request for financial assistance.

(2) If there is no evidence that an applicant is attempting to avoid environmental compliance requirements, the application is subject to the following additional requirements:

(i) The Agency will promptly provide written notice to the applicant that the applicant must halt construction if it is ongoing and fulfill all environmental compliance responsibilities before the requested financing will be provided;

(ii) The applicant must take immediate steps to identify any environmental resources affected by the construction and protect the affected resources; and

(iii) With assistance from the applicant and to the extent practicable, the Agency will determine whether environmental resources have been adversely affected by any construction and this information will be included in the environmental document.

(d) *Minimal expenditures.* In accordance with 40 CFR 1506.1(d), the Agency will not be precluded from approving minimal expenditures by the applicant not affecting the environment (*e.g.,* long lead-time equipment, purchase options, or environmental or technical documentation needed for Agency environmental review). To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Agency, and must not compromise the objectivity of the Agency's environmental review process.

§ 1970.13 Consideration of alternatives.

The purpose of considering alternatives to a proposed action is to explore and evaluate whether there may be reasonable alternatives to that action that may have fewer or less significant negative environmental impacts. When considering whether the alternatives are reasonable, the Agency will take into account factors such as economic and technical feasibility. The extent of the analysis on each alternative will depend on the nature and complexity of the proposal. Environmental review

documents must discuss the consideration of alternatives as follows:

(a) For proposals subject to subpart C of this part, the environmental effects of the ''No Action'' alternative must be evaluated. All EAs must evaluate other reasonable alternatives whenever the proposal involves potential adverse effects to environmental resources.

(b) For proposals subject to subpart D of this part, the Agency will follow the requirements in 40 CFR part 1502.

§ 1970.14 Public involvement.

(a) *Goal.* The goal of public involvement is to engage affected or interested parties and share information and solicit input regarding environmental impacts of proposals. This helps the Agency to better identify potential environmental impacts and mitigation measures and allows the public to review and comment on proposals under consideration by the Agency. The nature and extent of public involvement will depend upon the public interest and the complexity, sensitivity, and potential for significant environmental impacts of the proposal.

(b) *Responsibility to involve the public.* The Agency will require applicant assistance throughout the environmental review process, as appropriate, to involve the public as required under 40 CFR 1506.6. These activities may include, but are not limited to:

(1) Coordination with Federal, state, and local agencies; Federally recognized American Indian tribes; Alaska Native organizations; Native Hawaiian organizations; and the public;

(2) Providing meaningful opportunities for involvement of affected minority or low-income populations, which may include special outreach efforts, so that potential disproportionate effects on minority or low-income populations are reduced to the maximum extent practicable;

(3) Publication of notices;

(4) Organizing and conducting meetings; and

(5) Providing translators, posting information on electronic media, or any other additional means needed that will successfully inform the public.

(c) *Scoping.* In accordance with 40 CFR 1501.7, scoping is an early and open process to identify significant environmental issues deserving of study, de-emphasize insignificant issues, and determine the scope of the environmental review process.

(1) Public scoping meetings allow the public to obtain information about a proposal and to express their concerns directly to the parties involved and help determine what issues are to be addressed and what kinds of expertise, analysis, and consultation are needed. For proposals classified in §§ 1970.101 and 1970.151, scoping meetings may be required at the Agency's discretion. The Agency may require a scoping meeting whenever the proposal has substantial controversy, scale, or complexity.

(2) If required, scoping meetings will be held at reasonable times, in accessible locations, and in the geographical area of the proposal at a location the Agency determines would best afford an opportunity for public involvement.

(3) When held, applicants must attend and participate in all scoping meetings. When requested by the Agency, the applicant must organize and arrange meeting locations, publish public notices, provide translation, provide for any equipment needs such as those needed to allow for remote participation, present information on their proposal, and fulfill any related activities.

(d) *Public notices.* (1) The Agency is responsible for meeting the public notice requirements in 40 CFR 1506.6, but will require the applicant to provide public notices of the availability of environmental documents and of public meetings so as to inform those persons and agencies who may be interested in or affected by an applicant's proposal. The Agency will provide applicants with guidance as to specific notice content, publication frequencies, and distribution requirements. Public notices issued by the Agency or the applicant must describe the nature, location, and extent of the applicant's proposal and the Agency's proposed action; notices must also indicate the availability and location of pertinent information.

(2) Notices generally must be published in a newspaper(s) of general circulation (both in print and online) within the proposal's affected areas and other places as determined by the Agency. The notice must be published in the non-classified section of the newspaper. If the affected area is largely non-English speaking or bilingual, the notice must be published in both English and non-English language newspapers serving the affected area, if both are available. The Agency will determine the use of other distribution methods for communicating information to affected individuals and communities if those are more likely to be effective. The applicant must obtain an ''affidavit of publication'' or other such evidence from all publications (or equivalent verification if other distribution methods were used) and must submit such evidence to the Agency to be made a part of the Agency's Administrative Record.

(3) The number of times notices regarding EAs must be published is specified in § 1970.102(b)(6)(ii). Other distribution methods may be used in special circumstances when a newspaper notice is not available or is not adequate. Additional distribution methods may include, but are not limited to, direct public notices to adjacent property owners or occupants, mass mailings, radio broadcasts, internet postings, posters, or some other combination of public announcements.

(4) Formal notices required for EIS-level proposals pursuant to 40 CFR part 1500 will be published by the Agency in the **Federal Register**.

(e) *Public availability.* Documents associated with the environmental review process will be made available to the public at convenient locations specified in public notices and, where appropriate, on the Agency's internet site. Environmental documents that are voluminous or contain hard-to-reproduce graphics or maps should be made available for viewing at one or more locations, such as an Agency field office, public library, or the applicant's place of business. Upon request, the Agency will promptly provide interested parties copies of environmental review documents without charge to the extent practicable, or at a fee not to exceed the cost of reproducing and shipping the copies.

(f) *Public comments.* All comments should be directed to the Agency. Comments received by applicants must be forwarded to the Agency in a timely manner. The Agency will assess and consider all comments received.

§ 1970.15 Interagency cooperation.

In order to reduce delay and paperwork, the Agency will, when practicable, eliminate duplication of Federal, state, and local procedures by participating in joint environmental document preparation, adopting appropriate environmental documents prepared for or by other Federal agencies, and incorporating by reference other environmental documents in accordance with 40 CFR 1506.2 and 1506.3.

(a) *Coordination with other Federal agencies.* When other Federal agencies are involved in an Agency action listed in § 1970.101 or § 1970.151, the Agency will coordinate with these agencies to determine cooperating agency relationships as appropriate in the preparation of a joint environmental review document. The criteria for making this determination can be found at 40 CFR 1501.5.

(b) *Adoption of documents prepared for or by other Federal agencies.* The Agency may adopt EAs or EISs prepared for or by other Federal agencies if the proposed actions and site conditions addressed in the environmental document are substantially the same as those associated with the proposal being considered by the Agency. The Agency will consider age, location, and other reasonable factors in determining the usefulness of the other Federal documents. The Agency will complete an independent evaluation of the environmental document to ensure it meets the requirements of this part. If any environmental document does not meet all Agency requirements, it will be supplemented prior to adoption. Where there is a conflict in the two agencies' classes of action, the Agency may adopt the document provided that it meets the Agency's requirements.

(c) *Cooperation with state and local governments.* In accordance with 40 CFR 1500.5 and 1506.2, the Agency will cooperate with state and local agencies to the fullest extent possible to reduce delay and duplication between NEPA and comparable state and local requirements.

(1) Joint environmental documents. To the extent practicable, the Agency will participate in the preparation of a joint document to ensure that all of the requirements of this part are met. Applicants that request Agency assistance for specific proposals must contact the Agency at the earliest possible date to determine if joint environmental documents can be effectively prepared. In order to prepare joint documents the following conditions must be met:

(i) Applicants must also be seeking financial, technical, or other assistance such as permitting or approvals from a state or local agency that has responsibility to complete an environmental review for the applicant's proposal; and

(ii) The Agency and the state or local agency may agree to be joint lead agencies where practicable. When state laws or local ordinances have environmental requirements in addition to, but not in conflict with those of the Agency, the Agency will cooperate in fulfilling these requirements.

(2) Incorporating other documents. The Agency cannot adopt a non-Federal environmental document under NEPA. However, if an environmental document is not jointly prepared as described in paragraph (c)(1) of this section (*e.g.,* prepared in accordance with a state environmental policy act [SEPA]), the Agency will evaluate the document as reference or supporting material for the Agency's environmental document.

§ 1970.16 Mitigation.

(a) The goal of mitigation is to avoid, minimize, rectify, reduce, or compensate for the adverse environmental impacts of an action. The Agency will seek to mitigate potential adverse environmental impacts resulting from Agency actions. All mitigation measures will be included in Agency commitment or decision documents.

(b) Mitigation measures, where necessary for a FONSI or a ROD, will be discussed with the applicant and with any other relevant agency and, to the extent practicable, incorporated into Agency commitment documents, plans and specifications, and construction contracts so as to be legally binding.

(c) The Agency, applicable lenders, or any intermediaries will monitor implementation of all mitigation measures during development of design, final plans, inspections during the construction phase of projects, as well as in future servicing visits. The Agency will direct applicants to take necessary measures to bring the project into compliance. If the applicant fails to achieve compliance, all advancement of funds and the approval of cost reimbursements will be suspended. Other measures may be taken by the Agency to redress the failed mitigation as appropriate.

§ 1970.17 Programmatic analyses and tiering.

In accordance with 40 CFR 1502.20 and to foster better decision making, the Agency may consider preparing programmatic-level NEPA analyses and tiering to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

§ 1970.18 Emergencies.

When an emergency exists and the Agency determines that it is necessary to take emergency action before preparing a NEPA analysis and any required documentation, the provisions of this section apply.

(a) *Urgent response.* The Agency and the applicant, as appropriate, may take actions necessary to control the immediate impacts of an emergency (see § 1970.53(e)). Emergency actions include those that are urgently needed to restore services and to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the Agency and the applicant, when applicable, will take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(b) *CE- and EA-level actions.* If the Agency proposes longer-term emergency actions other than those actions described in paragraph (a) of this section, and such actions are not likely to have significant environmental impacts, the Agency will document that determination in a finding for a CE or in a FONSI for an EA prepared in accordance with this part. If the Agency finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or EA, the Agency will identify alternative arrangements for compliance with this part with the appropriate agencies.

(1) Alternative arrangements for environmental compliance are limited to actions necessary to control the immediate impacts of the emergency.

(2) Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part.

(c) *EIS-level actions.* If the Agency proposes emergency actions other than those actions described in paragraphs (a) or (b) of this section and such actions are likely to have significant environmental impacts, then the Agency will consult with the CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

§§ 1970.19–1970.50 [Reserved]

Subpart B—NEPA Categorical Exclusions

§ 1970.51 Applying CEs.

(a) The actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment (referred to as ''categorical exclusions'' or CEs).

(1) Actions listed in § 1970.53 do not normally require applicants to submit environmental documentation with their applications. However, these applicants may be required to provide environmental information at the Agency's request.

(2) Actions listed in § 1970.54 normally require the submission of an environmental report (ER) by an applicant to allow the Agency to determine whether extraordinary circumstances (as defined in § 1970.52(a)) exist. When the Agency

determines that extraordinary circumstances exist, an EA or EIS, as appropriate, will be required and, in such instances, applicants may be required to provide additional environmental information later at the Agency's request.

(3) Actions listed in § 1970.55 relate to financial assistance whereby the applicant is a primary recipient of a multi-tier program providing financial assistance to secondary or ultimate recipients without specifying the use of such funds for eligible actions at the time of initial application and approval. The decision to approve or fund such initial proposals has no discernible environmental effects and is therefore categorically excluded provided the primary recipient enters into an agreement with the Agency for future reviews. The primary recipient is limited to making the Agency's financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application. Second-tier funding of proposals to secondary or ultimate recipients will be screened for extraordinary circumstances by the primary recipient and monitored by the Agency. If the primary recipient determines that extraordinary circumstances exist on any second-tier proposal, it must be referred to the Agency for the appropriate level of review under this part in accordance with subparts C and D.

(b) To find that a proposal is categorically excluded, the Agency must determine the following:

(1) The proposal fits within a class of actions that is listed in §§ 1970.53 through 1970.55;

(2) There are no extraordinary circumstances related to the proposal (see § 1970.52); and

(3) The proposal is not ''connected'' to other actions with potentially significant impacts (see 40 CFR 1508.25(a)(1)) or is not considered a ''cumulative action'' (see 40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1.

(c) A proposal that consists of more than one action may be categorically excluded only if all components of the proposed action are eligible for a CE.

(d) If, at any time during the environmental review process, the Agency determines that the proposal does not meet the criteria listed in §§ 1970.53 through 1970.55, an EA or EIS, as appropriate, will be required.

(e) Failure to achieve compliance with this part will postpone further consideration of an applicant's proposal until such compliance is achieved or the applicant withdraws the proposal. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.52 Extraordinary circumstances.

(a) Extraordinary circumstances are unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA. In the event of extraordinary circumstances, a normally excluded action will be the subject of an additional environmental review by the Agency to determine the potential of the Agency action to cause any significant adverse environmental effect, and could, at the Agency's sole discretion, require an EA or an EIS, prepared in accordance with subparts C or D of this part, respectively.

(b) Significant adverse environmental effects that the Agency considers to be extraordinary circumstances include, but are not limited to:

(1) Any violation of applicable Federal, state, or local statutory, regulatory, or permit requirements for environment, safety, and health.

(2) Siting, construction, or major expansion of Resource Conservation and Recovery Act permitted waste storage, disposal, recovery, or treatment facilities (including incinerators), even if the proposal includes categorically excluded waste storage, disposal, recovery, or treatment actions.

(3) Any proposal that is likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products.

(4) An adverse effect on the following environmental resources:

(i) Historic properties;

(ii) Federally listed threatened or endangered species, critical habitat, Federally proposed or candidate species;

(iii) Wetlands (Those actions that propose to convert or propose new construction in wetlands will require consideration of alternatives to avoid adverse effects and unwarranted conversions of wetlands. For actions involving linear utility infrastructure where utilities are proposed to be installed in existing, previously disturbed rights-of-way or that are authorized under applicable Clean Water Act, Section 404 nationwide permits will not require the consideration of alternatives. Those actions that require Section 404 individual permits would create an extraordinary circumstance);

(iv) Floodplains (those actions that introduce fill or structures into a floodplain or propose substantial improvements to structures within a floodplain will require consideration of alternatives to avoid adverse effects and incompatible development in floodplains. Actions that do not adversely affect the hydrologic character of a floodplain, such as buried utility lines or subsurface pump stations, would not create an extraordinary circumstance; or purchase of existing structures within the floodplain will not create an extraordinary circumstance but may require consideration of alternatives to avoid adverse effects and incompatible development in floodplains when determined appropriate by the Agency);

(v) Areas having formal Federal or state designations such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; or marine sanctuaries;

(vi) Special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region);

(vii) Coastal barrier resources or, unless exempt, coastal zone management areas; and

(viii) Coral reefs.

(5) The existence of controversy based on effects to the human environment brought to the Agency's attention by a Federal, tribal, state, or local government agency.

§ 1970.53 CEs involving no or minimal disturbance without an environmental report.

The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist. In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) and its implementing regulations under 36 CFR 800.3(a), the Agency has determined that the actions in this section are undertakings, and in accordance with 36 CFR 800.3(a)(1) has identified those undertakings for which no further review under 36 CFR part 800 is required because they have no

potential to cause effects to historic properties. In accordance with section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations at 50 CFR part 402, the Agency has determined that the actions in this section are actions for purposes of the Endangered Species Act, and in accordance with 50 CFR 402.06 has identified those actions for which no further review under 50 CFR part 402 is required because they will have no effect to listed threatened and endangered species.

(a) *Routine financial actions.* The following are routine financial actions and, as such, are classified as categorical exclusions identified in paragraphs (a)(1) through (7) of this section.

(1) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable.

(i) Real property includes land and any existing permanent or affixed structures.

(ii) ''No or minimal change in use is reasonably foreseeable'' means no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.

(2) Financial assistance for the purchase, transfer, or lease of personal property or fixtures where no or minimal change in operations is reasonably foreseeable. These include:

(i) Approval of minimal expenditures not affecting the environment such as contracts for long lead-time equipment and purchase options by applicants under the terms of 40 CFR 1506.1(d) and 7 CFR 1970.12;

(ii) Acquisition of end-user equipment and programming for telecommunication distance learning;

(iii) Purchase, replacement, or installation of equipment necessary for the operation of an existing facility (such as Supervisory Control and Data Acquisition Systems (SCADA), energy management or efficiency improvement systems (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, standby internal combustion electric generators, battery energy storage systems, and associated facilities for the primary purpose of providing emergency power);

(iv) Purchase of vehicles (such as those used in business, utility, community, or emergency services operations);

(v) Purchase of existing water rights where no associated construction is involved;

(vi) Purchase of livestock and essential farm equipment, including crop storing and drying equipment; and

(vii) Purchase of stock in an existing enterprise to obtain an ownership interest in that enterprise.

(3) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses.

(4) Sale or lease of Agency-owned real property, if the sale or lease of Agency-owned real property will have no or minimal construction or change in current operations in the foreseeable future.

(5) The provision of additional financial assistance for cost overruns where the purpose, operation, location, and design of the proposal as originally approved has not been substantially changed.

(6) Rural Business Investment Program (7 U.S.C. 1989 and 2009cc *et seq.*) actions as follows:

(i) Non-leveraged program actions that include licensing by USDA of Rural Business Investment Companies (RBIC); or

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such Federal assistance is used to finance construction or development of land.

(7) A guarantee provided to a guaranteed lender for the sole purpose of refinancing outstanding bonds or notes or a guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the purpose of:

(i) Refinancing existing debt instruments of a lender organized on a not-for-profit basis; or

(ii) Prepaying outstanding notes or bonds made to or guaranteed by the Agency.

(b) *Information gathering and technical assistance.* The following are CEs for financial assistance, identified in paragraphs (b)(1) through (3) of this section.

(1) Information gathering, data analysis, document preparation, real estate appraisals, environmental site assessments, and information dissemination. Examples of these actions are:

(i) Information gathering such as research, literature surveys, inventories, and audits;

(ii) Data analysis such as computer modeling;

(iii) Document preparation such as strategic plans; conceptual designs; management, economic, planning, or feasibility studies; energy audits or assessments; environmental analyses; and survey and analyses of accounts and business practices; and

(iv) Information dissemination such as document mailings, publication, and distribution; and classroom training and informational programs.

(2) Technical advice, training, planning assistance, and capacity building. Examples of these actions are:

(i) Technical advice, training, planning assistance such as guidance for cooperatives and self-help housing group planning; and

(ii) Capacity building such as leadership training, strategic planning, and community development training.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur. This includes, but is not limited to, air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; and installation of small-scale air, water, or weather monitoring equipment.

(c) *Minor construction proposals.* The following are CEs that apply to financial assistance for minor construction proposals:

(1) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, geographic scope, or design of the project as originally approved;

(2) Repair, upgrade, or replacement of equipment in existing structures for such purposes as improving habitability, energy efficiency (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, pollution prevention, or pollution control;

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance, and replacement in-kind to an existing facility or structure;

(4) Construction of or substantial improvement to a single-family dwelling, or a Rural Housing Site Loan project or multi-family housing project serving up to four families and affecting less than 10 acres of land;

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(6) Replacement of existing water and sewer lines within the existing right-of-way and as long as the size of pipe is either no larger than the inner diameter of the existing pipe or is an increased diameter as required by Federal or state requirements. If a larger pipe size is required, applicants must provide a copy of written administrative requirements mandating a minimum

pipe diameter from the regulatory agency with jurisdiction;

(7) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the replacement well;

(8) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities; and

(9) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest.

(d) *Energy or telecommunication proposals.* The following are CEs that apply to financial assistance for energy or telecommunication proposals:

(1) Upgrading or rebuilding existing telecommunication facilities (both wired and wireless) or addition of aerial cables for communication purposes to electric power lines that would not affect the environment beyond the previously-developed, existing rights-of-way;

(2) Burying new facilities for communication purposes in previously developed, existing rights-of-way and in areas already in or committed to urbanized development or rural settlements whether incorporated or unincorporated that are characterized by high human densities and within contiguous, highly disturbed environments with human-built features. Covered actions include associated vaults and pulling and tensioning sites outside rights-of-way in nearby previously disturbed or developed land;

(3) Changes to electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(4) Phase or voltage conversions, reconductoring, upgrading, or rebuilding of existing electric distribution lines that would not affect the environment beyond the previously developed, existing rights-of-way. Includes pole replacements but does not include overhead-to-underground conversions;

(5) Collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks provided the latter technologies are not attached to and will not cause adverse effects to historic properties;

(6) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously developed land;

(7) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on or adjacent to an existing structure and that would not affect the environment beyond the previously developed facility area and are not attached to and will not cause adverse effects to historic properties;

(8) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(9) Construction of small standby electric generating facilities with a rating of one average megawatt (MW) or less, and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(10) Additions or modifications to electric transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock, grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms; and

(11) Safety, environmental, or energy efficiency (including heat rate efficiency) improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.

(e) *Emergency situations.* Repairs made because of an emergency situation to return to service damaged facilities of an applicant's utility system or other actions necessary to preserve life and control the immediate impacts of the emergency.

(f) *Promulgation of rules or formal notices.* The promulgation of rules or formal notices for policies or programs that are administrative or financial procedures for implementing Agency assistance activities.

(g) *Agency proposals for legislation.* Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or change in operations.

(h) *Administrative actions.* Agency procurement activities for goods and services; routine facility operations; personnel actions, including but not limited to, reduction in force or employee transfers resulting from workload adjustments, and reduced personnel or funding levels; and other such management actions related to the operation of the Agency.

§ 1970.54 CEs involving small-scale development with an environmental report.

The CEs in this section are for proposals for financial assistance that require an applicant to submit an ER with their application to facilitate Agency determination of extraordinary circumstances. At a minimum, the ER will include a complete description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quadrangle map; and information from authoritative sources acceptable to the Agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The ER submitted must be accurate, complete, and capable of verification. The Agency may request additional information as needed to make an environmental determination. Failure to submit the required environmental report will postpone further consideration of the applicant's proposal until the ER is submitted, or the Agency may deny the request for financial assistance. The Agency will review the ER and determine if extraordinary circumstances exist. The Agency's review may determine that classification as an EA or an EIS is more appropriate than a CE classification.

(a) *Small-scale site-specific development.* The following CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. These CEs are identified in paragraphs (a)(1) through (a)(9) of this section. This paragraph does not apply to new industrial proposals (such as ethanol and biodiesel production facilities) or those classes of action listed in §§ 1970.53, 1970.101, or 1970.151.

(1) Multi-family housing and Rural Housing Site Loans.

(2) Business development.

(3) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(4) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems. This does not include proposals that either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters, or cause substantial increase in a withdrawal or discharge at an existing site.

(5) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(6) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(7) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility.

(8) Installation or enlargement of irrigation facilities on an applicant's land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(9) Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s).

(10) Vegetative biomass harvesting operations of no more than 15 acres, provided any amount of land involved in harvesting is to be conducted managed on a sustainable basis and according to a Federal, state, or other governmental unit approved management plan.

(b) *Small-scale corridor development.* The following CEs apply to financial assistance for:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose, or location from the original infrastructure;

(2) Improvement and expansion of existing water, waste water, and gas utility systems:

(i) Within one mile of currently served areas irrespective of the percent of increase in new capacity, or

(ii) Increasing capacity not more than 30 percent of the existing user population;

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way; and

(4) Installation of new linear telecommunications facilities and related equipment and infrastructure.

(c) *Small-scale energy proposals.* The following CEs apply to financial assistance for:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(2) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less than 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles of line are involved; or

(iii) 230 kV or greater involving no more than three miles of line, but not for the integration of major new generation resources into a bulk transmission system;

(3) Reconstruction (upgrading or rebuilding) or minor relocation of existing electric transmission lines (230 kV or less) 25 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas;

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to a rating of 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, with a rating of 10 average MW or less. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(8) Siting, construction, and operation of small biomass projects (except small electric generating facilities projects fueled with biomass) producing not more than 3 million gallons of liquid fuel or 300,000 million british thermal units annually, developed on up 10 acres of land;

(9) Geothermal electric power projects or geothermal heating or cooling projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(10) Solar electric projects or solar thermal projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(11) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(12) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(13) Modifications or enhancements to existing facilities or structures that would not substantially change the

footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency (including heat rate efficiency), promoting pollution prevention or control, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

§ 1970.55 CEs for multi-tier actions.

The CEs in this section apply solely to providing financial assistance to primary recipients in multi-tier action programs.

(a) The Agency's approval of financial assistance to a primary recipient in a multi-tier action program is categorically excluded under this section only if the primary recipient agrees in writing to:

(1) Conduct a screening of all proposed uses of funds to determine whether each proposal that would be funded or financed falls within § 1970.53 or § 1970.54 as a categorical exclusion;

(2) Obtain sufficient information to make an evaluation of those proposals listed in § 1970.53 and prepare an ER for proposals under § 1970.54 to determine if extraordinary circumstances (as described in § 1970.52) are present;

(3) Document and maintain its conclusions regarding the applicability of a CE in its official records for Agency verification; and

(4) Refer all proposals that do not meet listed CEs in § 1970.53 or § 1970.54, and proposals that may have extraordinary circumstances (as described in § 1970.52) to the Agency for further review in accordance with this part.

(b) The primary recipient's compliance with this section will be monitored and verified in Agency compliance reviews and other required audits. Failure by a primary recipient to meet the requirements of this section will result in penalties that may include written warnings, withdrawal of Agency financial assistance, suspension from participation in Agency programs, or other appropriate action.

(c) Nothing in this section is intended to delegate the Agency's responsibility for compliance with this part. The Agency will continue to maintain ultimate responsibility for and control over the environmental review process in accordance with this part.

§§ 1970.56–1970.100 [Reserved]

Subpart C—NEPA Environmental Assessments

§ 1970.101 General.

(a) An EA is a concise public document used by the Agency to determine whether to issue a FONSI or prepare an EIS, as specified in subpart D of this part. If, at any point during the preparation of an EA, it is determined that the proposal will have a potentially significant impact on the quality of the human environment, an EIS will be prepared.

(b) Unless otherwise determined by the Agency, EAs will be prepared for all ''Federal actions'' as described in § 1970.8, unless such actions are categorically excluded, as determined under subpart B of this part, or require an EIS, as provided under subpart D of this part;

(c) Preparation of an EA will begin as soon as the Agency has determined the proper classification of the applicant's proposal. Applicants should consult as early as possible with the Agency to determine the environmental review requirements of their proposals. The EA must be prepared concurrently with the early planning and design phase of the proposal. The EA will not be considered complete until it is in compliance with this part.

(d) Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.102 Preparation of EAs.

The EA must focus on resources that might be affected and any environmental issues that are of public concern.

(a) The amount of information and level of analysis provided in the EA should be commensurate with the magnitude of the proposal's activities and its potential to affect the quality of the human environment. At a minimum, the EA must discuss the following:

(1) The purpose and need for the proposed action;

(2) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(3) The environmental impacts of the proposed action including the No Action alternative, and, if a specific project element is likely to adversely affect a resource, at least one alternative to that project element;

(4) Any applicable environmental laws and Executive Orders;

(5) Any required coordination undertaken with any Federal, state, or local agencies or Indian tribes regarding compliance with applicable laws and Executive Orders;

(6) Mitigation measures considered, including those measures that must be adopted to ensure the action will not have significant impacts;

(7) Any documents incorporated by reference, if appropriate, including information provided by the applicant for the proposed action; and

(8) A listing of persons and agencies consulted.

(b) The following describes the normal processing of an EA under this subpart:

(1) The Agency advises the applicant of its responsibilities as described in subpart A of this part. These responsibilities include preparation of the EA as discussed in § 1970.5(b)(3)(iv)(B).

(2) The applicant provides a detailed project description including connected actions.

(3) The Agency verifies that the applicant's proposal should be the subject of an EA under § 1970.101. In addition, the Agency identifies any unique environmental requirements associated with the applicant's proposal.

(4) The Agency or the applicant, as appropriate, coordinates with Federal, state, and local agencies with jurisdiction by law or special expertise; tribes; and interested parties during EA preparation.

(5) Upon receipt of the EA from the applicant, the Agency evaluates the completeness and accuracy of the documentation. If necessary, the Agency will require the applicant to correct any deficiencies and resubmit the EA prior to its review.

(6) The Agency reviews the EA and supporting documentation to determine whether the environmental review is acceptable.

(i) If the Agency finds the EA unacceptable, the Agency will notify the applicant, as necessary, and work to resolve any outstanding issues.

(ii) If the Agency finds the EA acceptable, the Agency will prepare or review a ''Notice of Availability of the EA'' and direct the applicant to publish the notice in local newspapers or through other distribution methods as approved by the Agency. The notice must be published for three consecutive issues (including online) in a daily newspaper, or two consecutive weeks in a weekly newspaper. If other distribution methods are approved, the

Agency will identify equivalent requirements. The public review and comment period will begin on the day of the first publication date or equivalent if other distribution methods are used. A 14- to 30-day public review and comment period, as determined by the Agency, will be provided for all Agency EAs.

(7) After reviewing and evaluating all public comments, the Agency determines whether to modify the EA, prepare a FONSI, or prepare an EIS that conforms with subpart D of this part.

(8) If the Agency determines that a FONSI is appropriate, and after preparation of the FONSI, the Agency will prepare or review a public notice announcing the availability of the FONSI and direct the applicant to publish the public notice in a newspaper(s) of general circulation, as described in § 1970.14(d)(2). In such case, the applicant must obtain an ''affidavit of publication'' or other such proof from all publications (or equivalent verification if other media were used) and must submit the affidavits and verifications to the Agency.

§ 1970.103 Supplementing EAs.

If the applicant makes substantial changes to a proposal or if new relevant environmental information is brought to the attention of the Agency after the issuance of an EA or FONSI, supplementing an EA may be necessary before the action has been implemented. Depending on the nature of the changes, the EA will be supplemented by revising the applicable section(s) or by appending the information to address potential impacts not previously considered. If an EA is supplemented, public notification will be required in accordance with § 1970.102(b)(7) and (8).

§ 1970.104 Finding of No Significant Impact.

The Agency may issue a FONSI or a revised FONSI only if the EA or supplemental EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Agency will follow the requirements of subpart D of this part before taking action on the proposal.

(a) A FONSI must include:

(1) A summary of the supporting EA consisting of a brief description of the proposed action, the alternatives considered, and the proposal's impacts;

(2) A notation of any other EAs or EISs that are being or will be prepared and that are related to the EA;

(3) A brief discussion of why there would be no significant impacts;

(4) Any mitigation essential to finding that the impacts of the proposed action would not be significant;

(5) The date issued; and

(6) The signature of the appropriate Agency approval official.

(b) The Agency must ensure that the applicant has committed to any mitigation that is necessary to support a FONSI and possesses the authority and ability to fulfill those commitments. The Agency must ensure that mitigation, and, if appropriate, a mitigation plan that is necessary to support a FONSI, is made a condition of financial assistance.

(c) The Agency must make a FONSI available to the public as provided at 40 CFR 1501.4(e) and 1506.6.

(d) The Agency may revise a FONSI at any time provided that the revision is supported by an EA or a supplemental EA. A revised FONSI is subject to all provisions of this section.

§§ 1970.105—1970.150 [Reserved]

Subpart D—NEPA Environmental Impact Statements

§ 1970.151 General.

(a) The purpose of an EIS is to provide a full and fair discussion of significant environmental impacts and to inform the appropriate Agency decision maker and the public of reasonable alternatives to the applicant's proposal, the Agency's proposed action, and any measures that would avoid or minimize adverse impacts.

(b) Agency actions for which an EIS is required include, but are not limited to:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated;

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261;

(3) Proposals that change or convert the land use of an area greater than 640 contiguous acres;

(4) New electric generating facilities, other than gas-fired prime movers (gas-fired turbines and gas engines) or renewable systems (solar, wind, geothermal), with a rating greater than 50 average MW, and all new associated electric transmission facilities;

(5) New mining operations when the applicant has effective control (*i.e.,* applicant's dedicated mine or purchase of a substantial portion of the mining equipment); and

(6) Agency proposals for legislation that may have a significant environmental impact.

(c) Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until the Agency determines that such compliance has been achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.152 EIS funding and professional services.

(a) *Funding for EISs.* Unless otherwise approved by the Agency, an applicant must fund an EIS and any supplemental documentation prepared in support of an applicant's proposal.

(b) *Acquisition of professional services.* Applicants shall solicit and procure professional services in accordance with and through the third-party contractor methods specified in 40 CFR 1506.5(c), and in compliance with applicable state or local laws or regulations. Applicants and their officers, employees, or agents shall not engage in contract awards or contract administration if there is a conflict of interest or receipt of gratuities, favors or any form of monetary value from contractors, subcontractors, potential contractors or subcontractors, or other parties performing or to perform work on an EIS. To avoid any conflicts of interest, the Agency is responsible for selecting the EIS contractor and the applicant must not initiate any procurement of professional services to prepare an EIS without prior written approval from the Agency. The Agency reserves the right to consider alternate procurement methods.

(c) *EIS scope and content.* The Agency will prepare the scope of work for the preparation of the EIS and will be responsible for the scope, content and development of the EIS prepared by the contractor(s) hired or selected by the Agency.

(d) *Agreement Outlining Party Roles and Responsibilities.* For each EIS, an agreement will be executed by the Agency, the applicant, and each third-party contractor, which describes each party's roles and responsibilities during the EIS process.

(e) *Disclosure statement.* The Agency will ensure that a disclosure statement is executed by each EIS contractor. The disclosure statement will specify that the contractor has no financial or other interest in the outcome of the proposal.

§ 1970.153 Notice of Intent and scoping.

(a) *Notice of Intent.* The Agency will publish a Notice of Intent (NOI) in the

Federal Register that an EIS will be prepared and, if public scoping meetings are required, the notice will be published at least 14 days prior to the public scoping meeting(s).

(1) The NOI will include a description of the following: the applicant's proposal and possible alternatives; the Agency's scoping process including plans for possible public scoping meetings with time and locations; background information if available; and contact information for Agency staff who can answer questions regarding the proposal and the EIS.

(2) The applicant must publish a notice similar to the NOI, as directed and approved by the Agency, in one or more newspapers of local circulation, or provide similar information through other distribution methods as approved by the Agency. If public scoping meetings are required, such notices must be published at least 14 days prior to each public scoping meeting.

(b) *Scoping.* In addition to the Agency and applicant responsibilities for public involvement identified in § 1970.14 and as part of early planning for the proposal, the Agency and the applicant must invite affected Federal, state, and local agencies and tribes to inform them of the proposal and identify the permits and approvals that must be obtained and the administrative procedures that must be followed.

(c) *Significant issues.* For each scoping meeting held, the Agency will determine, as soon as practicable after the meeting, the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues that are not significant, have been covered by prior environmental review, or are not determined to be reasonable alternatives.

§ 1970.154 Preparation of the EIS.

(a) The EIS must be prepared in accordance with the format outlined at 40 CFR 1502.10.

(b) The EIS must be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers must be appropriate to address the potential environmental impacts associated with the proposal. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts such as those at universities; local, state, and Federal agencies; and Indian tribes.

(c) The Agency will file the draft and final EIS with the U. S. Environmental Protection Agency's (EPA) Office of Federal Activities.

(d) The Agency will publish in the **Federal Register** a Notice of Availability announcing that either the draft or final EIS is available for review and comment. The applicant must concurrently publish a similar announcement using one or more distribution methods as approved by the Agency in accordance with § 1970.14.

(e) Minimum public comment time periods are calculated from the date on which EPA's Notice of Availability is published in the **Federal Register**. The Agency has the discretion to extend any public review and comment period if warranted. Notification of any extensions will occur through the **Federal Register** and other media outlets.

(f) When comments are received on a draft EIS, the Agency will assess and consider comments both individually and collectively. With support from the third-party contractor and the applicant, the Agency will develop responses to the comments received. Possible responses to public comments include: Modifying the alternatives considered; negotiating with the applicant to modify or mitigate specific project elements of the original proposal; developing and evaluating alternatives not previously given serious consideration; supplementing or modifying the analysis; making factual corrections; or explaining why the comments do not warrant further response.

(g) If the final EIS requires only minor changes from the draft EIS, the Agency may document and incorporate such minor changes through errata sheets, insertion pages, or revised sections to be incorporated into the draft EIS. In such cases, the Agency will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as the final EIS. The Agency will not circulate the draft EIS again; although, if requested, a copy of the draft EIS may be provided in a timely fashion to any interested party.

§ 1970.155 Supplementing EISs.

(a) A supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS (see 7 CFR 1970.154). Supplements to a draft or final EIS will be prepared if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information pertaining to the proposal arise which are relevant to environmental concerns and the proposal or its impacts.

(b) The Agency will publish an NOI to prepare a supplement to a draft or final EIS.

(c) The Agency, at its discretion, may issue an information supplement to a final EIS where the Agency determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). The Agency and the applicant must concurrently have separate notices of availability published. The notice requirements must be the same as for a final EIS and the information supplement must be circulated in the same manner as a final EIS. The Agency will take no final action on any proposed modification discussed in the information supplement until 30 days after the Agency's notice of availability or the applicant's notice is published, whichever occurs later.

§ 1970.156 Record of Decision.

(a) The ROD is a concise public record of the Agency's decision. The required information and format of the ROD will be consistent with 40 CFR 1505.2.

(b) Once a ROD has been executed by the Agency, the Agency will issue a **Federal Register** notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the **Federal Register**.

§§ 1970.157—1970.200 [Reserved]

PART 1980—GENERAL

■ 99. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart E—Business and Industrial Loan Program

■ 100. Revise § 1980.432 to read as follows:

§ 1980.432 Environmental review requirements.

[See subpart A, § 1980.40 and 7 CFR part 1970.] *Administrative*

Loans made under this part must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

■ 101. Amend § 1980.451 to revise paragraphs (h)(3) and *Administrative, B. Miscellaneous Administrative Provisions* 7. Par(i)(table) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(h) * * *

(3) Environmental review documentation as required in accordance with 7 CFR part 1970.

* * * * *

Administrative

B. Miscellaneous Administrative provisions:

7. *Par (i)* * * *

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

		Filing position
AD–425	Contractor's Affirmative Action Plan For Equal Employment Opportunity	1
RD 400–1	Equal Opportunity Agreement	6
RD 400–3	Notice to Contractors and Applicants	6
RD 400–4	Assurance Agreement	3
RD 400–6	Compliance Statement	6
RD 410–8	Applicant Reference Letter	3
RD 410–9	Statement Required by the Privacy Act	3
RD 410–10	Privacy Act Statement to References	3
RD 424–12	Inspection Report	6
RD 1940–3	Request for Obligation of Funds—Guaranteed Loans; Filing Position 2	2
RD 1970–1	Environmental Checklist for Categorical Exclusions	3
	Environmental Reports	3
	Environmental Assessments	3
	Environmental Impact Statements	3
RD 440–57	Acknowledgement of Obligated Funds/Check Request	2
RD 449–1	Application for Loan and Guarantee	3
RD 449–2	Statement of Collateral	5
RD 449–4	Statement of Personal History	3
	Loan Closing Opinion of Lender's Legal Counsel	

* * * * *

■ 102. Revise § 1980.490(p)(8) to read as follows:

§ 1980.490 Business and industry buydown loans.

* * * * *

(p) * * *

(8) *Sodbuster and swampbuster requirements.* The requirements found in 7 CFR part 1970 will apply to loans made to enterprises engaged in agricultural production.

■ 103. Revise § 1980.49 (m)(9) to read as follows:

§ 1980.498 Business and Industry Disaster Loans.

* * * * *

(m) * * *

(9) *Sodbuster and swampbuster requirements.* The requirements found in 7 CFR part 1970 will apply to loans made to enterprises engaged in agricultural production.

■ 104. In Appendix K to Subpart E, revise the introductory text of section K. and paragraph C.12. of section IX. Servicing to read as follows:

Appendix K to Subpart E of Part 1980—Regulations for Loan Guarantees for Disaster Assistance For Rural Business Enterprises

* * * * *

K. Sodbuster and Swampbuster requirements

The provisions of 7 CFR part 1970 will apply to loans made to rural business enterprises engaged in agricultural production.

* * * * *

IX. Servicing.

* * * * *

C. * * *

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, or otherwise are in compliance with 7 CFR part 1970.

* * * * *

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 105. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 106. Revise § 3550.5(b) to read as follows:

§ 3550.5 Environmental review requirements.

* * * * *

(b) *Regulatory references.* Processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

Subpart D—Regular Servicing

■ 107. Revise § 3550.159(c)(5) to read as follows:

§ 3550.159 Borrower actions requiring RHS approval.

* * * * *

(c) * * *

(5) Environmental requirements are met and environmental documentation is submitted in accordance with 7 CFR part 1970.

* * * * *

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 108. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

■ 109. Revise § 3555.5(b) to read as follows:

§ 3555.5 Environmental review requirements.

* * * * *

(b) *Regulatory references.* Loan processing or servicing actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970, and 7 CFR part 1924, which addresses lead-based paint.

* * * * *

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 110. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart A—General Provisions and Definitions

■ 111. Revise § 3560.3 to read as follows:

§ 3560.3 Environmental review requirements.

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 of this title are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8 of this title, are actions for the purposes of this part.

Subpart B—Direct Loan and Grant Origination

■ 112. Revise § 3560.54(b)(4) to read as follows:

§ 3560.54 Restriction on the use of funds.

* * * * *

(b) * * *

(4) The completion of environmental review requirements in accordance with 7 CFR part 1970.

■ 113. Revise § 3560.56(d)(7) to read as follows:

§ 3560.56 Processing section 515 housing proposals.

* * * * *

(d) * * *

(7) Completion of environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

■ 114. Revise § 3560.59 to read as follows:

§ 3560.59 Environmental review requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review requirements in accordance with 7 CFR part 1970. Likewise, the applicant should be informed that the environmental review must be completed and approved before the Agency can make a commitment of resources to the project.

■ 115. Revise § 3560.71(b)(4) to read as follows:

§ 3560.71 Construction financing.

* * * * *

(b) * * *

(4) An environmental review in accordance with 7 CFR part 1970 must be completed prior to issuance of the interim financing letter.

* * * * *

■ 116. Revise § 3560.73(e) to read as follows:

§ 3560.73 Subsequent loans.

* * * * *

(e) *Environmental review requirements.* Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

* * * * *

Subpart I—Servicing

■ 117. Revise § 3560.406(d)(4) to read as follows:

§ 3560.406 MFH ownership transfers or sales.

* * * * *

(d) * * *

(4) Prior to Agency approval of an ownership transfer or sale, the appropriate level of environmental review in accordance with 7 CFR part 1970 must be completed by the Agency on all property related to the ownership transfer or sale. If releases of or contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

* * * * *

■ 118. Revise § 3560.407(a) to read as follows:

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. Agency approvals of sales or other dispositions of security property are not subject to the requirements outlined in 7 CFR part 1970.

* * * * *

■ 119. Revise § 3560.408(a) to read as follows:

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. Agency approvals of lease agreements are considered loan servicing actions under 7 CFR part 1970, and as such do not require additional NEPA analysis and documentation.

* * * * *

■ 120. Revise § 3560.409(a) introductory text to read as follows:

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property, or lien subordination, (*i.e.,* granting of a prior interest to another lender.) Prior to Agency consent, environmental review requirements must be completed in accordance with 7 CFR part 1970. Borrowers must use an Agency approved lien subordination agreement.

* * * * *

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

■ 121. Revise § 3560.458(d) to read as follows:

§ 3560.458 Special property circumstances.

* * * * *

(d) *Due diligence.* When the Agency has completed an environmental site assessment in accordance with 7 CFR part 1970, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to releases of or the presence of contamination from hazardous substances, hazardous

wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its environmental site assessment.

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 122. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

■ 123. Revise § 3565.7 to read as follows:

§ 3565.7 Environmental review requirements.

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken under this part must comply with the environmental review requirements in accordance with 7 CFR part 1970.

Subpart E—Loan Requirements

■ 124. Revise § 3565.205(b) to read as follows:

§ 3565.205 Eligible uses of loan proceeds.

* * * * *

(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A, as well as any applicable historic preservation and environmental review requirements in accordance with 7 CFR part 1970.

Subpart F—Property Requirements

■ 125. Revise § 3565.255 to read as follows:

§ 3565.255 Environmental review requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved by the Agency until the Agency has completed the environmental review process in accordance with 7 CFR part 1970.

Subpart G—Processing Requirements

■ 126. Revise § 3565.303(b)(1) to read as follows:

§ 3565.303 Issuance of loan guarantee.

* * * * *

(b) * * *

(1) Completion of environmental review requirements in accordance with 7 CFR part 1970; and

* * * * *

Subpart J—Assignment, Conveyance, and Claims

■ 127. Revise § 3565.451(c) to read as follows:

§ 3565.451 Preclaim requirements.

* * * * *

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1970. Servicing actions as defined in § 1970.6 are part of financial assistance already provided and do not require additional NEPA review. However, certain post-financial assistance actions that have the potential to have an effect on the environment, such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, are subject to a NEPA analysis in accordance with 7 CFR part 1970.

PART 3570—COMMUNITY PROGRAMS

■ 128. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Community Facilities Grant Program

■ 129. Revise § 3570.69 to read as follows:

§ 3570.69 Environmental review requirements, intergovernmental review, and public notification.

Grants awarded under this subpart, including grant-only awards, must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970, to the intergovernmental review requirements of 7 CFR 3015, subpart V and RD Instruction 1970–I, ''Intergovernmental Review,'' and the public information process in 7 CFR 1942.17(j)(9).

PART 3575—GENERAL

■ 130. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

■ 131. Revise § 3575.9 to read as follows:

§ 3575.9 Environmental review requirements.

Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. The lender must assist the Agency to ensure that the lender's applicant complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender's applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4274—DIRECT AND INSURED LOANMAKING

■ 132. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

■ 133. Amend § 4274.337 by revising paragraph (b) to read as follows:

§ 4274.337 Other regulatory requirements.

* * * * *

(b) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970, as specified in § 1970.51(a)(3) for multi-tier actions. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Intermediaries must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

* * * * *

■ 134. Revise § 4274.343(a)(3) to read as follows:

§ 4274.343 Application.

(a) * * *

(3) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, an agreement in writing to the environmental requirements in accordance with 7 CFR part 1970.

* * * * *

■ 135. Revise § 4274.361(b)(2) to read as follows:

§ 4274.361 Requests to make loans to ultimate recipients.

* * * * *

(b) * * *

(2) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, required environmental documentation in accordance with 7 CFR part 1970.

* * * * *

PART 4279—GUARANTEED LOANMAKING

■ 136. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart A—General

■ 137. Revise § 4279.30(c) to read as follows:

§ 4279.30 Lenders' functions and responsibilities.

* * * * *

(c) *Environmental responsibilities.* Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(1) Lenders must assist the borrower in providing details of the projects impact on the environment and historic properties, in accordance with 7 CFR part 1970, when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(2) Lenders must ensure the borrower has:

(i) Provided the necessary environmental information to enable the Agency to approve the environmental review in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(3) Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review.

■ 138. Revise § 4279.43(g)(1)(iii) and (g)(2) to read as follows:

§ 4279.43 Certified Lender Program.

* * * * *

(g) * * *

(1) * * *

(iii) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and, in accordance with 7 CFR part 1970, approval of the environmental documentation, except that refinancing of existing lender debt in accordance with § 4279.113(q) will not be approved without a credit analysis by the Agency of the borrower's complete financial statement. The Agency may request such additional information as it determines is needed to make a decision.

* * * * *

Subpart B—Business and Industry Loans

■ 139. Revise § 4279.161(b)(3) to read as follows:

§ 4279.161 Filing preapplications and applications.

* * * * *

(b) * * *

(3) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

■ 140. Revise § 4279.165(b) to read as follows:

§ 4279.165 Evaluation of application.

* * * * *

(b) *Environmental requirements.* The environmental review process must be completed in accordance with 7 CFR part 1970 prior to the issuance of the conditional commitment, loan approval, or obligation of funds, whichever occurs first.

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans Lender Functions and Responsibilities

■ 141. Revise § 4279.216(b)(1) to read as follows:

§ 4279.216 Environmental responsibilities.

* * * * *

(b) * * *

(1) Provided the necessary environmental documentation to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits.

* * * * *

■ 142. Revise § 4279.261(k)(4) and (k)(8)(iv)(B)(*2*) to read as follows:

§ 4279.261 Application for loan guarantee content.

* * * * *

(k) * * *

(4) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

(8) * * *

(iv) * * *

(B) * * *

(*2*) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

PART 4280—LOANS AND GRANTS

■ 143. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301: 7 U.S.C. 940c and 7 U.S.C. 1932(c).

Subpart A—Rural Economic Development Loan and Grant Programs

■ 144. Revise § 4280.36(k) to read as follows:

§ 4280.36 Other laws that contain compliance requirements for these Programs.

* * * * *

(k) *Environmental requirements.* Actions taken under this subpart, including the loans made from the revolving loan fund using Agency funds, must comply with 7 CFR part 1970. However, revolving loan funds derived from repayments by third parties are not considered Federal financial assistance for the purposes of 7 CFR part 1970.

* * * * *

■ 145. Revise § 4280.39(a)(9) to read as follows:

§ 4280.39 Contents of an application.

* * * * *

(a) * * *

(9) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

■ 146. Revise § 4280.41 to read as follows:

§ 4280.41 Environmental review of the application.

The Agency will review the environmental documentation in accordance with 7 CFR part 1970. Intermediaries will be informed by the Agency if additional information is required from the intermediary to complete the environmental review process. The environmental review process must be completed before the application can be considered for approval by the Agency.

Subpart B—Rural Energy for America Program General

■ 147. Amend § 4280.108 by revising the introductory text of paragraph (d) to read as follows:

§ 4280.108 U.S. Department of Agriculture Departmental Regulations and laws that contain other compliance requirements.

* * * * *

(d) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

* * * * *

■ 148. Revise § 4280.110(h)(2) to read as follows:

§ 4280.110 General Applicant, application, and funding provisions.

* * * * *

(h) * * *

(2) *Technical report modifications.* If a technical report is prepared prior to the Applicant's selection of a final design, equipment vendor, or contractor, or other significant decision, it may be modified and resubmitted to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

* * * * *

■ 149. Revise § 4280.117(a)(5) to read as follows:

§ 4280.117 Grant applications for RES and EEI projects with total project costs of $200,000 and greater.

* * * * *

(a) * * *

(5) Environmental documentation in accordance with 7 CFR part 1970. The Applicant should contact the Agency to determine what documentation is required to be provided.

* * * * *

■ 150. Revise § 4280.119(b)(1)(v) to read as follows:

§ 4280.119 Grant applications for RES and EEI projects with total project costs of $80,000 or less.

* * * * *

(b) * * *

(1) * * *

(v) Environmental documentation in accordance with 7 CFR part 1970. The Applicant should contact the Agency to determine what documentation is required to be provided.

* * * * *

■ 151. Revise § 4280.124(d)(1) to read as follows:

§ 4280.124 Construction planning and performing development.

* * * * *

(d) * * *

(1) *Environmental requirements.* Actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Project planning and design must not only be responsive to the grantee's needs but must consider the environmental consequences of the proposed project. Project design must incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. If such actions are taken, the Agency has the right to withdraw and discontinue processing the application.

* * * * *

■ 152. Revise § 4280.137 (b)(2)(ii) to read as follows:

§ 4280.137 Application and documentation.

* * * * *

(b) * * *

(2) * * *

(ii) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

Subpart E—Rural Business Development Grants General

■ 153. Amend § 4280.408 by revising paragraph (d) introductory text, and paragraph (d)(4) to read as follows:

§ 4280.408 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

* * * * *

(d) *Environmental requirements.* Actions taken under this subpart must comply with 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

* * * * *

(4) Applications for Technical Assistance or Planning Projects are generally excluded from the environmental review process by 7 CFR 1970.53 provided the assistance is not related to the development of a specific site. However, as further specified in 7 CFR 1970.53, the grantee for a Technical Assistance grant, in the process of providing Technical Assistance, must consider the potential environmental impacts of the recommendations

provided to the recipient of the Technical Assistance as requested by the Agency and in accordance with 7 CFR part 1970.

* * * * *

PART 4284—GRANTS

■ 154. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Requirements for Cooperative Services Grant Programs

■ 155. Amend § 4284.16 by revising paragraph (a) to read as follows:

§ 4284.16 Other considerations.

(a) *Environmental requirements.* Grants made under this subpart must comply with 7 CFR part 1970. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1970.53, provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

* * * * *

Subpart J—Value-Added Producer Grant Program

■ 156. Revise § 4284.907 to read as follows:

§ 4284.907 Environmental requirements.

Grants made under this subpart must comply with 7 CFR part 1970. Applications for both Planning and Working Capital grants are generally excluded from the environmental review process by § 1970.53.

PART 4287—SERVICING

■ 157. The authority citation for part 4287 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart B—Servicing Business and Industry Guaranteed Loans

■ 158. Revise § 4287.157(j) introductory text to read as follows:

§ 4287.157 Liquidation.

* * * * *

(j) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment by the lender of non-Agency owned property will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review. Examples where abandonment may be considered include, but are not limited to:

* * * * *

Subpart D—Servicing Biorefinery, Renewable Chemical, and Biobased Manufacturing Assistance Guaranteed Loans

■ 159. Revise § 4287.357(i) to read as follows:

§ 4287.357 Liquidation.

* * * * *

(i) *Abandonment of collateral.* When the Lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain Collateral and receives Agency concurrence, the Lender may abandon that Collateral. When the Lender makes a recommendation for abandonment of Collateral, it will be considered a servicing action under 7 CFR 1970.8(e), and will not require separate NEPA review.

* * * * *

PART 4288—PAYMENT PROGRAMS

■ 160. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

■ 161. Revise § 4288.20(b)(5) to read as follows:

§ 4288.20 Submittal of applications.

* * * * *

(b) * * *

(5) Environmental documentation in accordance with 7 CFR part 1970.

* * * * *

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (RBIC) PROGRAM

■ 162. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2009cc *et seq.*

Subpart M—Miscellaneous

■ 163. Revise § 4290.1940(h) to read as follows:

§ 4290.1940 Integration of this part with other regulations application to USDA's programs.

* * * * *

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with 7 CFR part 1970. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

Dated: February 11, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

Dated: February 12, 2016.

Michael Scuse,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2016–03433 Filed 3–1–16; 8:45 am]

BILLING CODE 3410–XV–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 41 March 2, 2016

Part IV

Department of Health and Human Services

45 CFR Part 170
Medicare Program; FY 2015 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements and Process and Appeals for Part D Payment for Drugs for Beneficiaries Enrolled in Hospice; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 170

RIN 0955–AA00

ONC Health IT Certification Program: Enhanced Oversight and Accountability

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (''proposed rule'') introduces modifications and new requirements under the ONC Health IT Certification Program (''Program''), including provisions related to the Office of the National Coordinator for Health Information Technology (ONC)'s role in the Program. The proposed rule proposes to establish processes for ONC to directly review health IT certified under the Program and take action when necessary, including requiring the correction of non-conformities found in health IT certified under the Program and suspending and terminating certifications issued to Complete EHRs and Health IT Modules. The proposed rule includes processes for ONC to authorize and oversee accredited testing laboratories under the Program. It also includes a provision for the increased transparency and availability of surveillance results.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on May 2, 2016.

ADDRESSES: You may submit comments, identified by RIN 0955–AA00, by any of the following methods (please do not submit duplicate comments). Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word, Microsoft Excel, or Adobe PDF; however, we prefer Microsoft Word. *http://www.regulations.gov.*
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: ONC Health IT Certification Program Proposed Rule, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office of the National Coordinator for Health Information Technology, Attention: ONC Health IT Certification Program Proposed Rule, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Mary E. Switzer Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Enhancing the Public Comment Experience: To facilitate public comment on this proposed rule, a copy will be made available in Microsoft Word format on ONC's Web site (*http://www.healthit.gov*). We believe this version will make it easier for commenters to access and copy portions of the proposed rule for use in their individual comments. Additionally, a separate document will also be made available on ONC's Web site (*http://www.healthit.gov*) for the public to use in providing comments on the proposed rule. This document is meant to provide the public with a simple and organized way to submit comments on proposals and respond to specific questions posed in the preamble of the proposed rule. While use of this document is entirely voluntary, we encourage commenters to consider using the document in lieu of unstructured comments or to use it as an addendum to narrative cover pages. We believe that use of the document may facilitate our review and understanding of the comments received.

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: A person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered proprietary. We will post all comments that are received before the close of the comment period at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW., Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection).

FOR FURTHER INFORMATION CONTACT: Michael Lipinski, Office of Policy, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Commonly Used Acronyms

CEHRT Certified Electronic Health Record Technology
CFR Code of Federal Regulations
CHPL Certified Health IT Product List
EHR Electronic Health Record
HHS Department of Health and Human Services
HIT Health Information Technology
ISO International Organization for Standardization
NVLAP National Voluntary Laboratory Accreditation Program
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
ONC–ACB ONC–Authorized Certification Body
ONC–ATCB ONC-Authorized Testing and Certification Body
ONC–ATL ONC–Authorized Testing Laboratory
PoPC Principles of Proper Conduct

Table of Contents

I. Executive Summary

A. Purpose of Regulatory Action

The ONC Health IT Certification Program (''Program'') was first established as the Temporary Certification Program in a final rule published on June 24, 2010 (''Temporary Certification Program final rule'' (75 FR 36158)). It was later transitioned to the Permanent Certification Program in a final rule published on January 7, 2011 (''Permanent Certification Program final rule'' (76 FR 1262)). Since that time, we have updated the Program and made modifications to the Program through subsequent rules as discussed below.

In November 2011, a final rule established a process for ONC to address instances where the ONC-Approved Accreditor (ONC–AA) may engage in improper conduct or not perform its responsibilities under Program (76 FR 72636). In September 2012, a final rule (''2014 Edition final rule'' (77 FR 54163)) established an edition of certification criteria and modified the Program to, among other things, provide clear implementation direction to ONC-Authorized Certification Bodies (ONC–ACBs) for certifying Health IT Modules to new certification criteria. On September 11, 2014, a final rule provided certification flexibility through the adoption of new certification criteria and further improvements to the Program (''2014 Edition Release 2 final rule'' (79 FR 54430)). Most recently, on October 16, 2015, the Department of Health and Human Services (HHS) published a final rule that identified how health IT certification can support the establishment of an interoperable nationwide health information infrastructure through the certification and use of adopted new and updated vocabulary and content standards for the structured recording and exchange of health information (''2015 Edition final rule'' (80 FR 62602)). The 2015 Edition final rule modified the Program to make it open and accessible to more types of health IT and health IT that supports various care and practice settings. It also included provisions to increase the transparency of information related to health IT certified under the Program (referred to as ''certified health IT'' throughout this proposed rule) made available by health IT developers through enhanced surveillance and disclosure requirements.

With each Program modification and rule, we have been able to address stakeholder concerns, certification ambiguities, and improve oversight. As health IT adoption continues to increase, including for settings and use cases beyond the Medicare and Medicaid EHR Incentive Programs (''EHR Incentive Programs''), we propose to address in this proposed rule new concerns identified through Program administration and from stakeholders. As certified capabilities interact with other capabilities in certified health IT and with other products, we seek to ensure that concerns within the scope of the Program can be appropriately addressed.

We delegated authority to ONC–ACBs to issues certifications for heath IT on our behalf through the Permanent Certification Program final rule. The scope of this authority, consistent with customary certification programs and International Organization for Standardization/International Electrotechnical Commission 17065:2012 (ISO 17065),[1] is primarily limited to conformance determinations for health IT evaluated against adopted certification criteria with minimal determinations for health IT against other regulatory requirements (§ 170.523(k) and (l)). As such, ONC–ACBs do not have the responsibility or expertise to address matters outside the scope of this authority. In particular, ONC–ACBs are not positioned, due to the bounds of their authority and limited resources, to address situations that involve non-conformities resulting from the interaction of certified and uncertified capabilities within the certified health IT or the interaction of a certified health IT's capabilities with other products. In some instances, these non-conformities may pose a risk to public health or safety, including, for example, capabilities (certified or uncertified) of health IT directly contributing to or causing medical errors. While ONC–ACBs play an important role in the administration of the Program and in identifying non-conformities within their scope of authority (*e.g.,* non-conformities with

[1] The international standard to which ONC–ACBs are accredited. 45 CFR 170.599(b)(3).

certification criteria), the Program does not currently have any other means for reviewing and addressing other non-conformities. As explained below, ONC proposes to expand its role in the Program to include the ability to directly review and address non-conformities in an effort to enhance Program oversight and the reliability and safety of certified health IT.

The Health Information Technology for Economic and Clinical Health (HITECH) Act amended the Public Health Service Act (PHSA) and created ''Title XXX—Health Information Technology and Quality'' (Title XXX) to improve health care quality, safety, and efficiency through the promotion of health IT and electronic health information exchange. Section 3001(b) of the Public Health Service Act requires that the National Coordinator for Health Information Technology (National Coordinator) perform specified statutory duties (section 3001(c) of the PHSA), including keeping or recognizing a program or programs for the voluntary certification of health information technology (section 3001(c)(5) of the PHSA), in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that: (1) Ensures that each patient's health information is secure and protected, in accordance with applicable law; (2) improves health care quality, reduces medical errors, reduces health disparities, and advances the delivery of patient-centered medical care; (3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information; (4) provides appropriate information to help guide medical decisions at the time and place of care; (5) ensures the inclusion of meaningful public input in such development of such infrastructure; (6) improves the coordination of care and information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information; (7) improves public health activities and facilitates the early identification and rapid response to public health threats and emergencies, including bioterror events and infectious disease outbreaks; (8) facilitates health and clinical research and health care quality; (9) promotes early detection, prevention, and management of chronic diseases; (10) promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, and improved outcomes in health care services; and (11) improves efforts to reduce health disparities. Consistent with this statutory instruction, we propose to expand ONC's role in the Program to encompass the ability to directly review health IT certified under the Program and address non-conformities found in certified health IT.

The proposed rule also proposes processes for ONC to timely and directly address testing issues. These processes do not exist today under the current Program structure, particularly as compared to ONC's oversight of ONC–ACBs. In addition, the proposed rule includes a provision for the increased transparency and availability of identifiable surveillance results. The publication of identifiable surveillance results would support further accountability of health IT developers to their customers and users of certified health IT.

B. Summary of Major Provisions

1. ONC Direct Review of Certified Health IT

We propose, consistent with section 3001 of the PHSA, to expand ONC's role in the Program to encompass the ability to directly review health IT certified under the Program (referred to as ''certified health IT'' throughout this proposed rule). This review would be independent of, and may be in addition to, reviews conducted by ONC–ACBs. ONC's direct review may include certified capabilities and non-certified capabilities of the certified health IT in order for ONC to meet its responsibilities under section 3001 of the PHSA. More specifically, this review would extend beyond the continued conformance of the certified health IT's capabilities with the specific certification criteria, test procedures, and certification requirements such as mandatory disclosures of limitations on use and types of costs related to certified capabilities (*see* § 170.523(k)(1)). It would extend to the interaction of certified and uncertified capabilities within the certified health IT and to the interaction of a certified health IT's capabilities with other products. This approach would support the National Coordinator fulfilling the statutory duties specified in section 3001 of the PHSA as it relates to keeping a certification program for the voluntary certification of health IT that allows for the electronic use and exchange of information consistent with the goals of section 3001(b).

Under our proposals outlined in this proposed rule, ONC would have broad discretion to review certified health IT. However, we anticipate that such review would be relatively infrequent and would focus on situations that pose a risk to public health or safety. An effective response to these situations would likely require the timely marshaling and deployment of resources and specialized expertise by ONC. It may also require coordination among federal government agencies. Additionally, we believe there could be other exigencies, distinct from public health and safety concerns, which for similar reasons would warrant ONC's direct review and action. These exigencies are described in section II.A.1 of this preamble.

We propose that ONC could initiate a direct review whenever it becomes aware of information, whether from the general public, interested stakeholders, ONC–ACBs, or by any other means, that indicates that certified health IT may not conform to the requirements of its certification or is, for example, leading to medical errors, breaches in the security of a patient's health information, or other outcomes that are in direct opposition to the National Coordinator's responsibilities under section 3001 of the PHSA. The proposals in this proposed rule would enable ONC to require corrective action for these non-conformities and, when necessary, suspend or terminate a certification issued to a Complete EHR or Health IT Module. We also propose to establish a process for health IT developers to appeal determinations by ONC to suspend or terminate certifications issued to health IT under the Program. Further, to protect the integrity of the Program and users of certified health IT, we propose strict processes for the recertification of health IT (or replacement versions) that has had its certification terminated, heightened scrutiny for such health IT, and a Program ban for health IT of health IT developers that do not correct non-conformities. We emphasize that enhancing ONC's role in reviewing certified health IT would support greater accountability for health IT developers under the Program and provide greater confidence that health IT conforms to Program requirements when it is implemented, maintained, and used. We further emphasize that our first and foremost goal is to work with health IT developers to remedy any identified non-conformities of certified health IT in a timely manner.

2. ONC-Authorized Testing Laboratories

We propose that ONC would conduct direct oversight of testing labs under the Program in order to ensure that ONC oversight can be similarly applied at all stages of the Program. Unlike the processes we established for ONC–ACBs, we did not establish a similar and equitable process for testing labs. Instead, we required in the Principles of Proper Conduct (PoPC) for ONC–ACBs that ONC–ACBs only accept test results from National Voluntary Laboratory Accreditation Program (NVLAP)-accredited testing labs. This requirement for ONC–ACBs had the effect of requiring testing labs to be accredited by NVLAP to International Organization for Standardization/International Electrotechnical Commission 17025:2005 (General requirements for the competence of testing and calibration laboratories) (ISO 17025). However, in so doing, there is effectively no direct ONC oversight of NVLAP-accredited testing labs like there is for ONC–ACBs.

This proposed rule proposes means for ONC to have direct oversight of NVLAP-accredited testing labs by having them apply to become ONC-Authorized Testing Labs (ONC–ATLs). Specifically, this proposed rule proposes means for authorizing, retaining, suspending, and revoking ONC-Authorized Testing Lab (ONC–ATL) status under the Program. These proposed processes are similar to current ONC–ACB processes. The proposed changes would enable ONC to oversee and address testing and certification performance issues throughout the entire continuum of the Program in a precise and direct manner.

3. Transparency and Availability of Surveillance Results

In furtherance of our efforts to increase the transparency and availability of information related to certified health IT, we propose to require ONC–ACBs to make identifiable surveillance results publicly available on their Web sites on a quarterly basis. We believe the publication of identifiable surveillance results would enhance transparency and the accountability of health IT developers to their customers. The public availability of identifiable surveillance results would provide customers and users with valuable information about the continued performance of certified health IT as well as surveillance efforts. While we expect that the prospect of publicly identifiable surveillance results would motivate some health IT developers to improve their maintenance efforts, we believe that most published surveillance results would reassure customers and users of certified health IT. This is because, based on ONC–ACB surveillance results to date, most certified health IT and health IT developers are maintaining conformance with certification criteria and Program requirements. The publishing of such ''positive'' surveillance results would also provide a more complete context of surveillance; rather than only sharing ''negatives,'' such as non-conformities and corrective action plans.

C. Costs and Benefits

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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). OMB has determined that this proposed rule is an economically significant rule as the potential costs associated with this proposed rule could be greater than $100 million per year. Accordingly, we have prepared an RIA that to the best of our ability presents the costs and benefits of the proposed rule.

1. Costs

We estimated the potential monetary costs of this proposed rule for health IT developers, ONC–ATLs, the Federal government (*i.e.,* ONC), and health care providers as follows: (1) Costs for health IT developers to correct non-conformities identified by ONC; (2) costs for ONC and health IT developers related to ONC review and inquiry into certified health IT non-conformities; (3) costs to health IT developers and ONC associated with the proposed appeal process following a suspension/termination of a Complete EHR's or Health IT Module's certification; (4) costs to health care providers to transition to another certified health IT product when the certification of a Complete EHR or Health IT Module that they currently use is terminated; (5) costs for ONC–ATLs and ONC associated with ONC–ATL accreditation, application, renewal, and reporting requirements; (6) costs for ONC–ATLs and ONC related to revoking ONC–ATL status; and (7) costs for ONC–ACBs to publicly post identifiable surveillance results. We also provide an overall annual monetary cost estimate for this proposed rule. We note that we have rounded all estimates to the nearest dollar and all estimates are expressed in 2016 dollars.

We have been unable to estimate the costs for health IT developers to correct non-conformities identified through ONC's direct review of certified health IT because the costs incurred by health IT developers to bring their certified health IT into conformance would be determined on a case-by-case basis. We do, however, identify factors that would inform cost estimates and request comment on existing relevant data and methods we could use to estimate these costs in section VII.C.1.a of this preamble.

We estimated the costs for ONC and health IT developers related to ONC review and inquiry into certified health IT non-conformities. We estimate the cost for a health IT developer to cooperate with an ONC review and inquiry into certified health IT would, on average, range from $9,819 to $49,096. We estimate the cost for ONC to review and conduct an inquiry into certified health IT would, on average, range from $2,455 to $73,644.

We estimated the costs to health IT developers and ONC associated with the proposed appeal process following a suspension/termination of a Complete EHR's or Health IT Module's certification. We estimate the cost for a health IT developer to appeal a suspension or termination would, on average, range from $9,819 to $29,458. We estimate the cost for ONC to conduct an appeal would, on average, range from $24,548 to $98,192.

We estimated the costs to health care providers to transition to another certified health IT product when the certification of a Complete EHR or Health IT Module that they currently use is terminated. Specifically, we estimate the cost impact of certification termination on health care providers would range from $33,000 to $649,836,000 with a median cost of $792,000 and a mean cost of $6,270,000. We note, however, that it is very unlikely that the high end of our estimated costs would ever be realized. To date, there have been only a few terminations of certified health IT under the Program, which have only affected a small number on providers. Further, we have stated in this proposed rule our intent to work with health IT developers to correct non-conformities ONC finds in their certified health IT under the provisions in this proposed rule. We provide a more detailed discussion of past certification terminations and the potential impacts of certification

termination on providers in section VII.C.1.a of this preamble.

We estimated the costs for ONC–ATLs and ONC associated with ONC–ATL accreditation, application, renewal, and reporting requirements. We estimate the annualized cost of ONC–ATL accreditation, application, and the first proposed three-year authorization period to be approximately $55,623. We estimate the annualized cost for an ONC–ATL to renew its accreditation, application, and authorization during the first three-year ONC–ATL authorization period to be approximately $84,372. In addition, we estimate the total annual cost for ONC–ATLs to meet the reporting requirements of proposed § 170.524(d) to be approximately $819.

We estimate ONC's annualized cost of administering the entire application process to be approximately $992. These costs would be the same for a new applicant or ONC–ATL renewal. We would also post the names of applicants granted ONC–ATL status on our Web site. We estimate the potential cost for posting and maintaining the information on our Web site to be approximately $446 annually. We estimate an annual cost to the federal government of $743 to record and maintain updates and changes reported by the ONC–ATLs.

We estimate the costs for ONC–ATLs and ONC related to revoking ONC–ATL status. We estimate the cost for an ONC–ATL to comply with ONC requests per § 170.565 would, on average, range from $2,455 to $19,638. We estimate the cost for ONC would, on average, range from $4,910 to $39,277.

We estimate the costs for ONC–ACBs to publicly post identifiable surveillance results on their Web sites on a quarterly basis. We estimate these costs would annually be $205 per ONC–ACB and total $615 for all ONC–ACBs.

We estimate the overall annual cost for this proposed rule, based on the cost estimates outlined above, would range from $230,616 to $650,288,915 with an average annual cost of $6,595,268. For a more detailed explanation of our methodology and estimated costs, including requests for comment on ways to improve our methodology and estimated costs, please see section VII.C.1.a of this preamble.

2. Benefits

The proposed rule's provisions for ONC direct review of certified health IT would promote health IT developers' accountability for the performance, reliability, and safety of certified health IT; and facilitate the use of safer and reliable health IT by health care providers and patients. Specifically, ONC's direct review of certified health IT would permit ONC to assess non-conformities and prescribe comprehensive corrective actions for health IT developers to address non-conformities, including notifying affected customers. As previously stated, our first and foremost goal would be to work with health IT developers to remedy any non-conformities with certified health IT in a timely manner and across all customers. If ONC ultimately suspends and/or terminates a certification issued to a Complete EHR or Health IT Module under the proposals in this proposed rule, such action would serve to protect the integrity of the Program and users of health IT. Overall, we believe that ONC direct review supports and enables the National Coordinator to fulfill his/her responsibilities under the HITECH Act, instills public confidence in the Program, and protects public health and safety.

The proposed rule's provisions would also provide other benefits. The proposals for ONC to authorize and oversee testing labs (ONC–ATLs) would facilitate further public confidence in testing and certification by permitting ONC to timely and directly address testing issues for health IT. The proposed public availability of identifiable surveillance results would enhance transparency and the accountability of health IT developers to their customers. This proposal would provide customers and users of certified health IT with valuable information about the continued performance of certified health IT as well as surveillance efforts. Further, the public availability of identifiable surveillance results would likely benefit health IT developers by providing a more complete context of surveillance and illuminating good performance and the continued compliance of certified health IT with Program requirements. Overall, we believe these proposed approaches, if finalized, would improve Program compliance and further public confidence in certified health IT.

II. Provisions of the Proposed Rule

A. ONC's Role Under the ONC Health IT Certification Program

In initially developing the Program, ONC consulted with the National Institute of Standards and Technology (NIST) and created the Program structure based on industry best practice. This structure includes the use of two separate accreditation bodies: (1) An accreditor that evaluates the competency of a health IT testing laboratory to operate a testing program in accordance with international standards; and (2) an accreditor that evaluates the competency of a health IT certification body to operate a certification program in accordance with international standards (see the Permanent Certification Program final rule). In this section of the preamble, we propose means for enhancing ONC's role in the Program.

1. Review of Certified Health IT

We propose to modify ONC's role in the Program to provide additional oversight of health IT certified under the Program. We propose to create a process for ONC to directly review certified health IT. We propose that ONC would directly assess non-conformities and, where applicable, prescribe comprehensive corrective actions for health IT developers that could include: Investigating and reporting on root cause analyses of the non-conformities; notifying affected customers; fully correcting identified issues across a health IT developer's customer base; and taking other appropriate remedial actions. We propose that ONC would be able to suspend and/or terminate a certification issued to health IT under the Program. We also propose to establish a process for health IT developers to appeal determinations by ONC to suspend or terminate certifications issued to health IT under the Program. We believe these proposals would enhance the overall integrity and performance of the Program and provide greater confidence that health IT conforms to the requirements of certification when it is implemented, maintained, and used.

a. Authority and Scope

Section 3001 of the PHSA directs the National Coordinator to establish a certification program or programs and to perform the duties of keeping or recognizing such program(s) in a manner consistent with the development of a nationwide health information technology infrastructure that allows for the electronic use and exchange of information and that, among other requirements: Ensures that each patient's health information is secure and protected, in accordance with applicable law; improves health care quality; reduces medical errors; reduces health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care, and incomplete information; and promotes a more effective marketplace, greater competition, greater systems analysis, increased consumer choice, and improved outcomes in health care

services (*see* section 3001(b) of the PHSA).

Under the current structure of the Program, ONC–ACBs are responsible for issuing and administering certifications in accordance with ISO 17065, the PoPC for ONC–ACBs, and other requirements of the Program. Specifically, ONC–ACBs are directly positioned and accountable for determining whether a Complete EHR or Health IT Module initially satisfies and subsequently continues to conform to certification criteria, including relevant interpretative guidance and test procedures. ONC–ACBs are also responsible for ensuring compliance with other Program requirements such as the mandatory disclosure requirements of limitations on use and types of costs related to certified capabilities (*see* § 170.523(k)(1)). If an ONC–ACB can substantiate a non-conformity under the Program, either as a result of surveillance or otherwise, ISO 17065 requires that the ONC–ACB consider and decide upon the appropriate action, which could include: (1) The continuation of the certification under specified conditions (*e.g.,* increased surveillance); (2) a reduction in the scope of certification to remove non-conforming product variants; (3) suspension of the certification pending remedial action by the developer; or (4) termination of the certification (*see* 80 FR 62707–62725 and § 170.556).

While ONC authorizes ONC–ACBs to issue and administer certifications for health IT, ONC does not directly review certified health IT under the Program. The only exception would be if ONC revoked an ONC–ACB's authorization due to a ''Type-1'' program violation [2] that calls into question the legitimacy of a certification issued by the ONC–ACB (*see* § 170.570). Under these circumstances, the National Coordinator would review and determine whether health IT was improperly certified and, if so, require recertification of the health IT within 120 days (76 FR 1299). We explained in the Permanent Certification Program final rule that recertification would be necessary in such a situation to maintain the integrity of the Program and to ensure the efficacy and safety of certified health IT (76 FR 1299).

ONC–ACBs have the necessary expertise and capacity to effectively administer certification requirements under a wide variety of circumstances (80 FR 62708–09). Nevertheless, we recognized in response to comments on the 2015 Edition proposed rule (80 FR 16804) that we would need to provide additional guidance and assistance to ONC–ACBs to ensure that these requirements are applied consistently and in a manner that accomplishes our intent.[3] While we are committed to supporting ONC–ACBs in their roles, we further recognize that there are certain instances when review of certified health IT is necessary to ensure continued compliance with Program requirements, but such review is beyond the scope of an ONC–ACB's responsibilities, expertise (*i.e.,* accreditation), or resources.

A health IT developer may have had products certified by two different ONC–ACBs and a potential non-conformity with a certified capability may extend across all of the health IT developers' certified health IT. In such an instance, ONC would be more suited to handle the review of the certified health IT as ONC–ACBs only have oversight of the health IT they certify and ONC could ensure a more coordinated review and consistent determination. Similarly, a potential non-conformity or non-conformity may involve systemic, widespread, or complex issues that could be difficult for an ONC–ACB to investigate or address in a timely and effective manner, such as where the nature, severity, or extent of the non-conformity would be likely to quickly consume or exceed an ONC–ACB's resources or capacity. Most acutely, non-conformities with certified health IT may arise that pose a risk to public health or safety, including, for example, capabilities (certified or uncertified) of health IT directly contributing to or causing medical errors (*see* section 3001(b)(2) of the PHSA). In such situations, ONC is directly responsible for reducing medical errors through the certification of health IT and ONC–ACBs may not have the expertise to address these matters. We believe there could also be other exigencies, distinct from public health and safety concerns, which for similar reasons would warrant ONC's direct review and action. For example, ONC might directly review a potentially widespread non-conformity that could compromise the security or protection of patients' health information in violation of applicable law (*see* section 3001(b)(1) of the PHSA) or that could lead to inaccurate or incomplete documentation and resulting inappropriate or duplicative care under federal health care programs (*see* section 3001(b)(3) of the PHSA). Last, it is conceivable that ONC could have information about a potential non-conformity that is confidential or that for other reasons cannot be shared with an ONC–ACB, and therefore could be acted upon only by ONC.

In the instances described above, we believe that the existing role of ONC–ACBs could be complemented by establishing a process for ONC to directly review certified health IT. While we propose that ONC would have broad discretion to review certified health IT under proposed § 170.580(a), we anticipate that this ''direct review'' of certified health IT would be relatively infrequent and would focus on the situations that present unique challenges or issues that ONC–ACBs may be unable to effectively address without ONC's assistance or intervention (as described in the examples above and in proposed § 170.580(a)(1)). ONC can effectively respond to these potential issues through quickly marshaling and deploying resources and specialized expertise and ensuring a coordinated review and response that may involve other offices and agencies within HHS as well as other federal agencies. We seek comment on these and other factors that ONC should consider in deciding whether and under what circumstances to directly review certified health IT. We emphasize that our primary goal in all cases would be to correct non-conformities and ensure that certified health IT performs in accordance with Program requirements. In this regard, our first and foremost desire would be to work with the health IT developer to remedy any non-conformity in a timely manner.

b. ONC–ACB's Role

We propose that ONC's review of certified health IT, as specified in proposed 170.580(a)(2)(i), would be independent of, and may be in addition, to any review conducted by an ONC–ACB, even if ONC and the ONC–ACB were to review the same certified health IT, and even if the reviews occurred concurrently. For the reasons and situations we have described above in section II.A.1.a, we believe that these reviews would be complementary

[2] We defined Type-1 violations to include violations of law or ONC Health IT Certification Program policies that threaten or significantly undermine the integrity of the ONC Health IT Certification Program. These violations include, but are not limited to: false, fraudulent, or abusive activities that affect the ONC Health IT Certification Program, a program administered by HHS or any program administered by the Federal government (45 CFR 170.565(a)).

[3] Shortly after publishing the 2015 Edition final rule, we issued updated guidance to ONC–ACBs on how to address these new requirements in their annual surveillance plans. *See* ONC, Program Policy Guidance #15–01A, *https://www.healthit.gov/sites/default/files/policy/2015-11-02_supp_cy_16_surveillance_guidance_to_onc-acb_15-01a_final.pdf* (November 5, 2015).

because ONC may review matters outside of an ONC–ACB's responsibilities (*i.e.,* those that implicate section 3001(b) of the PHSA) or matters that may be partially within an ONC–ACB's purview to review but present special challenges or considerations that may be difficult for an ONC–ACB to address. Accordingly, to ensure consistency and clear accountability, we propose in § 170.580(a)(2)(ii) that ONC, if it deems necessary, could assert exclusive review of certified health IT as to any matters under review by ONC and any other matters that are so intrinsically linked that divergent determinations between ONC and an ONC–ACB would be inconsistent with the effective administration or oversight of the Program. We propose in § 170.580(a)(2)(iii) that in such instances, ONC's determinations on these matters would take precedent and a health IT developer would be subject to the proposed ONC direct review provisions in this proposed rule, including having the opportunity to appeal an ONC determination, as applicable.

We clarify that in matters where ONC does not assert direct and/or exclusive review or ceases its direct and/or exclusive review, an ONC–ACB would be permitted to issue its own determination on the matter. Further, any determination to suspend or terminate a certification issued to health IT by an ONC–ACB that may result would not be subject to ONC review under the provisions in this proposed rule. In those instances, there would also be no opportunity to appeal the ONC–ACB's determination(s) under the provisions in this proposed rule. ONC–ACBs are accredited, authorized, and entrusted to issue and administer certifications under the Program consistent with certification criteria and other specified Program requirements. Therefore, they have the necessary expertise and capacity to effectively administer these specific requirements.

We propose that ONC could initiate review of certified health IT on its own initiative based on information from an ONC–ACB, which could include a specific request from the ONC–ACB to conduct a review. In exercising its review of certified health IT, we propose in § 170.580(a)(2)(iv) that ONC would be entitled to any information it deems relevant to its review that is available to the ONC–ACB responsible for administering the health IT's certification. We propose that ONC could contract with an ONC–ACB to conduct facets of the review within an ONC–ACB's scope of expertise, such as testing or surveillance of certified capabilities. We propose that ONC could also share information with an ONC–ACB that may lead the ONC–ACB, at its discretion and consistent with its accreditation, to conduct in-the-field surveillance of the health IT at particular locations. We further propose in § 170.580(a)(2)(v) that ONC could, at any time, end all or any part of its review of certified health IT under the processes in this proposed rule and refer the applicable part of the review to the relevant ONC–ACB(s) if doing so would serve the efficiency or effective administration or oversight of the Program. The ONC–ACB would be under no obligation to proceed further, but would have the discretion to review and evaluate the information provided and proceed in a manner it deems appropriate. As noted above, this may include processes and determinations (*e.g.,* suspension or termination) not governed by the review and appeal processes in this proposed rule.

We encourage comment on our proposed approach and the role of an ONC–ACB.

c. Review Processes

ONC could become aware of information from the general public, interested stakeholders, ONC–ACBs, or by any other means that indicates that certified health IT may not conform to the requirements of its certification or is, for example, leading to medical errors, breaches in the security of a patient's health information, or other outcomes that do not align with the National Coordinator's responsibilities under section 3001 of the PHSA. If ONC deems the information to be reliable and actionable, it would conduct further inquiry into the certified health IT. Alternatively, ONC could initiate an independent inquiry into the certified health IT that could be conducted by ONC or a third party(ies) on behalf of ONC (*e.g.,* contractors or inspection bodies under the certification scheme). If information reveals that there is a potential non-conformity (through substantiation or omission of information to the contrary) or confirms a non-conformity in the certified health IT, ONC would proceed to notify the health IT developer of its findings, as applicable, and work with the health IT developer to address the matter.

We propose for all processes proposed under this section (section II.A.1.c) of the preamble, as described below, that correspondence and communication with ONC and/or the National Coordinator shall be conducted by email, unless otherwise necessary or specified. We propose to modify § 170.505 accordingly.

(1) Notice of Potential Non-Conformity or Non-Conformity

If information suggests to ONC that certified health IT is not performing consistent with Program requirements and a non-conformity exists with the certified health IT, ONC would send a notice of potential non-conformity or non-conformity to the health IT developer (*see* proposed § 170.580(b)(1)). The notice would specify ONC's reasons for the notification, explain ONC's findings, and request that the health IT developer respond to the potential/alleged non-conformity (and potentially a corrective action request) or be subject to further action (*e.g.,* corrective action, suspension, and/or the termination of the certification in question, as appropriate).

To ensure a complete and comprehensive review of the certified health IT product, we propose in § 170.580(b)(2) that ONC have the ability to access and share within HHS, with other federal agencies, and with appropriate entities, a health IT developer's relevant records related to the development, testing, certification, implementation, maintenance, and use of its product, as well as any complaint records related to the product. We recognize that much of this information already must be disclosed as required by the Program and described in the 2015 Edition final rule. We propose, however, that ONC be granted access to, and be able to share within HHS, with other federal agencies, and with appropriate entities (*e.g.,* a contractor or ONC–ACB) any additional records not already disclosed that may be relevant and helpful in ONC's fact-finding and review. This approach would support the review of capabilities that interact with certified capabilities and assist ONC in determining whether certified health IT conforms to applicable Program requirements. We emphasize that health IT developers would be required to cooperate with ONC's efforts to access relevant records and should not prevent or seek to discourage ONC from obtaining such records. If we determined that the health IT developer was not cooperative with the fact-finding process, we propose that we would have the ability to suspend or terminate the certification of any encompassed Complete EHR or Health IT Module of the certified health IT as outlined later in sections II.A.1.c.(3) and (4) of this preamble.

We understand that health IT developers may have concerns regarding

disclosure of proprietary, trade secret, competitively sensitive, or other confidential information. To address these concerns, ONC would implement appropriate safeguards to ensure, to the extent permissible with federal law, that any proprietary business information or trade secrets that ONC might encounter by accessing the health IT developer's records would be kept confidential by ONC.[4] For instance, ONC would ensure that, if it obtains proprietary or trade secret information, that information would not be included in the Certified Health IT Product List (CHPL). We note, however, that the safeguards we would adopt would be prophylactic and would not create a substantive basis for a health IT developer to refuse to comply with the proposed requirements. Thus, a health IT developer would not be able to avoid providing ONC access to relevant records by asserting that such access would require it to disclose trade secrets or other proprietary or confidential information.

The notice of potential non-conformity or non-conformity would specify the timeframe for which the health IT developer must respond to ONC. Unless otherwise specified in the notice and as outlined in proposed § 170.580(b)(1)(i) and (ii), the health IT developer would be required to respond within 30 days of receipt of the notice and, if necessary, submit a proposed corrective action plan as outlined below in section II.A.1.c.(2) of this preamble. We propose that ONC may require a health IT developer to respond and/or submit a proposed corrective action plan in more or less time than 30 days based on factors such as, but not limited to: (1) The type of health IT and health IT certification in question; (2) the type of non-conformity to be corrected; (3) the time required to correct the potential non-conformity or non-conformity; and (4) issues of public safety and other exigencies related to the National Coordinator carrying out his or her duties in accordance with sections 3001(b) and (c) of the PHSA (*see* proposed § 170.580(b)(1)(i) and (ii)). We propose that ONC would have discretion in deciding the appropriate timeframe for a response and proposed corrective action plan from the health IT developer. We believe that affording ONC this flexibility would advance the overarching policy goal of ensuring that ONC addresses and works with health IT developers to correct potential non-conforming health IT in an efficient and effective manner.

[4] The Freedom of Information Act and Uniform Trade Secrets Act generally govern the disclosure of these types of information.

We propose in § 170.580(b)(3) that if the health IT developer contends that the certified health IT in question conforms to Program requirements, the health IT developer must include in its response all appropriate documentation and explain in writing why the health IT is conformant.

We request comment on our proposed processes as described above, including whether the timeframe for responding to a notice of potential non-conformity or non-conformity is reasonable and whether there are additional factors that we should consider.

(2) Corrective Action

If ONC finds that certified health IT does not conform to Program requirements, ONC would take appropriate action with the health IT developer to remedy the non-conformity as outlined below and in proposed § 170.580(c). To emphasize, remedying a non-conformity may require addressing both certified and *uncertified* capabilities within the certified health IT.

We propose in § 170.580(c)(1) that ONC would require a health IT developer to submit a proposed corrective action plan to ONC. The corrective action plan would provide a means to correct the identified non-conformities across all the health IT developer's customer base and would require the health IT developer to make such corrections before the certified health IT could continue to be identified as ''certified'' under the ONC Health IT Certification Program, or sold or licensed with that designation to new customers.

We propose, as described above in section II.A.1.c.(1) of this preamble, that a health IT developer must submit a proposed corrective action plan to ONC within 30 days of the date that the health IT developer was notified by ONC of the non-conformity unless ONC specifies a different timeframe. This approach aligns with and does not change the corrective action process for ONC–ACBs described in § 170.556(d). The primary difference between this approach and the approach for ONC–ACBs in § 170.556(d) is that in § 170.556(d) the health IT developer must submit a corrective action plan to an ONC–ACB within 30 days of being notified of the potential non-conformity. In this proposed rule, we propose that this 30-day period be the default for receiving a response/corrective action plan, but that ONC may alter the response period based on non-conformities that may pose a risk to public health or safety, or other exigencies related to the National Coordinator carrying out his or her duties in accordance with sections 3001(b) and (c) of the PHSA.

We propose in § 170.580(c)(2) that ONC would provide direction to the health IT developer as to the required elements of the corrective action plan and would work with the health IT developer to develop an acceptable corrective action plan. The corrective action plan would be required to include, at a minimum, for each non-conformity:

- A description of the identified non-conformity;
- An assessment of the nature, severity, and extent of the non-conformity, including how widespread they may be across all of the health IT developer's customers of the certified health IT;
- How the health IT developer will address the identified non-conformity, both at the locations where the non-conformity was identified and for all other potentially affected customers;
- A detailed description of how the health IT developer will assess the scope and impact of the non-conformity(ies), including identifying all potentially affected customers, how the health IT developer will promptly ensure that all potentially affected customers are notified of the non-conformity and plan for resolution, how and when the health IT developer will resolve issues for individual affected customers, and how the health IT developer will ensure that all issues are in fact resolved; and
- The timeframe under which corrective action will be completed.

We propose in § 170.580(c)(3) that when ONC receives a proposed corrective action plan (or a revised proposed corrective action plan) it shall either approve the proposed corrective action plan or, if the plan does not adequately address all required elements, instruct the health IT developer to submit a revised proposed corrective action plan. In addition to the required elements above and as specified in § 170.580(c)(4), we propose that a health IT developer would be required to submit an attestation to ONC. The attestation would follow the form and format specified by the corrective action plan and would be a binding official statement by the health IT developer that it has fulfilled all of its obligations under the corrective action plan, including curing the identified non-conformities and related deficiencies and taking all reasonable steps to prevent their recurrence. Based on this attestation and all other relevant information, ONC would determine whether the non-conformity(ies) has

been cured and, if so, would lift the corrective action plan. However, if it were later discovered that the health IT developer had not acted in the manner attested, we propose that ONC could reinstitute the corrective action plan or proceed to suspend or terminate the certification of any encompassed Complete EHR or Health IT Module of the certified health IT (*see* proposed § 170.580(c)(5), (d)(1)(v) and (e)(1)(iv)).

We request comment on our proposed corrective action plan processes as described above.

We propose that ONC would report the corrective action plan and related data to the publicly accessible CHPL. The purpose of this reporting requirement, as it is for ONC–ACBs under current regulations, would be to ensure that health IT users, implementers, and purchasers are alerted to potential conformance issues in a timely and effective manner. This approach is consistent with the public health and safety, program integrity, and transparency objectives described previously in this proposed rule and in the 2015 Edition final rule (80 FR 62725–26).

(3) Suspension

We propose that ONC may suspend the certification of a Complete EHR or Health IT Module *at any time* because ONC believes that the certified health IT poses a potential risk to public health or safety, other exigent circumstances exist concerning the product, or due to certain actions or inactions by the product's health IT developer as detailed below. We propose in § 170.580(d)(1) that ONC would be permitted to initiate certification suspension procedures for a Complete EHR or Health IT Module for any one of the following reasons:

- Based on information it has obtained, ONC believes that the certified health IT poses a potential risk to public health or safety or other exigent circumstances exist. More specifically, ONC would suspend a certification issued to any encompassed Complete EHR or Health IT Module of the certified health IT if the certified health IT was, but not limited to: Contributing to a patient's health information being unsecured and unprotected in violation of applicable law; increasing medical errors; decreasing the detection, prevention, and management of chronic diseases; worsening the identification and response to public health threats and emergencies; leading to inappropriate care; worsening health care outcomes; or undermining a more effective marketplace, greater competition, greater systems analysis, and increased consumer choice. Such results would conflict with section 3001(b) of the PHSA, which instructs the National Coordinator to perform the duties in keeping or recognizing a certification program that, among other requirements, ensures patient health information is secure and protected in accordance with applicable law, reduces medical errors, increases efficiency, and leads to improved care and health care outcomes. As discussed under the ''termination'' section below, we propose that ONC could terminate a certification on the same basis *if* it concludes that a certified health IT's non-conformity(ies) cannot be cured;
- The health IT developer fails to timely respond to any communication from ONC, including, but not limited to: Fact-finding; or a notice of potential non-conformity or notice of non-conformity;
- The information provided by the health IT developer in response to any ONC communication, including, but not limited to: Fact-finding, a notice of potential non-conformity, or a notice of non-conformity is insufficient or incomplete;
- The health IT developer fails to timely submit a proposed corrective action plan that adequately addresses the elements required by ONC as described earlier in this preamble under the ''corrective action'' section and in proposed § 170.580(c); or
- The health IT developer does not fulfill its obligations under the corrective action plan developed in accordance with proposed § 170.580(c).

We note that section § 170.556(d)(5) states that, consistent with its accreditation to ISO 17065 and procedures for suspending a certification, an ONC–ACB shall initiate suspension procedures for a Complete EHR or Health IT Module:

- 30 days after notifying the developer of a non-conformity, if the developer has not submitted a proposed corrective action plan;
- 90 days after notifying the developer of a non-conformity, if the ONC–ACB cannot approve a corrective action plan because the developer has not submitted a revised proposed corrective action plan; and
- Immediately, if the developer has not completed the corrective actions specified by an approved corrective action plan within the time specified therein.

As noted above, we propose that ONC may suspend a certification for similar reasons, but also propose that ONC would suspend a certification at any time based on a potential risk to public health or safety, or other exigent circumstances. We believe the proposed addition of an expedited process and direct ONC review for those reasons makes the Program better enabled for ONC to act swiftly to address potentially non-conforming certified health IT. To note, the processes for ONC–ACBs as detailed above and in the 2015 Edition final rule are not altered by the proposals in this proposed rule.

ONC's process for obtaining information to support a suspension could involve, but would not be limited to: Fact-finding; requesting information from an ONC–ACB; contacting users of the health IT; and/or reviewing complaints. We propose in § 170.580(d)(2) that ONC would issue a notice of suspension when appropriate. We propose that a suspension would become effective upon the health IT developer's receipt of the notice of suspension. We propose that the notice of suspension would include, but not be limited to: ONC's explanation for the suspension; the information ONC relied upon to reach its determination; the consequences of suspension for the health IT developer and the Complete EHR or Health IT Module under the Program; and instructions for appealing the suspension. We propose that the notice of suspension would be sent via certified mail and the official date of receipt would be the date of the delivery confirmation.

We propose in 170.580(d)(3) that the health IT developer would be required to notify its affected and potentially affected customers of the certification suspension in a timely manner. Additionally, we propose that ONC would publicize the suspension on the CHPL to alert interested parties, such as purchasers of certified health IT or programs that require the use of certified health IT. We propose in § 170.580(d)(4) that ONC would issue a cease and desist notice to health IT developers to immediately stop the marketing and sale of the Complete EHR or Health IT Module as ''certified'' under the Program when it suspends the Complete EHR's or Health IT Module's certification. Additionally, we propose in § 170.580(d)(5) that in cases of a certification suspension, inherited certified status for the Complete EHR or Health IT Module would not be permitted. We propose in § 170.580(d)(6) that we would rescind a suspension of certification if the health IT developer completes all elements of an approved corrective action plan and/or ONC confirms that all non-conformities have been corrected.

We request comments on these processes, including how timely a health IT developer should notify

affected and potentially affected customers of a suspension and what other means we should consider using for publicizing certification suspensions. We also request comment on whether a health IT developer should only be permitted to certify new Complete EHRs and Health IT Modules while the certification in question is suspended if such new certification of other Complete EHRs or Health IT Modules would correct the non-conformity for all affected customers. Such a prohibition on the certification of new Complete EHRs or Health IT Modules may incentivize the health IT developer to cure the non-conformity. In correcting the non-conformity for all affected customers, we note that this would not include those affected customers that decline the correction or fail to cooperate. We request comment as to whether correcting the non-conformity for a certain percentage of all affected customers or certain milestones demonstrating progress in correcting the non-conformity (*e.g.,* a percentage of customers within a period of time) should be sufficient to lift the prohibition.

Under the current suspension processes administered by ONC–ACBs, following the suspension of a certification of a Complete EHR or Health IT Module, an ONC–ACB is permitted to initiate certification termination procedures for the Complete EHR or Health IT Module should the health IT developer not complete the actions necessary to reinstate the suspended certification (consistent with its accreditation to ISO 17065 and procedures for terminating a certification). We propose that ONC would similarly be permitted to initiate the certification termination procedures as described in more detail in the ''Termination'' section below.

(4) Termination

We propose in § 170.580(e)(1) that ONC may terminate certifications issued to Complete EHRs or Health IT Modules under the Program if: (1) The health developer fails to timely respond to any communication from ONC, including, but not limited to: (a) Fact-finding; and (b) a notice of potential non-conformity or non-conformity; (2) the information provided by the health IT developer in response to fact-finding, a notice of potential non-conformity, or a notice of non-conformity is insufficient or incomplete; (3) the health IT developer fails to timely submit a proposed corrective action plan that adequately addresses the elements required by ONC as described in section II.A.1.c.(2) of this preamble; (4) the health IT developer does not fulfill its obligations under the corrective action plan developed in accordance with proposed § 170.580(c); or (5) ONC concludes that the certified health IT's non-conformity(ies) cannot be cured. We request comment on these proposed reasons for termination and on any additional circumstances for which commenters believe termination of a certification would be warranted.

We propose that a termination would be issued consistent with the processes specified in proposed § 170.580(e)(2) through (4) and outlined below, but note that these proposed termination processes do not change the certification termination processes for ONC–ACBs described in the 2015 Edition final rule. A notice of termination would include, but may not be limited to: ONC's explanation for the termination; the information ONC relied upon to reach its determination; the consequences of termination for the health IT developer and the Complete EHR or Health IT Module under the Program; and instructions for appealing the termination. ONC would send a written notice of termination to the agent of record for the health IT developer of the Complete EHR or Health IT Module. The written termination notice would be sent via certified mail and the official date of receipt would be the date of the delivery confirmation.

The termination of a certification would be effective either upon: (1) The expiration of the 10-day period for filing an appeal as specified in section II.A.1.c.(5) of this preamble if the health IT developer does not file an appeal; or, if a health IT developer files an appeal, (2) upon a final determination to terminate the certification as described below in the ''appeal'' section of the preamble and in proposed § 170.580(f)(7). As we proposed for suspension of a certification, the health IT developer must notify the affected and potentially affected customers of the identified non-conformity(ies) and termination of certification in a timely manner. Additionally, we propose that ONC would publicize the termination on the CHPL to alert interested parties, such as purchasers of certified health IT or entities administering programs that require the use of health IT certified under the Program. We request comments on these processes, including how timely a health IT developer should notify affected and potentially affected customers of a termination of a Complete EHR's or Health IT Module's certification and what other means we should consider for publicizing certification terminations.

(5) Appeal

If ONC suspends or terminates a certification for a Complete EHR or Health IT Module, we propose that the health IT developer of the Complete EHR or Health IT Module may appeal the determination to the National Coordinator in accordance with the proposed processes specified in § 170.580(f) and outlined below.

Section 170.580(f)(1) sets forth that a health IT developer may appeal an ONC determination to suspend or terminate a certification issued to Complete EHR or a Health IT Module if the health IT developer asserts: (1) ONC incorrectly applied Program methodology, standards, or requirements for suspension or termination; or (2) ONC's determination was not sufficiently supported by the information used by ONC to reach the determination.

Section 170.580(f)(2) describes that a request for appeal of a suspension or termination must be submitted in writing by an authorized representative of the health IT developer whose certified Complete EHR or certified Health IT Module was subject to the determination being appealed. Section 170.580(f)(2) also requires that the request for appeal must be filed in accordance with the instructions specified in the notice of termination or notice of suspension. These instructions for filing a request may include, but would not be limited to: (1) Providing a copy of the written determination by ONC to suspend or terminate the certification and any supporting documentation; and (2) explaining the reasons for the appeal. Section 170.580(f)(3) describes that this request must be submitted to ONC within 10 calendar days of the health IT developer's receipt of the notice of suspension or notice of termination. Section 170.580(f)(4) specifies that a request for appeal would stay the termination of a certification issued to a Complete EHR or Health IT Module until a final determination is reached on the appeal. However, a request for appeal would not stay a suspension of a Complete EHR or Health IT Module. We propose that, similar to the effects of a suspension, while an appeal would stay a termination, a Complete EHR or Health IT Module would be prohibited from being marketed or sold as ''certified'' during the stay.

We propose that the National Coordinator would assign the appeal to a hearing officer who would adjudicate the appeal on his or her behalf, as described in § 170.580(f)(5). The hearing officer may not preside over an appeal in which he or she participated in the

initial suspension or termination determination by ONC or has a conflict of interest in the pending matter.

There would be two parties involved in an appeal: (1) The health IT developer that requests the appeal; and (2) ONC. Section 170.580(f)(6)(i) describes that the hearing officer would have the discretion to make a determination based on: (1) The written record as submitted to the hearing officer by the health IT developer with the appeal filed in accordance with proposed § 170.580(f)(1) through (3) and would include ONC's written statement and supporting documentation, if provided; or (2) the information described in option 1 and a hearing conducted in-person, via telephone, or otherwise. As specified in § 170.580(f)(6)(ii), the hearing officer would have the discretion to conduct a hearing if he or she: (1) Requires clarification by either party regarding the written record under paragraph (f)(6)(i) of this section; (2) requires either party to answer questions regarding the written record under paragraph (f)(6)(i) of this section; or (3) otherwise determines a hearing is necessary. As specified in § 170.580(f)(6)(iii), the hearing officer would neither receive testimony nor accept any new information that was not presented with the appeal request or was specifically and clearly relied upon to reach the determination to suspend or terminate the certification by ONC. As specified in § 170.580(f)(6)(iv), the default process for the hearing officer would be a determination based on option 1 described above.

As proposed in § 170.580(f)(6)(v) and mentioned above, once the health IT developer requests an appeal, ONC would have an opportunity to provide the hearing officer with a written statement and supporting documentation on its behalf (*e.g.,* a brief) that explains its determination to suspend or terminate the certification. Failure of ONC to submit a written statement would not result in any adverse findings against ONC and may not in any way be taken into account by the hearing officer in reaching a determination.

As proposed in § 170.580(f)(7)(i), the hearing officer would issue a written determination to the health IT developer within 30 days of receipt of the appeal, unless the health IT developer and ONC agree to a finite extension approved by the hearing officer. We request comment on whether the allotted time for the hearing officer to issue a written determination should be lessened or lengthened, such as 15, 45, or 60 days. We also request comment on whether an extension should be permitted and whether it should only be permitted under the circumstances proposed or for other reasons and circumstances.

As proposed in § 170.580(f)(7)(ii), the National Coordinator's determination, as issued by the hearing officer, would be the agency's final determination and not subject to further review.

We welcome comments on the proposed appeal processes outlined in this section.

d. Consequences of Certification Termination

In general, this proposed rule does not address the consequences of certification termination beyond requirements for recertification. Any consequences of, and remedies for, termination beyond recertification requirements are outside the scope of this proposed rule. For example, this proposed rule does not address the remedies for providers participating in the EHR Incentive Programs that may be using a Complete EHR or Health IT Module that has its certification terminated.[5] While our goals with this proposed rule are to enhance Program oversight and health IT developer accountability for the performance, reliability, and safety of certified health IT, we remind stakeholders that we have proposed methods (*e.g.,* corrective action plans) designed to identify and remedy non-conformities so that a Complete EHR or Health IT Module can maintain its certification.

(1) Program Ban and Heightened Scrutiny

We propose in § 170.581(a) that a Complete EHR or Health IT Module that has had its certification terminated can be tested and recertified once all non-conformities have been adequately addressed. We propose that the recertified Complete EHR or Health IT Module (or replacement version) must maintain a scope of certification that, at a minimum, includes all the previous certified capabilities. We propose that the health IT developer must request permission to participate in the Program before submitting the Complete EHR or Health IT Module (or replacement version) for testing to an ONC–ATL and recertification (certification) by an ONC–ACB under the Program. As part of its request, we propose that a health IT developer must submit a written explanation of what steps were taken to address the non-conformities that led to the termination. We also propose that ONC would need to review and approve the request for permission to participate in the Program before testing and recertification (certification) of the Complete EHR or Health IT Module (or replacement version) can commence under the Program.

If the Complete EHR or Health IT Module (or replacement version) is recertified (certified), we believe and propose in § 170.581(b) that the certified health IT product should be subjected to some form of heightened scrutiny by ONC or an ONC–ACB for a minimum of one year. We believe completion of the recertification process and heightened scrutiny would support the integrity of the Program and the continued functionality and reliability of the certified health IT. We request comment on the forms of heightened scrutiny (*e.g.,* quarterly in-the-field surveillance) and length of time for the heightened scrutiny (more or less than one year, such as six months or two years) of a recertified Complete EHR or recertified Health IT Module (or replacement version) that previously had its certification terminated.

We propose in § 170.581(c) that the testing and certification of any health IT of a health IT developer that has the certification of one of its health IT products terminated under the Program or withdrawn from the Program when the subject of a potential nonconformity (notice of potential non-conformity) or non-conformity would be prohibited. The only exceptions would be if: (1) The non-conformity is corrected and implemented to all affected customers; or (2) the certification and implementation of other health IT by the health IT developer would remedy the non-conformity for all affected customers. As noted in the discussion under the proposed suspension provisions, prohibiting the certification of new products, unless it serves to correct the non-conformity for all affected customers, may incentivize a health IT developer to cure the non-conformity. In correcting the non-conformity for all affected customers, we note that this would not include those customers that decline the correction or fail to cooperate. We welcome comments on this proposal, including how the health IT developer should demonstrate to ONC that all necessary corrections were completed. We further request comment as to whether correcting the non-conformity for a certain percentage of all affected customers or certain milestones demonstrating progress in correcting the non-conformity (*e.g.,* a percentage of customers within a period of time) should be sufficient to lift the

[5] See CMS EHR Incentive Programs FAQ 12657: *https://questions.cms.gov/faq.php?isDept=0&search=decertified&searchType=keyword&submitSearch=1&id=5005.*

prohibition. Additionally, consistent with this and the other proposed requirements of § 170.581, we request comment on whether heightened scrutiny (surveillance or other requirements) should apply for a period of time (*e.g.,* six months, one year, or two years) to all currently certified Complete EHRs or certified Health IT Modules, future versions of either type, and all new certified health IT of a health IT developer that has a product's certification terminated under the Program.

(2) ONC–ACB Response to a Non-Conformity

As previously noted in this proposed rule, ONC–ACBs are accredited to ISO 17065. Section 7.11.1 of ISO 17065 instructs certification bodies to consider and decide upon the appropriate action to address a non-conformity found, through surveillance or otherwise, in the product the certification body certified.[6] Section 7.11.1 lists, among other appropriate actions, the reduction in scope of certification to remove non-conforming product variants or withdrawal of the certification. We do not, however, believe these are appropriate actions under the Program.

We do not believe that a reduction in scope is appropriate for health IT under the Program. This action would absolve a health IT developer from correcting a non-conformity. Health IT is tested and certified to meet adopted criteria and requirements. It should continue to meet those criteria and requirements when implemented. If not, it should be corrected (the version is corrected through an update or a new corrected version is rolled out to all affected customers) or be subjected to certification termination. Accordingly, we propose to revise the PoPC for ONC–ACBs (§ 170.523) to prohibit ONC–ACBs from reducing the scope of a certification when the health IT is under surveillance or a corrective action plan. This proposal addresses two situations: (1) When health IT is suspected of a non-conformity (*i.e.,* under surveillance); and (2) when health IT has a non-conformity (*i.e.,* under a corrective action plan).

A health IT developer's withdrawal of its certified health IT from the Program when the subject of a potential non-conformity (under surveillance) or non-conformity should not be without prejudice. If a health IT developer is not willing to correct a non-conformity, then we believe the health IT developer should be subject to the same proposed consequences as we have proposed under ONC direct review of health IT (*i.e.,* a Program ban on the testing and certification of its health IT). We further propose that the same proposed consequences for health IT and health IT developers related to certification termination under ONC direct review (*i.e.,* all of the § 170.581 proposals) should apply to certification terminations issued by ONC–ACBs. We note that the concept of heightened scrutiny, as described above, is consistent with section 7.11.1 listing of increased surveillance as an appropriate response to a non-conformity.

These proposals are consistent with our proposed approach and processes for ONC direct review and would support the overall integrity and reliability of the Program. We welcome comment on these proposals.

2. Establishing ONC Authorization for Testing Labs Under the Program; Requirements for ONC–ATL Conduct; ONC Oversight and Processes for ONC–ATLs

a. Background on Testing and Relationship of Testing Labs and the Program

The Temporary Certification Program, established by final rule (75 FR 36158), provided a process by which an organization or organizations could become an ONC-Authorized Testing and Certification Body (ONC–ATCB) and be authorized by the National Coordinator to perform the testing and certification of Complete EHRs and/or Health IT Modules. Under the Temporary Certification Program, an organization was both a testing lab and certification body. The Temporary Certification Program was replaced by the Permanent Certification Program, which first finalized a new set of rules in 2011 (76 FR 1262). The name of the Permanent Certification Program was changed to the ONC HIT Certification Program in the 2014 Edition final rule (77 FR 54163) and the ONC Health IT Certification Program (Program) in the 2015 Edition final rule (80 FR 62602).

Under the Program, testing and certification must be completed by organizations (or components of organizations) that are separately accredited to different ISO standards (*i.e.,* ISO 17065 for certification and ISO 17025 for testing). In the Permanent Certification Program final rule, we explained that the NVLAP, administered by NIST, would be the accreditor for health IT testing labs under the Program (76 FR 1278–1281).

Unlike the processes we established for ONC–ACBs, which at a high-level includes a two-step process of: (1) Accreditation by the ONC-Approved Accreditor; and (2) a formal request for and subsequent authorization by the National Coordinator to operate within the Program, we did *not* establish a similar and equitable process for testing labs. Instead, we required in the PoPC for ONC–ACBs (45 CFR 170.523(h)) that ONC–ACBs only accept test results from NVLAP-accredited testing labs. This requirement for ONC–ACBs had the effect of requiring testing labs to be accredited by NVLAP to ISO 17025. However, in so doing, there is effectively no direct ONC oversight of NVLAP-accredited testing labs like there is for ONC–ACBs.

In the five years we have administered the Program, we have continually made updates to the Program's rules to refine, mature, and optimize program operations (see revisions to the Program in the 2014 Edition final rule, 2014 Edition Release 2 final rule, and 2015 Edition final rule). These changes have also included new and expanded responsibilities for ONC–ACBs and ONC. While we have continued to update and improve our oversight of ONC–ACBs, we have not done the same for the testing labs upon which ONC–ACBs rely. Our continued evaluation of the Program has led us to determine that the operational efficiency and overall integrity of the Program could be improved by establishing parity in the oversight we provide for both testing and certification.

The testing of health IT by accredited testing labs is the first line of evaluation in determining whether health IT meets the capabilities included in a certification criterion and serves as the basis for the certification of health IT by ONC–ACBs. We believe that having a similar and comparable authorization and oversight paradigm for testing labs and certification bodies would enable ONC to oversee and address testing and certification performance issues throughout the entire continuum of the Program in a precise and direct manner. For example, ensuring that consistent testing documentation (*e.g.,* files, reports, and test tool outputs) is produced across all ONC–ATLs could be directly addressed at the testing stage compared to today's rules that solely apply to ONC–ACBs, who are simply the recipients of such information. Additionally, ONC direct oversight would ensure that, like with ONC–ACBs, testing labs are directly and immediately accountable to ONC for their performance across a variety of Program items including, but not limited to: Specifying and verifying testing personnel qualifications;

[6] 45 CFR 170.599(b)(3).

requiring training sessions for testing lab personnel; establishing record documentation and retention requirements; and instituting methods for addressing inappropriate and incorrect testing methods and non-compliance with Program requirements.

b. Proposed Amendments To Include ONC–ATLs in the Program

This proposed rule proposes means for ONC to have direct oversight of NVLAP-accredited testing labs by having them apply to become ONC–ATLs. Specifically, this proposed rule proposes means for authorizing, retaining, suspending, and revoking ONC–ATL status under the Program. These proposed processes are similar to current ONC–ACB processes. In general, to seek and acquire authorization, an applicant must be NVLAP-accredited to ISO 17025, agree to the PoPC for ONC–ATLs, and comply with the proposed application documentation and procedural requirements. We propose that an ONC–ATL would retain its status for a three-year period that could be continually renewed as long as the ONC–ATL follows proposed good standing and testing requirements, including the PoPC for ONC–ATLs. To maintain proper oversight and the integrity of the Program, we propose criteria and means for ONC to suspend and revoke an ONC–ATL's status under the Program, which include opportunities for an ONC–ATL to become compliant and respond to a proposed suspension and/or revocation. We also request comment on whether we should revise § 170.570 to account for the possibility of an ONC–ATL having its status revoked for a Type-1 violation that called into question the legitimacy of certifications issued by an ONC–ACB.

The following sections detail each new and amended regulatory provisions that we propose for subpart E of part 170, starting with 45 CFR 170.501, in order to include ONC–ATLs as part of the Program. For authorization and other processes, we intend to follow and leverage all of the processes established for ONC–ACBs. Thus, most of our proposals are minimal conforming amendments to existing regulatory text that add in references to a testing lab or (once authorized) ONC–ATL.

(1) Proposed Amendments to § 170.501 Applicability

We propose to revise paragraph (a) of § 170.501 to include references to ''applicants for ONC–ATL status;'' ''ONC–ATL;'' and ''ONC–ATL status.'' The proposed revisions would make clear that ONC–ATLs are part of the rules under this subpart.

(2) Proposed Amendments to § 170.502 Definitions

We propose to revise the definition of the term ''Applicant'' in § 170.502 to include a corresponding reference to ONC–ATL in order for such term to have equal meaning in the case of a testing lab that is applying for ONC–ATL status.

We propose to revise the definition of the term ''gap certification'' in § 170.502 to include a corresponding reference to ONC–ATL in paragraph (1) of that definition in order to give equal weight to test results based those issued by an ONC–ATL. We also propose to add ''under the ONC Health IT Certification Program'' to paragraphs (1) and (2) of the definition to improve the clarity of the definition.

We propose to define the term ''ONC–Authorized Testing Lab'' or ''ONC–ATL'' to mean an organization or consortium of organizations that has applied to and been authorized by the National Coordinator to perform the testing of Complete EHRs and Health IT Modules to certification criteria adopted by the Secretary in subpart C of this part.

(3) Proposed Amendments to § 170.505 Correspondence

In order to accurately reflect the addition of an applicant for ONC–ATL status and ONC–ATLs to the Program framework, we propose to revise § 170.505 to include references to ONC–ATL as appropriate.

(4) Proposed Amendment to § 170.510 Type of Certification

To make clear that § 170.510 is specifically geared toward applicants for ONC–ACB status and the authorization they may seek, we propose to revise the section heading to specifically reference the authorization scope of ONC–ACB status. We also propose to revise the introductory text within this section to more clearly convey that this section is solely focused on applicants for ONC–ACB status.

(5) Proposed Creation of § 170.511 Authorization Scope for ONC–ATL Status

We propose to create a new section (§ 170.511) to clearly define the scope of the authorization an ''applicant'' testing lab may be able to seek from the National Coordinator. We propose that such authorization be limited to the certification criteria adopted by the Secretary in subpart C of this part. However, to support specialized testing and testing efficiencies for health IT, we propose that an applicant for ONC–ATL status could seek for the scope of its authorization all certification criteria, a subset of all of the certification criteria (*e.g.,* to support only privacy and security testing), one certification criterion, or a portion of one certification criterion. The latter two options provide opportunities for entities that may perform industry testing of health IT for limited and/or distinct capabilities (*e.g.,* e-prescribing) that align with certification criteria to participate in the Program. This approach could avoid duplicative testing and reduce regulatory burden for health IT developers that test and certify health IT under the Program and with entities outside of the Program.

(6) Proposed Amendments to § 170.520 Application

We propose to make the following amendments in order to establish the requirements that an applicant for ONC–ATL status must follow for its application for ONC–ATL status. First, we propose to reorder the regulatory text hierarchy to reference the ONC–ACB application requirements under § 170.520(a) and then the ONC–ATL application requirements under § 170.520(b). For the ONC–ATL requirements, we propose that an ONC–ATL applicant would need to seek authorization based on the scope proposed in § 170.511 and follow the same set of amended requirements as applicable to the different accreditation and PoPC to which ONC–ATLs would need to adhere. We propose that this application information include the same general identifying information as for ONC–ACB applicants; the same authorized representative designation; documentation that the applicant has been accredited by NVLAP to ISO 17025; and an agreement executed by the authorized representative to PoPC for ONC–ATLs.

(7) Proposed Amendment to § 170.523 Principles of Proper Conduct for ONC–ACBs

We propose to revise § 170.523(h) (PoPC for ONC–ACBs) to explicitly include ONC–ATLs as an entity from whom ONC–ACBs would receive test results (*see* proposed § 170.523(h)(1)). Additionally, to account for the transition period from NVLAP-accredited testing laboratories to ONC–ATLs, we propose to modify § 170.523(h) to include a six month time window from the authorization of the first ONC–ATL to permit the continued acceptance by ONC–ACBs of *any* test results from a NVLAP-accredited testing

laboratory (*see* proposed § 170.523(h)(2)). We believe this would provide more than adequate transition time for ONC–ACBs to continue to issue certifications based on test results for new and revised certification criteria issued by a ''NVLAP-accredited testing laboratory'' and would also serve as a mobilizing date for a testing lab that has not yet applied for ONC–ATL status. We, however, request comment on our proposed approach to the transition period from NVLAP-accredited testing laboratories to ONC–ATLs. Specifically, we request comment on whether we should alternatively establish that ONC–ACBs may only be permitted to accept *any* test results from a NVLAP-accredited testing laboratory for a period of time from the effective date of a subsequent final rule. This approach would provide a more certain timetable for ONC–ACBs compared to the proposed approach, but may not provide sufficient time for all NVLAP-accredited testing laboratories to transition to ONC–ATL status. We also request comment on whether the transition period should be shorter (*e.g.,* three months) or longer (*e.g.,* nine months) under either the proposed approach or the alternative approach.

We propose in § 170.523(h)(2) to permit the use of test results from a NVLAP-accredited testing laboratory for certifying previously certified health IT to unchanged certification criteria and gap certification. As proposed, NVLAP-accredited testing laboratories would be replaced with ONC–ATLs. This proposal would permit the test results issued by NVLAP-accredited testing laboratories under the Program (*e.g.,* test results for health IT tested to the 2014 Edition) to continue to be used for certifying previously certified health IT to unchanged certification criteria and gap certification. As a related proposal, we propose to remove references to ONC–ATCBs in § 170.523(h). ONC–ATCBs certified health IT to the 2011 Edition. The 2011 Edition has been removed from the Code of Federal Regulations and ONC–ACBs no longer maintain active certifications for health IT certified to the 2011 Edition.

(8) Proposed Creation of § 170.524 Principles of Proper Conduct for ONC–ATLs

Similar to the set of rules and conditions to which we require ONC–ACBs to adhere, we propose to establish a corresponding set of PoPC to which ONC–ATLs must adhere. Adherence to these conduct requirements would be necessary for ONC–ATLs to maintain their authorization and to remain in good standing under the Program. Many of the proposed PoPC for ONC–ATLs would remain consistent with those to which ONC–ACBs are already required to adhere. The proposed PoPC for ONC–ATLs include that an ONC–ATL shall:

- Maintain its accreditation through NVLAP based on the ISO 17025 standard;
- Attend all mandatory ONC training and program update sessions;
- Maintain a training program that includes documented procedures and training requirements to ensure its personnel are competent to test health IT;
- Report to ONC within 15 days any changes that materially affect its: Legal, commercial, organizational, or ownership status; organization and management including key testing personnel; policies or procedures; location; personnel, facilities, working environment or other resources; ONC authorized representative (point of contact); or other such matters that may otherwise materially affect its ability to test health IT;
- Allow ONC, or its authorized agent(s), to periodically observe on site (unannounced or scheduled), during normal business hours, any testing performed pursuant to the Program;
- Consistent with the revisions recently adopted in the 2015 Edition final rule, to retain all records related to the testing of Complete EHRs and/or Health IT Modules to an edition of certification criteria for a minimum of three years from the effective date that removes the applicable edition from the Code of Federal Regulations; and to make the records available to HHS upon request during the retention period;
- Only test health IT (Complete EHRs and Health IT Modules) using test tools and test procedures approved by the National Coordinator; and
- Promptly refund any and all fees received for: Requests for testing while its operations are suspended by the National Coordinator; testing that will not be completed as a result of its conduct; and previous testing that it performed if its conduct necessitates the retesting of Complete EHRs and/or Health IT Modules.

(9) Proposed Amendments to § 170.525 Application Submission

To clearly recognize that testing labs would be applying for ONC–ATL status, we propose to include reference to an applicant for ONC–ATL status in paragraphs (a) and (b) of § 170.525 and to have the same rules that currently apply to applicants for ONC–ACB status apply to applicants for ONC–ATL status.

(10) Proposed Amendments to § 170.530 Review of Application

We propose to revise paragraphs (c)(2), (c)(4), (d)(2), and (d)(3) of § 170.530 to equally reference that an ONC–ATL could be part of the application review process. Further, in so doing, we propose to follow all of the same application review steps and processes that we currently follow for applicants for ONC–ACB status.

(11) Proposed Amendments to § 170.535 ONC–ACB Application Reconsideration

We propose to revise this section's heading to include reference to ONC–ATLs. Additionally, we propose to revise paragraphs (a) and (d)(1) of § 170.535 to equally reference that an ONC–ATL could be part of the application reconsideration process. Further, in so doing, we propose to follow all of the same application reconsideration steps and processes that we currently require and follow for applicants for ONC–ACB status.

(12) Proposed Amendments to § 170.540 ONC–ACB Status

We propose to revise this section's heading to include reference to ONC–ATLs. Additionally, we propose to revise paragraphs (a) through (d) of § 170.540 to equally reference an ONC–ATL as part of the rules currently governing the achievement of ONC–ACB status. These rules would include: The acknowledgement of ONC–ATL status; that the ONC–ATL must prominently and unambiguously identify the scope of its authorization; that ONC–ATL authorization must be renewed every three (3) years; and the expiration of ONC–ATL status (3 years from when it was granted unless renewed).

(13) Proposed Amendments to § 170.557 Authorized Certification Methods

We propose to revise this section's heading to include a reference to ''testing.'' Additionally, we propose to update the regulatory text hierarchy to have paragraph (a) be applicable to ONC–ATLs and paragraph (b) be applicable to ONC–ACBs. We have included this proposal for ONC–ATLs because we believe the requirement to provide for remote testing for both development and deployment sites is equally applicable to testing labs as it is to certification bodies.

(14) Proposed Amendments to § 170.560 Good Standing as an ONC–ACB

We propose to revise this section's heading to include reference to ONC–ATLs. Additionally, we propose to revise the paragraph hierarchy to make

the paragraph (a) requirements applicable to ONC–ACBs (without modification) and to make the paragraph (b) requirements applicable to ONC–ATLs following the same set of three requirements as for ONC–ACBs. We believe mirroring these requirements between ONC–ACBs and ONC–ATLs provides for consistent administration for both testing and certification under the Program.

(15) Proposed Amendments to § 170.565 Revocation of ONC–ACB Status

We propose to revise this section's heading to include reference to ONC–ATLs. Additionally, we propose to revise paragraphs (a) through (h) to include references to an ONC–ATL as applicable. We propose to apply the same oversight paradigm of Type-1 and Type-2 [7] violations to ONC–ATLs as we apply to ONC–ACBs today. Further, we propose to follow the same process for ONC–ATLs as already included in this section for ONC–ACBs. We believe this consistency would enable ONC to treat similar fact-based non-compliance situations equitably among ONC–ACBs and ONC–ATLs. We propose to specifically add paragraph (d)(1)(iii) for ONC–ATL suspension provisions because the suspension provisions in paragraph (d)(1)(ii) are too specific to ONC–ACBs and certification and simply referencing ONC–ATLs in that paragraph would cause confusion. Similarly, we propose to specifically add paragraph (h)(3) related to the extent and duration of revocation to clearly divide the rules applicable to ONC–ACBs from those that are applicable to ONC–ATLs. This proposed revision would place the current ONC–ACB applicable regulation text in proposed paragraph (h)(2).

(16) Request for Comment on § 170.570 in the Context of an ONC–ATL's Status Being Revoked

Section 170.570 discusses the general rule applicable to certifications issued to Complete EHRs and/or Health IT Modules in the event that an ONC–ACB has had its status revoked. It also includes specific steps that the National Coordinator can follow if a Type-1 violation occurred that called into question the legitimacy of certifications conducted by the former ONC–ACB. These provisions were specifically put in place to provide clarity to the market about the impact that an ONC–ACB's status revocation would have on certified health IT in use as part of the EHR Incentive Programs.

In the context of an ONC–ATL having its status revoked, we have not specifically proposed to modify § 170.570 to include a set of rules applicable to such a scenario. In large part, we do not believe that the same provisions are necessary given the tangible differences between test results for a not yet certified product and an issued certification being used by hundreds or thousands of providers for participation in other programs, HHS or otherwise. We do, however, request comment, whether there would be any circumstances in which additional clarity around the viability of test results attributed to a not yet certified product would be necessary. Additionally, we request comment as to whether we should include provisions similar to those already in this section to account for an instance where an ONC–ATL has its status revoked as a result of a Type-1 violation, which calls into question the legitimacy of the test results the ONC–ATL issued and, thus, could call into question the legitimacy of the subsequent certifications issued to products by a potentially unknowing or deceived ONC–ACB.

B. Public Availability of Identifiable Surveillance Results

In the 2014 Edition final rule, for the purposes of increased Program transparency, we instituted a requirement for the public posting of the test results used to certify health IT (77 FR 54271). We also instituted a requirement that a health IT developer publicly disclose any additional types of costs that a provider would incur for using the health IT developer's certified health IT to participate in the EHR Incentive Programs (77 FR 54273–74). Building on these transparency and public accountability requirements for health IT developers, in the 2015 Edition final rule, we took steps to increase the transparency related to certified health IT through surveillance, disclosure, and reporting requirements. For instance, we now require ONC–ACBs to report corrective action plans and related data to the publicly accessible CHPL. The purpose of this reporting requirement, as described in the 2015 Edition final rule, was to ensure that health IT users, implementers, and purchasers are alerted to potential conformance issues in a timely and effective manner, consistent with the patient safety, program integrity, and transparency objectives of the 2015 Edition final rule.

In furtherance of our efforts to increase Program transparency and health IT developer accountability for their certified health IT, we propose to require ONC–ACBs to publicly publish on their Web sites identifiable surveillance results on a quarterly basis. These surveillance results would include information such as, but may not be limited to: Names of health IT developers; names of products and versions; certification criteria and Program requirements surveilled; and outcomes of surveillance. This information is already collected by ONC–ACBs as part of their surveillance efforts under the Program and should be readily available for posting on their Web sites.

The publication of identifiable surveillance results, much like the publication of corrective action plans on the CHPL, would hold health IT developers more accountable to the customers and users of their certified health IT. Customers and users would be provided with valuable information about the continued performance of certified health IT as well as surveillance efforts. To elaborate, identifiable surveillance results would serve to inform providers currently using certified health IT as well as those that may consider switching their certified health IT or purchasing certified health IT for the first time. While we expect that the prospect of publicly identifiable surveillance results would motivate some health IT developers to improve their maintenance efforts, we believe that most published surveillance results would reassure customers and users of certified health IT. This is because, based on ONC–ACB surveillance results to date, most certified health IT and health IT developers are maintaining conformance with certification criteria and Program requirements. The publishing of such ''positive'' surveillance results would also provide a more complete context of surveillance; rather than only sharing ''negatives,'' such as non-conformities and corrective action plans.

We make clear that we do not propose to require that publicly posted surveillance results include certain information that is proprietary, trade secret, or confidential (*e.g.,* ''screenshots'' that may include such information). We expect health IT developers and ONC–ACBs to ensure that such information is not posted when making available the information

[7] Type-2 violations constitute non-compliance with 45 CFR 170.560 (Good standing as an ONC–ACB) (45 CFR 170.565(b)). An ONC–ACB must maintain good standing by: (a) Adhering to the Principles of Proper Conduct for ONC–ACBs; (b) Refraining from engaging in other types of inappropriate behavior, including an ONC–ACB misrepresenting the scope of its authorization, as well as an ONC–ACB certifying Complete EHRs and/or Health IT Module(s) for which it does not have authorization; and (c) Following all other applicable Federal and State laws.

we propose would be required to be posted as noted above (*i.e.,* but not limited to, names of health IT developers; names of products and versions; certification criteria and Program requirements surveilled; and outcomes of surveillance).

We request public comment on the publication of identifiable surveillance results. Specifically, we request comment on the types of information to include in the surveillance results and the format (*e.g.,* summarized or unrefined surveillance results) that would be most useful to stakeholders. In addition to the proposal for ONC–ACBs to publish these results quarterly on their Web sites, we request comment on the value of publishing hyperlinks on the ONC Web site to the results on the ONC–ACBs' Web sites. This may provide stakeholders with a more readily available means for accessing all the results.

To implement the proposed new requirement, we propose to revise § 170.523(i) of the PoPC for ONC–ACBs by adding language that requires ONC–ACBs to make identifiable surveillance results publicly available on their Web sites on a quarterly basis. We also propose to revise § 170.556(e)(1) for clarity and consistency with § 170.523(i)(2) by adding that the ongoing submission of in-the-field surveillance results to the National Coordinator throughout the calendar year must, at a minimum, be done on a quarterly basis. Further, we propose to reestablish a requirement that ONC–ACBs submit an annual summative report of surveillance results to the National Coordinator. This previous requirement was unintentionally removed in the 2015 Edition final rule when we established a quarterly reporting requirement for surveillance results. Summative reports provide comprehensive summaries of the surveillance conducted throughout the year.

III. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 3701 *et seq.*) and the Office of Management and Budget (OMB) Circular A–119 [8] require the use of, wherever practical, standards that are developed or adopted by voluntary consensus standards bodies to carry out policy objectives or activities, with certain exceptions. In this proposed rule, we propose to adopt one voluntary consensus standard (ISO 17025).

[8] *http://www.whitehouse.gov/omb/circulars_a119.*

IV. Incorporation by Reference

The Office of the Federal Register has established requirements for materials (*e.g.,* standards and implementation specifications) that agencies propose to incorporate by reference in the **Federal Register** (79 FR 66267; 1 CFR 51.5(a)). Specifically, § 51.5(a) requires agencies to discuss, in the preamble of a proposed rule, the ways that the materials it proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties; and summarize, in the preamble of the proposed rule, the material it proposes to incorporate by reference. To make the materials we intend to incorporate by reference reasonably available, we provide a uniform resource locator (URL) to the standard. The standard must be purchased to obtain access. Alternatively, a copy of the standard may be viewed for free at the U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, 330 C Street SW., Washington, DC 20201. Please call (202) 690–7171 in advance to arrange inspection. As required by § 51.5(a), we also provide a summary of the standard we propose to adopt and subsequently incorporate by reference in the **Federal Register**.

ISO/IEC 17025:2005 General requirements for the competence of testing and calibration laboratories.

URL: ISO/IEC 17025:2005 (ISO 17025) is available for purchase on the ISO Web site at: *http://www.iso.org/iso/catalogue_detail.htm?csnumber=39883.*

Summary: Accreditation bodies that recognize the competence of testing and calibration laboratories should use ISO 17025 as the basis for their accreditation. Clause 4 specifies the requirements for sound management. Clause 5 specifies the requirements for technical competence for the type of tests and/or calibrations the laboratory undertakes.

The use of ISO 17025 will facilitate cooperation between laboratories and other bodies, and assist in the exchange of information and experience, and in the harmonization of standards and procedures.

V. Response to Comments

Because of the large number of public comments normally received in response to **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment on a proposed collection of information before it is submitted to OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by the OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency;

2. The accuracy of the agency's estimate of the information collection burden;

3. The quality, utility, and clarity of the information to be collected; and

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

A. ONC–AA and ONC–ACBs

Under the ONC Health IT Certification Program, accreditation organizations that wish to become the ONC-Approved Accreditor (ONC–AA) must submit certain information, organizations that wish to become an ONC–ACB must comply with collection and reporting requirements, and ONC–ACBs must comply with collection and reporting requirements, records retention requirements, and submit annual surveillance plans and annually report surveillance results. In the 2015 Edition proposed rule (80 FR 16894), we estimated less than ten annual respondents for all of the regulatory ''collection of information'' requirements that applied to the ONC–AA and ONC–ACBs, including those previously approved by OMB. In the 2015 Edition final rule (80 FR 62733), we concluded that the regulatory ''collection of information'' requirements for the ONC–AA and the ONC–ACBs were not subject to the PRA under 5 CFR 1320.3(c). We further note that the PRA (44 U.S.C. 3518(c)(1)(B)(ii)) exempts the information collections specified in 45 CFR 170.565 that apply to ONC–ACBs, which are collection activities that would occur during administrative actions or investigations involving ONC against an ONC–ACB.

B. ONC–ATLs

We estimate less than ten annual respondents for all of the proposed regulatory ''collection of information'' requirements for ONC–ATLs under Part 170 of Title 45. Accordingly, the regulatory ''collection of information'' requirements under the Program described in this section are not subject to the PRA under 5 CFR 1320.3(c). We further note that the PRA (44 U.S.C. 3518(c)(1)(B)(ii)) exempts the information collections specified in 45 CFR 170.565 that apply to ONC–ATLs, which are collection activities that would occur during administrative actions or investigations involving ONC against an ONC–ATL.

Since the establishment of the Program in 2010, there have never been more than six applicants or entities selected for ONC–ATCB or accredited testing lab status. We anticipate that there will be no more than eight ONC–ATLs participating in the Program. There are currently only five accredited testing labs under the Program. We estimate that up to three more testing labs may consider becoming accredited and seek ONC–ATL status because of our proposal to permit granting ONC–ATL status to an accredited testing lab for the testing of health IT to one certification criterion or only a partial certification criterion.

We welcome comments on these conclusions and the supporting rationale on which they are based.

The specific ''collection of information'' requirements that apply to ONC–ATLs are found in § 170.520(b); proposed § 170.524(d) and (f); and § 170.540(c). We have estimated the burden hours for these requirements in case our conclusions above are found to be misguided based on public comments or other reasons. Our estimates for the total burden hours are expressed in the table below. The estimated total burden hours are based on an estimated five respondents (ONC–ATLs) for the reasons noted above. With similar requirements to ONC–ACBs, we estimate the same number of burden hours for ONC–ATLs to comply with §§ 170.520(b) and 170.540(c) as cited in the 2015 Edition proposed rule (80 FR 16894). We also make the same determination for ONC–ATL records retention requirements under proposed § 170.524(f) as we did for the ONC–ACB records retention requirements (*i.e.,* no burden hours) (80 FR 16894). We have estimated two responses per year at one hour per response for ONC–ATLs to provide updated contact information to ONC per § 170.524(d). We welcome comments on our burden hour estimates. We also welcome comments on the estimated costs associated with these proposed collection of information requirements, which can be found in section VII (''Regulatory Impact Statement'') of this preamble.

ESTIMATED ANNUALIZED TOTAL BURDEN HOURS

Type of respondent	Code of federal regulations section	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ONC–ATL	45 CFR 170.520(b)	8	1	1	8
ONC–ATL	45 CFR 170.524(d)	8	2	1	16
ONC–ATL	45 CFR 170.524(f)	8	n/a	n/a	n/a
ONC–ATL	45 CFR 170.540(c)	8	1	1	8
Total burden hours for all collections of information.	.....	.....	.....	.....	32

C. Health IT Developers

We propose in 45 CFR 170.580 that a health IT developer would have to submit certain information to ONC as part of a review of the health IT developer's certified health IT and if ONC took action against the certified health IT (*e.g.,* requiring a corrective action plan to correct a non-conformity or suspending or terminating a certification for a Complete EHR or Health IT Module). The PRA, however, exempts these information collections. Specifically, 44 U.S.C. 3518(c)(1)(B)(ii) excludes collection activities during the conduct of administrative actions or investigations involving the agency against specific individuals or entities.

VII. Regulatory Impact Statement

A. Statement of Need

The proposed rule proposes to establish processes for ONC to expand its role to directly review health IT certified under the Program and take action when necessary, including requiring the correction of non-conformities found in health IT certified under the Program and suspending and terminating certifications issued to Complete EHRs and Health IT Modules. These processes would serve to address non-conformities, particularly those that may pose a risk to public health or safety or create other exigent circumstances that are inconsistent with section 3001(b) of the PHSA. The Program does not currently have regulatory means for reviewing and addressing such non-conformities and reliance on ONC–ACBs is not appropriate due to their limited scope of responsibilities, expertise, and resources. Therefore, we propose to establish processes for ONC to address these situations.

The proposed rule also proposes processes for ONC to timely and directly address testing issues. These processes do not exist today under the current Program structure, particularly as compared to ONC's oversight of ONC–ACBs. In addition, the proposed rule includes a provision for the increased transparency and availability of identifiable surveillance results. The publication of identifiable surveillance results would support further accountability of health IT developers to their customers and users of certified health IT.

B. Alternatives Considered

We assessed alternatives to our proposed approaches for enhanced oversight by ONC described in this proposed rule (*i.e.,* the direct review of certified health IT and the authorization and oversight of accredited testing labs (ONC–ATLs)). One less stringent alternative would be to maintain our current approach for the Program in which ONC–ACBs have sole responsibility for issuing and administering certifications in accordance with ISO 17065, the PoPC for ONC–ACBs, and other requirements of the Program. This approach would also leave the testing structure as it currently exists. A second more stringent alternative to what we proposed would be for ONC to take further responsibility for the testing, certification, and ongoing compliance of

health IT with Program requirements by making testing and certification determinations and/or reviewing all determinations made under the Program. We believe either approach would be misguided.

The current approach would leave no means for ONC to address non-conformities in certified health IT that are contrary to the National Coordinator's responsibilities under section 3001(b) of the PHSA and, as discussed in this proposed rule, ONC–ACBs are not situated to address these types of non-conformities. If we did not change the current testing structure, a lack of parity in ONC oversight for testing and certification would continue to exist. ONC direct oversight of ONC–ATLs would ensure that, like with ONC–ACBs, testing labs are directly and immediately accountable to ONC for their performance across a variety of Program items that affect the testing of health IT. Accordingly, and for the reasons outlined in this proposed rule, we do not believe maintaining the Program as currently structured is acceptable.

We fully considered the Program structure when establishing the Program and have made appropriate modifications as the Program has evolved (*see* the discussion in section I.A of this preamble for a summary of rulemaking related to the Program and citations for the relevant rules). These past considerations primarily focused on a market-driven approach for the Program with testing and certification conducted on behalf of ONC and with ONC retaining and establishing direct and indirect oversight over certain activities. As discussed in this proposed rule, ONC–ACBs play an integral role in the Program and have the necessary expertise and capacity to effectively administer specific Program requirements. Accredited testing labs also play an integral role in the Program's success through the testing of health IT. Our proposals in this proposed rule align with past considerations and would only serve to enhance the Program by providing more consistency and accountability for Program participants, which would provide greater confidence in certified health IT when it is implemented, maintained, and used.

We welcome comments on our assessment of alternatives and any alternatives that we should also consider.

C. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (February 2, 2011), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), and Executive Order 13132 on Federalism (August 4, 1999).

1. Executive Orders 12866 and 13563—Regulatory Planning and Review Analysis

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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). OMB has determined that this proposed rule is an economically significant rule as the potential costs associated with this proposed rule could be greater than $100 million per year. Accordingly, we have prepared an RIA that to the best of our ability presents the costs and benefits of the proposed rule.

a. Costs

We estimated the potential monetary costs of this proposed rule for health IT developers, ONC–ATLs, the Federal government (*i.e.,* ONC), and health care providers as follows: (1) Costs for health IT developers to correct non-conformities identified by ONC; (2) costs for ONC and health IT developers related to ONC review and inquiry into certified health IT non-conformities; (3) costs to health IT developers and ONC associated with the proposed appeal process following a suspension/termination of a Complete EHR's or Health IT Module's certification; (4) costs to health care providers to transition to another certified health IT product when the certification of a Complete EHR or Health IT Module that they currently use is terminated; (5) costs for ONC–ATLs and ONC associated with ONC–ATL accreditation, application, renewal, and reporting requirements; (6) costs for ONC–ATLs and ONC related to revoking ONC–ATL status; and (7) costs for ONC–ACBs to publicly post identifiable surveillance results. We also provide an overall annual monetary cost estimate for this proposed rule (see (8) Total Annual Cost Estimate). We note that we have rounded all estimates to the nearest dollar and all estimates are expressed in 2016 dollars.

We have made employee assumptions about the level of expertise needed to complete the proposed requirements in this section. We have correlated that expertise with the corresponding grade and step of an employee classified under the General Schedule Federal Salary Classification, relying on the associated employee hourly rates for the Washington, DC locality pay area as published by the Office of Personnel Management. We have assumed that an applicant expends one hundred percent (100%) of an employee's hourly wage on benefits for the employee. Therefore, we have doubled the employee's hourly wage to account for benefits. We have concluded that a 100% expenditure on benefits is an appropriate estimate based on research conducted by HHS.

We have used the General Schedule Federal Salary Classification for private sector employee wage calculations because the majority of the proposed tasks and requirements that would be performed by private sector employees do not easily fall within a particular occupational classification identified by the Bureau of Labor Statistics (BLS). For instance, while we estimate costs for specialized testing labs personnel to support accreditation, we also estimate costs for participating in administrative reviews and appeals and reporting certain information to ONC. As noted above, in all instances, we correlated the expertise needed to complete the task or requirement with the corresponding grade and step of a federal employee classified under the General Schedule Federal Salary Classification.

We welcome comments on our methodology for estimating employee costs, including whether there are appropriate BLS occupational classifications and wages that we should instead use to estimate employee costs and the costs of the tasks and requirements proposed in this proposed rule.

(1) Costs for Health IT Developers To Correct a Non-Conformity Identified by ONC

We do not believe health IT developers face additional direct costs for the proposed ONC direct review of certified health IT, including the National Coordinator fulfilling the responsibilities of section 3001(b) of the PHSA. There are no new certification requirements proposed in this proposed rule. Health IT developers have already been certified to applicable certification criteria and other Program requirements. Further, health IT developers should already be ensuring that their certified

health IT is not, for example, creating public health and/or safety issues by causing medical errors or leaving a patient's health information unprotected in violation of applicable law (*e.g.,* in violation of the Health Insurance Portability and Accountability Act). However, we acknowledge that this proposed rule may: (1) Lead health IT developers to reassess whether their certified health IT is conformant; and (2) require health IT developers to correct non-conformities found by ONC in their certified health IT.

We have been unable to estimate the costs for health IT developers to reassess their certified health IT for any non-conformities due to, but not limited to, the variability of health IT developers' certified technologies, current conformance, quality management systems, implementation of certified health IT, and resources. Additionally, we are not aware of relevant data or methodology we could use to estimate these costs. We do not, however, anticipate that this reassessment would result in substantial costs to health IT developers because health IT developers should have means for routinely evaluating their certified health IT for potential issues. We welcome comment on relevant data and methods we could use to estimate these costs.

If ONC identifies a non-conformity with a health IT developer's certified health IT, the costs incurred by the health IT developer to bring the product into conformance would be determined on a case-by-case basis. If ONC found a non-conformity with a certified capability related to a certification criterion, then the costs are not truly a result of this proposed rule because a health IT developer's product should remain conformant to those criteria and the costs to meet certification criteria were previously estimated in the 2014 Edition final rule and the 2015 Edition final rule. Alternatively, ONC could find either that certified health IT is causing medical errors or contributing to a patient's health information being unsecured and unprotected in violation of applicable law. In either instance, the monetary costs to correct the non-conformity would likely vary significantly based on factors such as the cause of the non-conformity and how easily it could be corrected. We are unable to reliably estimate these costs as we do not have cost estimates for a comparable situation. We request comment on existing relevant data and methods we could use to estimate these costs.

(2) Costs for ONC and Health IT Developers Related to ONC Review and Inquiry Into Certified Health IT Non-Conformities

ONC would have broad discretion to review certified health IT. However, we anticipate that such review would be relatively infrequent and would focus on situations that pose a risk to public health or safety. We estimate that a health IT developer may commit, on average and depending on complexity, between 80 and 400 hours of staff time to provide ONC with all requested records and documentation that ONC would use to make a suspension and/or termination determination. We assume that the expertise of the employee(s) needed to comply with ONC's requests would be equivalent to a GS–15, Step 1 federal employee. The hourly wage with benefits for a GS–15, Step 1 employee located in Washington, DC is approximately $122.74. Therefore, we estimate the cost for a health IT developer to cooperate with an ONC review and inquiry into certified health IT would, on average, range from $9,819 to $49,096. We note that some health IT developers' costs are expected to be less and some health IT developers' costs are expected to be more than this estimated cost range.

We estimate that ONC may commit, on average and depending on complexity, between 20 and 600 hours of staff time to complete a review and inquiry into certified health IT. We assume that the expertise of a GS–15, Step 1 federal employee(s) would be necessary. Therefore, we estimate the cost for ONC to review and conduct an inquiry into certified health IT would, on average, range from $2,455 to $73,644. We note that some reviews and inquiries may cost less and some may cost more than this estimated cost range.

We welcome comment on our estimated costs and any comparable processes and costs that we could use to improve our cost estimates. We intend to continue to conduct fact-finding in an effort to provide more reliable cost estimates in a subsequent final rule.

(3) Costs to Health IT Developers and ONC Associated With the Proposed Appeal Process Following a Suspension/Termination of a Complete EHR's or Health IT Module's Certification

As discussed in section II.A.1.c.(5) of this preamble, we propose in § 170.580(f) to permit a health IT developer to appeal an ONC determination to suspend or terminate a certification issued to a Complete EHR or Health IT Module. We estimate that a health IT developer may commit, on average and depending on complexity, between 80 to 240 hours of staff time to provide the required information to appeal a suspension or termination and respond to any requests from the hearing officer. We assume that the expertise of the employee(s) needed to participate in the appeal would be equivalent to a GS–15, Step 1 federal employee. The hourly wage with benefits for a GS–15, Step 1 employee located in Washington, DC is approximately $122.74. Therefore, we estimate the cost for a health IT developer to appeal a suspension or termination would, on average, range from $9,819 to $29,458. We note that some health IT developers' costs are expected to be less and some health IT developers' costs are expected to be more than this estimated cost range.

We estimate that ONC would commit, on average and depending on complexity, between 200 and 800 hours of staff time to conduct an appeal. This would include the time to represent ONC in the appeal and support the costs for the hearing officer. We assume that the expertise of a GS–15, Step 1 federal employee(s) would be necessary. Therefore, we estimate the cost for ONC to conduct an appeal would, on average, range from $24,548 to $98,192. We note that some appeals may cost less and some may cost more than this estimated cost range.

We welcome comment on our estimated costs and any comparable processes and costs that we could use to improve our cost estimates. We intend to continue to conduct fact-finding in an effort to provide more reliable cost estimates in a subsequent final rule.

(4) Costs to Health Care Providers To Transition to Another Certified Health IT Product When the Certification of a Complete EHR or Health IT Module That They Currently Use Is Terminated

This cost analysis with regards to health care providers focuses on the direct effects of the termination of a Complete EHR's or Health IT Module's certification under this proposed rule's provisions as a certification termination would have the greatest potential impact. We note and emphasize that the estimated costs for health care providers as a result of a certification termination could be incurred absent the proposals in this proposed rule. ONC–ACBs currently have the authority to terminate (and suspend) the certifications of Complete EHRs and Health IT Modules. In this regard, ONC–ACBs have terminated certifications for both Complete EHRs and Health IT Modules.

The most recent termination of a certification by an ONC–ACB occurred in September 2015 when the certifications of a health IT developer's Complete EHRs and Health IT Modules were terminated for failure to respond and participate in routine surveillance requests.[9] Only 48 eligible professionals (EPs) attested under the Medicare EHR Incentive Program to using these products. In April 2013, an ONC–ACB terminated the certifications of Complete EHRs and Health IT Modules because they did not meet the required functionality.[10] Those health IT products had no Medicare attestations. Considering that these are the only terminations and impacts over the five years of the Program and consistent with our stated intent in this proposed rule to work with health IT developers to correct non-conformities found in their certified health IT under the provisions in this proposed rule, it is highly unlikely that the high end of our estimated costs for health care providers would ever be realized.

We estimated the monetary costs that would be sustained by health care providers to transition to another certified health IT product when the certification of a Complete EHR or Health IT Module that they currently use is terminated. We anticipate that health care providers impacted by certification termination would transition to a new certified health IT product due to eventually needing certified health IT to participate in other HHS programs requiring the use of certified health IT (*e.g.,* the EHR Incentive Programs [11]). The estimated upfront cost for health care providers is calculated using the number of known EPs that report under the Medicare EHR Incentive Program using certified Complete EHRs and certified Health IT Modules that would have their certifications terminated multiplied by an estimated average cost per product per provider to implement a new certified health IT product. The estimated average cost per product per provider to implement a new certified health IT product is approximately $33,000. This estimation is consistent with other analyses on average costs.[12]

This analysis and cost estimates do not include sunk costs during the transition year, such as ongoing maintenance for the health IT product that had its certification(s) terminated and any upfront costs the provider paid for the health IT product. The transition by a health care provider to a new health IT product could also include non-sunk costs associated with unwinding contractual matters and technological connectivity, replacement/implementation efforts, training of workforce, and the potential for an operational shut down to effectuate a transition to a replacement technology. In regard to contractual matters we acknowledge that transitioning to a new certified health IT product following a certification termination may be further complicated by the fact that health care providers may have entered multi-year transactions for a Complete EHR or Health IT Module(s). These costs would likely vary significantly based on the contract and specific situation. Conversely, unlike the cost categories just mentioned, which would tend to make our estimates understate the costs to providers due to a termination of certification, some aspects of certified health IT implementation may be similar across products, thus reducing the costs of transitioning to a new product below the costs incurred in association with the original implementation.

We used the following formula to calculate the estimated upfront costs for health care providers to transition to a new product:

1. Number of EPs reporting with a certified Complete EHR or certified Health IT Module that could potentially have its certification terminated
2. #1 multiplied by the average upfront cost per product per health care provider
3. Result of #2 equals the estimated cost for health care providers to replace the certified Complete EHR or certified Health IT Module

Applying this formula, we calculated the upper and lower threshold impacts as well as the median and mean impacts of terminating certifications issued to a Complete EHR or Health IT Module(s). The upper and lower thresholds were calculated from the certified Complete EHR and certified Health IT Modules with the greatest and least number of reported attestations to the Medicare EHR Incentive Program respectively.[13] The median and mean impacts also were calculated using the number of reported attestations for each product (*see* ''Cost Impact to Health Care Providers'' table). We calculated the estimated cost to those health care providers assuming all the health care providers would transition to a new certified health IT product.

COST IMPACT TO HEALTH CARE PROVIDERS

	Lower	Median	Mean	Upper
Number of EP Attestations	1	24	190	19,692
Calculated Cost	$33,000	$792,000	$6,270,000	$649,836,000

We estimate the cost impact of certification termination on health care providers would range from $33,000 to $649,836,000 with a median cost of $792,000 and a mean cost of $6,270,000. We welcome comment on our proposed approach and cost estimates as well as the identification of any reliable data upon which we could base or revise our cost estimates in a subsequent final rule.

We note that health IT developers may be required to pay for transition costs of health care providers due to certification termination. A complete presentation regarding who bears these costs is excluded from our analysis because arrangements would vary by contract and we do not have relevant data upon which to base an estimate.

[9] *http://www.hhs.gov/news/press/2015pres/09/20150902c.html.*

[10] *http://www.hhs.gov/about/news/2013/04/25/certification-for-electronic-health-record-product-revoked.html.*

[11] See CMS EHR Incentive Programs FAQ 12657: *https://questions.cms.gov/faq.php?isDept=0&search=decertified&searchType=keyword&submitSearch=1&id=5005.*

[12] A Health Affairs study (*http://content.healthaffairs.org/content/30/3/481.abstract*) estimated the average cost for EHR implementation at a five-physician practice as $162,000. Dividing by five, the estimated cost per physician is $32,400, which is close to our estimated cost of $33,000 to implement an in-office health IT product.

[13] As of November 30, 2015.

(5) Costs for ONC–ATLs and ONC Associated With ONC–ATL Accreditation, Application, Renewal, and Reporting Requirements

Costs for the Applicant/ONC–ATL

An applicant for ONC–ATL status would be required to submit an application and must be accredited in order to be a qualified ONC–ATL applicant. As specified in section VI.B of this preamble, we estimate that there would be between five and eight applicants, five of which are already accredited by NVLAP to ISO 17025 and up to three new applicants. Any new applicants for ONC–ATL status under the Program would first be required to become accredited by NVLAP to ISO 17025.

Based on our consultations with NIST, we estimate that it would take approximately 2–5 days for NVLAP to complete a full scope on-site assessment for all criteria required for accreditation at an approximate cost of $11,000. The on-site assessment fee covers the costs incurred by the assessors conducting the on-site assessment such as preparation time, time on-site, and travel costs (*e.g.* flights, hotel, meals, etc.). Proposed § 170.511 would permit the authorization of ONC–ATLs for testing to one or even a partial certification criterion. Based on consultations with NIST, this would take at least one day to complete and may reduce the necessary scope and cost of the on-site assessment to approximately $8,000. The current five accredited testing labs would each incur the full scope on-site assessment fee of $11,000, as discussed below. We anticipate the potential three new applicants would each incur a limited scope on-site assessment fee of $8,000, as discussed below.

We estimate the applicant staff time necessary to prepare and participate in the full scope on-site assessment at 200 hours, which is consistent with the estimate we used for ONC–ACBs based on stakeholder feedback (76 FR 1316). We estimate the applicant staff time necessary to prepare and participate in the limited scope on-site assessment at 100 hours, which is half the estimate for the full scope on-site assessment. We believe an employee equivalent to a GS–15, Step 1 federal employee would be responsible for preparation and participation in the accreditation assessment. The hourly wage with benefits for a GS–15, Step 1 employee located in Washington, DC is approximately $122.74. Therefore, we estimate the applicant staff cost for the full scope on-site assessment at $24,548 and the applicant staff cost for the limited scope on-site assessment at $12,274.

We anticipate that ONC–ATLs would incur an estimated $5,000 accreditation administrative/technical support fee each year during the three-year ONC–ATL authorization period.[14] The accreditation administrative/technical support fee covers costs associated with NVLAP staff under the Program. On-site assessments are required prior to initial accreditation, during the first renewal year, and every two years thereafter. As such, we expect the potential three new applicants would each incur the on-site assessment fee twice during their initial three-year ONC–ATL authorization period and the current five accredited testing labs would incur the on-site assessment fee once during the same period. Further, as stated above, each full scope on-site assessment for all criteria would cost approximately $11,000 and each limited scope on-site assessment would cost approximately $8,000. We estimate that staff expertise and cost for renewal is likely to remain consistent at approximately $24,548 for a full scope on-site assessment and $12,274 for a limited scope on-site assessment. We expect that each ONC–ATL would renew its status, meaning it would request reauthorization from ONC to be an ONC–ATL, every three years.

After becoming accredited by NVLAP, an applicant for ONC–ATL status would incur minimal costs to prepare and submit an application to the National Coordinator. We believe that it would take ten minutes to provide the general information requested in the application, 30 minutes to assemble the information necessary to provide documentation of accreditation by NVLAP, and 20 minutes to review and agree to the PoPC for ONC–ATLs. We believe these time estimates would also be accurate for an ONC–ATL to complete the proposed status renewal process. Based on our consultations with NIST, we believe that an employee equivalent to a GS–9, Step 1 federal employee could provide the required general identifying information and documentation of accreditation status. The hourly wage with benefits for a GS–9, Step 1 federal employee located in Washington, DC is approximately $51.20. We believe that an employee equivalent to a GS–15, Step 1 federal employee would be responsible for reviewing and agreeing to the PoPC for ONC–ATLs. Therefore, our cost estimate per ONC–ATL for these activities is $75.04.

Overall, we estimate that the total cost of ONC–ATL accreditation, application, and the first proposed three-year authorization period would be approximately $55,623 and the total cost for up to three new applicants would be approximately $166,869. We assume that ONC–ATLs would remain accredited during the three-year ONC–ATL authorization period.

We estimate the total cost for an ONC–ATL to renew its accreditation, application, and authorization during the first three-year ONC–ATL authorization period to be approximately $50,623 and the total renewal cost for all five current ONC–ATLs to be approximately $253,115. Based on our cost estimate timeframe of three years, the annualized renewal cost would be approximately $84,372.

We propose in § 170.524(d) that ONC–ATLs shall report various changes to their organization within 15 days. We believe an employee equivalent to the Federal Salary Classification of GS–9, Step 1 could complete the transmissions of the requested information to ONC. As specified in section VI.B of this preamble, we estimate two responses per year at one hour per response for ONC–ATLs to provide updated information to ONC per § 170.524(d). Accordingly, we estimate it would cost each ONC–ATL $102.40 annually to meet this requirement. To estimate the highest possible cost, we assume that the eight applicants we estimate would apply to become ONC–ATLs would become ONC–ATLs. Therefore, we estimate the total annual cost for ONC–ATLs to meet the requirements of proposed § 170.524(d) to be $819.

We propose in § 170.524(f) that ONC–ATLs shall retain all records related to the testing of Complete EHRs and Health IT Modules to an edition of certification criteria for a minimum of three years from the effective date that removed the applicable edition from the Code of Federal Regulations. Based on our consultations with NIST, we believe this time period is in line with common industry practices. Consequently, it does not represent an additional cost to ONC–ATLs.

We welcome comments on our methodology and estimated costs.

Costs to ONC

We estimate the cost to develop the ONC–ATL application to be $522 based on the five hours of work we believe it would take a GS–14, Step 1 federal employee to develop an application form. The hourly wage with benefits for a GS–14, Step 1 employee located in Washington, DC is approximately $104.34. We also anticipate that there

[14] *See* NVLAP Fee Structure, *http://www.nist.gov/nvlap/nvlap-fee-policy.cfm.*

would be costs associated with reviewing applications under the Program. We expect that a GS–15, Step 1 federal employee would review the applications and ONC (or a designated representative) would issue final decisions on all applications. We anticipate that it would take approximately 20 hours to review and reach a final decision on each application. This estimate assumes a satisfactory application (*i.e.,* no formal deficiency notifications) and includes the time necessary to verify the information in each application and prepare a briefing for the National Coordinator. We estimate the cost for the application review process to be $2,455. As a result, we estimate ONC's overall cost of administering the entire application process to be approximately $2,977. Based on our cost estimate timeframe of three years, the annualized cost to ONC would be $992. These costs would be the same for a new applicant or ONC–ATL renewal.

As proposed, we would also post the names of applicants granted ONC–ATL status on our Web site. We believe there would be minimal cost associated with this action and estimate the potential cost for posting and maintaining the information on our Web site to be approximately $446 annually. This amount is based on a maximum of six hours of work for a GS–12, Step 1 federal employee. The hourly wage with benefits for a GS–12 Step 1 federal employee located in Washington, DC is $74.

We believe there would be minimal cost associated with recording and maintaining updates and changes reported by the ONC–ATLs. We estimate an annual cost to the federal government of $743. This amount is based on ten hours of yearly work of a GS–12, Step 1 federal employee.

We welcome comments on our methodology and estimated costs.

(6) Costs for ONC–ATLs and ONC Related To Revoking ONC–ATL Status

As discussed in section II.A.2.b.(15) of this preamble, we propose to revise § 170.565 to apply the same process for ONC–ATL status revocation as applies to ONC–ACBs. We estimate that an ONC–ATL may commit, on average and depending on complexity, between 20 and 160 hours of staff time to provide responses and information requested by ONC. We assume that the expertise of the employee(s) needed to comply with ONC's requests would be equivalent to a GS–15, Step 1 federal employee. The hourly wage with benefits for a GS–15, Step 1 employee located in Washington, DC is approximately $122.74. Therefore, we estimate the cost for an ONC–ATL to comply with ONC requests per § 170.565 would, on average, range from $2,455 to $19,638. We note that in some instances the costs may be less and in other instances the costs may exceed this estimated cost range.

Costs to ONC

We estimate that ONC would commit, on average and depending on complexity, between 40 and 320 hours of staff time to conducting actions under § 170.565 related to ONC–ATLs. We assume that the expertise of a GS–15, Step 1 federal employee(s) would be necessary. Therefore, we estimate the cost for ONC would, on average, range from $4,910 to $39,277. We note that in some instances the costs may be less and in other instances the costs may exceed this estimated cost range.

We welcome comment on our estimated costs and any comparable processes and costs that we could use to improve our cost estimates. We intend to continue to conduct fact-finding in an effort to provide more reliable cost estimates in a subsequent final rule.

(7) Costs for ONC–ACBs To Publicly Post Identifiable Surveillance Results

In section II.B of this preamble, we propose to require ONC–ACBs to make identifiable surveillance results publicly available on their Web sites on a quarterly basis. We believe that an employee equivalent to a GS–9, Step 1 federal employee could post the surveillance results. We believe it would take the employee no more than four hours annually to prepare and post the surveillance results. The hourly wage with benefits for a GS–9, Step 1 federal employee located in Washington, DC is approximately $51.20. Therefore, we estimate the annual cost for each ONC–ACB to post surveillance results to be $205 and the total cost for all ONC–ACBs to be $615.

(8) Total Annual Cost Estimate

We estimate the total annual cost for this proposed rule, based on the cost estimates outlined above, would range from $230,616 to $650,288,915 with an average annual cost of $6,595,268.

b. Benefits

The proposed rule's provisions for ONC direct review of certified health IT would promote health IT developers' accountability for the performance, reliability, and safety of certified health IT; and facilitate the use of safer and reliable health IT by health care providers and patients. Specifically, ONC's direct review of certified health IT would permit ONC to assess non-conformities and prescribe comprehensive corrective actions for health IT developers to address non-conformities, including notifying affected customers. As previously stated, our first and foremost goal would be to work with health IT developers to remedy any non-conformities with certified health IT in a timely manner and across all customers. If ONC ultimately suspends and/or terminates a certification issued to a Complete EHR or Health IT Module under the proposals in this proposed rule, such action would serve to protect the integrity of the Program and users of health IT. While we do not have available means to quantify the benefits of ONC direct review of certified health IT, we believe that ONC direct review supports and enables the National Coordinator to fulfill his/her responsibilities under the HITECT Act, instills public confidence in the Program, and protects public health and safety.

The proposed rule's provisions would also provide other benefits. The proposals for ONC to authorize and oversee testing labs (ONC–ATLs) would facilitate further public confidence in testing and certification by permitting ONC to timely and directly address testing issues for health IT. The proposed public availability of identifiable surveillance results would enhance transparency and the accountability of health IT developers to their customers. This proposal would provide customers and users of certified health IT with valuable information about the continued performance of certified health IT as well as surveillance efforts. Further, the public availability of identifiable surveillance results would likely benefit health IT developers by providing a more complete context of surveillance and illuminating good performance and the continued compliance of certified health IT with Program requirements. Again, while we do not have available means to quantify these benefits, we believe these proposed approaches, if finalized, would improve Program compliance and further public confidence in certified health IT.

We welcome comment on potential means, methods, and relevant comparative studies and data that we could use to quantify these benefits. To note, we do not have data to establish how often we would need to exercise direct review, the extent of existing and future non-conformities, and the likely outcomes that would be achieved by ONC review, including up to preventing the loss of life. Similarly, we do not have data to establish that our proposals

for direct oversight of testing labs and the public availability of identifiable surveillance results would actually result in greater public confidence in certified health IT, including greater adoption of certified health IT. We also welcome comment on other benefits, quantifiable and non-quantifiable, which could be achieved through the proposals we have put forth in this proposed rule.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The Small Business Administration (SBA) establishes the size of small businesses for federal government programs based on average annual receipts or the average employment of a firm.[15] The entities that are likely to be directly affected by this proposed final rule are applicants for ONC–ATL status and health IT developers.

We estimate up to eight applicants for ONC–ATL status. These applicants would be classified under the North American Industry Classification System (NAICS) codes 541380 (Testing Laboratories) specified at 13 CFR 121.201 where the SBA publishes ''Small Business Size Standards by NAICS Industry.'' [16] The SBA size standard associated with this NAICS code is set at $15 million annual receipts or less. As specified in section VII.C above, we estimate minimal costs for applicants for ON–ATL status to apply and participate in the Program as ONC–ATLs. We believe that we have proposed the minimum amount of requirements necessary to accomplish our goal of enhanced oversight of testing under the Program. As discussed under section VII.B above, there are also no appropriate regulatory or non-regulatory alternatives that could be developed to lessen the compliance burden associated with this proposed rule. We further note that we expect all of the estimated costs to be recouped by those applicants that become ONC–ATLs through the fees they charge for testing health IT under the Program.

While health IT developers that pursue certification of their health IT under the Program represent a small segment of the overall information technology industry, we believe that many health IT developers impacted by this proposed rule most likely fall under the North American Industry Classification System (NAICS) code 541511 ''Custom Computer Programming Services.'' [17] The SBA size standard associated with this NAICS code is set at $27.5 million annual receipts or less. There is enough data generally available to establish that between 75% and 90% of entities that are categorized under the NAICS code 541511 are under the SBA size standard. We also note that with the exception of aggregate business information available through the U.S. Census Bureau and the SBA related to NAICS code 541511, it appears that many health IT developers that pursue certification of their health IT under the Program are privately held or owned and do not regularly, if at all, make their specific annual receipts publicly available. As a result, it is difficult to locate empirical data related to many of these health IT developers to correlate to the SBA size standard. However, although not perfectly correlated to the size standard for NAICS code 541511, we do have information indicating that over 60% of health IT developers that have had Complete EHRs and/or Health IT Modules certified to the 2011 Edition have less than 51 employees.

We estimate that this proposed rule would have effects on health IT developers, some of which may be small entities, that have certified health IT or are likely to pursue certification of their health IT under the Program because health IT developers *may* need to reassess their health IT to verify compliance with the Program requirements outlined in this proposed rule and they may have their certified health IT subjected to a corrective action, suspension, and/or termination under the provisions of this proposed rule. We believe, however, that we have proposed the minimum amount of requirements necessary to accomplish our primary policy goals of enhancing Program oversight and health IT developer accountability for the performance, reliability, and safety of certified health IT. Further, as discussed under section VII.B above, there are no appropriate regulatory or non-regulatory alternatives that could be developed to lessen the compliance burden associated with this proposed rule as this proposed rule places no new requirements on health IT developers, unless their certified health IT is reviewed by ONC and found to have a non-conformity.

We do not believe that the proposed rule would create a significant impact on a substantial number of small entities, but request comment on whether there are small entities that we have not identified that may be affected in a significant way by this proposed rule. Additionally, the Secretary proposes to certify that this proposed rule would not have a significant impact on a substantial number of small entities.

3. 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. Nothing in this proposed rule imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has federalism implications. We are not aware of any state laws or regulations that are contradicted or impeded by any of the proposals in this proposed rule. We welcome comments on this assessment.

4. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that imposes unfunded mandates on state, local, and tribal governments or the private sector requiring spending in any one year of $100 million in 1995 dollars, updated annually for inflation. The current inflation-adjusted statutory threshold is approximately $144 million. While the estimated potential cost effects of this proposed rule reach the statutory threshold, we do not believe this proposed rule imposes unfunded mandates on state, local, and tribal governments or the private sector. As described under section VII.C.1 above, we estimate the *potential* monetary costs for the private sector (health IT developers and health care providers), which would be the result of a health IT developer not maintaining its product(s) compliance with voluntary Program requirements and having its product's certification terminated. The minimal monetary cost estimates for ONC–ATLs derive from voluntary participation in the Program and would be recouped through fees charged for the testing of health IT under the Program. We welcome comments on these conclusions.

OMB reviewed this proposed rule.

[15] The SBA references that annual receipts means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service tax return forms.

[16] *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*

[17] *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*

List of Subjects in 45 CFR Part 170

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Health care, Health information technology, Health insurance, Health records, Hospitals, Incorporation by reference, Laboratories, Medicaid, Medicare, Privacy, Reporting and recordkeeping requirements, Public health, Security.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter D, part 170, is proposed to be amended as follows:

PART 170—HEALTH INFORMATION TECHNOLOGY STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA AND CERTIFICATION PROGRAMS FOR HEALTH INFORMATION TECHNOLOGY

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; 5 U.S.C. 552.

■ 2. Amend § 170.501 by revising paragraph (a) to read as follows:

§ 170.501 Applicability.

(a) This subpart establishes the processes that applicants for ONC–ACB status must follow to be granted ONC–ACB status by the National Coordinator; the processes the National Coordinator will follow when assessing applicants and granting ONC–ACB status; the requirements that ONC–ACBs must follow to maintain ONC–ACB status; and the requirements of ONC–ACBs for certifying Complete EHRs, Health IT Module(s), and other types of health IT in accordance with the applicable certification criteria adopted by the Secretary in subpart C of this part. It also establishes the processes that applicants for ONC–ATL status must follow to be granted ONC–ATL status by the National Coordinator; the processes the National Coordinator will follow when assessing applicants and granting ONC–ATL status; the requirements that ONC–ATLs must follow to maintain ONC–ATL status; and the requirements of ONC–ATLs for testing Complete EHRs and Health IT Modules in accordance with the applicable certification criteria adopted by the Secretary in subpart C of this part. Further, this subpart establishes the processes accreditation organizations must follow to request approval from the National Coordinator and that the National Coordinator in turn will follow to approve an accreditation organization under the ONC Health IT Certification Program as well as certain ongoing responsibilities for an ONC–AA.

* * * * *

■ 3. Amend § 170.502 by revising the definitions of ''Applicant'' and ''Gap certification'' and by adding the definition of ''ONC-Authorized Testing Lab or ONC–ATL'' in alphabetical order to read as follows:

§ 170.502 Definitions.

* * * * *

Applicant means a single organization or a consortium of organizations that seeks to become an ONC–ACB or ONC–ATL by submitting an application to the National Coordinator for such status.

* * * * *

Gap certification means the certification of a previously certified Complete EHR or Health IT Module(s) to:

(1) All applicable new and/or revised certification criteria adopted by the Secretary at subpart C of this part based on test results issued by a NVLAP-accredited testing laboratory under the ONC Health IT Certification Program or an ONC–ATL; and

(2) All other applicable certification criteria adopted by the Secretary at subpart C of this part based on the test results used to previously certify the Complete EHR or Health IT Module(s) under the ONC Health IT Certification Program.

* * * * *

ONC-Authorized Testing Lab or ONC–ATL means an organization or a consortium of organizations that has applied to and been authorized by the National Coordinator pursuant to this subpart to perform the testing of Complete EHRs and Health IT Modules to certification criteria adopted by the Secretary at subpart C of this part.

* * * * *

4. Revise § 170.505 to read as follows:

§ 170.505 Correspondence.

(a) Correspondence and communication with ONC or the National Coordinator shall be conducted by email, unless otherwise necessary or specified. The official date of receipt of any email between ONC or the National Coordinator and an accreditation organization requesting ONC–AA status, the ONC–AA, an applicant for ONC–ACB status, an applicant for ONC–ATL status, an ONC–ACB, an ONC–ATL, health IT developer, or a party to any proceeding under this subpart is the date on which the email was sent.

(b) In circumstances where it is necessary for an accreditation organization requesting ONC–AA status, the ONC–AA, an applicant for ONC–ACB status, an applicant for ONC–ATL status, an ONC–ACB, an ONC–ATL, health IT developer, or a party to any proceeding under this subpart to correspond or communicate with ONC or the National Coordinator by regular or express mail, the official date of receipt will be the date of the delivery confirmation.

■ 5. Amend § 170.510 by revising the section heading and introductory text to read as follows:

§ 170.510 Authorization scope for ONC–ACB status.

Applicants for ONC–ACB status may seek authorization from the National Coordinator to perform the following types of certification:

* * * * *

■ 6. Add § 170.511 to read as follows:

§ 170.511 Authorization scope for ONC–ATL status.

Applicants may seek authorization from the National Coordinator to perform the testing of Complete EHRs or Health IT Modules to a portion of a certification criterion, one certification criterion, or many or all certification criteria adopted by the Secretary under subpart C of this part.

■ 7. Revise § 170.520 to read as follows:

§ 170.520 Application.

(a) *ONC–ACB application.* Applicants must include the following information in an application for ONC–ACB status and submit it to the National Coordinator for the application to be considered complete.

(1) The type of authorization sought pursuant to § 170.510. For authorization to perform Health IT Module certification, applicants must indicate the specific type(s) of Health IT Module(s) they seek authorization to certify. If qualified, applicants will only be granted authorization to certify the type(s) of Health IT Module(s) for which they seek authorization.

(2) General identifying, information including:

(i) Name, address, city, state, zip code, and Web site of applicant; and

(ii) Designation of an authorized representative, including name, title, phone number, and email address of the person who will serve as the applicant's point of contact.

(3) Documentation that confirms that the applicant has been accredited by the ONC–AA.

(4) An agreement, properly executed by the applicant's authorized representative, that it will adhere to the Principles of Proper Conduct for ONC–ACBs.

(b) *ONC–ATL application.* Applicants must include the following information

in an application for ONC–ATL status and submit it to the National Coordinator for the application to be considered complete.

(1) The authorization scope sought pursuant to § 170.511.

(2) General identifying, information including:

(i) Name, address, city, state, zip code, and Web site of applicant; and

(ii) Designation of an authorized representative, including name, title, phone number, and email address of the person who will serve as the applicant's point of contact.

(3) Documentation that confirms that the applicant has been accredited by NVLAP to ISO 17025.

(4) An agreement, properly executed by the applicant's authorized representative, that it will adhere to the Principles of Proper Conduct for ONC–ATLs.

■ 8. Amend § 170.523 by revising paragraphs (h) and (i) and adding paragraph (o) to read as follows:

§ 170.523 Principles of proper conduct for ONC–ACBs.

* * * * *

(h) Only certify health IT (Complete EHRs and/or Health IT Modules) that has been tested, using test tools and test procedures approved by the National Coordinator, by a/an:

(1) ONC–ATL;

(2) NVLAP-accredited testing laboratory under the ONC Health IT Certification Program for no longer than six months from the authorization of the first ONC–ATL unless:

(i) Certifying previously certified Complete EHRs and/or Health IT Module(s) if the certification criterion or criteria to which the Complete EHRs and/or Health IT Module(s) was previously certified have not been revised and no new certification criteria are applicable to the Complete EHRs and/or Health IT Module(s); or

(ii) Performing gap certification.

(i) Conduct surveillance as follows:

(1) Submit an annual surveillance plan to the National Coordinator.

(2) Report, at a minimum, on a quarterly basis to the National Coordinator the results of its surveillance.

(3) Publicly publish identifiable surveillance results on its Web site on a quarterly basis.

(4) Annually submit a summative report of surveillance results.

* * * * *

(o) Be prohibited from reducing the scope of a certification when the health IT is under surveillance or under a corrective action plan.

■ 9. Add § 170.524 to read as follows:

§ 170.524 Principles of proper conduct for ONC–ATLs.

An ONC–ATL shall:

(a) Maintain its NVLAP accreditation to ISO 17025;

(b) Attend all mandatory ONC training and program update sessions;

(c) Maintain a training program that includes documented procedures and training requirements to ensure its personnel are competent to test health IT;

(d) Report to ONC within 15 days any changes that materially affect its:

(1) Legal, commercial, organizational, or ownership status;

(2) Organization and management including key testing personnel;

(3) Policies or procedures;

(4) Location;

(5) Personnel, facilities, working environment or other resources;

(6) ONC authorized representative (point of contact); or

(7) Other such matters that may otherwise materially affect its ability to test health IT.

(e) Allow ONC, or its authorized agent(s), to periodically observe on site (unannounced or scheduled), during normal business hours, any testing performed pursuant to the ONC Health IT Certification Program;

(f) *Records retention.* (1) Retain all records related to the testing of Complete EHRs and/or Health IT Modules to an edition of certification criteria for a minimum of 3 years from the effective date that removes the applicable edition from the Code of Federal Regulations; and

(2) Make the records available to HHS upon request during the retention period described in paragraph (f)(1) of this section;

(g) Only test health IT using test tools and test procedures approved by the National Coordinator; and

(h) Promptly refund any and all fees received for:

(1) Requests for testing that are withdrawn while its operations are suspended by the National Coordinator;

(2) Testing that will not be completed as a result of its conduct; and

(3) Previous testing that it performed if its conduct necessitates the retesting of Complete EHRs and/or Health IT Modules.

■ 10. Revise § 170.525 to read as follows:

§ 170.525 Application submission.

(a) An applicant for ONC–ACB or ONC–ATL status must submit its application either electronically via email (or Web site submission if available), or by regular or express mail.

(b) An application for ONC–ACB or ONC–ATL status may be submitted to the National Coordinator at any time.

■ 11. Amend § 170.530 by revising paragraphs (c)(2), (4), (d)(2) and (3) to read as follows:

§ 170.530 Review of application.

* * * * *

(c) * * *

(2) In order for an applicant to continue to be considered for ONC–ACB or ONC–ATL status, the applicant's revised application must address the specified deficiencies and be received by the National Coordinator within 15 days of the applicant's receipt of the deficiency notice, unless the National Coordinator grants an applicant's request for an extension of the 15-day period based on a finding of good cause. If a good cause extension is granted, then the revised application must be received by the end of the extension period.

* * * * *

(4) If the National Coordinator determines that a revised application still contains deficiencies, the applicant will be issued a denial notice indicating that the applicant cannot reapply for ONC–ACB or ONC–ATL status for a period of six months from the date of the denial notice. An applicant may request reconsideration of this decision in accordance with § 170.535.

(d) * * *

(2) The National Coordinator will notify the applicant's authorized representative of its satisfactory application and its successful achievement of ONC–ACB or ONC–ATL status.

(3) Once notified by the National Coordinator of its successful achievement of ONC–ACB or ONC–ATL status, the applicant may represent itself as an ONC–ACB or ONC–ATL (as applicable) and begin certifying or testing (as applicable) health information technology consistent with its authorization.

■ 12. Amend § 170.535 by revising the section heading and paragraphs (a) and (d)(1) to read as follows:

§ 170.535 ONC–ACB and ONC–ATL application reconsideration.

(a) *Basis for reconsideration request.* An applicant may request that the National Coordinator reconsider a denial notice only if the applicant can demonstrate that clear, factual errors were made in the review of its application and that the errors' correction could lead to the applicant obtaining ONC–ACB or ONC–ATL status.

* * * * *

(d) * * *

(1) If the National Coordinator determines that clear, factual errors were made during the review of the application and that correction of the errors would remove all identified deficiencies, the applicant's authorized representative will be notified of the National Coordinator's determination and the applicant's successful achievement of ONC–ACB or ONC–ATL status.

* * * * *

■ 13. Revise § 170.540 to read as follows:

§ 170.540 ONC–ACB and ONC–ATL status.

(a) *Acknowledgement and publication.* The National Coordinator will acknowledge and make publicly available the names of ONC–ACBs and ONC–ATLs, including the date each was authorized and the type(s) of certification or scope of testing, respectively, each has been authorized to perform.

(b) *Representation.* Each ONC–ACB or ONC–ATL must prominently and unambiguously identify the scope of its authorization on its Web site and in all marketing and communications statements (written and oral) pertaining to its activities under the ONC Health IT Certification Program.

(c) *Renewal.* An ONC–ACB or ONC–ATL is required to renew its status every three years. An ONC–ACB or ONC–ATL is required to submit a renewal request, containing any updates to the information requested in § 170.520, to the National Coordinator 60 days prior to the expiration of its status.

(d) *Expiration.* An ONC–ACB's or ONC–ATL's status will expire three years from the date it was granted by the National Coordinator unless it is renewed in accordance with paragraph (c) of this section.

■ 14. Amend § 170.556 by revising paragraph (e)(1) to read as follows:

§ 170.556 In-the-field surveillance and maintenance of certification for health IT.

* * * * *

(e) * * *

(1) *Rolling submission of in-the-field surveillance results.* The results of in-the-field surveillance under this section must be submitted to the National Coordinator on an ongoing basis throughout the calendar year and, at a minimum, in accordance with § 170.523(i)(2).

* * * * *

■ 15. Revise § 170.557 to read as follows:

§ 170.557 Authorized testing and certification methods.

(a) *ONC–ATL applicability.* An ONC–ATL must provide remote testing for both development and deployment sites.

(b) *ONC–ACB applicability.* An ONC–ACB must provide remote certification for both development and deployment sites.

■ 16. Revise § 170.560 to read as follows:

§ 170.560 Good standing as an ONC–ACB or ONC–ATL.

(a) *ONC–ACB good standing.* An ONC–ACB must maintain good standing by:

(1) Adhering to the Principles of Proper Conduct for ONC–ACBs;

(2) Refraining from engaging in other types of inappropriate behavior, including an ONC–ACB misrepresenting the scope of its authorization, as well as an ONC–ACB certifying Complete EHRs and/or Health IT Module(s) for which it does not have authorization; and

(3) Following all other applicable federal and state laws.

(b) *ONC–ATL good standing.* An ONC–ATL must maintain good standing by:

(1) Adhering to the Principles of Proper Conduct for ONC–ATLs;

(2) Refraining from engaging in other types of inappropriate behavior, including an ONC–ATL misrepresenting the scope of its authorization, as well as an ONC–ATL testing health IT for which it does not have authorization; and

(3) Following all other applicable federal and state laws.

■ 17. Revise § 170.565 to read as follows:

§ 170.565 Revocation of ONC–ACB or ONC–ATL status.

(a) *Type-1 violations.* The National Coordinator may revoke an ONC–ATL or ONC–ACB's status for committing a Type-1 violation. Type-1 violations include violations of law or ONC Health IT Certification Program policies that threaten or significantly undermine the integrity of the ONC Health IT Certification Program. These violations include, but are not limited to: False, fraudulent, or abusive activities that affect the ONC Health IT Certification Program, a program administered by HHS or any program administered by the federal government.

(b) *Type-2 violations.* The National Coordinator may revoke an ONC–ATL or ONC–ACB's status for failing to timely or adequately correct a Type-2 violation. Type-2 violations constitute noncompliance with § 170.560.

(1) *Noncompliance notification.* If the National Coordinator obtains reliable evidence that an ONC–ATL or ONC–ACB may no longer be in compliance with § 170.560, the National Coordinator will issue a noncompliance notification with reasons for the notification to the ONC–ATL or ONC–ACB requesting that the ONC–ATL or ONC–ACB respond to the alleged violation and correct the violation, if applicable.

(2) *Opportunity to become compliant.* After receipt of a noncompliance notification, an ONC–ATL or ONC–ACB is permitted up to 30 days to submit a written response and accompanying documentation that demonstrates that no violation occurred or that the alleged violation has been corrected.

(i) If the ONC–ATL or ONC–ACB submits a response, the National Coordinator is permitted up to 30 days from the time the response is received to evaluate the response and reach a decision. The National Coordinator may, if necessary, request additional information from the ONC–ATL or ONC–ACB during this time period.

(ii) If the National Coordinator determines that no violation occurred or that the violation has been sufficiently corrected, the National Coordinator will issue a memo to the ONC–ATL or ONC–ACB confirming this determination.

(iii) If the National Coordinator determines that the ONC–ATL or ONC–ACB failed to demonstrate that no violation occurred or to correct the area(s) of non-compliance identified under paragraph (b)(1) of this section within 30 days of receipt of the noncompliance notification, then the National Coordinator may propose to revoke the ONC–ATL or ONC–ACB's status.

(c) *Proposed revocation.* (1) The National Coordinator may propose to revoke an ONC–ATL or ONC–ACB's status if the National Coordinator has reliable evidence that the ONC–ATL or ONC–ACB has committed a Type-1 violation; or

(2) The National Coordinator may propose to revoke an ONC–ATL or ONC–ACB's status if, after the ONC–ATL or ONC–ACB has been notified of a Type-2 violation, the ONC–ATL or ONC–ACB fails to:

(i) Rebut the finding of a violation with sufficient evidence showing that the violation did not occur or that the violation has been corrected; or

(ii) Submit to the National Coordinator a written response to the noncompliance notification within the specified timeframe under paragraph (b)(2) of this section.

(d) *Suspension of an ONC–ATL or ONC–ACB's operations.* (1) The National Coordinator may suspend the operations of an ONC–ATL or ONC–ACB under the ONC Health IT Certification Program based on reliable evidence indicating that:

(i) *Applicable to both ONC–ACBs and ONC–ATLs.* The ONC–ATL or ONC–ACB committed a Type-1 or Type-2 violation;

(ii) *Applicable to ONC–ACBs.* The continued certification of Complete EHRs or Health IT Modules by the ONC–ACB could have an adverse impact on the health or safety of patients.

(iii) *Applicable to ONC–ATLs.* The continued testing of Complete EHRs or Health IT Modules by the ONC–ATL could have an adverse impact on the health or safety of patients.

(2) If the National Coordinator determines that the conditions of paragraph (d)(1) of this section have been met, an ONC–ATL or ONC–ACB will be issued a notice of proposed suspension.

(3) Upon receipt of a notice of proposed suspension, an ONC–ATL or ONC–ACB will be permitted up to 3 days to submit a written response to the National Coordinator explaining why its operations should not be suspended.

(4) The National Coordinator is permitted up to 5 days from receipt of an ONC–ATL or ONC–ACB's written response to a notice of proposed suspension to review the response and make a determination.

(5) The National Coordinator may make one of the following determinations in response to the ONC–ATL or ONC–ACB's written response or if the ONC–ATL or ONC–ACB fails to submit a written response within the timeframe specified in paragraph (d)(3) of this section:

(i) Rescind the proposed suspension; or

(ii) Suspend the ONC–ATL or ONC–ACB's operations until it has adequately corrected a Type-2 violation; or

(iii) Propose revocation in accordance with paragraph (c) of this section and suspend the ONC–ATL or ONC–ACB's operations for the duration of the revocation process.

(6) A suspension will become effective upon an ONC–ATL or ONC–ACB's receipt of a notice of suspension.

(e) *Opportunity to respond to a proposed revocation notice.* (1) An ONC–ATL or ONC–ACB may respond to a proposed revocation notice, but must do so within 10 days of receiving the proposed revocation notice and include appropriate documentation explaining in writing why its status should not be revoked.

(2) Upon receipt of an ONC–ATL or ONC–ACB's response to a proposed revocation notice, the National Coordinator is permitted up to 30 days to review the information submitted by the ONC–ACB and reach a decision.

(f) *Good standing determination.* If the National Coordinator determines that an ONC–ATL or ONC–ACB's status should not be revoked, the National Coordinator will notify the ONC–ATL or ONC–ACB's authorized representative in writing of this determination.

(g) *Revocation.* (1) The National Coordinator may revoke an ONC–ATL or ONC–ACB's status if:

(i) A determination is made that revocation is appropriate after considering the information provided by the ONC–ATL or ONC–ACB in response to the proposed revocation notice; or

(ii) The ONC–ATL or ONC–ACB does not respond to a proposed revocation notice within the specified timeframe in paragraph (e)(1) of this section.

(2) A decision to revoke an ONC–ATL or ONC–ACB's status is final and not subject to further review unless the National Coordinator chooses to reconsider the revocation.

(h) *Extent and duration of revocation.* (1) The revocation of an ONC–ATL or ONC–ACB is effective as soon as the ONC–ATL or ONC–ACB receives the revocation notice.

(2) *ONC–ACB provisions.* (i) A certification body that has had its ONC–ACB status revoked is prohibited from accepting new requests for certification and must cease its current certification operations under the ONC Health IT Certification Program.

(ii) A certification body that has had its ONC–ACB status revoked for a Type-1 violation is not permitted to reapply for ONC–ACB status under the ONC Health IT Certification Program for a period of 1 year.

(iii) The failure of a certification body that has had its ONC–ACB status revoked to promptly refund any and all fees for certifications of Complete EHRs and Health IT Module(s) not completed will be considered a violation of the Principles of Proper Conduct for ONC–ACBs and will be taken into account by the National Coordinator if the certification body reapplies for ONC–ACB status under the ONC Health IT Certification Program.

(3) *ONC–ATL provisions.* (i) A testing lab that has had its ONC–ATL status revoked is prohibited from accepting new requests for testing and must cease its current testing operations under the ONC Health IT Certification Program.

(ii) A testing lab that has had its ONC–ATL status revoked for a Type-1 violation is not permitted to reapply for ONC–ATL status under the ONC Health IT Certification Program for a period of 1 year.

(iii) The failure of a testing lab that has had its ONC–ATL status revoked to promptly refund any and all fees for testing of health IT not completed will be considered a violation of the Principles of Proper Conduct for ONC–ATLs and will be taken into account by the National Coordinator if the testing lab reapplies for ONC–ATL status under the ONC Health IT Certification Program.

■ 18. Add § 170.580 to read as follows:

§ 170.580 ONC review of certified health IT.

(a) *Direct review.* ONC may directly review certified health IT whenever there is reason to believe that the certified health IT may not comply with requirements of the ONC Health IT Certification Program.

(1) In determining whether to exercise such review, ONC shall consider:

(i) The potential nature, severity, and extent of the suspected non-conformity(ies), including the likelihood of systemic or widespread issues and impact.

(ii) The potential risk to public health or safety or other exigent circumstances.

(iii) The need for an immediate and coordinated governmental response.

(iv) Whether investigating, evaluating, or addressing the suspected non-conformity would:

(A) Require access to confidential or other information that is unavailable to an ONC–ACB;

(B) Present issues outside the scope of an ONC–ACB's accreditation;

(C) Exceed the resources or capacity of an ONC–ACB;

(D) Involve novel or complex interpretations or application of certification criteria or other requirements.

(v) The potential for inconsistent application of certification requirements in the absence of direct review.

(2) *Relationship to ONC–ACB's oversight.* (i) ONC's review of certified health IT is independent of, and may be in addition to, any review conducted by an ONC–ACB.

(ii) ONC may assert exclusive review of certified health IT as to any matters under review by ONC and any other matters so intrinsically linked that divergent determinations between ONC and an ONC–ACB would be inconsistent with the effective administration or oversight of the ONC Health IT Certification Program.

(iii) ONC's determination on matters under its review is controlling and

supersedes any determination by an ONC–ACB on the same matters.

(iv) An ONC–ACB shall provide ONC with any available information that ONC deems relevant to its review of certified health IT.

(v) ONC may end all or any part of its review of certified health IT under this section and refer the applicable part of the review to the relevant ONC–ACB(s) if ONC determines that doing so would be in the best interests of efficiency or the administration and oversight of the Program.

(b) *Notice of potential non-conformity or non-conformity*—(1) *General.* ONC will send a notice of potential non-conformity or notice of non-conformity to the health IT developer if it has information that certified health IT is not or may not be performing consistently with Program requirements.

(i) *Potential non-conformity.* ONC may require that the health IT developer respond in more or less time than 30 days based on factors such as, but not limited to:

(A) The type of certified health IT and certification in question;

(B) The type of potential non-conformity to be corrected;

(C) The time required to correct the potential non-conformity; and

(D) Issues of public health or safety or other exigent circumstances.

(ii) *Non-conformity.* ONC may require that the health IT developer respond and submit a proposed corrective action plan in more or less time than 30 days based on factors such as, but not limited to:

(A) The type of certified health IT and certification in question;

(B) The type of non-conformity to be corrected;

(C) The time required to correct the non-conformity; and

(D) Issues of public health or safety or other exigent circumstances.

(2) *Records access.* In response to a notice of potential non-conformity or notice of non-conformity, a health IT developer shall make available to ONC and for sharing within HHS, with other federal agencies, and with appropriate entities:

(i) All records related to the development, testing, certification, implementation, maintenance and use of its certified health IT; and

(ii) Any complaint records related to the certified health IT.

(3) *Health IT developer response.* The health IT developer must include in its response all appropriate documentation and explain in writing why the certified health IT is conformant.

(c) *Corrective action plan and procedures.* (1) If ONC determines that certified health IT does not conform to Program requirements, ONC shall notify the health IT developer of the certified health IT of its findings and require the health IT developer to submit a proposed corrective action plan.

(2) ONC shall provide direction to the health IT developer as to the required elements of the corrective action plan. ONC shall prescribe such corrective action as may be appropriate to fully address the identified non-conformity(ies). The corrective action plan is required to include, at a minimum, for each non-conformity:

(i) A description of the identified non-conformity;

(ii) An assessment of the nature, severity, and extent of the non-conformity, including how widespread they may be across all of the health IT developer's customers of the certified health IT;

(iii) How the health IT developer will address the identified non-conformity, both at the locations where the non-conformity was identified and for all other potentially affected customers;

(iv) A detailed description of how the health IT developer will assess the scope and impact of the non-conformity, including:

(A) Identifying all potentially affected customers;

(B) How the health IT developer will promptly ensure that all potentially affected customers are notified of the non-conformity and plan for resolution;

(C) How and when the health IT developer will resolve issues for individual affected customers; and

(D) How the health IT developer will ensure that all issues are in fact resolved; and

(v) The timeframe under which corrective action will be completed.

(3) When ONC receives a proposed corrective action plan (or a revised proposed corrective action plan), it shall either approve the proposed corrective action plan or, if the plan does not adequately address all required elements, instruct the developer to submit a revised proposed corrective action plan.

(4) Upon fulfilling all of its obligations under the corrective action plan, the health IT developer must submit an attestation to ONC, which serves as a binding official statement by the health IT developer that it has fulfilled all of its obligations under the corrective action plan.

(5) ONC may reinstitute a corrective action plan if it later determines that a health IT developer has not fulfilled all of its obligations under the corrective action plan as attested in accordance with paragraph (c)(4) of this section.

(d) *Suspension.* (1) ONC may suspend the certification of a Complete EHR or Health IT Module at any time for any one of the following reasons:

(i) Based on information it has obtained, ONC believes that the certified health IT poses a potential risk to public health or safety or other exigent circumstances exist. More specifically, ONC would suspend a certification issued to any encompassed Complete EHR or Health IT Module of the certified health IT if the certified health IT was, but not limited to: Contributing to a patient's health information being unsecured and unprotected in violation of applicable law; increasing medical errors; decreasing the detection, prevention, and management of chronic diseases; worsening the identification and response to public health threats and emergencies; leading to inappropriate care; worsening health care outcomes; or undermining a more effective marketplace, greater competition, greater systems analysis, and increased consumer choice;

(ii) The health IT developer fails to timely respond to any communication from ONC, including, but not limited to:

(A) Fact-finding;

(B) A notice of potential non-conformity within the timeframe established in accordance with paragraph (b)(1)(i) of this section; or

(C) A notice of non-conformity within the timeframe established in accordance with paragraph (b)(1)(ii) of this section;

(iii) The information provided by the health IT developer in response to any ONC communication, including, but not limited to: Fact-finding, a notice of potential non-conformity, or a notice of non-conformity is insufficient or incomplete;

(iv) The health IT developer fails to timely submit a proposed corrective action plan that adequately addresses the elements required by ONC as described in paragraph (c) of this section;

(v) The health IT developer does not fulfill its obligations under the corrective action plan developed in accordance with paragraph (c) of this section.

(2) When ONC decides to suspend a certification, ONC will notify the health IT developer of its determination through a notice of suspension.

(i) The notice of suspension will include, but may not be limited to:

(A) An explanation for the suspension;

(B) The information ONC relied upon to reach its determination;

(C) The consequences of suspension for the health IT developer and the Complete EHR or Health IT Module

under the ONC Health IT Certification Program; and

(D) Instructions for appealing the suspension.

(ii) A suspension of a certification will become effective upon the health IT developer's receipt of a notice of suspension.

(3) The health IT developer must notify all affected and potentially affected customers of the identified non-conformity(ies) and suspension of certification in a timely manner.

(4) If a certification is suspended, the health IT developer must cease and desist from any marketing and sale of the suspended Complete EHR or Health IT Module as ''certified'' under the ONC Health IT Certification Program from that point forward until such time ONC may rescind the suspension.

(5) Inherited certified status certification for a suspended Complete EHR or Health IT Module is not permitted until such time ONC rescinds the suspension.

(6) ONC will rescind a suspension of certification if the health IT developer completes all elements of an approved corrective action plan and/or ONC confirms that all non-conformities have been corrected.

(e) *Termination.* (1) ONC may terminate a certification issued to a Complete EHR and/or Health IT Module if:

(i) The health IT developer fails to timely respond to any communication from ONC, including, but not limited to:

(A) Fact-finding;

(B) A notice of potential non-conformity within the timeframe established in accordance with paragraph (b)(1)(i) of this section; or

(C) A notice of non-conformity within the timeframe established in accordance with paragraph (b)(1)(ii) of this section;

(ii) The information provided by the health IT developer in response to any ONC communication, including, but not limited to: Fact-finding, a notice of potential non-conformity, or a notice of non-conformity is insufficient or incomplete;

(iii) The health IT developer fails to timely submit a proposed corrective action plan that adequately addresses the elements required by ONC as described in paragraph (c) of this section;

(iv) The health IT developer does not fulfill its obligations under the corrective action plan developed in accordance with paragraph (c) of this section; or

(v) ONC concludes that a certified health IT's non-conformity(ies) cannot be cured.

(2) When ONC decides to terminate a certification, ONC will notify the health IT developer of its determination through a notice of termination.

(i) The notice of termination will include, but may not be limited to:

(A) An explanation for the termination;

(B) The information ONC relied upon to reach its determination;

(C) The consequences of termination for the health IT developer and the Complete EHR or Health IT Module under the ONC Health IT Certification Program; and

(D) Instructions for appealing the termination.

(ii) A termination of a certification will become effective either upon:

(A) The expiration of the 10-day period for filing an appeal in paragraph (f)(3) of this section if an appeal is not filed by the health IT developer; or

(B) A final determination to terminate the certification per paragraph (f)(7) of this section if a health IT developer files an appeal.

(3) The health IT developer must notify affected and potentially affected customers of the identified non-conformity(ies) and termination of certification in a timely manner.

(4) If ONC determines that a Complete EHR or Health IT Module certification should not be terminated, ONC will notify the health IT developer in writing of this determination.

(f) *Appeal*—(1) *Basis for appeal.* A health IT developer may appeal an ONC determination to suspend or terminate a certification issued to a Complete EHR or Health IT Module if the health IT developer asserts:

(i) ONC incorrectly applied Program methodology, standards, or requirements for suspension or termination; or

(ii) ONC's determination was not sufficiently supported by the information used by ONC to reach the determination.

(2) *Method and place for filing an appeal.* A request for appeal must be submitted to ONC in writing by an authorized representative of the health IT developer whose Complete EHR or Health IT Module was subject to the determination being appealed. The request for appeal must be filed in accordance with the requirements specified in the notice of termination or notice of suspension.

(3) *Time for filing a request for appeal.* An appeal must be filed within 10 calendar days of receipt of the notice of suspension or notice of termination.

(4) *Effect of appeal on suspension and termination.* (i) A request for appeal stays the termination of a certification issued to a Complete EHR or Health IT Module, but the Complete EHR or Health IT Module is prohibited from being marketed or sold as ''certified'' during the stay.

(ii) A request for appeal does not stay the suspension of a Complete EHR or Health IT Module.

(5) *Appointment of a hearing officer.* The National Coordinator will assign the case to a hearing officer to adjudicate the appeal on his or her behalf. The hearing officer may not review an appeal in which he or she participated in the initial suspension or termination determination or has a conflict of interest in the pending matter.

(6) *Adjudication.* (i) The hearing officer may make a determination based on:

(A) The written record as provided by the health IT developer with the appeal filed in accordance with paragraphs (f)(1) through (3) of this section and including any information ONC provides in accordance with paragraph (f)(6)(v) of this section; or

(B) All the information provided in accordance with paragraph (f)(6)(i)(A) and any additional information from a hearing conducted in-person, via telephone, or otherwise.

(ii) The hearing officer will have the discretion to conduct a hearing if he/she:

(A) Requires clarification by either party regarding the written record under paragraph (f)(6)(i)(A) of this section;

(B) Requires either party to answer questions regarding the written record under paragraph (f)(6)(i)(A) of this section; or

(C) Otherwise determines a hearing is necessary.

(iii) The hearing officer will neither receive testimony nor accept any new information that was not presented with the appeal request or was specifically and clearly relied upon to reach the determination issued by ONC under paragraph (d)(2) or (e)(2) of this section.

(iv) The default process will be a determination in accordance with paragraph (f)(6)(i)(A) of this section.

(v) ONC will have an opportunity to provide the hearing officer with a written statement and supporting documentation on its behalf that explains its determination to suspend or terminate the certification. The written statement and supporting documentation must be included as part of the written record. Failure of ONC to submit a written statement does not result in any adverse findings against ONC and may not in any way be taken into account by the hearing officer in reaching a determination.

(7) *Determination by the hearing officer.* (i) The hearing officer will issue

a written determination to the health IT developer within 30 days of receipt of the appeal, unless the health IT developer and ONC agree to a finite extension approved by the hearing officer.

(ii) The National Coordinator's determination on appeal, as issued by the hearing officer, is final and not subject to further review.

■ 19. Add § 170.581 to read as follows:

§ 170.581 Consequences due to the termination of a certification.

(a) *Testing and recertification.* A Complete EHR or Health IT Module (or replacement version) that has had its certification terminated can be tested and recertified (certified) once all non-conformities have been adequately addressed.

(1) The recertified Complete EHR or Health IT Module (or replacement version) must maintain a scope of certification that, at a minimum, includes all the previous certified capabilities.

(2) The health IT developer must request, and have approved, permission to participate in the Program before testing and recertification (certification) may commence for the Complete EHR or Health IT Module (or replacement version).

(i) The request must include a written explanation of the steps taken to address the non-conformities that led to the termination.

(ii) ONC must approve the request to participate in the Program.

(b) *Heightened scrutiny.* Certified health IT that was previously the subject of a certification termination (or replacement version) shall be subject to heightened scrutiny for, at a minimum, one year.

(c) *Program ban.* The testing and certification of any health IT of a health IT developer that has the certification of one of its Complete EHRs or Health IT Modules terminated under the Program or withdrawn from the Program when the subject of a potential nonconformity or non-conformity is prohibited, unless:

(1) The non-conformity is corrected and implemented for all affected customers; or

(2) The certification and implementation of other health IT by the health IT developer would remedy the non-conformity for all affected customers.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–04531 Filed 3–1–16; 8:45 am]

BILLING CODE 4150–45–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 41 March 2, 2016

Part V

The President

Executive Order 13720—Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Preferences Extension Act of 2015

Federal Register
Vol. 81, No. 41
Wednesday, March 2, 2016

Presidential Documents

Title 3—

The President

Executive Order 13720 of February 26, 2016

Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Preferences Extension Act of 2015

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trade Preferences Extension Act of 2015 (the ''Act'') (Public Law 114–27), and section 301 of title 3, United States Code, I hereby order as follows:

Section 1. *Authorities and Functions under the Act.* (a) Except as provided in subsections (b), (c), and (d) of this section, the authorities granted to and functions specifically assigned to the President under title I of the Act are delegated and assigned, respectively, to the United States Trade Representative (U.S. Trade Representative).

(b) The exercise of the following authorities of, and functions specifically assigned to the President under title I of the Act are not delegated or assigned under this order:

(i) section 104(c) of the Act;

(ii) sections 105(a) and (b) of the Act; and

(iii) sections 506A(d)(3)(B) and (d)(4)(C) of the Trade Act of 1974 (as amended by the Act).

(c) The functions of the President under section 13(c) of the AGOA Acceleration Act of 2004, as added by section 109 of the Act, are assigned to the Administrator of the United States Agency for International Development, in collaboration with the Secretary of Agriculture.

(d) The functions of the President under section 110(a) of the Act are assigned to the U.S. Trade Representative, in consultation with the Secretary of State.

Sec. 2. *Reducing Poverty and Eliminating Hunger.* The U.S. Trade Representative, with the advice and assistance of other executive departments and agencies involved in international programs to reduce poverty and eliminate hunger, shall perform the reporting function under section 701 of the Act.

Sec. 3. *General Provisions.* (a) In exercising authority delegated by or performing functions assigned in this order, officers of the United States:

(i) shall ensure that all actions taken by them are consistent with the President's constitutional authority to (A) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations; (B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; (C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and (D) supervise the executive branch; and

(ii) may redelegate authority delegated by this order and may further assign functions assigned by this order to officers of any other department or agency within the executive branch to the extent permitted by law, and such redelegation or further assignment shall be published in the *Federal Register.*

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 26, 2016.

[FR Doc. 2016–04770
Filed 3–1–16; 11:15 am]
Billing code 3295–F6–P

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To direct the Secretary of Veterans Affairs to convey to the Florida Department of Veterans Affairs all right, title, and interest of the United States to the property known as ''The Community Living Center'' at the Lake Baldwin Veterans Affairs Outpatient Clinic, Orlando, Florida. (Feb. 29, 2016; 130 Stat. 290)

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