FEDERAL REGISTER

Vol. 81 Thursday,
No. 57 March 24, 2016

Pages 15613–16052

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

RIN 0584–AE33

Supplemental Nutrition Assistance Program (SNAP): Employment and Training Program Monitoring, Oversight and Reporting Measures

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: Section 4022 of the Agricultural Act of 2014 requires that, not later than 18 months after the date of enactment, USDA (the Department) shall issue an interim final rule implementing the amendments made by subsection (a)(2). Pursuant to that requirement, this rule implements the employment and training (E&T) provisions of section 4022(a)(2) of the Agricultural Act of 2014. Section 4022(a)(2) of the Agricultural Act of 2014 provides the Department additional oversight authority of State agencies' administration of the Supplemental Nutrition Assistance Program (SNAP) E&T program. In addition, it requires the Department to develop national reporting measures and for State agencies to report outcome data to the Department. It also requires that the Department monitor and assess State agencies' E&T programs, and provides the Department with the authority to require State agencies to make improvements to their programs as necessary. Finally, State agencies are required to submit reports on the impact of certain E&T components and, in certain States, the E&T services provided to able-bodied adults without dependents (ABAWDs).

DATES: *Effective Date:* This rule will become effective May 23, 2016.

Implementation Date: Upon clearance by OMB of the associated information collection requirements, States shall include reporting measures in the E&T State Plans for the first full fiscal year that begins not earlier than September 20, 2016.

Comment Date: Written comments must be received on or before May 23, 2016.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: Preferred method. Go to *http://www.regulations.gov;* follow the online instructions for submitting comments.

FAX: Submit comments by facsimile transmission to (703) 305–2486, attention: Moira Johnston, Director, Office of Employment and Training, SNAP.

Web site: Go to *http://www.fns.usda.gov.* Follow the online instructions for submitting comments through the link at the SNAP Web site.

Email: Send comments to *SNAP-Ed@fns.udsa.gov.* Include Docket ID Number FNS–2011–0026, Supplemental Nutrition Assistance Program: Employment and Training Employment and Training Program Monitoring, Oversight and Reporting Measures Interim Rule in the subject line of the message.

Mail: Send comments to Moira Johnston, Director, Office of Employment and Training, SNAP, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 806, Alexandria, Virginia 22302.

Hand delivery or Courier: Deliver comments to Ms. Johnston at the above address. All comments on this interim rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Director, Office of Employment and Training, at the above address or by telephone at (703) 305–2515.

SUPPLEMENTARY INFORMATION:

What acronyms or abbreviations are used in this supplementary discussion?

In the discussion of the provisions in this rule, the following acronyms or other abbreviations stand in for certain words or phrases:

Phrase	Acronym, abbreviation, or symbol
Able-Bodied Adults Without Dependents.	ABAWDs.
Code of Federal Regulations.	CFR.
Employment and Training	E&T.
Federal Register	FR.
Federal Fiscal Year	FY.
Food and Nutrition Act of 2008, as amended.	the FNA.
Food and Nutrition Service	FNS.
Food, Conservation and Energy Act of 2008 (Pub. L. 110–246).	FCEA.
Secretary of the U.S. Department of Agriculture.	Secretary.
Section (when referring to Federal Regulations).	§.
Supplemental Nutrition Assistance Program.	SNAP.
U.S. Department of Agriculture.	the Department.
U.S. Department of Labor	DOL.
Workforce Innovation and Opportunity Act.	WIOA.

Background

What is the SNAP E&T program?

Section 6(d)(4) of the FNA requires that each State agency implement an E&T program designed to help members of SNAP households gain skills, training, employment, or experience that increase participants' ability to obtain regular employment. State agencies may include one or more of the following components in their E&T program: Job search, job search training, workfare, work experience, work training, basic education programs, self-employment training programs, job retention services, and other programs as approved by the Secretary. State agencies submit E&T plans that outline planned components and budgets to FNS for approval annually.

How is SNAP E&T funded?

The Department funds SNAP E&T programs through $90 million in E&T grants and an additional $20 million in grants for State agencies that pledge to serve all ABAWDs at-risk of losing eligibility due to time-limited

participation. In addition to these grants, the Department reimburses State agencies for 50 percent of approved administrative costs beyond the E&T grant and for 50 percent of allowable participant expenses, such as transportation and dependent care.

Is participation in SNAP E&T mandatory?

SNAP work registrants not otherwise exempted by the State agency must participate in a SNAP E&T component if referred by the State agency. E&T programs may be mandatory or voluntary. In a mandatory program, failure to comply without good cause, results in disqualification from SNAP for a minimum sanction period which can vary depending upon State policy. Except in the case of permanent disqualification, an individual may resume SNAP participation after the sanction period expires and/or the individual complies with work requirements (whichever is later). State agencies may also serve voluntary E&T participants. Voluntary E&T participants are not subject to disqualification from SNAP for failure to comply with a SNAP E&T component.

The Agricultural Act of 2014

This interim rule implements section 4022(a)(2) of the Agricultural Act of 2014. Even though the reporting requirements of this rule must be implemented by the beginning of first full fiscal year 180 days after publication of this rule, the Department is soliciting comments on this rule. The Department believes that it would benefit from the public's comments before publishing a final rule.

Why is the Department publishing this interim rule rather than a proposed and then final rule?

Section 4022(a)(3)(A) of the Agricultural Act of 2014 requires that ''Not later than 18 months after the date of enactment of this Act, the Secretary shall issue interim final regulations implementing the amendments made by subsection (a)(2).''

What does the Agricultural Act of 2014 require in regards to SNAP E&T?

Section 4022 of the Agricultural Act of 2014 amends section 16(h)(5) of the FNA, to provide that:

- The Department develop standardized reporting measures for E&T programs;
- States agencies' annual E&T plans must identify additional reporting measures for each E&T component that is intended to serve at least 100 participants a year;
- The Department monitor State E&T programs and assess their effectiveness;
- State agencies submit an annual report on their E&T programs that includes the number of participants who have gained skills, training, work, or experience that will increase their ability to obtain regular employment;
- The Department may require a State agency to make modifications to its E&T plan if it determines that the State agencies' E&T outcomes are inadequate.

These provisions will provide the Department with more information about the States with effective SNAP E&T programs and promising practices, and help identify those States that need technical assistance to improve their programs.

Section 4022 of the Agricultural Act of 2014 also requires the Department to carry out up to 10 SNAP E&T pilot projects and to evaluate the SNAP E&T program nationally at least once every five years. This interim rule does not address these last two issues.

Reporting Measures

What does Section 4022(a)(2) of the Agricultural Act of 2014 require the Department to do in developing national reporting measures?

Section 4022(a)(2) amended section 16(h)(5)(B)(i) and (ii) of the FNA to require the Department to develop national reporting measures for States within the following requirements:

- The Department, in consultation with the Secretary of Labor, must develop State reporting measures that identify improvements in the skills, training, education, or work experience of members of households participating in SNAP;
- The measures must be based on common measures of performance for Federal workforce training programs; and
- The measures must include additional indicators that reflect the challenges facing the types of members of households participating in SNAP who participate in a specific E&T component.

Has the Department consulted with the Department of Labor (DOL) in the development of this rule?

Yes. In addition to consulting with and reviewing DOL's current performance measures, the Department examined and discussed the performance indicators included in WIOA (visit *http://www.doleta.gov/wioa/* for more information on this legislation).

What national reporting measures does this rule establish?

After consultation with the DOL, the Department is establishing the following national reporting measures and requiring State agencies to report outcome data based on these measures. These reporting measures are similar to the performance indicators for the core programs in WIOA, but reflect the intent of the Agricultural Act of 2014, the unique characteristics of the SNAP E&T program and its participants, the required frequency of reporting, and how the Department will use the data. The reporting measures include:

- The number and percentage of E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T;
- The number and percentage of E&T participants and former participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T;
- The median quarterly earnings of all the E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T; and
- The number and percentage of participants that completed a training, educational, work experience or an on-the-job training component.

What additional reporting measures does Section 4022(a)(2) of the Agricultural Act of 2014 require that State agencies include in their E&T plans?

Section 4022(a)(2) amended section 16(h)(5)(B)(ii) of the FNA to require each State agency's E&T plan to identify appropriate reporting measures for each proposed component that serves a threshold number of participants of at least 100 per year. State agencies will report the outcome data in their annual reports to FNS. The Department has adopted 100 per year because this is consistent with the minimum in the Agricultural Act of 2014. The Department is particularly interested in receiving comments about the reporting measures themselves, as well as the appropriateness of this threshold.

Because State agencies have broad flexibility in what E&T components they offer and how they structure their activities, the Department is not prescribing national reporting measures for specific components. Instead, the Department encourages State agencies, in designing their E&T component measures, consider the measures that are suggested in the Agricultural Act of 2014, which may include:

- The percentage and number of program participants who received E&T services and are in unsubsidized employment subsequent to the receipt of those services;
- The percentage and number of participants who obtain a recognized credential, including a registered apprenticeship, or a regular secondary school diploma or its recognized equivalent, while participating in, or within 1 year after receiving, E&T services;
- The percentage and number of participants who are in an education or training program that is intended to lead to a recognized credential, including a registered apprenticeship or on-the-job training program, a regular secondary school diploma or its recognized equivalent, or unsubsidized employment;
- Measures developed by each State agency to assess the skills acquisition of employment and training program participants that reflect the goals of the specific employment and training program components of the State agency, which may include:
  - The percentage and number of participants who are meeting program requirements in each component of the education and training program of the State agency;
  - The percentage and number of participants who are gaining skills likely to lead to employment as measured through testing, quantitative or qualitative assessment, or other method; and
  - The percentage and number of participants who do not comply with employment and training requirements and who are ineligible under section 6(b); and
  - Other indicators approved by the Secretary.

Is the Department required to approve State agencies' reporting measures for each component?

Yes. FNS will work with State agencies to identify appropriate reporting measures for each component. State agencies must include the reporting measures for individual components in their E&T plans, which must be submitted and approved by FNS on an annual basis.

Will State agencies be required to report additional information on the characteristics of SNAP E&T participants?

The SNAP work registrant population, like the general SNAP population, is very diverse and faces a myriad of challenges to employment, such as measurable educational attainment and employment history, or intangibles such as substance abuse or mental health problems. The Department is interested in understanding the effectiveness of certain approaches with populations facing different barriers; however, this can be difficult to ascertain given that the complex nature of these challenges.

The Department believes that to have a better understanding of the effectiveness of SNAP E&T it must have a more complete picture of the population it is serving. The Department has very little detailed information on the characteristics of SNAP E&T participants. There are no existing reporting requirements or other mechanisms to collect this information. Therefore, in order to better serve SNAP E&T participants, this rule requires State agencies to report the following six characteristics for *all* E&T participants. The report will include the total number and percentage of all E&T participants who:

- Are voluntary vs. mandatory;
- have achieved a high school degree (or GED) prior to being provided with E&T services;
- are ABAWDs;
- speak English as a second language;
- are male vs. female; and
- belong in the following age ranges: 16–17, 18–35, 36–49, 50–59, 60 or older.

For example, if a State had 10,000 E&T participants in a year, 2,000 of which were voluntary and 8,000 mandatory, these numbers would be reported along with the 20 and 80 percentages. State agencies currently collect most of this information as part of the application and it should be available through their eligibility systems or SNAP E&T tracking systems. This will not require additional reporting on the part of the SNAP recipient.

Section 16(h)(5)(B)(ii) of the FNA, as amended by the Agricultural Act of 2014, requires that the national reporting measures developed by the Department include additional indicators that reflect the challenges facing the types of members of households participating in SNAP who participate in a specific employment and training component. What are these indicators and for which SNAP E&T participants must State agencies report these indicators?

Of the above six characteristics required to be reported of all SNAP E&T participants, the Department has identified three that it believes are most important to understanding the challenges to employment faced by those SNAP E&T participants and former participants who are included in the four national reporting measures described above. These characteristics are: Voluntary or mandatory participation in E&T, those with low education attainment, and those who are ABAWDs. A participant may have more than one characteristic (*e.g.,* may be a voluntary participant who is also an ABAWD). The Department believes obtaining data on those participants and former participants included in the national reporting measures who have these three characteristics is critical to the development of effective strategies to serve these populations. Therefore, the rule requires that for each national reporting measure States must submit summary data that disaggregate the four national measures by the following three characteristics.

- Individuals who are or were voluntary vs. mandatory participants;
- participants having achieved a high school degree (or GED) prior to being provided with E&T services; and
- participants who are or were ABAWDs;

Thus, to illustrate, States will be required to report the total number and percentage of E&T participants and former participants in unsubsidized employment during Q2 after participation in E&T and the number and percentage of those participants who were mandatory and voluntary. If the State had 1,000 out of 10,000 E&T participants and former participants employed in the second quarter following completion of E&T (10 percent) and of the 1,000, 300 were voluntary and 700 were mandatory, these numbers would be reported along with the percentages.

Furthermore, in addition to reporting the median quarterly earnings of all the E&T participants and former participants, States will be required to report this outcome measure for the following subgroups: Voluntary participants, mandatory participants, those who have achieved a high school degree (or GED) prior to being provided with E&T services, and ABAWDs.

Are the SNAP E&T reporting measures based on the performance indicators for core workforce programs included in WIOA?

WIOA established primary indicators of performance for the core programs related to employment, earnings, credential attainment/measureable skills gains as they relate to gaining/retaining employment, and serving employers. The SNAP E&T reporting measures required by this rule are closely aligned with, but not identical to, those in WIOA. The variations can be attributed to: (1) Difference in the required

frequency of reporting (the Agricultural Act of 2014 requires a single annual report whereas the WIOA proposed regulations would require quarterly reports and an annual report); (2) difference in data needs; and (3) seeking a balance between value of information obtained and the burden of longer term tracking. FNS does not include a reporting measure for the effectiveness of serving employers or the number of participants that obtain credentials, in part because DOL and Department of Education are still in the process of developing this policy. In addition, because State agencies have broad flexibility in what E&T components they offer and how they structure their activities, the Department is not prescribing national reporting measures for specific components, like the percentage and number of participants who obtain a recognized credential, but the Department encourages State Agencies to consider such measures as described in

''What additional reporting measures does Section 4022(a)(2) of the Agricultural Act of 2014 require that State agencies include in their E&T plans?''

DOL published proposed regulations regarding WIOA in the ''Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions'' proposed rule on April 16, 2015. The Department views DOL as the leader in employment policy and will look for ways to be consistent with any changes made to its performance measures in the final E&T rulemaking. The Department is interested in comments pertaining to the variance between the WIOA performance indicators and the SNAP E&T reporting measures.

What will the Department do with the reported data?

The Department will use outcome data to monitor the effectiveness of SNAP E&T programs. The Department will also share this information with policy makers, State agencies, and other stakeholders. In combination with the current data State agencies report to FNS regarding SNAP E&T, outcome data will help the Department identify E&T programs and components that produce a higher number and percentage of participants that obtain unsubsidized employment. The Department will use the data on median earnings to evaluate the cost-effectiveness of E&T programs and the components States have implemented. The Department will also use this data to assess and identify the most promising practices for State agencies that want to improve their SNAP E&T programs. The Department will use the data on educational attainment in a similar way, while the data regarding the characteristics of E&T participants will help the Department and States better understand the relative challenges different groups face.

How often and what method will State agencies use to report to the Department?

Pursuant to section 16(h)(5)(D) of the FNA, as amended by the Agricultural Act of 2014, this rule requires State agencies to submit an annual report to FNS by January 1 of each year, to include outcome data on the reporting measures outlined above for the Federal fiscal year ending the previous September 30. FNS may specify a standard format for the annual report.

What data and timeframes will an annual report include?

Data will be measured within the fiscal year for which the State agency is reporting using the most recent data available during the reporting period for each measure and additional characteristics for the participants and former participants included in the reporting measures. Therefore, if an individual completed participation in E&T in the fourth quarter of FY 2018, information from the second quarter of FY 2019 concerning their employment would be included in reporting for FY 2019, even if that individual was no longer participating in SNAP.

Reporting for a fiscal year will include the characteristics of each E&T participant that participated in E&T during that fiscal year.

Is there a minimum amount that an individual must earn in a quarter to be included in a reporting measure?

No, there is no minimum amount of earnings from unsubsidized employment in a quarter for an individual to be included in a reporting measure.

What other information must States include in the annual E&T reports?

States that have committed to offering all at-risk ABAWDs a slot in a qualifying activity and have received an additional allocation of funds as specified in 7 CFR 273.7(d)(3) must include in their annual reports the following information:

- The monthly average number of individuals in the State who meet the conditions of § 273.7(d)(3)(i);
- The number of individuals to whom the State offers a position in a program described in § 273.24(a)(3)and (4);
- The number of individuals who participate in such programs; and
- A description of the types of employment and training programs the State agency offered to at-risk ABAWDs, and the availability of those programs throughout the State.

What does the Agricultural Act of 2014 require in terms of monitoring, evaluating and assessing States' E&T programs?

The Agricultural Act of 2014 amended section 16(h)(5)(A) of the FNA to require the Department to monitor SNAP E&T programs and assess their effectiveness in terms of preparing members of households for employment, including the acquisition of basic skills necessary for employment, and increasing the number of household members who obtain and retain employment subsequent to participation in E&T. The Agricultural Act of 2014 also amended section 16(h)(5)(C) of the FNA to require that the Department evaluate State agencies' E&T programs on a periodic basis to ensure:

- Compliance with Federal E&T program rules and regulations;
- that program activities are appropriate to meet the needs of the individuals referred by the State agency to an E&T program component; and
- that reporting measures are appropriate to identify improvements in skills, training, work and experience for participants in an employment and training program component.

How is the Department codifying this provision?

SNAP regulations at 7 CFR 275.3(a) already require FNS to conduct management evaluation (ME) reviews of designated, or ''target'', areas of program operation each fiscal year. FNS identifies target areas each year based upon a number of considerations, including recent policy changes, risk to Federal funds, and risk to program access. For example, FNS may identify program access as an area that the regional offices are required to review in every State, and nutrition education as an area to be reviewed on an at-risk basis, as necessary. This affords FNS maximum flexibility to target its resources to those current areas of vulnerability or agency priorities. In past years, FNS has not required its regional offices to perform an ME of each State agency's E&T program; many operate very small job-search only programs. However, FNS has required its regional offices to review E&T programs in States that operate third party matching programs, or that have

combined Federal and State budgets over a certain threshold. As part of its general monitoring and oversight responsibilities, FNS will meet the requirement of the FNA by continuing to perform MEs of States' E&T programs, but will also continue to establish in guidance which target areas to focus on each year.

In addition, through its current authority, FNS is required to review and approve State agencies' E&T plans and budgets. Through this process, FNS will ensure that individual components are structured to meet the needs of participants and that the reporting measures for individual components with more than 100 participants, required by this rule, are appropriate to measure the impact of the components on participants.

Does the Department have authority to require modifications to State agencies' E&T programs?

Yes. Section 16(h)(5)(E) of the FNA, as amended by the Agricultural Act of 2014, gives the Department the authority to require a State agency to make modifications to its SNAP E&T plan to improve outcomes if the Department determines that the E&T outcomes are inadequate.

Why are most of the reporting measures focused on program outcomes?

The Government Performance and Results Act of 1993 (GPRA) requires that performance indicators be used to measure the outcome of government programs. The national reporting measures in this rule will provide data that be used to evaluate the effectiveness of E&T programs in moving SNAP recipients toward self-sufficiency.

Additionally, the USDA Office of Inspector General (OIG) performed an audit of the SNAP E&T program and, in its final report, entitled ''Food Stamp Employment and Training Program'' (OIG #27601–16-At), released April 29, 2008, concluded that the data to evaluate the SNAP E&T program's impact was lacking. The chief recommendation of this audit report was that FNS establish reporting measures for the SNAP E&T program and require State agencies to submit outcome data, which FNS could then use to determine whether the program improves employability and helps participants prepare for or obtain jobs. FNS agrees with this recommendation and, through this rule, is establishing standardized reporting measures that capture the impact of E&T programs. As noted above, FNS will use data to help identify the most effective E&T programs and best practices, and will share this information with State agencies looking to improve or expand their E&T programs.

Do State agencies already have reporting measures and outcome data?

Currently, thirty-six State agencies have reporting measures and report E&T program outcome data in their E&T plans. State agencies use a variety of reporting measures, and the outcome data reported cannot be compared or summarized on a national level. Additionally, other work programs, such as those funded under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act (WPA), require State agencies to track, collect, and report outcome data. The measures in this rule are designed to be similar to the common measures used by these other work programs. The Department recommends that State agencies consult with State workforce and other agencies on data collection strategies and technical requirements.

For reporting purposes, who is considered an E&T participant?

A SNAP applicant or recipient who is placed in and begins an E&T component is considered a ''participant'' for reporting purposes. E&T participants who are placed in a component but do not show up for the first training appointment will not be counted in the base of participants for reporting measures. Individuals that complete an E&T component are also considered to be participants for reporting purposes, even if they are no longer participating in SNAP. The Department recognizes that some State agencies provide E&T services to SNAP participants who are under-employed and it does not wish to discourage this practice. As such, State agencies may include E&T participants who are already employed as countable participants, if placed in a component.

Should voluntary participants be counted as well as mandatory participants?

Yes. State agencies must count all E&T participants, both mandatory and voluntary, in the base for reporting measures. The Department recognizes that some State agencies have shifted the focus of their E&T programs to voluntary participants because these participants are often more motivated to work and seek training that will make them more employable. The interim reporting measures will reflect the effectiveness of the program for both mandatory and voluntary participants.

What is meant by unsubsidized employment?

Unsubsidized employment means the E&T participant does not receive wages subsidized by a Federal, State or local government program, such as the TANF subsidized employment program or a SNAP work supplementation program. This is consistent with the definition of unsubsidized employment used by other Federal work programs. Participants who enter unsubsidized employment may still be receiving job retention services such as transportation reimbursements and dependent care.

The definition of unsubsidized employment is not limited to jobs with paid benefits, such as health care coverage. Although the Department recognizes the value of such benefits for SNAP households, it would add complexity to data collection and the Department believes it is not an essential reporting requirement for the purpose of the interim rule.

What is meant by ''median'' quarterly earnings?

This rule requires that State agencies report the median average quarterly earnings for all E&T participants who had earnings from unsubsidized employment in the second quarter following completion of E&T. Median earnings will capture wage levels, and is consistent with the similar DOL reporting measure under WIOA. The ''median'' is determined by ranking participants' incomes from lowest to highest and identifying the middle income amount so that there are an equal number of incomes higher and lower. The median income is the amount in the middle—half the income amounts are higher, and half are lower. For example, for three participants earning $1,000, $1,500 and $3,500, the median income is $1,500 even though the average (or mean) would be $2,000. Using the median income can provide a more meaningful measure since it shows the halfway point, rather than the average, which can be significantly influenced by the larger incomes at the top or very small incomes at the bottom of the scale.

Will E&T 100 percent grants be affected by the reported measures data?

No. Outcome data will not affect Federal 100 percent grant funding for E&T programs. However, the Department retains the authority at § 273.7(d)(1)(i)(D) to consider outcome data as part of the scope of impact for a State's E&T program when evaluating requests for additional 100 percent funds.

How may States fund the collection and reporting of outcome data?

State agencies may use E&T administrative funds provided by § 273.7(d)(1) and (2) to pay for development of reporting systems as necessary. E&T administrative funds may also be used to meet staffing requirements that result from reporting measure tracking, the cost of follow-up with E&T participants and other aspects of the measures.

Will the Department consider unemployment rates when evaluating outcome data?

The Department will not factor unemployment rates into the raw outcome data. Reporting measures are meant to reflect whether E&T programs are effective in moving participants toward employment and self-sufficiency. However, the Department will consider unemployment rates together with other important factors when looking at the unique challenges SNAP E&T participants face.

Should State agencies count workfare and work experience as unsubsidized employment?

No. Workfare and work experience are defined as E&T components at section 6(d)(4) of the FNA, and participation in these components is captured in the FNS–583. Currently, many State agencies offer workfare and work experience as E&T components to provide participants with experience or training that will move them promptly into employment. As State agencies already report these activities on the FNS–583 as E&T components, the Department will not consider placement in such activities as unsubsidized employment to be included in the reporting measures.

Will the Department verify this data?

The Department will not verify this information on a regular basis. However, FNS will review data collection methods and verify data as part of the ME review of States' E&T programs. This will help to ensure that reported data is accurate.

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). Consistent with the requirements of Executive Orders 12866 and 13563, a Regulatory Impact Analysis (RIA) was developed for this interim rule.

Regulatory Impact Analysis

As required for all rules that have been designated as significant by OMB, a RIA was developed for this interim rule. The RIA for this rule was published as part of the docket to this rule on *www.regulations.gov*. The following summarizes the conclusions of the regulatory impact analysis.

Need for Action: This interim rule implements requirements for State agencies to report outcome data for SNAP E&T programs as mandated by Section 4022(a)(2) of the Agricultural Act of 2014. The interim rule establishes five separate reporting measures and requires State agencies to report annually outcome data to monitor the effectiveness of E&T programs.

State agencies are also required to identify appropriate reporting measures for each proposed component that serves a threshold number of participants of at least 100 a year. The reporting measures for these components will be identified in State agencies' E&T plans and the outcome data will be reported to FNS in State agencies' annual reports.

Benefits: Benefits of this action include better data to inform policy makers regarding means to improve E&T effectiveness, ultimately benefiting SNAP E&T participants. National reporting measures will allow State and Federal program managers and policy makers to strategically plan on program tactics that will result in improved employment outcomes. Uniform reporting measures for E&T programs will potentially benefit SNAP applicants and recipients by providing data to help evaluate what works in SNAP E&T and share best practices from those programs.

Costs: FNS estimates that the costs will include one-time capital costs for developing new or modifying existing data collection systems for E&T programs, additional reporting burden for collecting and reporting data for the required reporting measures, and, for those States that need to develop new systems, annual operating and maintenance costs for those systems. FNS anticipates minimal burden to a small number of low-income families and minimal, if any, impact on program participation. FNS anticipates that some costs will be paid for using the existing federal grant money States receive to operate E&T. State funds spent in excess of the grant are reimbursed at a 50 percent rate by the Federal government.

Effect on State Agencies: The Department has estimated that the effect on State agencies will be two-fold: First, a one-time capital cost for developing new or modifying existing data collection systems for E&T programs; and second, a reporting burden for collecting and reporting data for the required outcome measures. Those States that need to develop new systems may also incur annual operating and maintenance costs.

Thirty-six State agencies currently have reporting measures and collect outcome data. However, the interim rule requires the addition of several data elements that none of these States are currently collecting.

While it is expected that, in the first-year, State agencies will expend time and effort to establish reporting systems, the ongoing burden as shown below in the Paperwork Reduction Act section of the preamble is relatively moderate—about one and one-half staff-month per State.

Effect on Low-Income Families: Establishing reporting requirements that measure E&T outcomes will ultimately allow State agencies to better serve low-income populations by providing them with E&T services that lead to longer-term unsubsidized employment opportunities. In addition, the Department estimates that the burden of the rule on low-income families will be minimal. A small number of E&T participants may face additional reporting burden due to the need to contact these individuals to track outcomes that are not available through existing data sources.

Participation Impacts: The Department estimates that the impact on SNAP participation will be minimal. Establishing reporting requirements that measure E&T outcomes will allow State agencies to better serve low-income populations by providing them with E&T services that lead to longer-term unsubsidized employment opportunities.

Civil Rights Impact Analysis

The Department has reviewed this interim rule in accordance with Departmental Regulation 4300–4, ''Civil

Rights Impact Analysis,'' to identify any requirements that may have the purpose or effect of excluding, limiting, or otherwise disadvantaging any group or class of persons on one or more prohibited bases. After careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, the Department has determined that this rule will not have a disparate impact on any group or class of persons. The interim rule will require State agencies to collect and report outcome data on SNAP E&T programs and will not change work requirements or impact the population subject to work requirements. The Department specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, sex, religious creed, age, disability, and political beliefs. SNAP's nondiscrimination policy can be found at 7 CFR 272.6(a). The interim rule does not change these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that will minimize any significant impacts on small entities. Pursuant to that review, it is certified that this interim rule will not have a significant impact on small entities. The provisions of this interim rule apply to State agencies, which are not small entities as defined by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for 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 Department 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 interim rule contains 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. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), the Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Impact Statement

Executive Order 13132, requires Federal agencies to consider the impact of their regulatory actions. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of the Executive Order 13132. This rule does not have Federalism impacts.

Prior Consultation With State Officials

Currently, the Department, through FNS, has encouraged State agencies to establish reporting measures and to report outcome data in their State E&T plans. FNS informally consulted with State agencies to identify what E&T reporting measures and outcome data they collect in the absence of required reporting measures. An informal review of State agencies in FY 2007 showed that twenty-three State agencies had reporting measures and gathered outcome data on the number of E&T participants who entered employment. This review revealed wide variability in how State agencies' aggregate data, how employment was defined, and whether a direct link to participation in E&T was established. FNS reviewed FY 2013 State agency E&T plans and found that thirty-six State agencies track the number of E&T participants that enter employment. The interim rule will standardize the reporting measures that State agencies use and what outcome data State agencies report.

Nature of Concerns and the Need To Issue This Rule

As modified by the Agricultural Act of 2014, section 16(h)(5) of the FNA requires that the Department monitor SNAP E&T programs and measure their effectiveness. In addition, the Government Performance and Results Act of 1993 (GPRA) requires that performance indicators be used to measure the outcome of government programs. Finally, a 2008 audit by the USDA Office of Inspector General (OIG) found that FNS had sufficient systems in place to monitor State agency compliance and administration with laws and regulations, but recommended FNS establish reporting measures for the SNAP E&T program and require State agencies to submit outcome data to determine the Program's effectiveness.

This rule establishes standardized reporting measures and requires State agencies to report outcome data for the SNAP E&T program. The Department published a proposed rule establishing performance measures in 1991 (FR 43152, August 30, 1991). At that time, many State agencies and advocates responded that the rule would impose an unreasonable burden on State agencies. The Department did not codify that proposed rule. While State agencies may have similar concerns today, other Federal work programs, such as the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act (WPA), have established standardized performance indicators and State workforce investment boards have more experience tracking entered employment, retention and earnings. By implementing Section 16(h)(5) of the FNA, the Department is following the lead of other Federal agencies and establishing standardized reporting measures and requiring State agencies to report outcome data in order to evaluate the effectiveness of E&T programs.

Extent to Which We Met Those Concerns

The Department has considered the impact of the interim rule on State and local agencies. This rule will implement reporting measures that are required by law and require the reporting of outcome data. The provisions in this rule are similar to the current practice of at least thirty-six State agencies. FNS will work with the remaining State agencies to provide guidance and technical assistance in meeting the requirements of this rule.

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 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.

Currently, only two State SNAP E&T programs include partnerships or activities with Tribal organizations. On February 29, 2012, during a Tribal consultation, the Department explained the existing section 16(h)(5) of the FNA which required the Department to monitor and measure the effectiveness of E&T programs, and FNS's intention to write a proposed rule on E&T reporting measures and the reporting of outcome data. The Department invited Tribal officials or their designees to ask questions about the impact of a proposed rule on Tribal governments, communities, and individuals. The Department did not receive any comments or questions on its intention to write that rule. (Subsequently, the Agricultural Act of 2014 passed, which expanded the requirements and authority under section 16(h)(5) of the FNA, and included a requirement that the Department publish an interim rule identifying national reporting measures.) This session established a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from the Tribal consultation session will be made part of the Department's annual reporting on Tribal Consultation and Collaboration. The Department will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country. FNS has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require tribal consultation under E.O. 13175 and has consulted with Tribes as described above. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that will otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

E-Government Act Compliance

The Department 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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This interim rule contains new provisions that will affect reporting and recordkeeping burdens. Section 271.8 has been amended to reflect the new reporting requirements. The changes in burden that will result from the provisions in the interim rule are described below, and are subject to review and approval by OMB. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB's approval.

Written comments on the information collection in this interim rule must be received by May 23, 2016. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Moira Johnston, at the address listed in the **ADDRESSES** section of this preamble. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. For further information, or for copies of the information collection requirements, please contact Ms. Johnston.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: SNAP: Employment and Training Program Monitoring, Oversight and Reporting Measures.

OMB Number: [0584—NEW].

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FNS is submitting this information collection to OMB for its review. The interim rule will require State agencies to collect and report information on: (1) The number and percentage of E&T participants who are in unsubsidized employment during the second quarter after completion of participation in E&T; (2) The number and percentage of E&T participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T; (3) Median quarterly earnings of all E&T participants who worked in unsubsidized employment during the second quarter after completion of participation in E&T; (4) The total number and percentage of participants that complete a training, educational, work experience or an on-the-job training component; and (5) certain unique characteristics of SNAP E&T participants that will provide information on the challenges they face in obtaining employment.

The rule also requires State agencies to identify appropriate reporting measures for each proposed component that serves a threshold number of participants of at least 100 a year. The reporting measures for each component will be identified in States' E&T plans and the outcome data will be reported to FNS in their annual reports. Additionally, the rule requires that State agencies that have committed to offering all ABAWDs at risk of losing eligibility due to time-limited participation a slot in a qualifying activity and have received an additional allocation of funds, to report information regarding the use of those funds.

Respondents: The 53 State agencies that administer the SNAP E&T program.

Estimated Number of Responses per Respondent: One response per year for each State agency that administers the SNAP E&T program. States agencies will be required to report their outcome data annually.

Current status: Thirty-six State agencies currently identify reporting measures and collect outcome data. However, the interim rule requires the addition of several data elements that these State agencies are not currently collecting. While the Department believes that some of these State agencies may continue to use the systems they already have in place with modifications to meet the provisions of this rule, others may decide to implement new systems to meet the increase in data that is required to be reported to FNS. The remaining 17 State agencies that do not have reporting measures in place will all need to develop systems to collect and report the required data. In the first year that the rule is published, State agencies will need to develop E&T data collection systems, reprogram existing systems, build interfaces between SNAP eligibility and SNAP E&T data collection systems and decide what data will be collected manually.

Effect on State Agencies: The Department has estimated that the effect on State Agencies will be two-fold: First, a one-time capital cost for developing new or modifying existing data collection systems for E&T programs; and second, a reporting burden for collecting and reporting data for the required reporting measures. Those States that need to develop new systems may also incur annual operating and maintenance costs.

Prior to implementation: In the first year that the rule is published, States may develop new SNAP E&T systems, reprogram existing systems, build interfaces between SNAP eligibility and SNAP E&T systems, and/or decide what data will be collected manually. For several of the measures (*e.g.,* employment, earnings, characteristics of E&T participants) State agencies' could use a variety of sources to obtain administrative data, such as SNAP automated eligibility systems. The Department anticipates that some State agencies will rely on government entities with which they already have agreements and will need to renegotiate those agreements.

Given the different size and complexity of States' E&T programs, variations in their E&T data systems, capabilities of their SNAP eligibility systems, and experience with reporting measures, it is not possible to develop a reliable estimate of the burden this rule places on State agencies to implement. Because of the uncertainties surrounding the exact methods States will use to collect and submit outcome data, we are requesting that States comment specifically on their potential capital start-up and operating and maintenance costs based upon consultation with potential data sources. After internal discussions with FNS regional office and State systems staff, FNS assumes an estimate of three staff-months (520 hours) per State to establish data collection and reporting systems to implement this rule, at a cost of approximately $1.2 million. This estimate of initial burden is a placeholder until FNS receives comments from States on their estimate of the time it will take to implement.

ESTIMATED INITIAL REPORTING AND RECORDKEEPING BURDEN HOURS

Description of activity	Number of respondents	Total annual responses	Number of burden hours per response	Total burden hours
One-time capital start-up and operating and maintenance costs	53	53	520	27,560

Annual ongoing burden from rule: While it is expected that in the first year State agencies will expend more time and effort to establish reporting systems, the ongoing burden as shown below is relatively moderate—about one and one half staff-month per State. The following estimates assume that State agencies will use a combination of methods to collect the data including existing automated systems data, new data collection, and some contact with SNAP E&T participants. In the regulatory impact analysis accompanying this rule, FNS estimates that the ongoing additional time burden will average no more than about 231 hours annually per State (about one and a half staff-months) on average (12,233 hours per year for all States), or less than $1 million in total. The breakdown of the 231 hours is itemized in the table below. FNS believes this estimate may be somewhat high since data that can be collected through automated data systems is expected to require less time than data collected through direct contact with SNAP E&T participants.

ESTIMATED ONGOING REPORTING AND RECORDKEEPING BURDEN HOURS

Regulation section	Description of activity	Number of respondents	Annual report/ record filed	Total annual responses	Average burden hours per response	Total burden hours
272.1(f) Record-keeping.		53	1	53	1	53
273.7(c)(17)(i) Reporting.	E&T participants who have earnings in the second quarter after completion of E&T.	53	1	53	40	2,120
273.7(c)(17)(ii) Reporting.	E&T participants who have earnings in the fourth quarter after completion of E&T.	53	1	53	40	2,120
273.7(c)(17)(iii) Reporting.	Median quarterly earnings	53	1	53	40	2,120
273.7(c)(17)(iv) Reporting.	E&T participants that completed a training, educational, work experience or an on-the-job training component within 6 months after completion of participation in E&T.	45	1	45	80	3,600

ESTIMATED ONGOING REPORTING AND RECORDKEEPING BURDEN HOURS—Continued

Regulation section	Description of activity	Number of respondents	Annual report/ record filed	Total annual responses	Average burden hours per response	Total burden hours
273.7(c)(17)(v) & (vi) Reporting.	Characteristics of E&T participants, some broken out by 4 above measures.	53	1	53	20	1,060
273.7(c)(17)(vii) Reporting.	Measures in a State agencies' E&T plan for components that are designed to serve at least 100 E&T participants a year.	53	1	53	20	1,060
273.7(c)(17)(viii) Reporting.	Information about ABAWDs from State agencies that have committed to offering them participation in a qualifying activity.	10	1	10	10	100
Total Reporting.	.....	53	7	320	38	12,180
Total Recordkeeping.	.....	53	1	53	1	53

SUMMARY OF ONGOING BURDEN (IN ADDITION TO OMB #0584—NEW) 7 CFR 273

Total No. Respondents	53
Average No. Responses per Respondent	7
Total Annual Responses	373
Average Hours per Response	32.8
Total Burden Hours for Part 273 With Interim Rule	12,233

In addition to potential capital start-up and operating and maintenance costs, we are requesting that States comment specifically on our burden estimates.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Education and employment, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, Supplemental Nutrition Assistance Program.

For reasons set forth in the preamble, 7 CFR parts 271 and 273 are amended as follows:

■ 1. The authority citation for 7 CFR parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.8, amend the table by adding an entry for § 273.7(c)(16) in alphanumeric order to read as follows:

§ 271.8 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control No.
* * * * *	
273.7(c)(16)	0584—New.
* * * * *	

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 3. Amend § 273.7 as follows:
■ a. Add paragraph (c)(6)(xvii); and
■ b. Add paragraphs (c)(16) and (17).
The additions read as follows:

§ 273.7 Work provisions.

* * * * *

(c) * * *

(6) * * *

(xvii) For each component that is expected to include 100 or more participants, reporting measures that the State will collect and include in the annual report in paragraph (c)(17) of this section. Such measures may include:

(A) The percentage and number of program participants who received E&T services and are in unsubsidized employment subsequent to the receipt of those services;

(B) The percentage and number of participants who obtain a recognized credential, a registered apprenticeship, or a regular secondary school diploma (or its recognized equivalent), while participating in, or within 1 year after receiving E&T services;

(C) The percentage and number of participants who are in an education or training program that is intended to lead to a recognized credential, a registered apprenticeship an on-the-job training program, a regular secondary school diploma (or its recognized equivalent), or unsubsidized employment;

(D) Measures developed to assess the skills acquisition of E&T program participants that reflect the goals of the specific components including the percentage and number of participants who are meeting program requirements or are gaining skills likely to lead to employment; and

(E) Other indicators approved by FNS in the E&T State plan.

* * * * *

(16) FNS may require a State agency to make modifications to its SNAP E&T plan to improve outcomes if FNS determines that the E&T outcomes are inadequate.

(17) The State agency shall submit an annual E&T report by January 1 each year that contains the following information for the Federal fiscal year ending the preceding September 30.

(i) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(ii) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T.

(iii) Median average quarterly earnings of the E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(iv) The total number and percentage of participants that completed an educational, training work experience or an on-the-job training component.

(v) The number and percentage of E&T participants who:

(A) Are voluntary vs. mandatory participants;

(B) Have received a high school degree (or GED) prior to being provided with E&T services;

(C) Are ABAWDs;

(D) Speak English as a second language;

(E) Are male vs. female

(F) Are within each of the following age ranges: 16–17, 18–35, 36–49, 50–59, 60 or older.

(vi) Of the number and percentage of E&T participants reported in paragraphs (c)(17)(i) through (iv) of this section, a disaggregation of the number and percentage of those participants and former participants by the characteristics listed in paragraphs (c)(17)(v)(A), (B), and (C) of this section.

(vii) Reports for the measures identified in a State's E&T plan related to components that are designed to serve at least 100 participants a year; and

(viii) States that have committed to offering all at-risk ABAWDs participation in a qualifying activity and have received an additional allocation of funds as specified in § 273.7(d)(3) shall include:

(A) The monthly average number of individuals in the State who meet the conditions of § 273.7(d)(3)(i);

(B) The monthly average number of individuals to whom the State offers a position in a program described in § 273.24(a)(3) and (4);

(C) The monthly average number of individuals who participate in such programs; and

(D) A description of the types of employment and training programs the State agency offered to at risk ABAWDs and the availability of those programs throughout the State.

(ix) States may be required to submit the annual report in a standardized format based upon guidance issued by FNS.

* * * * *

Dated: March 18, 2016.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2016–06549 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31068 Amdt. No. 3688]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2016.

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

For Examination

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

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

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

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

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

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 11, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Apr–16	PA	Meadville	Port Meadville	5/0049	03/01/16	LOC RWY 25, Amdt 6B.
28–Apr–16	PA	Meadville	Port Meadville	5/0069	03/01/16	RNAV (GPS) RWY 7, Amdt 1B.
28–Apr–16	PA	Meadville	Port Meadville	5/0070	03/01/16	RNAV (GPS) RWY 25, Amdt 1B.
28–Apr–16	PA	Williamsport	Williamsport Rgnl	5/0073	03/03/16	RNAV (GPS) RWY 9, Orig-A.
28–Apr–16	ME	Waterville	Waterville Robert Lafleur	5/0190	02/23/16	ILS OR LOC/DME RWY 5, Amdt 4A.
28–Apr–16	ME	Waterville	Waterville Robert Lafleur	5/0191	02/23/16	RNAV (GPS) RWY 5, Amdt 1A.
28–Apr–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/ Woodrum Field.	5/0239	03/03/16	RNAV (GPS) RWY 24, Amdt 1A.
28–Apr–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/ Woodrum Field.	5/0242	03/03/16	RNAV (GPS) RWY 34, Amdt 1B.
28–Apr–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/ Woodrum Field.	5/0243	03/03/16	VOR RWY 34, Amdt 1A.
28–Apr–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/ Woodrum Field.	5/0245	03/03/16	VOR/DME–A, Amdt 7.
28–Apr–16	NV	Las Vegas	Mc Carran Intl	5/0253	02/29/16	ILS OR LOC/DME RWY 1L, Amdt 1.
28–Apr–16	VA	Roanoke	Roanoke-Blacksburg Rgnl/ Woodrum Field.	5/0273	03/03/16	ILS OR LOC RWY 34, Amdt 14B.
28–Apr–16	OR	The Dalles	Columbia Gorge Rgnl/The Dalles Muni.	5/0502	02/29/16	COPTER LDA/DME RWY 25, Amdt 1.
28–Apr–16	OR	The Dalles	Columbia Gorge Rgnl/The Dalles Muni.	5/0503	02/29/16	LDA/DME RWY 25, Amdt 1.
28–Apr–16	MT	Laurel	Laurel Muni	5/0506	02/29/16	RNAV (GPS) RWY 22, Amdt 1.
28–Apr–16	MT	Laurel	Laurel Muni	5/0507	02/29/16	RNAV (GPS) RWY 4, Amdt 1.
28–Apr–16	WA	Pullman/Moscow,ID	Pullman/Moscow Rgnl	5/0508	02/29/16	RNAV (GPS) RWY 24, Amdt 1B.
28–Apr–16	WA	Pullman/Moscow,ID	Pullman/Moscow Rgnl	5/0509	02/29/16	RNAV (RNP) Z RWY 6, Orig-A.
28–Apr–16	WA	Pullman/Moscow,ID	Pullman/Moscow Rgnl	5/0511	02/29/16	RNAV (GPS) Y RWY 6, Amdt 2C.
28–Apr–16	WA	Pullman/Moscow,ID	Pullman/Moscow Rgnl	5/0515	02/29/16	VOR RWY 6, Amdt 9A.
28–Apr–16	KY	Madisonville	Madisonville Rgnl	5/0577	02/23/16	RNAV (GPS) RWY 5, Orig-A.
28–Apr–16	KY	Madisonville	Madisonville Rgnl	5/0578	02/23/16	VOR RWY 23, Amdt 14A.
28–Apr–16	KY	Madisonville	Madisonville Rgnl	5/0582	02/23/16	RNAV (GPS) RWY 23, Orig-A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Apr–16	NJ	Readington	Solberg-Hunterdon	5/0657	02/23/16	VOR RWY 4, Amdt 1A.
28–Apr–16	NJ	Readington	Solberg-Hunterdon	5/0658	02/23/16	RNAV (GPS) RWY 22, Orig-A.
28–Apr–16	NJ	Readington	Solberg-Hunterdon	5/0661	02/23/16	RNAV (GPS) RWY 4, Orig-A.
28–Apr–16	NH	Nashua	Boire Field	5/0811	02/23/16	ILS OR LOC RWY 14, Amdt 1A.
28–Apr–16	NH	Nashua	Boire Field	5/0816	02/23/16	RNAV (GPS) RWY 14, Amdt 1A.
28–Apr–16	NH	Nashua	Boire Field	5/0817	02/23/16	RNAV (GPS) RWY 32, Amdt 1A.
28–Apr–16	NH	Nashua	Boire Field	5/0818	02/23/16	VOR–A, Amdt 12.
28–Apr–16	NC	Fayetteville	Fayetteville Rgnl/Grannis Field	5/0885	03/03/16	VOR RWY 22, Amdt 7.
28–Apr–16	NC	Fayetteville	Fayetteville Rgnl/Grannis Field	5/0886	03/03/16	VOR RWY 28, Amdt 8.
28–Apr–16	NC	Fayetteville	Fayetteville Rgnl/Grannis Field	5/0888	03/03/16	RNAV (GPS) RWY 10, Orig.
28–Apr–16	IL	Cahokia/St Louis	St Louis Downtown	5/1406	02/23/16	ILS OR LOC RWY 30L, Amdt 9A.
28–Apr–16	IL	Cahokia/St Louis	St Louis Downtown	5/1407	02/23/16	RNAV (GPS) RWY 30L, Orig-B.
28–Apr–16	KY	Monticello	Wayne County	5/1569	03/03/16	RNAV (GPS) RWY 21, Orig-A.
28–Apr–16	WA	Hoquiam	Bowerman	5/1682	02/24/16	RNAV (GPS) RWY 24, Amdt 2C.
28–Apr–16	NC	Jacksonville	Albert J Ellis	5/1961	03/01/16	NDB RWY 5, Amdt 8B.
28–Apr–16	NC	Roanoke Rapids	Halifax-Northampton Rgnl	5/2003	03/03/16	VOR/DME RWY 2, Orig-B.
28–Apr–16	MS	Meridian	Key Field	5/2868	03/03/16	ILS OR LOC RWY 1, Amdt 26.
28–Apr–16	MS	Meridian	Key Field	5/2869	03/03/16	RNAV (GPS) RWY 19, Amdt 1.
28–Apr–16	MS	Meridian	Key Field	5/2870	03/03/16	RNAV (GPS) RWY 1, Amdt 3.
28–Apr–16	MS	Meridian	Key Field	5/2871	03/03/16	RNAV (GPS) RWY 4, Amdt 1.
28–Apr–16	CA	Mariposa	Mariposa-Yosemite	5/3308	02/29/16	RNAV (GPS)-A, Orig.
28–Apr–16	CA	Mariposa	Mariposa-Yosemite	5/3309	02/29/16	RNAV (GPS)-B, Orig.
28–Apr–16	WA	Spokane	Spokane Intl	5/3564	02/29/16	RNAV (RNP) Z RWY 7, Orig.
28–Apr–16	IA	Pocahontas	Pocahontas Muni	5/4229	02/23/16	RNAV (GPS) RWY 12, Orig-C.
28–Apr–16	IA	Pocahontas	Pocahontas Muni	5/4230	02/23/16	RNAV (GPS) RWY 30, Orig-C.
28–Apr–16	IA	Pocahontas	Pocahontas Muni	5/4235	02/23/16	VOR/DME RWY 30, Amdt 4B.
28–Apr–16	IA	Pocahontas	Pocahontas Muni	5/4236	02/23/16	NDB RWY 12, Amdt 5C.
28–Apr–16	PA	Williamsport	Williamsport Rgnl	5/4518	03/03/16	RNAV (GPS) RWY 12, Orig-A.
28–Apr–16	PA	Williamsport	Williamsport Rgnl	5/4521	03/03/16	ILS OR LOC RWY 27, Amdt 16A.
28–Apr–16	PA	Williamsport	Williamsport Rgnl	5/5686	03/03/16	RNAV (GPS) RWY 30, Orig-A.
28–Apr–16	CA	Monterey	Monterey Rgnl	5/5781	02/29/16	ILS OR LOC RWY 10R, Amdt 28.
28–Apr–16	MI	Harbor Springs	Harbor Springs	5/6457	02/24/16	RNAV (GPS) RWY 10, Amdt 1.
28–Apr–16	MI	Harbor Springs	Harbor Springs	5/6460	02/24/16	RNAV (GPS) RWY 28, Amdt 2.
28–Apr–16	IA	Boone	Boone Muni	5/6608	03/03/16	RNAV (GPS) RWY 33, Amdt 1A.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7326	02/24/16	ILS OR LOC RWY 26, Amdt 10.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7327	02/24/16	RNAV (GPS) RWY 26, Amdt 1.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7332	02/24/16	RNAV (GPS) RWY 8, Amdt 1.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7333	02/24/16	VOR RWY 26, Amdt 16.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7334	02/24/16	VOR RWY 8, Amdt 5.
28–Apr–16	ID	Twin Falls	Joslin Field—Magic Valley Rgnl.	5/7335	02/24/16	VOR/DME RWY 8, Amdt 1.
28–Apr–16	TX	Midland	Midland Intl	5/7419	02/23/16	RNAV (GPS) RWY 4, Amdt 1A.
28–Apr–16	CO	Rifle	Garfield County Rgnl	5/7626	02/29/16	ILS RWY 26, Amdt 3.
28–Apr–16	OH	Wilmington	Clinton Field	5/7674	03/07/16	RNAV (GPS) RWY 21, Amdt 1.
28–Apr–16	VA	South Hill	Mecklenburg-Brunswick Rgnl ..	5/7872	03/01/16	LOC RWY 1, Orig-C.
28–Apr–16	VA	South Hill	Mecklenburg-Brunswick Rgnl ..	5/7873	03/01/16	RNAV (GPS) RWY 1, Orig-B.
28–Apr–16	VA	South Hill	Mecklenburg-Brunswick Rgnl ..	5/7874	03/01/16	RNAV (GPS) RWY 19, Orig-B.
28–Apr–16	MT	Billings	Billings Logan Intl	5/8056	03/01/16	ILS OR LOC RWY 10L, Amdt 25.
28–Apr–16	MT	Billings	Billings Logan Intl	5/8057	03/01/16	RNAV (GPS) RWY 25, Amdt 1.
28–Apr–16	MT	Billings	Billings Logan Intl	5/8058	03/01/16	RNAV (GPS) RWY 7, Amdt 1.
28–Apr–16	MT	Billings	Billings Logan Intl	5/8060	03/01/16	VOR/DME RWY 28R, Amdt 14A.
28–Apr–16	WA	Seattle	Seattle-Tacoma Intl	5/8220	02/29/16	ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (SA CAT II), Amdt 1C.
28–Apr–16	AZ	Douglas Bisbee	Bisbee Douglas Intl	5/8474	03/03/16	VOR/DME RWY 17, Amdt 6.
28–Apr–16	AZ	Douglas Bisbee	Bisbee Douglas Intl	5/8475	03/03/16	VOR RWY 17, Amdt 3.
28–Apr–16	OH	Piqua	Piqua Airport-Hartzell Field	5/8875	02/24/16	RNAV (GPS) RWY 8, Orig-B.
28–Apr–16	OH	Piqua	Piqua Airport-Hartzell Field	5/8876	02/24/16	VOR–A, Amdt 13A.
28–Apr–16	OH	Tiffin	Seneca County	5/9532	03/07/16	RNAV (GPS) RWY 24, Amdt 1A.
28–Apr–16	TX	Rocksprings	Edwards County	5/9740	03/07/16	RNAV (GPS) RWY 14, Orig-A.
28–Apr–16	MN	Fairmont	Fairmont Muni	5/9782	03/07/16	ILS OR LOC RWY 31, Orig-D.
28–Apr–16	MN	Fairmont	Fairmont Muni	5/9784	03/07/16	COPTER ILS 31, Orig-A.
28–Apr–16	WA	Spokane	Spokane Intl	5/9991	02/23/16	RNAV (RNP) Z RWY 25, Amdt 1.
28–Apr–16	WA	Spokane	Spokane Intl	5/9996	02/23/16	RNAV (GPS) Y RWY 25, Amdt 4.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Apr–16	MT	Great Falls	Great Falls Intl	6/0048	03/07/16	VOR/DME RWY 3, Amdt 17.
28–Apr–16	WA	Friday Harbor	Friday Harbor	6/0050	03/01/16	Takeoff Minimums and (Obstacle) DP, Amdt 3.
28–Apr–16	GA	Waycross	Waycross-Ware County	6/0169	03/03/16	ILS Z OR LOC Z RWY 19, Amdt 3.
28–Apr–16	AL	Decatur	Pryor Field Rgnl	6/0185	03/03/16	RNAV (GPS) RWY 36, Amdt 2.
28–Apr–16	CA	Willits	Ells Field-Willits Muni	6/0338	03/03/16	RNAV (GPS) RWY 34, Amdt 1A.
28–Apr–16	CA	Sacramento	Sacramento Executive	6/0473	03/01/16	VOR RWY 2, Amdt 10C.
28–Apr–16	CA	Sacramento	Sacramento Executive	6/0474	03/01/16	ILS OR LOC RWY 2, Amdt 24B.
28–Apr–16	CA	Sacramento	Sacramento Executive	6/0475	03/01/16	RNAV (GPS) RWY 2, Orig-C.
28–Apr–16	UT	Richfield	Richfield Muni	6/0905	02/23/16	RNAV (GPS) RWY 19, Amdt 1A.
28–Apr–16	GA	Rome	Richard B Russell Regional—J H Towers Field	6/1523	03/07/16	RNAV (GPS) RWY 7, Orig-A.
28–Apr–16	GA	Rome	Richard B Russell Regional—J H Towers Field	6/1524	03/07/16	RNAV (GPS) RWY 25, Orig-A.
28–Apr–16	IN	Rensselaer	Jasper County	6/1634	03/07/16	RNAV (GPS) RWY 18, Orig-A.
28–Apr–16	IN	Rensselaer	Jasper County	6/1635	03/07/16	RNAV (GPS) RWY 36, Orig-A.
28–Apr–16	OK	Chandler	Chandler Rgnl	6/1637	03/07/16	NDB RWY 35, Amdt 1.
28–Apr–16	OK	Chandler	Chandler Rgnl	6/1642	03/07/16	RNAV (GPS) RWY 17, Orig.
28–Apr–16	IN	Indianapolis	Indianapolis Rgnl	6/1651	03/07/16	ILS OR LOC RWY 25, Amdt 2C.
28–Apr–16	IN	Indianapolis	Indianapolis Rgnl	6/1652	03/07/16	RNAV (GPS) RWY 25, Orig.
28–Apr–16	IN	Indianapolis	Indianapolis Rgnl	6/1653	03/07/16	VOR RWY 34, Amdt 2A.
28–Apr–16	IA	Oskaloosa	Oskaloosa Muni	6/1654	03/07/16	VOR/DME RWY 31, Amdt 3.
28–Apr–16	PR	Ponce	Mercedita	6/2026	03/03/16	RNAV (GPS) RWY 12, Orig-B.
28–Apr–16	CA	Santa Barbara	Santa Barbara Muni	6/2206	02/24/16	ILS OR LOC RWY 7, Amdt 5.
28–Apr–16	CA	Santa Barbara	Santa Barbara Muni	6/2207	02/24/16	VOR OR GPS RWY 25, Amdt 6B.
28–Apr–16	CA	Santa Barbara	Santa Barbara Muni	6/2210	02/24/16	RNAV (GPS) RWY 7, Orig-A.
28–Apr–16	AZ	Douglas Bisbee	Bisbee Douglas Intl	6/2260	03/03/16	RNAV (GPS) RWY 17, Orig.
28–Apr–16	IA	Davenport	Davenport Muni	6/2283	02/23/16	VOR RWY 21, Amdt 8A.
28–Apr–16	TX	Nacogdoches	A L Mangham Jr Rgnl	6/2290	02/22/16	ILS OR LOC RWY 36, Amdt 3C.
28–Apr–16	IA	Eagle Grove	Eagle Grove Muni	6/2293	02/22/16	VOR/DME–A, Amdt 2.
28–Apr–16	IA	Eagle Grove	Eagle Grove Muni	6/2295	02/22/16	RNAV (GPS) RWY 31, Amdt 2A.
28–Apr–16	IA	Eagle Grove	Eagle Grove Muni	6/2296	02/22/16	RNAV (GPS) RWY 13, Amdt 1A.
28–Apr–16	ND	Walhalla	Walhalla Muni	6/2298	02/22/16	RNAV (GPS) RWY 33, Orig.
28–Apr–16	SD	Britton	Britton Muni	6/2301	02/23/16	RNAV (GPS) RWY 31, Amdt 1A.
28–Apr–16	FL	St Petersburg	Albert Whitted	6/2442	02/23/16	RNAV (GPS) RWY 7, Amdt 3B.
28–Apr–16	FL	St Petersburg	Albert Whitted	6/2443	02/23/16	VOR RWY 18, Amdt 9.
28–Apr–16	FL	St Petersburg	Albert Whitted	6/2444	02/23/16	RNAV (GPS) RWY 18, Orig-C.
28–Apr–16	SC	Darlington	Darlington County Jetport	6/2445	03/07/16	Takeoff Minimums and (Obstacle) DP, Orig-A.
28–Apr–16	SC	Darlington	Darlington County Jetport	6/2446	03/07/16	VOR/DME–A, Amdt 7.
28–Apr–16	SC	Darlington	Darlington County Jetport	6/2447	03/07/16	RNAV (GPS) RWY 5, Orig-B.
28–Apr–16	SC	Darlington	Darlington County Jetport	6/2448	03/07/16	RNAV (GPS) RWY 23, Orig-B.
28–Apr–16	SC	Darlington	Darlington County Jetport	6/2449	03/07/16	NDB RWY 23, Amdt 1.
28–Apr–16	TN	Athens	Mcminn County	6/2609	02/22/16	RNAV (GPS) RWY 20, Amdt 1A.
28–Apr–16	TX	Brady	Curtis Field	6/2706	02/23/16	RNAV (GPS) RWY 17, Amdt 1A.
28–Apr–16	NE	Minden	Pioneer Village Field	6/2710	02/22/16	VOR–A, Orig.
28–Apr–16	NE	Minden	Pioneer Village Field	6/2716	02/22/16	RNAV (GPS) RWY 16, Orig.
28–Apr–16	NE	Minden	Pioneer Village Field	6/2719	02/22/16	RNAV (GPS) RWY 34, Orig.
28–Apr–16	TX	Brady	Curtis Field	6/2958	02/23/16	NDB RWY 17, Amdt 4.
28–Apr–16	TX	Brady	Curtis Field	6/2959	02/23/16	RNAV (GPS) RWY 35, Amdt 1.
28–Apr–16	MD	Fort Meade(Odenton).	Tipton	6/3585	03/01/16	RNAV (GPS) RWY 10, Amdt 1.
28–Apr–16	MD	Fort Meade(Odenton).	Tipton	6/3586	03/01/16	RNAV (GPS) RWY 28, Amdt 1.
28–Apr–16	MN	Hibbing	Range Rgnl	6/3791	02/23/16	RNAV (GPS) RWY 13, Amdt 1A.
28–Apr–16	WV	Buckhannon	Upshur County Rgnl	6/3981	02/29/16	RNAV (GPS) RWY 11, Amdt 2A.
28–Apr–16	WV	Buckhannon	Upshur County Rgnl	6/3982	02/29/16	RNAV (GPS) RWY 29, Amdt 2A.
28–Apr–16	OR	Bend	Bend Muni	6/4352	02/24/16	VOR/DME RWY 16, Amdt 10.
28–Apr–16	OR	Bend	Bend Muni	6/4353	02/24/16	RNAV (GPS) Y RWY 16, Amdt 2.
28–Apr–16	VA	Danville	Danville Rgnl	6/4741	02/22/16	Takeoff Minimums and (Obstacle) DP, Amdt 2.
28–Apr–16	CA	Oceanside	Oceanside Muni	6/5020	02/22/16	Takeoff Minimums and (Obstacle) DP, Amdt 4.
28–Apr–16	WY	Torrington	Torrington Muni	6/5029	02/24/16	GPS RWY 10, Orig-C.
28–Apr–16	WY	Torrington	Torrington Muni	6/5030	02/24/16	GPS RWY 28, Orig-C.
28–Apr–16	WY	Torrington	Torrington Muni	6/5031	02/24/16	NDB RWY 10, Amdt 2A.
28–Apr–16	WY	Torrington	Torrington Muni	6/5032	02/24/16	NDB RWY 28, Amdt 2A.
28–Apr–16	OH	Columbus	Rickenbacker Intl	6/5211	02/22/16	RNAV (GPS) RWY 23R, Orig-A.
28–Apr–16	MO	Kennett	Kennett Memorial	6/5265	02/24/16	VOR/DME RWY 20, Amdt 1.
28–Apr–16	MO	Kennett	Kennett Memorial	6/5266	02/24/16	RNAV (GPS) RWY 2, Amdt 1.
28–Apr–16	MO	Kennett	Kennett Memorial	6/5267	02/24/16	RNAV (GPS) RWY 20, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Apr–16	MN	Maple Lake	Maple Lake Muni	6/5287	02/23/16	RNAV (GPS) RWY 28, Orig-A.
28–Apr–16	MN	Maple Lake	Maple Lake Muni	6/5288	02/23/16	VOR–A, Amdt 4A.
28–Apr–16	CA	Upland	Cable	6/5664	03/03/16	VOR–A, Orig.
28–Apr–16	MN	Pipestone	Pipestone Muni	6/5942	02/23/16	RNAV (GPS) RWY 18, Amdt 1A.
28–Apr–16	MN	Pipestone	Pipestone Muni	6/5943	02/23/16	RNAV (GPS) RWY 36, Amdt 1A.
28–Apr–16	SD	Britton	Britton Muni	6/5955	02/23/16	RNAV (GPS) RWY 13, Amdt 1A.
28–Apr–16	TN	Mc Minnville	Warren County Memorial	6/6018	02/23/16	RNAV (GPS) RWY 23, Orig-A.
28–Apr–16	ND	Kindred	Robert Odegaard Field	6/6040	02/23/16	RNAV (GPS) RWY 29, Amdt 1A.
28–Apr–16	OH	St Clairsville	Alderman	6/6049	02/23/16	VOR–A, Amdt 3A.
28–Apr–16	WA	Snohomish	Harvey Field	6/6191	03/01/16	RNAV (GPS)-A, Orig.
28–Apr–16	CA	Sacramento	Sacramento Mather	6/6210	02/24/16	RNAV (GPS) RWY 22L, Amdt 2A.
28–Apr–16	CA	Riverside	Riverside Muni	6/6229	02/24/16	ILS OR LOC RWY 9, Amdt 8C.
28–Apr–16	CA	Riverside	Riverside Muni	6/6230	02/24/16	RNAV (GPS) RWY 9, Amdt 2B.
28–Apr–16	NM	Carlsbad	Cavern City Air Trml	6/6347	02/24/16	RNAV (GPS) RWY 32L, Amdt 1B.
28–Apr–16	IL	Peoria	Mount Hawley Auxiliary	6/6352	02/24/16	VOR/DME–A, Orig.
28–Apr–16	NE	David City	David City Muni	6/6353	02/24/16	RNAV (GPS) RWY 14, Amdt 1.
28–Apr–16	NE	David City	David City Muni	6/6354	02/24/16	RNAV (GPS) RWY 32, Amdt 1.
28–Apr–16	NE	David City	David City Muni	6/6355	02/24/16	VOR/DME RWY 32, Amdt 1.
28–Apr–16	CA	San Diego	Brown Field Muni	6/6385	02/24/16	RNAV (GPS) RWY 8L, Amdt 1A.
28–Apr–16	SD	Aberdeen	Aberdeen Rgnl	6/6433	02/23/16	RNAV (GPS) RWY 31, Orig.
28–Apr–16	CA	Willits	Ells Field-Willits Muni	6/6458	03/03/16	RNAV (GPS) RWY 16, Amdt 1A.
28–Apr–16	PA	Hazleton	Hazleton Rgnl	6/6675	03/03/16	LOC RWY 28, Amdt 7.
28–Apr–16	WI	Milwaukee	General Mitchell Intl	6/6823	03/03/16	RNAV (GPS) RWY 13, Orig.
28–Apr–16	AR	Stuttgart	Stuttgart Muni	6/6860	02/23/16	RNAV (GPS) RWY 9, Orig-A.
28–Apr–16	AR	Stuttgart	Stuttgart Muni	6/6861	02/23/16	RNAV (GPS) RWY 27, Amdt 1A.
28–Apr–16	AR	Stuttgart	Stuttgart Muni	6/6863	02/23/16	ILS OR LOC RWY 36, Orig-A.
28–Apr–16	AR	Stuttgart	Stuttgart Muni	6/6864	02/23/16	RNAV (GPS) RWY 36, Amdt 1A.
28–Apr–16	TX	Houston	Houston-Southwest	6/6947	03/03/16	LOC/DME RWY 9, Amdt 3B.
28–Apr–16	WI	Phillips	Price County	6/6949	03/03/16	RNAV (GPS) RWY 19, Orig-B.
28–Apr–16	WA	Wenatchee	Pangborn Memorial	6/7191	02/22/16	VOR/DME–A, Amdt 8.
28–Apr–16	WA	Wenatchee	Pangborn Memorial	6/7192	02/22/16	VOR/DME–C, Amdt 4.
28–Apr–16	WA	Deer Park	Deer Park	6/7221	03/01/16	RNAV (GPS) RWY 34, Orig.
28–Apr–16	CA	San Diego/El Cajon	Gillespie Field	6/7269	03/03/16	LOC/DME–D, Amdt 11A.
28–Apr–16	CA	San Diego/El Cajon	Gillespie Field	6/7270	03/03/16	RNAV (GPS) RWY 17, Amdt 2C.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7813	03/07/16	RNAV (GPS) Y RWY 20, Amdt 1B.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7814	03/07/16	ILS OR LOC RWY 20, Amdt 11G.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7815	03/07/16	VOR RWY 2, Amdt 6B.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7816	03/07/16	VOR RWY 20, Amdt 10.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7817	03/07/16	RNAV (GPS) Y RWY 2, Amdt 1.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7819	03/07/16	LOC BC RWY 2, Amdt 6B.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7820	03/07/16	RNAV (RNP) Z RWY 20, Orig-B.
28–Apr–16	ID	Idaho Falls	Idaho Falls Rgnl	6/7821	03/07/16	RNAV (RNP) Z RWY 2, Orig-A.
28–Apr–16	NC	Roanoke Rapids	Halifax-Northampton Rgnl	6/7844	03/03/16	RNAV (GPS) RWY 2, Amdt 1A.
28–Apr–16	CO	Telluride	Telluride Rgnl	6/8240	03/07/16	RNAV (GPS) Z RWY 9, Orig.
28–Apr–16	PA	Hazleton	Hazleton Rgnl	6/8305	03/03/16	VOR RWY 10, Amdt 11A.
28–Apr–16	PA	Hazleton	Hazleton Rgnl	6/8311	03/03/16	VOR RWY 28, Amdt 9A.
28–Apr–16	KY	Louisville	Louisville Intl-Standiford Field	6/9089	02/22/16	ILS OR LOC RWY 17L, Amdt 4E.
28–Apr–16	AZ	Goodyear	Phoenix Goodyear	6/9293	03/01/16	RNAV (GPS) RWY 3, Orig-A.
28–Apr–16	CA	Los Angeles	Los Angeles Intl	6/9822	03/01/16	RNAV (RNP) Z RWY 7R, Orig-C.

[FR Doc. 2016–06329 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31065; Amdt. No. 3686]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2016.

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

For Examination

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

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

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

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

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 26, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31–Mar–16 ...	CA	San Diego	Brown Field Muni	5/7981	01/27/16	This NOTAM, published in TL. 16–07, is hereby rescinded in its entirety.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0011	02/11/16	RNAV (GPS) RWY 36, Amdt 2A.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0018	02/11/16	ILS OR LOC RWY 36, Amdt 2A.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0020	02/11/16	VOR/DME–A, Amdt 8.
31–Mar–16 ...	WI	Ladysmith	Rusk County	5/0022	02/10/16	RNAV (GPS) RWY 32, Orig-A.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0026	02/11/16	RNAV (GPS) RWY 29, Amdt 1A.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0028	02/11/16	RNAV (GPS) RWY 18, Amdt 1A.
31–Mar–16 ...	AL	Auburn	Auburn University Rgnl	5/0036	02/11/16	RNAV (GPS) RWY 11, Amdt 1A.
31–Mar–16 ...	NC	Morganton	Foothills Regional	5/0803	02/11/16	RNAV (GPS) RWY 3, Amdt 1.
31–Mar–16 ...	GA	Jasper	Pickens County	5/1499	02/11/16	RNAV (GPS) RWY 16, Amdt 1A.
31–Mar–16 ...	CO	La Junta	La Junta Muni	5/1868	02/16/16	Takeoff Minimums and (Obstacle) DP, Amdt 3.
31–Mar–16 ...	MD	Baltimore	Martin State	5/2207	02/16/16	VOR/DME OR TACAN Z RWY 15, Orig-A.
31–Mar–16 ...	DE	Wilmington	New Castle	5/2426	02/11/16	RNAV (GPS) RWY 27, Orig-A.
31–Mar–16 ...	IL	Freeport	Albertus	5/2785	02/10/16	ILS OR LOC RWY 24, Orig.
31–Mar–16 ...	IL	Freeport	Albertus	5/2786	02/10/16	RNAV (GPS) RWY 6, Orig.
31–Mar–16 ...	IL	Freeport	Albertus	5/2787	02/10/16	RNAV (GPS) RWY 24, Amdt 1.
31–Mar–16 ...	IL	Freeport	Albertus	5/2788	02/10/16	VOR RWY 24, Amdt 7.
31–Mar–16 ...	AL	Montgomery	Montgomery Rgnl (Dannelly Field).	5/2875	02/11/16	VOR–A, Amdt 4.
31–Mar–16 ...	AL	Montgomery	Montgomery Rgnl (Dannelly Field).	5/2876	02/11/16	RADAR 1, Amdt 9.
31–Mar–16 ...	WI	Milwaukee	General Mitchell Intl	5/4924	02/17/16	RNAV (GPS) RWY 7L, Orig.
31–Mar–16 ...	WI	Milwaukee	General Mitchell Intl	5/4929	02/17/16	RNAV (GPS) RWY 19L, Orig.
31–Mar–16 ...	WI	Milwaukee	General Mitchell Intl	5/4931	02/17/16	RNAV (GPS) RWY 25R, Orig-A.
31–Mar–16 ...	WI	Milwaukee	General Mitchell Intl	5/4934	02/17/16	RNAV (GPS) RWY 31, Orig.
31–Mar–16 ...	NC	Wilmington	Wilmington Intl	5/5567	02/16/16	RNAV (GPS) RWY 24, Amdt 2A.
31–Mar–16 ...	TN	Jackson	Mc Kellar-Sipes Rgnl	5/6906	02/11/16	RNAV (GPS) RWY 20, Orig.
31–Mar–16 ...	TN	Jackson	Mc Kellar-Sipes Rgnl	5/6907	02/11/16	RNAV (GPS) RWY 2, Orig.
31–Mar–16 ...	TN	Jackson	Mc Kellar-Sipes Rgnl	5/6908	02/11/16	ILS OR LOC RWY 2, Amdt 8A.
31–Mar–16 ...	NC	Reidsville	Rockingham County NC Shiloh	5/9488	02/16/16	NDB RWY 31, Amdt 5.
31–Mar–16 ...	NC	Reidsville	Rockingham County NC Shiloh	5/9489	02/16/16	RNAV (GPS) RWY 31, Orig.
31–Mar–16 ...	OH	Marysville	Union County	5/9514	02/17/16	RNAV (GPS) RWY 27, Orig-A.
31–Mar–16 ...	TN	Athens	McMinn County	5/9954	02/11/16	RNAV (GPS) RWY 2, Orig-A.
31–Mar–16 ...	TN	Athens	McMinn County	5/9955	02/11/16	NDB RWY 2, Amdt 6A.
31–Mar–16 ...	ND	Devils Lake	Devils Lake Rgnl	6/0293	02/17/16	ILS OR LOC/DME RWY 31, Amdt 3A.
31–Mar–16 ...	MI	Pellston	Pellston Rgnl Airport Of Emmet County.	6/2211	02/17/16	RNAV (GPS) RWY 32, Orig-B.
31–Mar–16 ...	MI	Pellston	Pellston Rgnl Airport Of Emmet County.	6/2212	02/17/16	RNAV (GPS) RWY 23, Orig-A.
31–Mar–16 ...	MI	Pellston	Pellston Rgnl Airport Of Emmet County.	6/2214	02/17/16	ILS OR LOC RWY 32, Amdt 11A.
31–Mar–16 ...	CT	Groton (New London).	Groton-New London	6/3087	02/16/16	VOR RWY 5, Amdt 8A.
31–Mar–16 ...	CT	Groton (New London).	Groton-New London	6/3088	02/16/16	VOR RWY 23, Amdt 10A.
31–Mar–16 ...	CT	Groton (New London).	Groton-New London	6/3089	02/16/16	RNAV (GPS) RWY 23, Orig-B.
31–Mar–16 ...	CT	Groton (New London).	Groton-New London	6/3090	02/16/16	RNAV (GPS) RWY 33, Orig-A.
31–Mar–16 ...	TX	Burnet	Burnet Muni Kate Craddock Field.	6/3503	02/17/16	RNAV (GPS) RWY 1, Orig-A.
31–Mar–16 ...	TX	Burnet	Burnet Muni Kate Craddock Field.	6/3504	02/17/16	RNAV (GPS) RWY 19, Orig.
31–Mar–16 ...	MN	Olivia	Olivia Rgnl	6/3505	02/16/16	VOR/DME OR GPS–A, Amdt 2.
31–Mar–16 ...	MN	Olivia	Olivia Rgnl	6/3506	02/16/16	RNAV (GPS) RWY 29, Orig.
31–Mar–16 ...	NE	Imperial	Imperial Muni	6/3507	02/16/16	RNAV (GPS) RWY 13, Orig.
31–Mar–16 ...	NE	Imperial	Imperial Muni	6/3508	02/16/16	RNAV (GPS) RWY 31, Amdt 1A.
31–Mar–16 ...	IA	Marshalltown	Marshalltown Muni	6/3772	02/17/16	RNAV (GPS) RWY 13, Amdt 1.
31–Mar–16 ...	IA	Marshalltown	Marshalltown Muni	6/3773	02/17/16	RNAV (GPS) RWY 31, Amdt 1.
31–Mar–16 ...	MI	Grand Ledge	Abrams Muni	6/4558	02/17/16	VOR OR GPS–A, Amdt 5.
31–Mar–16 ...	NJ	Toms River	Ocean County	6/4595	02/16/16	ILS OR LOC RWY 6, Amdt 2A.
31–Mar–16 ...	NJ	Toms River	Ocean County	6/4596	02/16/16	RNAV (GPS) RWY 24, Orig-A.
31–Mar–16 ...	NJ	Toms River	Ocean County	6/4597	02/16/16	RNAV (GPS) RWY 6, Orig-A.
31–Mar–16 ...	NJ	Toms River	Ocean County	6/4598	02/16/16	VOR RWY 6, Amdt 7A.
31–Mar–16 ...	NJ	Toms River	Ocean County	6/4599	02/16/16	VOR/DME RWY 24, Amdt 4A.
31–Mar–16 ...	TN	Sparta	Upper Cumberland Rgnl	6/4644	02/17/16	RNAV (GPS) RWY 22, Orig-B.
31–Mar–16 ...	CO	Meeker	Meeker Coulter Fld	6/5329	02/11/16	RNAV (GPS)-B, Orig-A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31–Mar–16 ...	CO	Meeker	Meeker Coulter Fld	6/5330	02/11/16	RNAV (GPS) RWY 3, Amdt 3A.
31–Mar–16 ...	CO	Meeker	Meeker Coulter Fld	6/5331	02/11/16	VOR–A, Amdt 1.
31–Mar–16 ...	NC	Wilmington	Wilmington Intl	6/5562	02/16/16	RNAV (GPS) 35, Amdt 3A.
31–Mar–16 ...	VA	Marion/Wytheville ...	Mountain Empire	6/6183	02/16/16	LOC RWY 26, Amdt 2A.
31–Mar–16 ...	VA	Marion/Wytheville ...	Mountain Empire	6/6184	02/16/16	RNAV (GPS) RWY 26, Orig-A.
31–Mar–16 ...	ME	Rockland	Knox County Rgnl	6/6882	02/16/16	NDB RWY 31, Orig-C.
31–Mar–16 ...	GA	Carrollton	West Georgia Rgnl—O V Gray Field.	6/7059	02/16/16	RNAV (GPS) RWY 17, Orig-A.
31–Mar–16 ...	GA	Carrollton	West Georgia Rgnl—O V Gray Field.	6/7060	02/16/16	RNAV (GPS) RWY 35, Orig.
31–Mar–16 ...	VA	Crewe	Crewe Muni	6/7076	02/16/16	RNAV (GPS) RWY 15, Orig.

[FR Doc. 2016–06327 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31067; Amdt. No. 3687]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2016.

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

For Examination

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

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

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

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

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less

than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on March 11, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 28 APRIL 2016

Las Vegas, NV, Mc Carran Intl, ILS OR LOC RWY 25R, Amdt 18
Fremont, OH, Sandusky County Rgnl, RNAV (GPS) RWY 6, Amdt 1
Allentown, PA, Lehigh Valley Intl, ILS OR LOC RWY 13, Amdt 8
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) RWY 13, Amdt 2
Bloomsburg, PA, Bloomsburg Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Winchester, VA, Winchester Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1

Effective 26 MAY 2016

Butler, AL Butler-Choctaw County, RNAV (GPS) RWY 12, Amdt 1
Butler, AL Butler-Choctaw County, RNAV (GPS) RWY 30, Amdt 1 Butler, AL Butler-Choctaw County, Takeoff Minimums and Obstacle DP, Amdt 1 Canon City, CO, Fremont County, Takeoff Minimums and Obstacle DP, Amdt 2
Morris, IL, Morris Muni—James R Washburn Field, RNAV (GPS) RWY 18, Amdt 1
Morris, IL, Morris Muni—James R Washburn Field, RNAV (GPS) RWY 36, Amdt 2
Morris, IL, Morris Muni—James R Washburn Field, Takeoff Minimums and Obstacle DP, Amdt 1
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 5, Amdt 1, CANCELED
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 14, Amdt 2A, CANCELED
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 23, Orig-A, CANCELED
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 32, Orig-A, CANCELED
Monroe, MI, Custer, VOR RWY 3, Amdt 2, CANCELED
Caruthersville, MO, Caruthersville Memorial, Takeoff Minimums and Obstacle DP, Orig-A
Smithfield, NC, Johnston Regional, ILS Y OR LOC Y RWY 3, Amdt 1
Smithfield, NC, Johnston Regional, RNAV (GPS) RWY 3, Amdt 2
Whiteville, NC, Columbus County Muni, RNAV (GPS) RWY 24, Orig
New York, NY, La Guardia, VOR–F, Amdt 3B, CANCELED
Bucyrus, OH, Port Bucyrus-Crawford County, RNAV (GPS) RWY 4, Orig
Bucyrus, OH, Port Bucyrus-Crawford County, RNAV (GPS) RWY 22, Orig
Bucyrus, OH, Port Bucyrus-Crawford County, VOR RWY 22, Amdt 5
Fayetteville, TN, Fayetteville Muni, NDB RWY 20, Amdt 5A, CANCELED
Fayetteville, TN, Fayetteville Muni, SDF RWY 20, Amdt 4, CANCELED
Palacios, TX, Palacios Muni, Takeoff Minimums and Obstacle DP, Orig-A
Newport News, VA, Newport News/Williamsburg Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Lyndonville, VT, Caledonia County, NDB RWY 2, Amdt 4B, CANCELED
Deer Park, WA, Deer Park, RNAV (GPS) RWY 16, Orig
Port Angeles, WA, William R Fairchild Intl, ILS OR LOC RWY 8, Amdt 3
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 8, Amdt 1
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 26, Amdt 1
Port Angeles, WA, William R Fairchild Intl, WATTR SIX, Graphic DP

[FR Doc. 2016–06326 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31064; Amdt. No. 3685]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 24, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2016.

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

For Examination

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

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

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

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

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 26, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 31 MARCH 2016

Stuttgart, AR, Stuttgart Muni, NDB RWY 18, Amdt 10C, CANCELED
Durango, CO, Durango-La Plata County, ILS OR LOC/DME RWY 3, Amdt 5
Durango, CO, Durango-La Plata County, RNAV (GPS) RWY 3, Amdt 1
Durango, CO, Durango-La Plata County, VOR/DME RWY 3, Amdt 5A, CANCELED
Groton (New London), CT, Groton-New London, ILS OR LOC RWY 5, Amdt 11D
Groton (New London), CT, Groton-New London, RNAV (GPS) RWY 5, Orig-D
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, ILS OR LOC RWY 36R, Amdt 4
Griffin, GA, Griffin-Spalding County, RNAV (GPS) RWY 14, Orig-D
Jefferson, GA, Jackson County, VOR/DME RWY 35, Amdt 3
Washington, IA, Washington Muni, NDB RWY 31, Amdt 1A, CANCELED
Washington, IA, Washington Muni, RNAV (GPS) RWY 13, Orig
Washington, IA, Washington Muni, RNAV (GPS) RWY 18, Amdt 1
Washington, IA, Washington Muni, RNAV (GPS) RWY 31, Orig
Washington, IA, Washington Muni, RNAV (GPS) RWY 36, Amdt 1

Washington, IA, Washington Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Indianapolis, IN, Eagle Creek Airpark, Takeoff Minimums and Obstacle DP, Amdt 3
Winamac, IN, Arens Field, RNAV (GPS) RWY 9, Amdt 1
Winamac, IN, Arens Field, RNAV (GPS) RWY 27, Amdt 1
Independence, KS, Independence Muni, RNAV (GPS) RWY 17, Amdt 1
Springfield, KY, Lebanon Springfield-George Hoerter Field, RNAV (GPS) RWY 11, Amdt 1
Springfield, KY, Lebanon Springfield-George Hoerter Field, RNAV (GPS) RWY 29, Amdt 1
Springfield, KY, Lebanon Springfield-George Hoerter Field, Takeoff Minimums and Obstacle DP, Amdt 3
Cumberland, MD, Greater Cumberland Rgnl, LOC–A, Amdt 4, CANCELED
Cumberland, MD, Greater Cumberland Rgnl, LOC/DME RWY 23, Amdt 7
Cumberland, MD, Greater Cumberland Rgnl, RNAV (GPS) RWY 5, Amdt 2
Cumberland, MD, Greater Cumberland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Blue Earth, MN, Blue Earth Muni, NDB OR GPS RWY 34, Amdt 1, CANCELED
Blue Earth, MN, Blue Earth Muni, RNAV (GPS) RWY 34, Orig
Blue Earth, MN, Blue Earth Muni, Takeoff Minimums and Obstacle DP, Orig
Park Rapids, MN, Park Rapids Muni-Konshok Field, VOR RWY 31, Amdt 14A, CANCELED
Warroad, MN, Warroad Intl Memorial, RNAV (GPS) RWY 13, Amdt 1
St Louis, MO, Spirit of St Louis, ILS OR LOC RWY 8R, Amdt 14A
St Louis, MO, Spirit of St Louis, ILS OR LOC RWY 26L, Orig-C
St Louis, MO, Spirit of St Louis, NDB RWY 8R, Amdt 11E
St Louis, MO, Spirit of St Louis, NDB RWY 26L, Amdt 3A
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 8L, Orig-A
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 8R, Orig-A
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 26L, Orig-B
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 26R, Orig-A
Greenville, MS, Greenville Mid-Delta, VOR/DME RWY 18L, Amdt 13A, CANCELED
Bowman, ND, Bowman Regional, RNAV (GPS) RWY 13, Orig
Bowman, ND, Bowman Regional, RNAV (GPS) RWY 31, Orig
Bowman, ND, Bowman Regional, Takeoff Minimums and Obstacle DP, Orig
Columbus, OH, Port Columbus Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT I), ILS RWY 28L (SA CAT II), Amdt 30
Wilmington, OH, Wilmington Air Park, ILS OR LOC RWY 22R, ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 5B
Wilmington, OH, Wilmington Air Park, NDB RWY 4L, Amdt 2E, CANCELED
Wilmington, OH, Wilmington Air Park, NDB RWY 22R, Amdt 7E, CANCELED
Wilmington, OH, Wilmington Air Park, VOR RWY 4L, Amdt 6, CANCELED
Wilmington, OH, Wilmington Air Park, VOR RWY 22R, Amdt 4C, CANCELED
Wilmington, OH, Wilmington Air Park, VOR/DME RWY 22R, Amdt 5, CANCELED
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 18L, Amdt 16
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 18R, Amdt 7D
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (CAT II), Amdt 29E
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 8, Amdt 2A
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 18L, Amdt 1C
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 18R, Amdt 1D
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 26, Amdt 3D
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 36L, Orig-D
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 36R, Amdt 1B
Tulsa, OK, Tulsa Intl, Takeoff Minimums and Obstacle DP, Amdt 1A
Dillon, SC, Dillon County, NDB RWY 7, Amdt 5A, CANCELED
Centerville, TN, Centerville Muni, VOR RWY 2, Amdt 6, CANCELED
Centerville, TN, Centerville Muni, VOR/DME OR GPS RWY 2, Amdt 2, CANCELED
Sparta, TN, Upper Cumberland Rgnl, RNAV (GPS) RWY 4, Orig-C
Dallas, TX, Dallas Executive, VOR RWY 31, Amdt 1, CANCELED
Dallas, TX, Dallas Love Field, ILS OR LOC RWY 31L, Amdt 22
Dallas, TX, Dallas Love Field, ILS OR LOC RWY 31R, ILS RWY 31R (SA CAT I), Amdt 6
Dallas, TX, Dallas Love Field, ILS Y OR LOC Y RWY 13L, Amdt 33
Dallas, TX, Dallas Love Field, ILS Y OR LOC Y RWY 13R, Amdt 5A
Dallas, TX, Dallas Love Field, RNAV (GPS) Y RWY 13L, Amdt 1B
Dallas, TX, Dallas Love Field, RNAV (GPS) Y RWY 13R, Orig-A
Dallas, TX, Dallas Love Field, RNAV (GPS) Y RWY 31L, Amdt 1D
Dallas, TX, Dallas Love Field, RNAV (GPS) Y RWY 31R, Amdt 2
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13L, Amdt 3
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13R, Amdt 1B
Dallas, TX, Dallas Love Field, RNAV (RNP) W RWY 13L, Orig-B
Dallas, TX, Dallas Love Field, RNAV (RNP) W RWY 13R, Orig-C
Dallas, TX, Dallas Love Field, RNAV (RNP) X RWY 13L, Orig-B
Dallas, TX, Dallas Love Field, RNAV (RNP) X RWY 13R, Orig-C
Dallas, TX, Dallas Love Field, RNAV (RNP) Z RWY 31L, Orig-B
Dallas, TX, Dallas Love Field, RNAV (RNP) Z RWY 31R, Orig-B
Wichita Falls, TX, Kickapoo Downtown, RNAV (GPS) RWY 35, Amdt 1
Logan, UT, Logan-Cache, ILS OR LOC/DME RWY 17, Amdt 1
Logan, UT, Logan-Cache, RNAV (GPS) RWY 17, Amdt 2
Logan, UT, Logan-Cache, RNAV (GPS) RWY 35, Amdt 3
Auburn, WA, Auburn Muni, AUBURN ONE Graphic DP, CANCELED
Cumberland, WI, Cumberland Muni, GPS RWY 27, Orig, CANCELED
Cumberland, WI, Cumberland Muni, RNAV (GPS) RWY 9, Orig
Cumberland, WI, Cumberland Muni, RNAV (GPS) RWY 27, Orig
Cumberland, WI, Cumberland Muni, Takeoff Minimums and Obstacle DP, Orig
Lake Geneva, WI, Grand Geneva Resort, Takeoff Minimums and Obstacle DP, Amdt 1
Wisconsin Rapids, WI, Alexander Field South Wood County, NDB RWY 30, Amdt 9A, CANCELED

Effective 28 APRIL 2016

Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 32, Amdt 1C

RESCINDED: On February 19, 2016 (81 FR 8394), the FAA published an Amendment in Docket No. 31058, Amdt No. 3679, to Part 97 of the Federal Aviation Regulations, under section 97.23. The following entries for Greenville, MS, Rochester, NY, and Aiken, SC, effective March 3, 2016, are hereby rescinded in their entirety:

Greenville, MS, Greenville Mid-Delta, VOR/DME RWY 18L, Amdt 13A, CANCELED
Rochester, NY, Greater Rochester Intl, VOR/DME RWY 4, Amdt 4A, CANCELED
Aiken, SC, Aiken Muni, VOR/DME–A, Amdt 1A, CANCELED

[FR Doc. 2016–06324 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 160106014–6262–02]

RIN 0694–AG82

Temporary General License

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule creates a temporary general license that temporarily restores the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) to two entities added to the Entity List on March 8, 2016. BIS is issuing this rule in connection with a request to remove or modify the listing.

DATES: This rule is effective March 24, 2016 through June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce,

Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

This final rule does not amend the Entity List, but modifies an entry on the Entity List as described further below by adding a temporary general license for two entities recently added to the Entity List.

Addition of ZTE to the Entity List and Overview of Requests for Removal

BIS added Zhongxing Telecommunications Equipment (ZTE) Corporation (ZTE Corporation), ZTE Kangxun Telecommunications Ltd. (ZTE Kangxun), and two other entities to the Entity List on March 8, 2016. Details regarding the scope of the listing are at 81 FR 12004 (Mar. 8, 2016), (''Additions to the Entity List''). Each person on the Entity List has the right to request that its listing on the Entity List be removed or modified. Instructions on the request for removal or modification process are found at § 744.16 of the EAR.

The ERC reviews such requests in accordance with the procedures set forth in Supplement No. 5 to part 744. Specifically, as part of its review of requests to remove or modify a listing, the ERC will consider whether the circumstances that led to the decision to add the entity to the Entity List continue to exist. This includes reviewing whether there continues to be reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States—the standard for revising the Entity List established in § 744.11(b) of the EAR. In connection with a request by ZTE Corporation and ZTE Kangxun to remove or modify their listings on the Entity List submitted to BIS pursuant to the foregoing provisions, and binding commitments made by these entities to the U.S. Government, BIS is modifying the effect of their entries on the Entity List by adding a temporary general license to restore temporarily the *status quo ante* licensing policy pertaining to exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun. This final rule does not apply to the other two entities added to Supplement No. 4 to part 744 (The Entity List) on March 8, 2016.

Specifically, this final rule makes the following change to the EAR:

Addition of Temporary General License

This final rule amends the EAR by adding Supplement No. 7 to Part 744 to create a Temporary General License that returns until June 30, 2016 the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun to that which was in effect just prior to their having been added to the Entity List on March 8, 2016. For example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.

The impact of this temporary general license is that the license and other requirements specified in § 744.11 and Supplement No. 4 to part 744 pertaining to exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun do not apply during the period the temporary general license is in effect. This means that the license requirements, license review policies, and license exceptions that applied on March 7, 2016, are applicable regarding exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun until June 30, 2016, unless amended. However, the temporary general license does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR, such as those specified in §§ 744.2, 744.3 and 744.4 of the EAR. For example, this temporary general license does not relieve persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally, this temporary general license does not relieve persons of their obligation to apply for export, reexport, or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license

applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). If this rule were delayed to allow for notice and comment and a delay in effective date, then the national security and foreign policy objectives of this rule would be harmed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

■ 2. Add Supplement No. 7 to part 744 to read as follows:

SUPPLEMENT NO. 7 TO PART 744—TEMPORARY GENERAL LICENSE

Notwithstanding the requirements and other provisions of supplement 4 to part 744, which became effective on March 8, 2016, the licensing and other requirements in the EAR as of March 7, 2016, pertaining to exports, reexports, and transfers (in-country) of items ''subject to the EAR'' to Zhongxing Telecommunications Equipment (ZTE) Corporation, ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China, and ZTE Kangxun Telecommunications Ltd., 2/3 Floor, Suite A, ZTE Communication Mansion Keji (S) Road, Hi-New Shenzhen, 518057 China, are restored as of March 24, 2016 and through June 30, 2016. Thus, for example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.

Dated: March 21, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–06689 Filed 3–21–16; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–8–000; Order No. 823]

Relay Performance During Stable Power Swings Reliability Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission approves Reliability Standard PRC–026–1 (Relay Performance During Stable Power Swings), submitted by the North American Electric Reliability Corporation. Reliability Standard PRC–026–1 is designed to ensure that applicable entities use protective relay systems that can differentiate between faults and stable power swings.

DATES: This rule will become effective May 23, 2016.

FOR FURTHER INFORMATION CONTACT:

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Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 823

Final Rule

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves Reliability Standard PRC–026–1 (Relay Performance During Stable Power Swings).[1] The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), developed and submitted Reliability Standard PRC–026–1 for Commission approval. Reliability Standard PRC–026–1 applies to planning coordinators and to generator owners and transmission owners that apply certain load-responsive protective relays in specific, identified circumstances. Reliability Standard PRC–026–1 is designed to ensure the use of protective relay systems that can differentiate between faults and stable power swings.

2. The Commission determines that Reliability Standard PRC–026–1 satisfies the directive in Order No. 733 concerning undesirable relay operation due to power swings.[2] The Commission concludes that Reliability Standard PRC–026–1 provides an equally effective and efficient alternative to the Order No. 733 directive requiring the use of protective relay systems that can differentiate between faults and stable power swings and, when necessary, retirement of protective relay systems that cannot meet this requirement.[3]

3. The Commission approves NERC's assigned violation risk factors, violation

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

[2] *Transmission Relay Loadability Reliability Standard,* Order No. 733, 130 FERC ¶ 61,221, at P 153 (2010), *order on reh'g and clarification,* Order No. 733–A, 134 FERC ¶ 61,127, *order on reh'g and clarification,* Order No. 733–B, 136 FERC ¶ 61,185 (2011).

[3] *Id.* P 150.

severity levels and implementation plan.

I. Background

A. Mandatory Reliability Standards and Order No. 733 Directives

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[4] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6]

5. On March 18, 2010, the Commission approved Reliability Standard PRC–023–1 (Transmission Relay Loadability) in Order No. 733. The Commission also directed NERC to develop a new Reliability Standard that required the use of protective relay systems that can differentiate between faults and stable power swings and, when necessary, the retirement of protective relay systems that cannot meet this requirement.[7] In Order No. 733, the Commission cited the findings of both NERC and the U.S.-Canada Power System Outage Task Force on the causes of the 2003 Northeast Blackout, explaining that the cascade during this event was accelerated by zone 2 and zone 3 relays that tripped facilities out of service because these devices could not distinguish between a dynamic, but stable, power swing and an actual fault.[8] While the Commission recognized that addressing stable power swings is a complex issue, Order No. 733 observed that there was no Reliability Standard to address relays tripping for stable power swings despite their contribution to the 2003 Northeast Blackout. Accordingly, the Commission directed NERC to develop a Reliability Standard to address undesirable relay operation due to stable power swings.[9]

6. On February 17, 2011, the Commission denied rehearing in Order No. 733–A, stating that ''[w]e continue to believe that not addressing stable power swings constitutes a gap in the current Reliability Standards and must be addressed.'' [10] Accordingly, the Commission affirmed the directive in Order No. 733 that NERC develop a Reliability Standard addressing stable power swings.[11] The Commission clarified that it did not require a Reliability Standard containing an absolute obligation to prevent protection relays from operating unnecessarily during stable power swings or an across-the-board elimination of all zone 3 relays; the Commission only required the development of a Reliability Standard that addresses protection systems that are vulnerable to stable power swings (resulting from Category B and Category C contingencies from the NERC Planning Standards in place at that time) that result in inappropriate tripping.[12] In Order No. 733–B, the Commission denied further clarification on this issue.

B. NERC Petition and Reliability Standard PRC–026–1

7. On December 31, 2014, NERC submitted a petition seeking approval of Reliability Standard PRC–026–1, as well as the associated violation risk factors, violation severity levels and implementation plan.[13] NERC avers that Reliability Standard PRC–026–1 satisfies the Order No. 733 directive to develop a new Reliability Standard that requires the use of protective relay systems that can differentiate between faults and stable power swings. According to NERC, Reliability Standard PRC–026–1 sets forth requirements that prevent the unnecessary tripping of bulk electric system elements in response to stable power swings.[14] NERC further explains that the identification of bulk electric system elements with protection systems at-risk of operating as a result of a stable or unstable power swing and the subsequent review by the applicable generator owner or transmission owner ''provides assurance that relays will continue to be secure for stable power swings if any changes in system impedance occur.''[15]

8. According to NERC, Reliability Standard PRC–026–1 is ''directly responsive'' to the Order No. 733 directive that NERC develop a Reliability Standard addressing undesirable relay operation due to stable power swings.[16] However, NERC explains that the Reliability Standard PRC–026–1 ''includes an alternative to the Commission's approach to require 'the use of protective relay systems that can differentiate between faults and stable power swings and, when necessary, phases out protective relay systems that cannot meet this requirement.' '' [17] NERC notes that in Order No. 733–A, the Commission clarified that it had not intended ''to prohibit NERC from exercising its technical expertise to develop a solution to an identified reliability concern that is equally effective and efficient as the one proposed in Order No. 733.'' [18] In support of its alternative solution, NERC states that ''it is generally preferable to emphasize dependability over security when it is not possible to ensure both for all possible system conditions.'' [19] NERC also avers that ''[p]rohibiting use of certain types of relays, such as those protective relay systems that cannot differentiate between faults and stable power swings, may have unintended negative outcomes for Bulk-Power System reliability.'' [20]

9. Reliability Standard PRC–026–1 has four requirements and two attachments. NERC explains that Attachment A ''provides clarity on which load-responsive protective relay functions are applicable'' under the standard.[21] Specifically, Attachment A provides that Reliability Standard PRC–026–1 applies to:

> any protective functions which could trip instantaneously or with a time delay of less than 15 cycles on load current (*i.e.,* ''load-responsive''). . . .

According to NERC, the 15 cycle time delay ''is representative of an expected power swing having a slow slip rate of 0.67 Hertz (Hz) and is the average time that a stable power swing with that slip rate would enter the relay's characteristic, reverse direction, and then exit the characteristic before the time delay expired.'' [22] NERC states that the proposed standard does not apply to ''functions that are either immune to power swings, block power swings, or prevent non-immune protection function operation due to supervision of

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[4] 16 U.S.C. 824(d) and (e).

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

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

[7] Order No. 733, 130 FERC ¶ 61,221 at P 150.

[8] *Id.* PP 3–4, 130 (citing U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, at 80 (2004); and August 14, 2003 Blackout: NERC Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts, at 13 (2004)).

[9] *Id.* P 153.

[10] Order No. 733–A, 134 FERC ¶ 61,127 at P 104.

[11] *Id.*

[12] *Id.* P 107.

[13] Reliability Standard PRC–026–1 is available on the Commission's eLibrary document retrieval system in Docket No. RM15–8–000 and on the NERC Web site, *www.nerc.com.*

[14] *See* NERC Petition at 4.

[15] *Id.*

[16] *Id.* at 23 (citing Order No. 733, 130 FERC ¶ 61,221 at P 153).

[17] *Id.* (quoting Order No. 733, 130 FERC ¶ 61,221 at P 162).

[18] *Id.* at 11 (citing Order No. 733–A, 134 FERC ¶ 61,127 at P 11).

[19] *Id.* at 24.

[20] *Id.*

[21] *Id.* at 31.

[22] *Id.* at 30.

the function.'' [23] Attachment B contains the criteria for the evaluation of load-responsive protective relays that are within the scope of Reliability Standard PRC–026–1.[24]

10. Under NERC's proposed implementation plan for Reliability Standard PRC–026–1, Requirement R1 would become effective 12 months after Commission approval, and Requirements R2, R3 and R4 become effective 36 months after Commission approval.

C. Notice of Proposed Rulemaking

11. On September 17, 2015, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard PRC–026–1 as just, reasonable, not unduly discriminatory or preferential and in the public interest.[25] The NOPR stated that Reliability Standard PRC–026–1 appears to adequately address the Commission's directive in Order No. 733 by helping to prevent the unnecessary tripping of bulk electric system elements in response to stable power swings. The NOPR also proposed to accept NERC's proposed approach as an equally effective and efficient method to achieve the reliability goal underlying the Commission's Order No. 733 directive.

12. In the NOPR, the Commission also expressed concern that NERC's exclusion of load responsive relays with a time delay of 15 cycles or greater, as proposed in Attachment A to Reliability Standard PRC–026–1, could result in a gap in reliability. The Commission explained that, pursuant to Attachment A, Reliability Standard PRC–026–1 applies to ''any protective functions which could trip instantaneously or with a time delay of less than 15 cycles on load current (*i.e.,* ''load-responsive''). . . .'' The Commission further explained that, although NERC offered a technical rationale for the less than 15 cycle threshold, explaining that load-responsive relays set to trip instantaneously or with a ''slight time delay'' are most susceptible to power swings, NERC did not supply information on the burden of including relays with a time delay of 15 cycles or greater under Reliability Standard PRC–026–1.[26] The Commission stated that the lack of this information is significant in light of the fact that an entity would not be required under Reliability Standard PRC–026–1 to investigate an element identified by a planning coordinator as potentially susceptible to power swings or investigate an element following a known power swing trip if the relay(s) involved have a time delay of 15 cycles or greater.[27]

13. The NOPR requested comments on the potential burden of modifying the applicability of Reliability Standard PRC–026–1 to include relays with a time delay of 15 cycles or greater in instances where either: (1) An element has been identified by a planning coordinator as potentially susceptible to power swings; or (2) an entity becomes aware of a bulk electric system element that tripped in response to a stable or unstable power swing due to the operation of its protective relay(s), even if the element was not previously identified by the planning coordinator. The Commission stated that it may direct NERC to develop modifications to Reliability Standard PRC–026–1 depending on the response to the questions on the applicability of Reliability Standard PRC–026–1.

14. In response to the NOPR, seven entities submitted comments. A list of commenters appears in Appendix A. The comments have informed our decision making in this Final Rule.

II. Discussion

15. Pursuant to section 215(d)(2) of the FPA, we approve Reliability Standard PRC–026–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve NERC's proposed violation risk factors, violation severity levels and implementation plan. While Reliability Standard PRC–026–1 does not prohibit the use of relays that cannot differentiate between faults and stable power swings, Reliability Standard PRC–026–1 addresses the prevention of unnecessary tripping of bulk electric system elements in response to stable power swings. Accordingly, we approve NERC's approach as an equally effective and efficient method to achieve the reliability goal underlying the Commission's directive in Order No. 733.

16. As discussed below, based on the NOPR comments, we conclude that the potential reliability gap identified in the NOPR, resulting from the exclusion of load responsive relays with a time delay of 15 cycles or greater as proposed in Attachment A to Reliability Standard PRC–026–1, is adequately addressed by the provisions of Reliability Standards TPL–001–4 and PRC–004–4.[28]

Load Responsive Relays With a Delay of 15 Cycles or Greater

Comments

17. NERC, Luminant, NAGF, Tri-State, Idaho Power and EEI support the Commission's proposal to approve Reliability Standard PRC–026–1. In response to the NOPR's question regarding the burden of expanding the applicability of Reliability Standard PRC–026–1 to include load responsive relays with a time delay of 15 cycles or greater, NERC and other commenters offer two responses. First, commenters maintain that the 15 cycle limitation in Reliability Standard PRC–026–1 does not result in a reliability gap because of how Reliability Standard PRC–026–1 interacts with other Reliability Standards to address the Commission's concern. Second, commenters assert that expanding the applicability of Reliability Standard PRC–026–1 would result in an unnecessary, significant burden or risk to reliability.

18. NERC, EEI, Tri-State and Luminant claim that no reliability gap results from the 15 cycle limitation in Reliability Standard PRC–026–1 because planning assessments required by Reliability Standard TPL–001–4 already address the Commission's concerns regarding relays with a time delay of 15 cycles or greater in instances where an element has been identified by a planning coordinator as potentially susceptible to power swings.[29] Specifically, NERC explains that a planning assessment conducted pursuant to Reliability Standard TPL–001–4 ''will reveal Elements with load-responsive protective relays having time delays of 15 cycles or greater that trip due to power swings.'' [30] NERC further contends that, where an element that trips causes a violation of Reliability Standard TPL–001–4 performance criteria, ''the Planning Coordinator is required to mitigate these conditions through a Corrective Action Plan.'' [31] EEI agrees with NERC's assessment and identifies Reliability Standard TPL–001–4, Requirement R4, Subpart 4.1.2 and Requirement R2, Subpart 2.7 as the corresponding requirements.[32]

[23] *Id.* at 31.

[24] *See id.* at 35–38.

[25] *Relay Performance During Stable Power Swings Reliability Standard,* Notice of Proposed Rulemaking, 80 FR 57549 (Sept. 24, 2015), 152 FERC ¶ 61,200 (2015).

[26] *See* NOPR, 152 FERC ¶ 61,200 at P 14 (citing NERC Petition at 29–30).

[27] *Id.*

[28] As of January 1, 2016, all requirements of Reliability Standard TPL–001–4 are subject to enforcement. Reliability Standard PRC–004–4 was approved May 29, 2015 and will be subject to enforcement July 1, 2016.

[29] NERC Comments at 5–6. *See also* Tri-State Comments at 4; Luminant Comments at 3.

[30] NERC Comments at 6.

[31] *Id.*

[32] EEI Comments at 7.

19. In addition, NERC and industry commenters state that Reliability Standard PRC–004–4 addresses the Commission's concern regarding situations where a bulk electric system element trips in response to a stable or unstable power swing due to the operation of its protective relay(s).[33] Specifically, NERC explains that tripping unnecessarily ''due to an actual stable power swing would be classified as a Misoperation under PRC–004–4 (*Protection System Misoperation Identification and Correction*).'' [34] NERC explains that a ''Generator Owner and Transmission Owner are required to develop a corrective action plan to address the cause(s) of the Misoperation, for example, tripping due to a load-responsive protective relay set with a time delay of 15 cycles or greater, unless reliability would not be improved.'' [35]

20. Regarding the potential burden of expanding the applicability of Reliability Standard PRC–026–1 to cover relays with a time delay of 15 cycles or greater, NERC and industry commenters state that expanding the applicability of Requirement R1, Criteria 4 (element has been identified by a planning coordinator) would increase the burden on transmission owners and generator owners.[36] NERC states that there would be no increase in burden for the planning coordinator because the planning coordinator is required by Reliability Standard TPL–001–4, Requirement R4 ''to perform contingency analyses based on computer simulation models for the Stability portion of the annual Planning Assessment.'' [37] As noted above, NERC explains that where an element that trips during the annual planning assessment causes a violation of Reliability Standard TPL–001–4 performance criteria, ''the Planning Coordinator is required to mitigate these conditions through a Corrective Action Plan.'' [38]

21. NERC, however, states that expanding the applicability of Reliability Standard PRC–026–1 to cover relays with a time delay of 15 cycles or greater would ''place additional burden on the Generator Owner and Transmission Owner for any Elements that are identified using Requirement R1, Criteria 4.'' [39] NERC explains that the additional burden ''would be determined by the increase in the quantity of load-responsive protective relays applied to that Element beyond what is proposed in PRC–026–1 (*i.e.* load-responsive protective relays with time delays of 15 cycles or greater).'' NERC continues that the ''increase in burden could be on the order of two to three times in magnitude to address zone 2 (not communication-aided) and application of reverse zone and/or forward zone 4 remote back-up time delayed elements.'' [40]

22. EEI contends that the additional burden would ''vary greatly by entity size and asset configuration, however, the work associated with this effort would not be inconsequential and would consume significant dollars for large entities while tying up critical and often scarce engineering resources across the industry.'' [41] EEI explains that even though the Commission proposes to limit the analysis to the two scenarios identified in the NOPR, the proposal would increase the number of relay elements evaluated by 100 to 200 percent at impacted transmission lines, generators and transformer terminals.[42]

23. ITC, while not taking a position on the merits of the particular requirements of Reliability Standard PRC–026–1, argues ''that studies and information now available concerning relay performance during stable power swings controvert the Commission's at-the-time reasonable determination in Order No. 733 that a Standard to address relay performance during stable power swings was warranted.'' [43] In particular, ITC ''urge[s] the Commission to consider the [NERC System Protection and Control Subcommittee] Report findings in issuing its final rule in this proceeding.'' [44] ITC asserts that the SPSC Report undercuts the rationale for promulgating Reliability Standard PRC–026–1 and argues that ''the Commission should reconsider the necessity of PRC–026–1, particularly in light of the burden NERC has determined the new Standard would impose.'' [45]

Commission Determination

24. We find that Reliability Standard PRC–026–1 addresses the Commission's directive in Order No. 733 by providing measures to mitigate the unnecessary tripping of bulk electric system elements in response to stable power swings. While it does not prohibit the use of relays that cannot differentiate between faults and stable power swings, we conclude that Reliability Standard PRC–026–1's approach is an equally effective and efficient method to achieve the reliability goal underlying the Commission's directive in Order No. 733.

25. While ITC asks that the Commission reconsider the necessity of PRC–026–1 in light of the SPSC Report, the Commission continues to believe in the necessity of a Reliability Standard that addresses the performance of relays during stable power swings. In response to ITC's comments, the recommendations from the 2013 SPSC Report were used in the development of Reliability Standard PRC–026–1. As noted by NERC, Reliability Standard PRC–026–1 ''is based on and is consistent with the recommendations found in the [SPSC] Report.'' [46] Accordingly, we conclude that Reliability Standard PRC–026–1 reflects the recommendations outlined in the SPSC Report.

26. Based on the NOPR comments, we are persuaded that the potential reliability gap identified in the NOPR, resulting from the exclusion of load responsive relays with a time delay of 15 cycles or greater as proposed in Attachment A to Reliability Standard PRC–026–1, is adequately addressed by requirements of Reliability Standards TPL–001–4 (Transmission System Planning Performance Standards) and PRC–004–4 (Protection System Misoperation Identification and Correction). We agree with commenters that these Reliability Standards adequately address the risk posed by load responsive relays with a time delay of 15 cycles or greater in the two cases identified in the NOPR. Accordingly, we do not direct any modifications to Reliability Standard PRC–026–1 at this time.

27. First, where an element has been identified by a planning coordinator as potentially susceptible to power swings, Reliability Standard TPL–001–4 addresses the NOPR's concern by requiring applicable entities to both (1) identify elements with load-responsive protective relays having time delays of 15 cycles or greater that trip due to power swings and (2) mitigate through a corrective action plan where Reliability Standard TPL–001–4 performance criteria are not met. Specifically, Reliability Standard TPL–001–4 sets forth the parameters for

[33] NERC Comments at 9–10. *See also* EEI Comments at 8; Tri-State Comments at 5.

[34] NERC Comments at 9.

[35] *Id.*

[36] *See id.* at 7, 9. *See also* EEI Comments at 6; Luminant Comments at 4; Idaho Power Comments at 2.

[37] NERC Comments at 5.

[38] *Id.*

[39] *Id.* at 6.

[40] *Id.* at 7.

[41] EEI Comments at 6.

[42] *Id.*

[43] ITC Comments at 3.

[44] *Id.* (referencing NERC System Protection and Control Subcommittee, ''Protection System Response to Power Swings'' (2013) (SPSC Report)).

[45] *Id.* at 4.

[46] NERC Petition at 15–16.

certain studies associated with the annual planning assessment that are intended to identify, among other things, situations where a transmission system element trips due to an impedance swing resulting from a generator pulling out of synchronization.[47] An element that trips due to the criteria in Requirement R4, Subpart 4.1.2 fails to meet the performance requirements in Table 1 of Reliability Standard TPL–001–4. When an element fails to meet the performance requirements in Table 1, the planning coordinator is required to develop a ''Corrective Action Plan(s) addressing how the performance requirements will be met.'' [48] Therefore, Reliability Standard TPL–001–4 addresses the concerns raised in the NOPR regarding the exclusion of load responsive relays with a time delay of 15 cycles or greater from Requirement R1 of Reliability Standard PRC–026–1.

28. Second, where an entity becomes aware of a bulk electric system element that tripped in response to a stable or unstable power swing due to the operation of its protective relay(s), we agree with commenters that the tripping would be classified as a misoperation under Reliability Standard PRC–004–4.[49] Therefore, the generator owner or transmission owner would be required to develop a corrective action plan to address the cause(s) of the misoperation, which in this case would be tripping due to a load-responsive protective relay set with a time delay of 15 cycles or greater, unless the transmission owner or generation owner ''explains in a declaration why corrective action plans are beyond the entity's control or would not improve BES reliability.'' [50] Specifically, Reliability Standard PRC–004–4 requires entities to investigate and mitigate, through a corrective action plan, any misoperation.[51] A misoperation under Reliability Standard PRC–004–4 includes, in pertinent part, unnecessary trips for non-fault conditions resulting from power swings.[52] Therefore, Reliability Standard PRC–004–4 addresses the concerns raised in the NOPR regarding the exclusion of load responsive relays with a time delay of 15 cycles or greater from Requirement R2, Part 2.2 of Reliability Standard PRC–026–1.

29. Finally, concerns with the potential burden of expanding the applicability of Reliability Standard PRC–026–1 to cover relays with a time delay of 15 cycles or greater in order to address the potential reliability gap identified in the NOPR are moot given our determination above that the potential reliability gap identified in the NOPR is adequately addressed by existing Reliability Standard requirements.

III. Information Collection Statement

30. The FERC–725G [53] information collection requirements contained in this Final Rule are subject to review by the Office of Management and Budget (OMB) regulations under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[54] OMB's regulations require approval of certain informational collection requirements imposed by agency rules.[55] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

31. The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asked that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated. The Commission did not receive any comments on the estimates in the NOPR.

Public Reporting Burden: The Commission approves Reliability Standard PRC–026–1. Reliability Standard PRC–026–1 will impose new requirements for the notification of particular bulk electric system elements from planning coordinator to generator owners and transmissions owners based on given criteria. Generator owners and transmissions owner will evaluate those bulk electric system elements and load-responsive protective relay(s) according to Attachment B criteria and, if a load-responsive protective relay does not meet the Attachment B criteria, the generator owner/transmission owner must develop a corrective action plan. Our estimate below regarding the number of respondents is based on the NERC Compliance Registry as of June 26, 2015. According to the NERC Compliance Registry, NERC has registered 318 transmission owners, 884 generator owners, and 68 planning coordinators. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The total number of unique entities that may be identified as a notification provider (*e.g.* applicable entity) in accordance with proposed Reliability Standard PRC–026–1 will be approximately 1,074 entities registered in the United States as a transmission owner and/or generator owner. The total number of unique entities that may be identified as evidence retention entities (*e.g.* applicable entity) in accordance with proposed Reliability Standard PRC–026–1 will be approximately 1,092 entities registered in the United States as a transmission owner, generator owner and/or planning coordinator. The Commission estimates the annual reporting burden and cost as follows:

[47] *See* Reliability Standard TPL–001–4 (Transmission System Planning Performance Requirements), Requirement R4, Subpart 4.1.2.

[48] *Id.,* Requirement R2, Subpart 2.7.

[49] *See, e.g.,* NERC Comments at 9–10, EEI Comments at 8.

[50] Reliability Standard PRC–004–4 (Protection System Misoperation and Correction), Requirement R5.

[51] *See id.*

[52] *Id.,* Application Guidelines at 22.

[53] The requirements in the RM15–8–000 NOPR were submitted to OMB within FERC–725G3 (OMB Control Number 1902–0285). FERC–725G3 is a temporary collection that enabled timely submission to OMB. The requirements are now being submitted to the information collection intended for these requirements, specifically FERC–725G (OMB Control No. 1902–0252).

[54] 44 U.S.C. 3507(d).

[55] 5 CFR 1320.11.

RM15–8–000 (MANDATORY RELIABILITY STANDARDS—RELIABILITY STANDARD PRC–026–1)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Notifications to GO/TO per Requirement R1	1,074	1	1,074	8, $485.28 [56]	8,592 $521,191	$485.28
Evidence Retention GO/TO/PC	1,092	1	1,092	12, $450.00 [57]	13,104 $491,400	450.00
Total			2,166		21,696 $1,012,591	

Title: FERC–725G, Mandatory Reliability Standards: Reliability Standard PRC–026–1.

Action: Collection of Information.

OMB Control No: 1902–0252.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Responses: One time and on-going.

Necessity of the Information: Reliability Standard PRC–026–1 will implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the Reliability Standard will address undesirable relay operation due to power swings.

32. *Internal review:* The Commission has reviewed the requirements pertaining to the Reliability Standard PRC–026–1 and made a determination that the requirements of this standard are necessary to implement section 215 of the FPA. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

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

34. Comments concerning the information collections approved in this Final Rule and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–0710, fax: (202) 395–7285]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference the docket number of this Final Rule (Docket No. RM15–8–000) in your submission.

IV. Regulatory Flexibility Act Analysis

35. The Regulatory Flexibility Act of 1980 (RFA) [58] generally requires a description and analysis of this Final Rule that will have significant economic impact on a substantial number of small entities. Reliability Standard PRC–026–1 sets forth requirements that prevent the unnecessary tripping of bulk electric system elements in response to stable power swings. As shown in the information collection section, an estimated 1,092 entities are expected to evaluate bulk electric system elements and load-responsive protective relay(s) according to Attachment B criteria of PRC–026–1. Comparison of the applicable entities with the Commission's small business data indicates that approximately 661 are small entities [59] or 60.53 percent of the respondents affected by Reliability Standard PRC–026–1.

36. As discussed above, Reliability Standard PRC–026–1 will serve to enhance reliability by imposing mandatory requirements governing generator relay loadability, thereby reducing the likelihood of premature or unnecessary tripping of generators during system disturbances. The Commission estimates that each of the small entities to whom the Reliability Standard PRC–026–1 applies will incur paperwork and record retention costs of $935.28 per entity (annual ongoing).

37. The Commission does not consider the estimated costs per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that Reliability Standard PRC–026–1 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

V. Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[60] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective,

[56] The estimates for cost per response are derived using the following formula:

Average Burden Hours per Response * $60.66 per Hour = Average Cost per Response. The hourly average of $60.66 assumes equal time is spent by the manager, electrical engineer, and information and record clerk. The average hourly cost (salary plus benefits) is: $37.50 for information and record clerks (occupation code 43–4199), $78.04 for a manager (occupation code 11–0000), and $66.45 for an electrical engineer (occupation code 17–2071). (The figures are taken from the Bureau of Labor Statistics, May 2014 figures at *http://www.bls.gov/oes/current/naics2_22.htm.*)

[57] The average hourly cost (salary plus benefits) is $37.50. The BLS wage category code is 34–4199. This figure is also taken from the Bureau of Labor Statistics, May 2014 figures at *http://www.bls.gov/oes/current/naics2_22.htm.*

[58] 5 U.S.C. 601–612.

[59] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this rule, we apply a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

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

or procedural or that do not substantially change the effect of the regulations being amended.[61] The actions herein fall within this categorical exclusion in the Commission's regulations.

VI. Effective Date and Congressional Notification

39. This Final Rule is effective May 23, 2016. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

VII. Document Availability

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

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

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

By the Commission.

Issued: March 17, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

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

Appendix

COMMENTERS

Abbreviation	Commenter
EEI	Edison Electric Institute.
Idaho Power	Idaho Power Company.
ITC	International Transmission Company.
Luminant	Luminant Generation Company LLC.
NERC	North American Electric Reliability Corporation.
NAGF	North American Generator Forum.
Tri-State	Tri-State Generation and Transmission Association, Inc.

[FR Doc. 2016–06508 Filed 3–23–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 140929814–6136–02]

RIN 0625–AB02

Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the Department) is modifying its regulations pertaining to price adjustments in antidumping duty proceedings. These modifications clarify that the Department does not intend to accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Department, its entitlement to such an adjustment. The Department has further adopted in this final rule a non-exhaustive list of factors that it may consider in determining whether to accept a price adjustment that is made after the time of sale.

DATES: *Effective date:* April 25, 2016. *Applicability date:* This rule will apply to all proceedings initiated on or after April 25, 2016.

FOR FURTHER INFORMATION CONTACT: Jessica Link at (202) 482–1411, James Ahrens at (202) 482–3558, or Melissa Skinner at (202) 482–0461.

SUPPLEMENTARY INFORMATION:

Background

Section 731 of the Tariff Act of 1930, as amended (the Act) provides that when a company is selling foreign merchandise into the United States at less than fair value, and material injury or threat of material injury is found by the International Trade Commission, the Department shall impose an antidumping duty. An antidumping duty analysis involves a comparison of the company's sales price in the United States (known as the export price or constructed export price) with the price or cost in the foreign market (known as the normal value). *See* 19 CFR 351.401(a). *See also* section 772 of the Act (defining export price and constructed export price) and section 773 of the Act (defining normal value). The prices used to establish export price, constructed export price, and normal value involve certain adjustments. *See, e.g.,* 19 CFR 351.401(b). In its May 19, 1997 final rulemaking, the Department promulgated regulatory provisions governing the use of price adjustments in the calculation of export price, constructed export price, and normal value in antidumping duty proceedings. *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296 (May 19, 1997) (''*1997 Final Rule''*). In particular, the Department promulgated the current regulation at 19 CFR 351.102(b)(38), which provides a definition of ''price adjustment.'' In providing this definition, the Department stated that ''[t]his term is intended to describe a category of changes to a price, such as discounts, rebates and post-sale price adjustments, that affect the net outlay of funds by the purchaser.'' *1997 Final Rule,* 62 FR at 27300.

The Department also enacted 19 CFR 351.401(c) that explains how the Department will use a price net of price

[61] 18 CFR 380.4(a)(2)(ii) (2015).

adjustments. In the *1997 Final Rule,* the Department explained that 19 CFR 351.401(c) was intended to ''restate[] the Department's practice with respect to price adjustments, such as discounts and rebates.'' *Id.,* 62 FR at 27344.

The Department also addressed the following comment received on the *1997 Final Rule's* proposed rulemaking, regarding whether ''after the fact'' price adjustments, that were not contemplated at the time of sale, would be accepted under 19 CFR 351.401(c):

> One commenter suggested that, at least for purposes of normal value, the regulations should clarify that the only rebates Commerce will consider are ones that were contemplated at the time of sale. This commenter argued that foreign producers should not be allowed to eliminate dumping margins by providing ''rebates'' only after the existence of margins becomes apparent.
>
> The Department has not adopted this suggestion at this time. We do not disagree with the proposition that exporters or producers will not be allowed to eliminate dumping margins by providing price adjustments ''after the fact.'' However, as discussed above, the Department's treatment of price adjustments in general has been the subject of considerable confusion. In resolving this confusion, we intend to proceed cautiously and incrementally. The regulatory revisions contained in these final rules constitute a first step at clarifying our treatment of price adjustments. We will consider adding other regulatory refinements at a later date.

Id., 62 FR at 27344. Since enacting these regulations, the Department has consistently applied its practice of not granting price adjustments where the terms and conditions were not established and known to the customer at the time of sale (sometimes referred to as determining the ''legitimacy'' of a price adjustment) because of the potential for manipulation of the dumping margins through so-called ''after-the-fact'', or post-sale, adjustments. *See, e.g., Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value,* 79 FR 41979 (July 18, 2014) and accompanying Issues and Decision Memorandum, Cmt. 3; *Lightweight Thermal Paper From Germany: Notice of Final Results of the First Antidumping Duty Administrative Review,* 76 FR 22078 (April 20, 2011) (*Lightweight Thermal Paper from Germany*) and accompanying Issues and Decision Memorandum, Cmt. 3; *Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 70948 (Dec. 7, 2006) and accompanying Issues and Decision Memorandum, Cmt. 1; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* 71 FR 40064 (July 14, 2006) and accompanying Issues and Decision Memorandum, Cmt. 19.

On March 25, 2014, the Court of International Trade issued *Papierfabrik August Koehler AG* v. *United States,* 971 F. Supp. 2d 1246 (Ct. Int'l Trade 2014) (*Koehler AG*), remanding the Department's decision in *Lightweight Thermal Paper from Germany,* noted above. The Court ordered the Department to reconsider Papierfabrik August Koehler AG's rebate program. The Court disagreed with the Department's determination that the regulations permitted it to disregard certain price adjustments, the terms and conditions of which were not established or known to the customer at the time of sale, stating that ''the regulations set forth a broad definition of price adjustment encompassing '*any* change in the price charged for . . . the foreign like product' that 'are reflected in the purchaser's net outlay.' '' 971 F. Supp. 2d at 1251–52 (quoting 19 CFR 351.102(b)(38)) (emphasis added by Court). In accordance with the Court's order, on remand, under protest, the Department granted an adjustment for the rebates at issue. *See Final Results of Redetermination Pursuant to Court Remand, Lightweight Thermal Paper from Germany, Papierfabrik August Koehler AG* v. *United States,* Court No.11–00147, Slip Op.14–31 (Ct. Int'l Trade March 25, 2014), dated June 20, 2014.

On December 31, 2014, the Department published a proposed modification of its regulations, 19 CFR 351.102(b)(38) and 19 CFR 351.401(c), which concern price adjustments in antidumping duty proceedings. *See Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings,* 79 FR 78742 (December 31, 2014) (*Proposed Rule*). The *Proposed Rule* explained the Department's proposal, in light of the Court of International Trade's decision in *Koehler AG,* to clarify that the Department generally will not consider a price adjustment that reduces or eliminates dumping margins unless the party claiming such price adjustment demonstrates that the terms and conditions of the adjustment were established and known to the customer at the time of sale.

The Department received numerous comments on the *Proposed Rule* and has addressed these comments below. The *Proposed Rule,* comments received, and this final rule can be accessed using the Federal eRulemaking portal at *http://www.Regulations.gov* under Docket Number ITA–2014–0001. After analyzing and carefully considering all of the comments that the Department received in response to the *Proposed Rule,* the Department has adopted the modification with certain changes, and is amending its regulations accordingly.

Explanation of Regulatory Provision and Final Modification

The Department is modifying two of its regulations relating to price adjustments in antidumping duty proceedings: the definition of the term ''price adjustment'' in 19 CFR 351.102(b)(38), and the Department's explanation of its use of prices net of price adjustments in 19 CFR 351.401(c).

In the *Proposed Rule,* the Department proposed minor refinements to the definition of price adjustment in 19 CFR 351.102(b)(38). In this final rule, and in light of a party's comment, as discussed in further detail below, the Department is modifying 19 CFR 351.102(b)(38) to refine the definition of price adjustment. In particular, we are including language in 19 CFR 351.102(b)(38) to clarify that a price adjustment is not limited to discounts or rebates, but encompasses other adjustments as well.

Prior to the *Proposed Rule,* 19 CFR 351.401(c) provided an explanation of the Department's use of prices net of price adjustment in calculating export price (or constructed exported price) and normal value (where price is used as the basis for normal value). In the *Proposed Rule,* the Department proposed to modify 19 CFR 351.401(c), in light of the Court of International Trade's decision on *Koehler AG,* in two respects. First, in the first sentence of 19 CFR 351.401(c), the Department proposed language indicating that it would *normally* use a price that is net of any price adjustment. Second, the Department proposed to add a second sentence to 19 CFR 351.401(c) that clarified the Department generally would not consider a price adjustment that reduces or eliminates a dumping margin unless the party claiming such price adjustment demonstrates that the terms and conditions of the adjustment were established and known to the customer at the time of sale.

In the final rule, as discussed below, in light of comments received from interested parties, the Department is modifying 19 CFR 351.401(c) to clarify that the Department does not intend to accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Department, its entitlement to such an adjustment. The Department has further provided in this

final rule, as discussed in further detail below, a non-exhaustive list of factors which it may consider in determining whether to accept price adjustments that are made after the time of sale, also referred to as ''after-the-fact'' or ''post-sale'' adjustments.

Response to Comments on the Proposed Rule

The Department received numerous comments on its *Proposed Rule.* Below is a summary of the comments, grouped by issue category, followed by the Department's response.

1. Whether Any Changes to 19 CFR 351.102(b)(38) and 19 CFR 351.401(c) Are Necessary

Several commenters argue that the *Proposed Rule* is the appropriate response to *Koehler AG* and is necessary to maintain the integrity of the Department's proceedings and to prevent the manipulation of dumping margins through ''after-the-fact'' adjustments. These commenters argue that in *Koehler AG,* the Court improperly found that the plain language of the current regulations precludes the disallowance of any post-sale price adjustments. Without the *Proposed Rule,* these commenters argue that foreign producers and exporters would have every incentive to calculate the U.S. price reduction necessary to eliminate dumping, and then lower their prices accordingly through retroactive rebates to customers in the home or third-country market, thereby reducing or eliminating the dumping margins and undermining the integrity of the Department's proceedings.

One commenter argues that the *Proposed Rule* is unnecessary because the Department has provided no evidence of respondents utilizing manipulative post-sale price adjustments and that existing regulations are sufficient to maintain the integrity of the Department's proceedings because, under 19 CFR 351.401(b)(1), the Department can already deny a price adjustment if it determines that the adjustment is not *bona fide.* This commenter further argues that the *Proposed Rule* unduly burdens respondents operating in industries where many discounts and rebates are agreed to on an *ad hoc* basis without documentation over the course of multiple transactions many months before the Department's proceedings.

Response: The Department finds that the proposed changes will help protect the integrity of our proceedings and are an appropriate response to *Koehler AG,* which hinders the Department's ability to address after-the-fact rebates which present the potential for manipulation of dumping margins. In *Koehler AG* the Court of International Trade held that the Department did not have the discretion under 19 CFR 351.102(b)(38) and 19 CFR 351.401(c)—as currently written—to address such manipulative after-the-fact rebates. *See* 971 F. Supp. 2d at 1251–52. The *Proposed Rule,* and the further modifications adopted in this final rule, codify the Department's intent and discretion to prevent certain post-sale price adjustments, like those at issue in *Koehler AG,* and therefore are appropriate to protect the integrity of our proceedings. We believe that these further modifications, discussed below, should address any concerns that the *Proposed Rule* was unduly burdensome and does not account for actual business practices.

2. Whether the Proposed Rule Is Consistent With the Statute and U.S. International Obligations

Several commenters state that the *Proposed Rule* is consistent with the Department's general statutory authority to impose antidumping duties pursuant to section 731 of the Act. One commenter argues that the *Proposed Rule* is inconsistent with section 773(a)(6)(C)(iii) of the Act. This commenter argues that a discount or rebate, regardless of when it is established and known to the customer, is a circumstance of sale which falls within the statute's instruction that normal value shall be increased or decreased by the amount of any difference between export price (or constructed export price) and normal value established to the Department's satisfaction to be due to differences in the circumstances of sale. This commenter notes that the statute does not include a requirement that the customer have knowledge of the adjustment prior to the sale.

This same commenter argues that the *Proposed Rule* is inconsistent with Article 2.4 of the Antidumping (AD) Agreement, which provides that due allowance shall be made for differences that affect price comparability, including differences in conditions and terms of sale. This commenter notes the opinion of Dispute Settlement Body (DSB) of the World Trade Organization (WTO) in *United States—Stainless Steel (Korea)* that a condition or term of sale within the meaning of Article 2.4 is a condition or term that reasonably can be anticipated and accounted for at the time of sale. An additional commenter argues that any regulation that would necessarily disallow an adjustment only if it reduced or eliminated dumping margins could be construed as violating the ''fair comparison'' requirement of Article 2.4 of the AD Agreement.

Response: The Department disagrees with the commenter's argument that the Department's proposed modifications to 19 CFR 351.102(b)(38) and 19 CFR 351.401(c) are inconsistent with the statute. As an initial matter, the commenter argues that these modifications are inconsistent with section 773(a)(6)(C)(iii) of the Act, which states that normal value shall be increased or decreased by the amount of any difference between export price (or constructed export price) and normal value established to the Department's satisfaction to be due to differences in the circumstances of sale. However, the statutory basis for the price adjustments addressed in 19 CFR 351.102(b)(38) and 19 CFR 351.401(c) is not section 773(a)(6)(C)(iii) of the Act, but rather, is found in sections 772(a) and 773(a)(1)(B)(i), which provide that in determining export price or normal value the Department begins with the price at which the subject merchandise or foreign like product is first sold—in other words, the basic ''starting price'' provisions. *See 1997 Final Rule,* 62 FR at 27344 (''[The] use of a net price is consistent with the view that discounts, rebates and similar price adjustments are not expenses, but instead are items taken into account to derive the price paid by the purchaser.'') This is confirmed by the Department's treatment of the price adjustments described in 19 CFR 351.401(c) as something other than a circumstance of sale adjustment. *Compare* 19 CFR 351.401(c) (addressing use of price net of price adjustments) *with* 19 CFR 351.410 (addressing circumstances of sale adjustments which specifically cover direct selling expenses and assumed expenses between the seller and the buyer).

We disagree with the commenter's contention that the *Proposed Rule* was nevertheless inconsistent with the statute, which requires the Department to make adjustments for differences which affect price comparability, as well as the Department's obligation under U.S. law to calculate dumping margins as accurately as possible. As several commenters recognized, and as discussed in further detail below, the Department has a longstanding practice of denying certain post-sale price adjustments where there exists a potential for manipulation of the dumping margins, and the courts have affirmed this practice as consistent with the statute. *See Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834, 840 (Ct. Int'l Trade 1998) (''Commerce's decision to reject price amendments that

present the potential for price manipulation was a permissible interpretation of the statute.''); *Mitsubishi Elec. Corp.* v. *United States,* 700 F. Supp. 538, 555 (Ct. Int'l Trade 1988) (''The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion [to act] . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.''), *aff'd* 898 F.2d 1577 (1990).

The *Proposed Rule,* in proposing certain modifications to 19 CFR 351.102(b)(38) and 19 CFR 351.401(c), was intended to codify the Department's intent to prevent such potentially manipulative post-sale price adjustments. As discussed below, in this final rule the Department has made further modifications to these regulations to clarify that the Department does not intend to accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Department, its entitlement to such an adjustment. These final modifications continue to be consistent with the Department's statutory authority, in setting the ''starting price'' of normal value or export price, and prevent the potential manipulation of dumping margins through certain post-sale price adjustments.

Finally, the Department disagrees with those commenters that argue that the *Proposed Rule* was inconsistent with the United States' WTO obligations. To the contrary, the Department finds that the *Proposed Rule* was consistent with U.S. law, which is consistent with our obligations under the AD Agreement. In any case, the relevant language which one commenter objected to with respect to specifically disallowing adjustments which reduce or eliminate dumping margins does not appear in the final rule.

3. Whether the Proposed Rule Is Consistent With the Department's Practice

Several commenters argue that the *Proposed Rule* codifies the Department's longstanding practice of disallowing price adjustments that reduce or eliminate dumping margins where the terms and conditions of the adjustment were not established and known to the customer at the time of sale. Several of these commenters argue that the *Proposed Rule* is consistent with other aspects of the Department's practice based on the principle that the Department's proceedings should be free from outcome-driven manipulation and that dumping margins should reflect the respondent's pricing behavior in the ordinary course of business.

One commenter argues that the *Proposed Rule* in its current form is overly broad and, if adopted, threatens to eliminate certain legitimate post-sale price adjustments that were previously granted by the Department. This commenter argues that the Department's practice has allowed for at least three categories of post-sale price adjustments that the *Proposed Rule* would preclude: (1) Price protection adjustments whereby a buyer seeks a price adjustment to sell a commodity downstream when commodity prices are rapidly changing; (2) post-invoice consumer rebates that offer the buyer a rebate at the time it sells the product to an end user, where such rebates often are not fixed at the time of the first sale; and (3) quality-upon-receipt discounts, which are common for perishable goods.

Response: We find that the *Proposed Rule* was intended to codify the Department's intent and discretion to prevent certain post-sale price adjustments. However, in light of certain comments, we recognize that the proposed modifications to 19 CFR 351.401(c) could have the unintended effect of limiting the Department's discretion to accept certain post-sale price adjustments which the Department has previously accepted. Therefore, as discussed below, we have made further modifications to 19 CFR 351.401(c) to ensure that the Department maintains its intended discretion.

4. Whether the Department Should Implement Any Changes to the Proposed Rule

Several commenters argue that the Department should adopt the *Proposed Rule* in its entirety, as it is an appropriate and necessary codification of the Department's established practice of disallowing certain post-sale price adjustments.

One commenter argues that the Department should clarify that the *Proposed Rule* is not intended to limit the Department's discretion to address post-sale price adjustments other than rebates or discounts, such as billings adjustments. This commenter observes that whereas prior to this modification 19 CFR 351.102(b)(38) listed discounts, rebates, and post-sale price adjustments as examples of changes in price that could qualify as price adjustments, the *Proposed Rule* does not include the term ''post-sale price adjustments.'' This same commenter suggests that the Department consider a set of factors in determining whether to grant a price adjustment normally under its regulations. This commenter suggests that the Department could consider the following: (1) How common such post-sale price adjustments are for the industry; (2) the timing of the adjustment; (3) the number of such adjustments in the proceeding; (4) whether the reported changes reflect both increases and decreases to the originally negotiated prices in the relevant markets; (5) whether there is commercial documentation maintained in the ordinary course of business demonstrating that the price changes were negotiated by the parties and resulted in a change in the purchaser's net outlay and a change in the producer's net revenues; and (6) any other factors tending to reflect on the legitimacy of the claimed adjustment.

Other commenters argue that the *Proposed Rule* in its current form is inconsistent with normal business practices in many industries investigated by the Department.

One commenter proposes modifying 19 CFR 351.401(c) to allow for a price adjustment if the party seeking the adjustment can demonstrate that the adjustment at issue is within the party's standard business practice that existed prior to the initiation of the proceeding.

Response: With respect to the proposed changes to 19 CFR 351.102(b)(38) in the *Proposed Rule,* these modifications were not intended to foreclose other types of price adjustments, such as billing adjustments and post-sale decreases to home market prices or increases to U.S. prices. Nonetheless, in light of a party's comment, the Department is modifying 19 CFR 351.102(b)(38) to refine the definition of price adjustment and to clarify that a price adjustment is not just limited to discounts or rebates, but encompasses other adjustments as well.

With respect to 19 CFR 351.401(c), in light of concerns that the modifications in the *Proposed Rule* may have the unintended consequence of being overly restrictive and limiting the Department's discretion to accept certain post-sale price adjustments which it has previously accepted, the Department is modifying 19 CFR 351.401(c) to clarify that the Department generally will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Department, its entitlement to such an adjustment.

In determining whether a party has demonstrated its entitlement to such an adjustment, the Department may consider: (1) Whether the terms and conditions of the adjustment were

established and/or known to the customer at the time of sale, and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment. The Department may consider any one or a combination of these factors in making its determination, which will be made on a case-by-case basis and in light of the evidence and arguments on each record.

As demonstrated above, the Department is expressly referencing in this final rule certain of the factors suggested by one commenter. Other factors which are not expressly adopted here might fall under the last category we identify, *i.e.,* ''any other factors tending to reflect on the legitimacy of the claimed adjustment.''

We have not adopted the one commenter's suggestion, either in the regulation itself, or in this final rule, to accept post-sale price adjustments if a company can demonstrate that the adjustment at issue is part of its standard business practice that existed prior to the initiation of the proceeding. We believe that the list we have identified above provides adequate factors for the Department to consider in determining whether a company has demonstrated its entitlement to an adjustment. We also note that the timing of the adjustment is one of those criteria. However, we believe that allowing a company to simply show that certain adjustments are part of its standard business practice might permit certain adjustments, such as those at issue in *Koehler AG,* that have the potential to manipulate the dumping margins. As discussed above, it is the Department's intention to codify its discretion to reject those types of adjustments.

5. Effective Date of Final Rule

One commenter agrees with the Department's proposal in the *Proposed Rule* to set the effective date of the final rule to apply to proceedings initiated on or after 30 days following the publication of the final rule. This commenter states that the proposed effective date is appropriate, and that it would be unfair to apply the final rule to shipments that took place prior to publication of the final rule.

Response: The Department agrees that it is appropriate that the final rule be effective for proceedings which are initiated on or after 30 days following the date of publication of the final rule. We note that the final rule will therefore apply to entries of merchandise that took place prior to publication of the final rule. However, we believe this does not result in unfairness as the regulations, both in their current form and in this final rulemaking, merely guide the Department on what adjustments to make to export price or constructed export price and normal value under certain factual scenarios in the course of an antidumping duty proceeding. The final rule therefore impacts the way in which the Department makes certain calculations in antidumping duty proceedings, and no entities would be required to undertake additional compliance measures or expenditures on entries that have already taken place.

Changes From the Proposed Rule

In the final rule, the Department has added further refinements to the definition of price adjustment in 19 CFR 351.102(b)(38) to clarify that a price adjustment is not limited to discounts or rebates, but encompasses other adjustments as well. The Department has also made certain modifications to the new second sentence of 19 CFR 351.401(c) to clarify that the Department does not intend to accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Department, its entitlement to such an adjustment.

Classifications

Executive Order 12866

It has been determined that this rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the *Proposed Rule* and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, the conclusion in the certification memorandum for the *Proposed Rule* remains unchanged and a final regulatory flexibility analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: March 17, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In § 351.102, revise paragraph (b)(38) to read as follows:

§ 351.102 Definitions.

* * * * *

(b) * * *

(38) *Price adjustment.* ''Price adjustment'' means a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (*see* § 351.401(c)), that is reflected in the purchaser's net outlay.

* * * * *

■ 3. In § 351.401, revise paragraph (c) to read as follows:

§ 351.401 In general.

* * * * *

(c) *Use of price net of price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in § 351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the

satisfaction of the Secretary, its entitlement to such an adjustment.

* * * * *

[FR Doc. 2016–06698 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–DS–P

LEGAL SERVICES CORPORATION

45 CFR Chapter XVI

Compliance Supplement for Audits of LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice of final changes to Compliance Supplement for Audits of LSC Recipients.

SUMMARY: The Legal Services Corporation (''LSC'') Office of Inspector General (''OIG'') is updating its Compliance Supplement for Audits of LSC Recipients for fiscal years ending April 30, 2016, and thereafter. The revisions primarily affect certain regulatory requirements to be audited pursuant to LSC regulations. In addition, the LSC OIG has included for audit certain regulatory requirements which impact recipient staff's involvement in the outside practice of law. Finally, suggested audit procedures for several regulations have been updated and revised for clarification and simplification purposes.

DATES: The Compliance Supplement for Audits of LSC Recipients will be effective on April 25, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony M. Ramirez, Director of Planning, Policy & Reporting, Legal Services Corporation Office of Inspector General, 3333 K Street NW., Washington, DC 20007; (202) 295–1668 (phone), (202) 337–6616 (fax), or *aramirez@oig.lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. History of This Action

The purpose of the Compliance Supplement for Audits of LSC Recipients is to set forth the LSC regulatory requirements to be audited by the Independent Public Accountants (''IPA'') as part of the recipients' annual financial statement audit and to provide suggested guidance to the IPAs in accomplishing this task. Pursuant to 45 CFR part 1641, IPAs are subject to suspension, removal, and/or debarment for not following OIG audit guidance as set out in the Compliance Supplement for Audits of LSC Recipients. Since the last revision of the LSC OIG's Compliance Supplement for Audits of LSC Recipients, LSC has significantly revised and updated several regulations. By revising the Compliance Supplement for Audits of LSC Recipients, the LSC OIG intends that the Compliance Supplement accurately reflects these regulatory revisions and updates, including the corresponding changes to suggested audit guidance provided to the IPAs. A summary of the proposed changes follows.

The LSC OIG has included regulatory requirements under 45 CFR part 1604 in the Compliance Supplement for Audits of LSC Recipients. The inclusion sets forth the requirements dealing with the permissibility of recipient staff engaged in the outside practice of law along with suggested audit guidance for use by the IPAs.

The LSC OIG made major revisions to several regulatory summaries to reflect LSC's revisions to its regulations. Revised summaries include those for 45 CFR parts 1609 (fee generating cases); 1611 (eligibility); 1614 (private attorney involvement); 1626 (restrictions on legal assistance to aliens); and to a lesser extent, 1635 (timekeeping requirement). The summaries now follow the existing law and LSC regulations. The suggested audit procedures for each of these sections have been revised and updated to incorporate and take into consideration the regulatory changes.

The LSC OIG revised the case sampling methodology by reducing criteria utilized in the case selection process to clarify and simplify the process.

The LSC OIG updated and revised suggested audit procedures for the regulations. The updates and revisions are intended for clarification and simplification purposes and to provide added emphasis on internal controls.

II. General Discussion of Comments

The LSC OIG received ten comments during the public comment period. Four comments were submitted by LSC funded recipients: Prairie State Legal Services (PSLS), Colorado Legal Services (CLS), Land of Lincoln Legal Assistance Foundation, Inc. (LOLLAF) and Legal Assistance Foundation of Metropolitan Chicago (LAF). Three comments were submitted by IPAs. One comment was submitted by the Lawyers Trust Fund of Illinois (LTFI), separately joined by LAF. One comment was submitted by the Standing Committee on Legal Aid & Indigent Defendants (SCLAID) of the American Bar Association. One comment was submitted by the non-LSC funded non-profit National Legal Aid and Defender Association (NLADA) through its Civil Policy Group and its Regulations and Policy Committee, which was also separately joined by LAF. All commenters appeared generally supportive of the changes the LSC OIG proposed to the Compliance Supplement for Audits of LSC Recipients.

The LSC OIG proposed making the Compliance Supplement for Audits of LSC Recipients effective for audits of fiscal years ending on or after December 31, 2015. Four commenters (PSLS, NLADA, CLS, LTFI) expressed concern over retroactive application of the revised Compliance Supplement for Audits of LSC Recipients which they believed would result in additional audit costs, delays in submission and impact the current audit process that may be underway. The LSC OIG will make the Compliance Supplement for Audits of LSC Recipients effective for audits of fiscal years ending on or after April 30, 2016.

As part of finalizing the Compliance Supplement for Audits of LSC Recipients, typos were corrected and formatting problems were resolved in both the regulatory summaries and in the suggested audit procedures. One commenter (SCLAID) identified a formatting issue and typos in separate regulatory summaries that were all corrected.

III. Section-by-Section Discussion of Comments

A. Proposed Inclusion of 45 CFR Part 1604—Outside Practice of Law

The LSC OIG proposed inclusion of 45 CFR part 1604 in the Compliance Supplement for Audits of LSC Recipients and provided a regulatory summary of the applicable compliance requirements.

Comment—Two commenters (NLADA, CLS) expressed concern that the regulatory summary did not fully list all the permissible circumstances for the outside practice of law, specifically those contained in 45 CFR 1604.4(c)(2) and (c)(3).

Response—The LSC OIG has revised the regulatory summary to include the language contained in 45 CFR 1604.4(c)(2), (c)(3) and (c)(4).

B. Proposed Regulatory Summary for 45 CFR Part 1611—Financial Eligibility

The LSC OIG proposed revisions to update the regulatory summary for 45 CFR part 1611 in order to follow the current LSC regulation. The LSC OIG also proposed what it believed to be clarifying language relating to Older Americans Act (OAA) funds.

Comment 1—Six commenters (including NLADA, PSLS, CLS, LOLLAF, LTFI, LAF) expressed significant concern on the inclusion of the language relating to the OAA funds,

arguing that it changed longstanding LSC policy and would have a detrimental impact on providing services to the elderly. NLADA stated ''This section significantly changes longstanding guidance regarding eligibility determinations for senior citizens that would result in a reduction of services available to individuals age 60 and over.'' This was mirrored by several other LSC funded commenters.

Response—To avoid confusion and unintended consequences, the LSC OIG has removed the language referring to OAA funds from this section.

Comment 2—NLADA also expressed concern relating to a suggested audit procedure for assessing the waiver of eligibility requirements. NLADA believed that the language needed revision ''so that an auditor does not waste time looking for evidence of a waiver determination, but rather reviews whether the appropriate factors allowing income eligibility have been identified for households with income between 125% and 200% of the Federal Poverty Level.''

Response—The LSC OIG has modified the suggested audit procedure to provide better clarity by including the following language at the end of the suggested audit procedure: ''or the recipient determined the client was eligible based on the factors set forth in 45 CFR 1611.5(a)(3) or (4).''

C. Regulatory Summary Adjustment for Part 1612—Restrictions on Lobbying and Certain Other Activities

Comment—Two commenters (NLADA, CLS) expressed concern over the regulatory summary language regarding the prohibitions contained in 45 CFR 1612.6(c), describing it as ''overly broad and/or confusing.'' NLADA stated ''The regulation does not contain a general prohibition on providing information in connection with legislation or rulemaking.'' CLS stated ''This sentence omits key elements in the actual Regulation that employees are only prohibited from soliciting or arranging for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.''

Response—The LSC OIG has revised the regulatory summary language pertaining to 45 CFR 1612.6(c) to more accurately reflect the prohibitions. Also, a technical correction was made to the 45 CFR 1612.3 language contained in the regulatory summary in order to include phraseology that had been inadvertently omitted from the initial draft publication. The language added is as follows (with emphasis placed on the additions and corrections):

(5) the issuance, amendment or revocation of any executive *order. Recipients shall not use any funds to pay for any personal service, advertisement,* telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in (1)—(*5*) detailed above (45 CFR 1612.3).

D. Proposed Regulatory Summary for Part 1614—Private Attorney Involvement

The LSC OIG proposed revisions to update the regulatory summary for 45 CFR part 1614 in order to follow the current LSC regulation.

Comment—Two commenters (NLADA, CLS) expressed concern that the revised regulatory summary discussing § 1614.4(b)(1) omitted an important clause. NLADA stated that ''The sentence in the Draft Supplement currently only references including support provided by private attorneys to the recipient'' and does not mention subrecipient, an entire category of organizations that may receive private attorney support.

Response—The LSC OIG has revised the regulatory summary language as follows:

> Activities undertaken by the recipient to meet the requirements of this Part may also include, but are not limited to: (1) support provided by private attorneys to the recipient or a subrecipient as part of its delivery of legal assistance. . . .

E. Audit Considerations and Proposed Suggested Audit Procedures

Comment 1—Two commenters (NLADA, CLS) expressed concern over the LSC OIG policy on high risk designation for LSC grantees, stating that it is unwarranted, could be confusing to stakeholders and be a misnomer to a specific auditee. NLADA recommended the elimination of this blanket designation by the LSC OIG.

Response—The LSC OIG will retain the policy of high risk designation at this time. If the LSC OIG accepted the requested modification to this section, it could allow IPAs to designate LSC grantees as low risk. Such a designation would result in audits not in compliance with statutory requirements.

Comment 2—NLADA also expressed concern relating to the suggested audit procedure on obtaining an understanding of internal controls in place associated with specific regulations. NLADA recommended that the LSC OIG include clarification that ''. . . understanding internal controls means that the auditor has identified that there are systems in place to assure compliance.''

Response—The LSC OIG believes that the current language is sufficiently clear to the IPA that the internal controls relate to compliance with the applicable LSC regulatory requirement. No additional changes were made.

Comments provided by all three IPAs related to non-audit questions, satisfaction with improved procedures and commentary on utilizing the suggested audit procedures. No additional changes were made.

For the reasons stated above, the Legal Services Corporation Office of Inspector General revises the Compliance Supplement for Audits of LSC Recipients. The Revised Compliance Supplement for Audits of LSC Recipients is available on the LSC OIG Web site at: *https://www.oig.lsc.gov/images/pdfs/ipa_resources/April_2016_Compliance_Supplement.pdf.*

Dated: March 17, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–06451 Filed 3–23–16; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[GN Docket No. 13–5, RM–11358; WC Docket No. 05–25, RM–10593; FCC 15–97]

Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's network change disclosure rules pertaining to copper retirement notices. This document is consistent with the *Emerging Wireline Networks and Services (EWNS) Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking,* FCC 15–97, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 51.325(a)(4) and (e), 51.332, and

51.333(b) and (c) published at 80 FR 63322, October 19, 2015, are effective March 24, 2016.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1477, or by email at *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on March 17, 2016, OMB approved, for a period of three years, the information collection requirements relating to the network change disclosure rules pertaining to copper retirement notices contained in the Commission's *EWNS Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking,* FCC 15–97, published at 80 FR 63322, October 19, 2015.

The OMB Control Number is 3060–0741. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room A–C620, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0741, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on March 17, 2016, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 51. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0741.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0741.

OMB Approval Date: March 17, 2017.

OMB Expiration Date: March 31, 2019.

Title: Technology Transitions, GN Docket No. 13–5, et al.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,357 respondents; 573,767 responses.

Estimated Time per Response: 0.5–8 hours.

Frequency of Response: On occasion reporting requirements; recordkeeping; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 222 and 251.

Total Annual Burden: 575,840 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Privacy Act: No impact(s).

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. 251, is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. Section 222(e) is also designed to spur competition by prescribing requirements for the sharing of subscriber list information. These OMB collections are designed to help implement certain provisions of sections 222(e) and 251, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these OMB collections will be used to implement (1) local exchange carriers' (''LECs'') obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' (''ILECs'') duty to make network information disclosures; and (3) numbering administration. The Commission estimates that the total annual burden of the entire collection, as revised, is 575,840 hours. This revision relates to a change in one of many components of the currently approved collection—specifically, certain reporting, recordkeeping and/or third party disclosure requirements under section 251(c)(5). In August 2015, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. The changes to those rules apply specifically to a certain subset of network change disclosures, namely notices of planned copper retirements. The changes are designed to provide interconnecting entities adequate time to prepare their networks for the planned copper retirements and to ensure that consumers are able to make informed choices. There is also a change in the number of potential respondents to the rules promulgated under that section. The number of respondents as to the information collection requirements implemented under section 251(c)(5) of the Act, has changed from 1,300 to 750, a decrease of 550 respondents from the previous submission. Under section 251(f)(1) of the Act, rural telephone companies are exempt from the requirements of section 251(c) ''until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . .'' The Commission has determined that the number of potential respondents set forth in the previous submission inadvertently failed to take this exemption into account. There are 1,429 ILECs nationwide. Of those, 87 are non-rural ILECs and 1,342 are rural ILECs. The Commission estimates that of the 1,342 rural ILECs, 679 are entitled to the exemption and 663 are not entitled to the exemption and thus must comply with rules promulgated under section 251(c) of the Act, including the rules that are the subject of this information collection. Thus, the Commission estimates that there are 87 (non-rural) + 663 (rural) = 750 potential respondents. The Commission estimates that the revision does not result in any additional outlays of funds for hiring outside contractors or procuring equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–06683 Filed 3–23–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; FCC 14–50]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, certain information collection requirements associated with the Commission's Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Report and Order (*Incentive Auction Report and Order*), FCC 14–50. This document is consistent with the *Incentive Auction Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the new information collection requirements.

DATES: 47 CFR 73.3700(e)(2) through (6) and FCC Form 2100, Schedule 399, published at 79 FR 48442, August 15, 2014, are effective March 24, 2016.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on March 17, 2016, OMB approved the information collection requirements contained in the Commission's *Incentive Auction Report and Order,* FCC 14–50, published at 79 FR 48442, August 15, 2014. The OMB Control Number is 3060–1178. The Commission publishes this document as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1194, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on March 17, 2016, for the information collection requirements contained in 47 CFR 73.3700(e)(2) through (6).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1178. The foregoing document is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1178.

OMB Approval Date: March 17, 2016.

OMB Expiration Date: March 31, 2019.

Title: TV Broadcaster Relocation Fund Reimbursement Form, FCC Form 2100, Schedule 399, Section 73.3700(e), Reimbursement Rules.

Form Number: FCC Form 2100, Schedule 399.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 1,900 respondents and 22,800 responses.

Estimated Hours per Response: 1–4 hours.

Frequency of Response: One-time reporting requirement; on occasion reporting requirement.

Total Annual Burden: 31,000 hours.

Total Annual Costs: $5,625,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; and Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, §§ 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Nature and Extent of Confidentiality: There is some need for confidentiality with this collection of information. Invoices, receipts, contracts and other cost documentation submitted along with the form will be kept confidential in order to protect the identification of vendors and the terms of private contracts between parties. Vendor name and Employer Identification Numbers (EIN) or Taxpayer Identification Number (TIN) will not be disclosed to the public.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The collection was submitted to the Office of Management (OMB) and approved for the information collection requirements contained in the Commission's Incentive Auction Order, FCC 14–50, which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The information gathered in this collection will be used to provide reimbursement to television broadcast stations that are relocated to a new channel following the Federal Communications Commission's Incentive Auction, and to multichannel video programming distributors (MVDPs) that incur costs in carrying the signal of relocated television broadcast stations. Relocated television broadcasters and MVPDs (''eligible entities'') will be reimbursed for their reasonable costs incurred as a result of relocation from the TV Broadcaster Relocation Fund. Eligible entities will use the TV Broadcaster Relocation Fund Reimbursement Form (FCC Form 2100, Schedule 399) to submit an estimate of their eligible relocation costs; to submit actual cost documentation (such as receipts and invoices) throughout the construction period, as they incur expenses; and to account for the total expenses incurred at the end of the project.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–06685 Filed 3–23–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE523

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels less than 50 ft. length overall (LOA) using hook-and line gear and catcher vessels greater than or equal to 50 ft. LOA using hook-and-line gear to vessels using pot gear and vessels using jig gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the A season apportionment of the 2016 total allowable catch of Pacific cod to be harvested.

DATES: Effective March 21, 2016 through 1200 hours, Alaska local time (A.l.t.), June 10, 2016.

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

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

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to catcher vessels less than 50 ft. LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 3,411 metric tons (mt), as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 ft. LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 2,054 mt, as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using hook-and-line gear will not be able to harvest 1,700 mt of the A season apportionment of the 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B)(*1*) and (*2*). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that vessels using pot gear and vessels using jig gear in the Central Regulatory Area of the GOA currently have the capacity to harvest this excess allocation and reallocates 1,500 mt to vessels using pot gear and 200 mt to vessels using jig gear. Therefore, NMFS apportions 1,000 mt of Pacific cod from the A season apportionments for catcher vessels less than 50 ft. LOA using hook-and-line gear and 500 mt of Pacific cod from catcher vessels greater than or equal to 50 ft. LOA using hook-and-line gear to vessels using pot gear in the Central Regulatory Area of the GOA. NMFS also apportions 200 mt of Pacific cod from the A season apportionment for catcher vessels greater than or equal to 50 ft. LOA using hook-and-line gear to vessels using jig gear in the Central Regulatory Area of the GOA

The harvest specifications for Pacific cod included in the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016) are revised as follows: 2,411 mt to the A season apportionment and 4,347 mt to the annual amount for catcher vessels less than 50 ft. LOA using hook-and-line gear, 1,354 mt to the A season apportionment and 1,756 mt to the annual amount for catcher vessels equal to or greater than 50 ft. LOA using hook-and-line gear, 8,028 mt to the A season apportionment and 11,680 mt to the annual amount to vessels using pot gear, and 422 mt to the A season apportionment and 570 mt to the annual amount to vessels using jig gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels using hook-and-line gear to vessels using pot or jig gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2016.

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

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

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

Dated: March 21, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–06686 Filed 3–21–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE519

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; opening.

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

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 21, 2016, through 1200 hours, A.l.t., June 10, 2016.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 8, 2016.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2015–0110 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0110*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

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

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to vessels using jig gear in the Central Regulatory Area of the GOA is 222 metric tons (mt), as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

NMFS closed directed fishing for Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on March 1, 2016 (81 FR 11452, March 4, 2016).

As of March 18, 2016, NMFS has determined that approximately 200 mt of Pacific cod remain in the A season directed fishing allowance for Pacific cod apportioned to vessels using jig gear in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2016 TAC of Pacific cod in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod in the Central Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2016.

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

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 8, 2016.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 21, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–06688 Filed 3–21–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 57
Thursday, March 24, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 56, 145, 146, and 147

[Docket No. APHIS–2014–0101]

RIN 0579–AE16

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (NPIP, the Plan), its auxiliary provisions, and the indemnity regulations for the control of H5 and H7 low pathogenic avian influenza to clarify participation in the NPIP and amend participation requirements, amend definitions for poultry and breeding stock, amend the approval process for new diagnostic tests, and amend laboratory inspection and testing requirements. These changes would align the regulations with international standards and make them more transparent to Animal and Plant Health Inspection Service stakeholders and the general public. The proposed changes were voted on and approved by the voting delegates at the Plan's 2014 National Plan Conference.

DATES: We will consider all comments that we receive on or before May 23, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0101.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0101* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Denise Brinson, DVM, Director, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS, also referred to as ''the Service'') of the U.S. Department of Agriculture (USDA, also referred to as ''the Department'') amends these provisions from time to time to incorporate new scientific information and technologies within the Plan. In addition, the regulations in 9 CFR part 56 set out conditions for the payment of indemnity for costs associated with poultry that are infected with or exposed to H5/H7 low pathogenic avian influenza (LPAI) and provisions for a cooperative control program for the disease.

The proposed amendments discussed in this document are consistent with the recommendations approved by the voting delegates to the last National Plan Conference, which was held on July 10 through 12, 2014. Participants in the National Plan Conference represented flockowners, breeders, hatcherymen, slaughter plants, poultry veterinarians, laboratory personnel, Official State Agencies from cooperating States, and other poultry industry affiliates. The proposed amendments are discussed in the order they would appear in the regulations.

Description of Plan Intention

The NPIP regulations in 9 CFR parts 145 and 146 contain requirements that must be observed by flocks that participate in the Plan. Currently, § 145.3 details the process by which a person becomes eligible to participate in the Plan. Any person producing or dealing in products may participate when he/she has demonstrated, to the satisfaction of the Official State Agency, that his/her facilities, personnel, and practices are adequate for carrying out the applicable provisions of the Plan, and has signed an agreement with the Official State Agency to comply with the general and the applicable specific provisions of the Plan and any regulations of the Official State Agency under § 145.2. Affiliated flockowners may participate in the plan without signing an agreement with the Official State Agency. We are proposing to add additional language to this section to clarify that the NPIP is a cooperative Federal-State-Industry program through which new or existing diagnostic technology can be effectively applied to improve poultry and poultry products by controlling or eliminating specific poultry diseases. Because the Plan consists of programs that identify States, flocks, hatcheries, dealers, and slaughter plants that meet specific disease control standards specified in the Plan, we also propose to clarify that recordkeeping is important to demonstrate that participants adhere to the disease control programs in which they participate. We are proposing to add this language to paragraph (a) of § 145.3.

Revision of Records Retention Requirement for Hatchery Inspections

The regulations in § 145.12 contain requirements for the retention and

examination of records for all flocks maintained primarily for hatching eggs. Historically, testing records were retained at the hatchery, which allowed for examination of the records during annual inspections. However, not many commercial hatcheries currently keep testing records for their breeder flocks at the hatchery and may instead keep the records at the corporate office. Therefore, we are proposing a minor change to the regulations to specify that records for all breeder flock hatcheries must be made available for annual examination by a State inspector. This change also maintains flexibility in who must make the records available. Such people may include the hatchery manager, the quality assurance manager, the laboratory manager, the breeder manager, or the hatchery information specialist.

Clarification of Official Testing Requirements for Pullorum-Typhoid, Mycoplasma gallisepticum, M. meleagridis, and M. synoviae

The regulations in § 145.14 contain requirements for conducting official tests for pullorum-typhoid, *Mycoplasma gallisepticum, M. meleagridis, M. synoviae,* and avian influenza. Paragraph (a) outlines specific testing requirements for pullorum-typhoid. Currently, paragraph (a)(5) states that the official blood test for pullorum-typhoid shall include the testing of a sample of blood from each bird in the flock, provided that, under specified conditions in §§ 145.23, 145.33, 145.43, 145.53, and 145.63, the testing of a portion or sample of birds may be used in lieu of testing each bird. We are proposing to add §§ 145.73, 145.83, and 145.93 to the list of sections referenced in § 145.14(a)(5) as those sections are also applicable to pullorum-typhoid blood testing.

Paragraph (b) outlines specific testing requirements for *M. gallisepticum, M. meleagridis,* and *M. synoviae.* Currently, official tests for *M. gallisepticum, M. meleagridis,* and *M. synoviae* include the serum plate agglutination test, the tube agglutination test, the hemagglutination inhibition (HI) test, the microhemagglutination inhibition test, the enzyme-linked immunosorbent assay, and the polymerase chain reaction (PCR)-based test. We are proposing to remove references to the tube agglutination test because that test is outdated and no longer in use. We are also proposing to remove references to the microhemagglutination test as the term microhemagglutination is an outdated term. In addition, we are proposing to remove the reference to the PCR test and replace it with the words ''molecular based test.'' This change is necessary because there are other molecular based tests in addition to the PCR test. Also, changing the language in the regulations to ''molecular based test'' allows for greater testing flexibility in the event that a better and more cost-effective or efficient molecular based test is developed in the future. Finally, while the widely accepted industry standard has been to use either the HI test or a molecular based test to confirm the positive results of serological screening tests, this requirement has not previously been included in our regulations. Therefore, we are proposing to amend the regulations to make that clarification.

Requirements for Nest Clean Hatching Eggs for Breeding Turkeys

In a final rule [1] published in the **Federal Register** on July 9, 2014 (79 FR 38752–38768, Docket No. APHIS–2011–0101), with an effective date of August 8, 2014, we amended the regulations by, among other things, amending the requirements for participation in the Plan by multiplier egg-type breeding chickens, multiplier meat-type breeding chickens, primary egg-type breeding chickens, and primary meat-type breeding chickens to state that hatching eggs produced by the relevant flocks should be nest clean, and that they may be fumigated in accordance with part 147 or otherwise sanitized. ''Nest clean'' eggs are eggs that are collected from nests frequently to keep them clean without further processing. These changes were necessary because it has become standard practice within the industry to avoid sanitizing eggs and instead insist on nest clean eggs, which have been found to hatch better and provide a better chick than other eggs, even when they are sanitized. In addition, removing the requirement for fumigation and instead stating that hatching eggs ''may be'' fumigated or otherwise sanitized addresses changes made due to health restrictions and concerns related to staff safety, as well as aligning with changes made to the provisions for multiplier egg-type and meat-type chicken breeding flocks and primary egg-type and meat-type breeding flocks, following the 2010 NPIP Plan Conference.

The regulations in § 145.42 outline the requirements with which turkey flocks, and the eggs and poults produced from them, must comply in order to participate in the Plan. Due to the same restrictions and concerns for staff safety for workers in the turkey industry and the same standard practice and benefits of requiring nest clean eggs, we are proposing to make the same changes to paragraph (b) of this section that were made in the July 2014 final rule for §§ 145.22(b), 145.32(b), 145.72(b), and 145.82(b).

We are also proposing to amend the definition of *breeding flock* in § 56.1 in order to be more inclusive of both chicken and turkey flocks. Currently, the definition for *breeding flock* refers to a ''flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing chicks for the ultimate production of eggs or meat for human consumption.'' We propose to amend this definition to remove the word ''chicks'' and replace it with the word ''progeny.'' This change is also consistent with the definition of *multiplier breeding flock* in § 145.1.

Changes to U.S. M. gallisepticum Clean and U.S. M. synoviae Clean Classification for Breeding Flocks of Hobbyist and Exhibition Waterfowl, Exhibition Poultry, and Game Birds

The regulations in § 145.53 set out classifications for hobbyist and exhibition waterfowl, exhibition poultry, and game bird breeding flocks and products. Paragraph (c) in § 145.53 sets out the U.S. *M. gallisepticum* Clean classification for such poultry while paragraph (d) of that section sets out the U.S. *M. synoviae* Clean classification for such poultry.

We are proposing to require targeted bird sampling of the choanal palatine cleft/fissure area using appropriate swabs as an alternative to the random serum or egg yolk sampling currently required for retention of the U.S. *M. gallisepticum* Clean classification. The choanal palatine cleft/fissure area is easier to swab and is also a very reliable site for detection of *M. gallisepticum* and *M. synoviae.* The targeted sampling of this area would provide a greater likelihood of detecting the organism of concern than either the random serum or egg yolk sampling methods.

We are also proposing to change the size of the sample for U.S. *M. gallisepticum* testing from the current 5 percent of birds in the flock to at least 30 birds, or all birds in the flock if the flock size is less than 30. We would make the same change for a multiplier breeding flock which originated as U.S. *M. gallisepticum* Clean baby poultry from primary breeding flocks. Currently, sampling of such flocks must consist of at least 2 percent of birds in the flock. These changes would provide for a more appropriate level of sampling for *M.*

[1] To view the final rule and related documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0101.*

gallisepticum, particularly for those flocks that contain fewer than 30 birds.

Because *M. gallisepticum* and *M. synoviae* spread and infect birds similarly, we are proposing to amend the U.S. *M. synoviae* Clean classification to require that retention of that classification may also be obtained either by random sampling of serum or egg yolk or a targeted bird sample of the choanal palatine cleft/fissure area using appropriate swabs. Currently, the regulations do not specify how sampling is to be conducted. In addition, we are proposing to change the size of the sample for U.S. *M. synoviae* testing from at least 150 birds in the flock to at least 30 birds, or all birds in the flock if the flock size is less than 30. Finally, for a multiplier breeding flock which originated as U.S. *M. synoviae* Clean baby poultry from primary breeding flocks, we would remove the requirement for sampling a minimum of 75 birds and instead require that a random sample contain 50 percent of the birds in the flock with a maximum of 200 birds and a minimum of 30 birds, or all birds in the flock if the flock is less than 30 birds. This sampling would have to be conducted on birds that are at least 4 months of age or upon reaching sexual maturity.

Assuming a normal distribution and an infection rate of 1 percent, changing the sample sizes as proposed does not greatly affect the chance of detecting a positive sample (confidence interval approximately 95 percent). These proposed sample size changes would allow us to increase the efficiency of the NPIP program by allowing resources to be used elsewhere.

Changes to U.S. Salmonella Monitored Certification Requirements

The regulations in § 145.83 set out the requirements for the classification of participating flocks, and the eggs and chicks produced from them, with respect to certain diseases. Paragraph (f) of § 145.83 sets out requirements for preventing and controlling *Salmonella* in the breeding-hatching industry. Currently, a flock may be designated as U.S. *Salmonella* Monitored when, among other things, feed used for the flock, if containing animal proteins, adheres to certain processing requirements. We are proposing to remove these requirements because we believe that the rendering industry has appropriate standards to deal with the transmission of *Salmonella* through poultry feed and, therefore, these requirements are not necessary in the NPIP regulations. In addition, most of the primary meat type chicken industry today does not use animal protein products in their feed due to concerns of disease transmission. Therefore, we propose to amend the regulations in paragraph (f)(1)(i) to instead state that ''measures shall be implemented to control *Salmonella* challenge through the feed, feed storage, and feed transport.'' We also propose to remove paragraphs (f)(1)(ii) and (f)(1)(iii) and renumber paragraphs (f)(1)(iv) through (f)(1)(viii) as paragraphs (f)(1)(ii) through (f)(1)(vi).

Revision to Sanitation Requirements for Meat-Type Waterfowl

The regulations in §§ 145.91 and 145.92 set out special provisions for meat-type waterfowl and the eggs and baby poultry produced from them. Currently, paragraph (b) of § 145.92 requires that hatching eggs produced by primary breeding flocks be fumigated in accordance with part 147 or otherwise sanitized. We are proposing to remove the requirement for fumigation and instead state that hatching eggs should be ''nest clean'' and that they ''may be'' fumigated or otherwise sanitized. We would also extend these requirements to multiplier breeding flocks, as these proposed requirements are meant to mirror the changes made to the provisions for multiplier egg-type and meat-type chicken breeding flocks and primary egg-type and meat-type breeding flocks, following the 2010 NPIP conference as well as the changes we are proposing to the regulations for breeding turkeys in § 145.42.

Revision to Sample Size for U.S. H5/H7 Avian Influenza Clean Classification

The regulations in § 145.93 set out requirements for the classification of participating flocks of meat-type waterfowl and the eggs and baby poultry produced from them, with respect to certain diseases. Paragraph (c) of § 145.93 sets out requirements for the classification of such flocks as U.S. H5/H7 Avian Influenza Clean. Currently, the regulations state that, in order for multiplier breeding flocks to retain this classification, a sample of at least 30 birds must either be tested negative for avian influenza at intervals of 180 days, a sample of fewer than 30 birds may be tested and found negative for avian influenza at any one time if all pens are equally represented and a total of 30 birds are tested within each 180-day period, or a sample of at least 30 birds are tested and found negative to H5/H7 avian influenza within 21 days prior to movement to slaughter.

In the July 2014 final rule, we amended the regulations by changing the number of breeding birds required to be tested for avian influenza prior to movement to slaughter in §§ 145.23, 145.33, and 145.73. Rather than requiring 30 spent fowl to be tested, we now require the testing of a sample of 11 birds prior to movement to slaughter. This change was necessary because, generally, the entire flock of egg-type breeding chickens will be moved to slaughter at one time. Testing 11 birds per flock is also consistent with the testing requirements for meat-type commercial chickens moved to slaughter under the U.S. H5/H7 Avian Influenza Monitored program in § 146.33, and provides adequate assurance that the flock is free of avian influenza. We are proposing to make the same change for meat-type waterfowl breeding flocks. Aligning sample numbers across similar flocks simplifies plan participation.

Changes to the List of Commercial Poultry Plan Participants

Part 146 of the regulations contains the NPIP provisions for commercial poultry. Section 146.3 provides requirements for participation in the Plan by commercial table-egg producers, raised-for-release upland game bird or waterfowl premises, commercial upland game bird or waterfowl slaughter plants, and meat-type chicken or turkey slaughter plants. We propose to amend the regulations to add commercial table-egg layer pullet flocks to the list of Plan participants in paragraph (c)(1) of § 146.2 and paragraph (a) in § 146.3. A *commercial table-egg layer pullet flock* is currently defined in § 146.1 as a table-egg layer flock prior to the onset of egg production. The inclusion of these flock owners as Plan participants provides a means for NPIP staff to identify participation in the Plan and to help facilitate the movement of birds within States and across State lines.

Finally, we are proposing to amend the definition of *poultry* in § 146.1 to make it more inclusive of all domesticated fowl bred for the purpose of providing eggs or meat, including waterfowl and game birds. This change would be consistent with the *poultry* definition in § 56.1 and § 145.1.

Amendment to Slaughter Plant Inspection Requirements

Section 146.11 of the regulations sets out the audit process for participating slaughter plants. Paragraph (b) states that flocks slaughtered at a slaughter plant will be considered to be not conforming to the required protocol of the classifications if there are no test results available, if the flock was not tested within 21 days before slaughter, or if the test results for the flocks were not returned before slaughter. We are

proposing to amend paragraph (b) to state that a flock will be considered to be conforming to protocol if it meets the requirements described in §§ 146.33(a), 146.43(a), or 146.53(a). This change would correct problems inadvertently caused by combining all allowed testing requirements in 9 CFR part 146, subparts C, D, and E for participating slaughter plants into one set of testing requirements. One such problem was that the language in paragraph (b) directly contradicted the requirement allowing for testing at the slaughter plant on a shift basis. This change would also allow for future amendments to testing requirements for each subpart independent of one another and without having to amend the regulations in § 146.11.

Addition of Testing Commercial Table-Egg Producing Upland Game Birds and Waterfowl for Avian Influenza

The regulations in §§ 146.51 through 146.53 contain special provisions related to the participation in the NPIP program by commercial upland game birds, commercial waterfowl, raised-for-release upland game birds, and raised-for-release waterfowl and the classification of such flocks as U.S. H5/H7 Avian Influenza Monitored. Commercial upland game birds and waterfowl are sometimes grown for the primary purpose of producing eggs for human consumption, notably in specialty markets, restaurants, and health food outlets. Because a significant number of these flocks are large in size, we believe that the creation of a mechanism for NPIP participation and avian influenza surveillance for such flocks would be beneficial to the poultry industry as a whole. Therefore, we are proposing to amend the definition for *commercial upland game birds* and *commercial waterfowl* in § 146.51 to include birds grown for egg production. Currently, the definitions for these categories of birds include only those birds grown for the primary purpose of producing meat for human consumption.

We are also proposing to add commercial upland game birds and commercial waterfowl producing eggs for human consumption to the list of Plan participants in paragraphs (a) and (c) of § 146.52. We would also change the word ''purpose'' under both the definition for *commercial upland game birds* and *commercial waterfowl* to ''purposes.''

Paragraph (a) of § 146.53 contains the U.S. H5/H7 Avian Influenza Monitored classification for commercial waterfowl and commercial upland game birds. Currently, the commercial waterfowl and commercial upland game bird industry may earn U.S. H5/H7 Influenza Monitored classification by participating in routine surveillance for H5/H7 avian influenza through participating slaughter plants. We are proposing to add provisions for the regular surveillance of commercial waterfowl and game bird egg-producing flocks for avian influenza in new paragraphs (a)(4) and (a)(5). These provisions would require that a minimum of 11 birds per flock be tested negative to H5/H7 avian influenza as provided in § 146.13 within 30 days of disposal or within a 12 month period or that the participating flock has an on-going active and passive surveillance program for H5/H7 avian influenza approved by the Official State Agency and the Service.

Amendments to Authorized Laboratory Requirements

Subpart F of part 147 contains provisions for authorized laboratories and approved test and sanitation procedures under the NPIP. Section 147.52 contains the current provisions for approving authorized laboratories. While these provisions currently require laboratories to undergo an annual site visit and recordkeeping audit by their Official State Agency in order to maintain authorization, laboratory procedures and personnel generally do not change on a yearly basis. In addition, the need for Official State Agencies to inspect laboratories in other States serving industry members within their own States has proven to unnecessarily consume time and travel funds best utilized in other areas of the Plan. Therefore, we are proposing to amend the regulations to require that site visits take place at least once every 2 years.

Amendments to the Approval Process for New Diagnostic Tests

Section 147.54 outlines the required procedures for the approval of diagnostic test kits that are not licensed by APHIS. Current paragraph (a) states that the sensitivity of the kit will be estimated by testing known positive samples, as determined by official NPIP procedures found in the NPIP program standards or via other procedures approved by the Administrator. Because it is difficult to define a minor test modification versus a major test modification and to determine what data might be needed beforehand for a new test, we are proposing to allow the conditional use of a modified test side by side with the approved versions using field samples. This would make it easier for laboratories to participate in the test validation process. Field samples would have to be composed of those samples for which the presence or absence of the target organism or analyte has been determined by the current NPIP test rather than spiked samples or pure cultures. In addition, samples would have to come from a variety of field cases representing a range of low, medium, and high analyte concentrations. Spiked samples should only be used in the event that no other sample types are available. These changes would ensure that samples used for validation represent real samples and contain the same analytes and extraneous material that would be found in clinical samples. Realistic samples are critical to ensuring that a test will perform adequately with normal use. We are also proposing to clarify that laboratories should only be selected for their experience with testing for the target organism or analyte with the current NPIP approved test. Finally, we are proposing to remove the requirement that authorized laboratories be selected by the Service and clarify that the specificity of the kit will be ''evaluated'' rather than ''estimated'' in both current paragraphs (a) and (b) to provide more specific information on test performance. We are proposing this change because authorized NPIP laboratories use the same standards and guidelines. Therefore, any NPIP-authorized laboratory should be able to be utilized by any company seeking approval of a new test.

We are also proposing to revise the regulations in current paragraph (c) to remove the requirement for clinical samples to be supplied by the manufacturer of the test kit. Further, we propose to require that at least 50 known negative samples be tested by each laboratory rather than the currently required 50 known negative clinical samples. Because it can be difficult to find clinical samples and to share clinical samples for logistical reasons, removing the requirements for clinical samples and for samples to be supplied by the test kit manufacturer would allow any entity to provide clinical samples. However, the negative samples would have to contain relevant sample matrices/extraneous material which would be found in clinical samples. In addition, requiring at least 50 known negative samples rather than 50 known negative samples is necessary because, in the past, we have received fewer than 50 samples from a company when more samples were unavailable. This change would make it clearer that we view any sample sets consisting of fewer than 50 samples as incomplete and that we

would not review such sample sets. We are also proposing to add language allowing cooperating laboratories to perform a current NPIP procedure or test on samples alongside the test kit for comparison, and specific testing procedures for *Salmonella, Mycoplasma,* and avian influenza, as well as molecular-based testing procedures to better account for the differences among the three agents.

Paragraph (d) states that laboratories must submit assay response data to the kit manufacturer along with the official NPIP procedure. We are proposing to require that a worksheet for diagnostic test evaluation be submitted along with the raw data from the assay response and that the data and completed worksheet be submitted to the NPIP Senior Coordinator 4 months before the next General Conference Committee meeting, which is when test approval would be sought. Worksheets would be obtained by contacting the NPIP Senior Coordinator. The diagnostic test evaluation worksheet is intended to provide a standardized template to ensure that all needed data for test evaluation has been prepared and that the data is available in a uniform manner. This would make review of the data easier for the NPIP Technical Committee, which would facilitate the test approval process.

Paragraph (e) puts forth the process by which the NPIP Technical Committee will make their decision about whether to approve a new diagnostic test. We propose to clarify that a majority of the members of the Technical Committee would have to recommend whether to approve the test kit and that this recommendation would have to occur at the next scheduled General Conference Committee meeting.

Currently, the regulations do not provide procedures for modifying or removing diagnostic tests. Therefore, we are proposing to redesignate the introductory paragraph for § 147.54 as paragraph (a) and the following paragraphs (a) through (f) as paragraphs (a)(1) through (6) and add a new paragraph (b) to describe how diagnostic tests may be modified or removed. The proposed requirements would require the submission of data in support of modifying or removing the test in question to the NPIP Technical Committee in a manner similar to that in place for the approval of new test kits in current paragraph (e).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The changes in this proposed rule are recommended by the NPIP General Conference Committee, which represents cooperating State agencies and poultry industry members and advises the Secretary of Agriculture on issues pertaining to poultry health. The proposed amendments to these regulations would improve the regulatory environment for poultry and poultry products.

This rulemaking would result in various changes to 9 CFR parts 56 and 145–147, modifying provisions of the NPIP. The proposed rule would clarify participation in the NPIP and amend participation requirements, amend definitions for poultry and breeding stock, amend the approval process for new diagnostic tests, and amend inspection and laboratory testing requirements. The proposed amendments to these regulations would improve the regulatory environment for poultry and poultry products.

The establishments that would be affected by the proposed rule—principally entities engaged in poultry production and processing—are predominantly small by Small Business Administration standards. In those instances in which an addition or modification could potentially result in a cost to certain entities, we do not expect the costs to be significant. This rule embodies changes decided upon by the NPIP General Conference Committee on behalf of Plan members, that is, changes recognized by the poultry industry as in their interest. We note that NPIP membership is voluntary.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2014–0101. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the NPIP, its auxiliary provisions, and the indemnity regulations for the control of H5 and H7 low pathogenic avian influenza to clarify participation in the NPIP and amend participation requirements, amend definitions for poultry and breeding stock, amend the approval process for new diagnostic tests, and amend laboratory inspection and testing requirements. These changes would align the regulations with international standards and make them more transparent to APHIS stakeholders and the general public.

Implementing this rule will require certain new information collection activities such as Waterfowl and Game Bird Surveillance and Diagnostic Test Evaluation Worksheets. APHIS is asking OMB to approve, for 3 years, its use of these information collection activities in connection with APHIS' efforts to continually improve the health of the U.S. poultry population and the quality of U.S. poultry products. The NPIP has an existing information collection under OMB control number 0579–0007. At the next renewal of 0579–0007, we will merge the activities added by this proposed rule, subject to OMB approval.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.8 hours per response.

Respondents: Flock owners, breeders, hatchery owners, table egg producers, laboratory personnel, and State animal health officials.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 18 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects

9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

9 CFR Parts 145, 146, and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 56, 145, 146, and 147 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 56.1 is amended by revising the definition of *breeding flock* to read as follows:

§ 56.1 Definitions.

* * * * *

Breeding flock. A flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing progeny for the ultimate production of eggs or meat for human consumption.

* * * * *

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 3. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 145.2 [Amended]

■ 4. In § 145.2, paragraph (d) is amended by removing the words ''§ 145.3(d)'' and adding the words ''§ 145.3(e)'' in their place.

■ 5. Section 145.3 is amended as follows:

■ a. By redesignating paragraphs (a) through (f) as paragraphs (b) through (g), respectively.

■ b. By adding a new paragraph (a).

The addition reads as follows:

§ 145.3 Participation.

(a) The National Poultry Improvement Plan is a cooperative Federal-State-Industry program through which new or existing diagnostic technology can be effectively applied to improve poultry and poultry products by controlling or eliminating specific poultry diseases. The Plan consists of programs that identify States, flocks, hatcheries, dealers, and slaughter plants that meet specific disease control standards specified in the Plan. Participants shall maintain records to demonstrate that they adhere to the disease control programs in which they participate.

* * * * *

§ 145.12 [Amended]

■ 6. Section 145.12 is amended by adding, in paragraph (b), the words ''made available to and'' before the word ''examined''.

■ 7. Section 145.14 is amended as follows:

■ a. By revising paragraph (a)(5).

■ b. By revising paragraph (b)(1).

The revisions read as follows:

§ 145.14 Testing.

* * * * *

(a) * * *

(5) The official blood test shall include the testing of a sample of blood from each bird in the flock: Provided, That under specified conditions (see applicable provisions of §§ 145.23, 145.33, 145.43, 145.53, 145.63, 145.73, 145.83, and 145.93) the testing of a portion or sample of the birds may be used in lieu of testing each bird.

* * * * *

(b) * * *

(1) The official tests for *M. gallisepticum, M. meleagridis,* and *M. synoviae* shall be the serum plate agglutination test, the hemagglutination inhibition (HI) test, the enzyme-linked immunosorbent assay (ELISA) test [3], or a molecular based test. The HI test or molecular based test shall be used to confirm the positive results of other serological screening tests. HI titers of 1:40 or more may be interpreted as suspicious, and final judgment must be based on further samplings and/or culture of reactors. Tests must be conducted in accordance with this paragraph (b) and in accordance with part 147 of this subchapter.

* * * * *

[3] Procedures for the enzyme-linked immunosorbent assay (ELISA) test are set forth in the following publications:

A.A. Ansari, R.F. Taylor, T.S. Chang, ''Application of Enzyme-Linked Immunosorbent Assay for Detecting Antibody to Mycoplasma gallisepticum Infections in Poultry,'' *Avian Diseases,* Vol. 27, No. 1, pp. 21–35, January-March 1983; and

H.M. Opitz, J.B. Duplessis, and M.J. Cyr, ''Indirect Micro-Enzyme-Linked Immunosorbent Assay for the Detection of Antibodies to Mycoplasma synoviae and M. gallisepticum,'' *Avian Diseases,* Vol. 27, No. 3, pp. 773–786, July-September 1983; and

H.B. Ortmayer and R. Yamamoto, ''Mycoplasma Meleagridis Antibody Detection by Enzyme-Linked Immunosorbent Assay (ELISA),'' *Proceedings, 30th Western Poultry Disease Conference,* pp. 63–66, March 1981.

■ 8. In § 145.42, paragraph (b) is revised to read as follows:

§ 145.42 Participation.

* * * * *

(b) Hatching eggs should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

■ 9. Section 145.53 is amended as follows:

■ a. By revising paragraphs (c)(1)(i), (c)(1)(ii) introductory text, and (c)(1)(ii)(A).

■ b. By revising paragraphs (d)(1)(i), (d)(1)(ii) introductory text, and (d)(1)(ii)(A).

The revisions read as follows:

§ 145.53 Terminology and classification; flocks and products.

* * * * *

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: *Provided,* That to retain this classification, a random sample of serum or egg yolk or a targeted bird sample of the choanal palatine cleft/fissure area using appropriate swabs from all the birds in the flock if the flock size is less than 30, but at least 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 30 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 30 birds, or all birds in the flock if flock size is less than 30, is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean baby poultry from primary breeding flocks and a random sample comprised of 50 percent of the birds in the flock, with a maximum of 200 birds and a minimum of 30 birds per flock or all birds in the flock if the flock size is less than 30 birds, has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: Provided, That to retain this classification, the flock shall be subjected to one of the following procedures:

(A) At intervals of not more than 90 days, a random sample of serum or egg yolk or a targeted bird sample of the choanal palatine cleft/fissure area using appropriate swabs from all the birds in the flock if flock size is less than 30, but at least 30 birds, shall be tested; or

* * * * *

(d) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: *Provided,* That to retain this classification, a random sample of serum or egg yolk or a targeted bird sample of the choanal palatine cleft/fissure area using appropriate swabs (C.P. swabs) from all the birds in the flock if flock size is less than 30, but at least 30 birds, shall be tested at intervals of not more than 90 days: *And provided further,* That a sample comprised of less than 30 birds may be tested at any one time with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 30 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock that originated as U.S. M. Synoviae Clean chicks from primary breeding flocks and from which a random sample comprised of 50 percent of the birds in the flock, with a maximum of 200 birds and a minimum of 30 birds per flock or all birds in the flock if the flock is less than 30 birds, has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: *Provided,* That to retain this classification, the flock shall be subjected to one of the following procedures:

(A) At intervals of not more than 90 days, a random sample of serum or egg yolk or a targeted bird sample of the choanal palantine cleft/fissure area using appropriate swabs from all the birds in the flock if the flock size is less than 30, but at least 30 birds shall be tested: *Provided,* That a sample of fewer than 30 birds may be tested at any one time with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 30 birds, or the entire flock if flock size is less than 30, is tested each time and a total of at least 30 birds is tested within each 90-day period; or

* * * * *

■ 10. Section 145.83 is amended as follows:

■ a. By revising paragraph (f)(1)(i).

■ b. By removing paragraphs (f)(1)(ii) and (f)(1)(iii).

■ c. By redesignating paragraphs (f)(1)(iv) through (f)(1)(viii) as paragraphs (f)(1)(ii) through (f)(1)(vi).

■ d. In newly redesignated paragraphs (f)(1)(v) and (f)(1)(vi) by removing the words ''(f)(1)(vi)'' and adding the words ''(f)(1)(iv)'' in their place.

■ e. By revising paragraph (f)(3).

The revisions read as follows:

§ 145.83 Terminology and classification; flocks and products.

* * * * *

(f) * * *

(1) * * *

(i) Measures shall be implemented to control *Salmonella* challenge through feed, feed storage, and feed transport.

* * * * *

(3) In order for a hatchery to sell products of paragraphs (f)(1)(i) through (f)(1)(vi) of this section, all products handled shall meet the requirements of the classification.

* * * * *

■ 11. In § 145.92, paragraph (b) is revised to read as follows:

§ 145.92 Participation.

* * * * *

(b) Hatching eggs produced by primary and multiplier breeding flocks should be nest clean. They may be fumigated in accordance with part 147 of this subchapter or otherwise sanitized.

* * * * *

§ 145.93 [Amended]

■ 12. In § 145.93, paragraph (c)(3) is amended by removing the number ''30'' and adding the number ''11'' in its place.

PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

■ 13. The authority citation for part 146 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 14. Section 146.1 is amended by revising the definition of *poultry* to read as follows:

§ 146.1 Definitions.

* * * * *

Poultry. Domesticated fowl, including chickens, turkeys, waterfowl, and game birds, except doves and pigeons, that are bred for the primary purpose of producing eggs or meat.

* * * * *

■ 15. Section 146.2 is amended by revising paragraph (c) to read as follows:

§ 146.2 Administration.

* * * * *

(c)(1) An Official State Agency may accept for participation a commercial table-egg layer pullet flock, commercial table-egg layer flock, or a commercial meat-type flock (including an affiliated flock) located in another participating State under a mutual understanding and

agreement, in writing, between the two Official State Agencies regarding conditions of participation and supervision.

(2) An Official State Agency may accept for participation a commercial table-egg layer pullet flock, commercial table-egg layer flock, or a commercial meat-type flock (including an affiliated flock) located in a State that does not participate in the Plan under a mutual understanding and agreement, in writing, between the owner of the flock and the Official State Agency regarding conditions of participation and supervision.

* * * * *

§ 146.3 [Amended]

■ 16. In § 146.3, paragraph (a) is amended by adding the words ''commercial table-egg layer pullet flock,'' before the words ''table-egg producer''.

■ 17. In § 146.11, paragraph (b) is revised to read as follows:

§ 146.11 Inspections.

* * * * *

(b) A flock will be considered to be conforming to protocol if it meets the requirements as described in § 145.33(a), § 146.43(a), or § 146.53(a) of this chapter.

* * * * *

§ 146.51 [Amended]

■ 18. Section 146.51 is amended as follows:

■ a. In the definition of *commercial upland game birds* by changing the word ''purpose'' to ''purposes'' and adding the words ''eggs and/or'' before the word ''meat''.

■ b. In the definition of *commercial waterfowl,* by changing the word ''purpose'' to ''purposes'' and adding the words ''eggs and/or'' before the word ''meat''.

■ 19. Section 146.52 is amended by revising paragraphs (a) and (c) to read as follows:

§ 146.52 Participation.

(a) Participating commercial upland game bird slaughter plants, commercial waterfowl slaughter plants, raised-for-release upland game bird premises, raised-for-release waterfowl premises, and commercial upland game bird and commercial waterfowl producing eggs for human consumption premises shall comply with the applicable general provisions of subpart A of this part and the special provisions of this subpart E.

* * * * *

(c) Raised-for-release upland game bird premises, raised-for-release waterfowl premises, and commercial upland game bird and commercial waterfowl producing eggs for human consumption premises that raise fewer than 25,000 birds annually are exempt from the special provisions of this subpart E.

■ 20. Section 146.53 is amended as follows:

■ a. In paragraph (a) introductory text, by adding the words ''or, in the case of egg-producing flocks, the regular surveillance of these flocks'' after the words ''participating slaughter plant''.

■ b. By adding paragraphs (a)(4) and (a)(5).

The additions read as follows:

§ 146.53 Terminology and classification; slaughter plants and premises.

* * * * *

(a) * * *

(4) It is a commercial upland game bird or waterfowl flock that produces eggs for human consumption where a minimum of 11 birds per flock have been tested negative to the H5/H7 subtypes of avian influenza as provided in § 146.13 (b) within 30 days of disposal or within a 12 month period.

(5) It is a commercial upland game bird or waterfowl flock that has an on-going active and passive surveillance program for H5/H7 subtypes of avian influenza that is approved by the Official State Agency and the Service.

* * * * *

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

■ 21. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 22. In § 147.52, paragraph (d) is revised to read as follows:

§ 147.52 Authorized laboratories.

* * * * *

(d) *State site visit.* The Official State Agency will conduct a site visit and recordkeeping audit at least once every 2 years. This will include, but may not be limited to, review of technician training records, check test proficiency, and test results. The information from the site visit and recordkeeping audit will be made available to the NPIP upon request.

* * * * *

■ 23. Section 147.54 is revised to read as follows:

§ 147.54 Approval of diagnostic test kits not licensed by the Service.

(a) Diagnostic test kits that are not licensed by the Service (*e.g.,* bacteriological culturing kits) may be approved through the following procedure:

(1) The sensitivity of the kit will be evaluated in at least three NPIP authorized laboratories by testing known positive samples, as determined by the official NPIP procedures found in the NPIP Program Standards or through other procedures approved by the Administrator. Field samples for which the presence or absence of the target organism or analyte has been determined by the current NPIP test should be used, not spiked samples or pure cultures. Samples from a variety of field cases representing a range of low, medium, and high analyte concentrations should be used. In some cases it may be necessary to utilize samples from experimentally infected animals. Spiked samples (clinical sample matrix with a known amount of pure culture added) should only be used in the event that no other sample types are available. Pure cultures should never be used. Additionally, laboratories should be selected for their experience with testing for the target organism or analyte with the current NPIP approved test. If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(2) The specificity of the kit will be evaluated in at least three NPIP authorized laboratories by testing known negative samples, as determined by tests conducted in accordance with the NPIP Program Standards or other procedures approved by the Administrator in accordance with § 147.53(d)(1). If certain conditions or interfering substances are known to affect the performance of the kit, appropriate samples will be included so that the magnitude and significance of the effect(s) can be evaluated.

(3) The kit will be provided to the cooperating laboratories in its final form and include the instructions for use. The cooperating laboratories must perform the assay exactly as stated in the supplied instructions. Each laboratory must test a panel of at least 25 known positive samples. In addition, each laboratory will be asked to test at least 50 known negative samples obtained from several sources, to provide a representative sampling of the general population. The cooperating laboratories must perform a current NPIP procedure or NPIP approved test on the samples alongside the test kit for comparison.

(4) Cooperating laboratories will submit to the kit manufacturer all raw data regarding the assay response. Each

sample tested will be reported as positive or negative, and the official NPIP procedure used to classify the sample must be submitted in addition to the assay response value. A completed worksheet for diagnostic test evaluation is required to be submitted with the raw data and may be obtained by contacting the NPIP Senior Coordinator. Raw data and the completed worksheet for diagnostic test evaluation must be submitted to the NPIP Senior Coordinator 4 months prior to the next scheduled General Conference Committee meeting, which is when approval will be sought.

(5) The findings of the cooperating laboratories will be evaluated by the NPIP Technical Committee, and the Technical Committee will make a majority recommendation whether to approve the test kit to the General Conference Committee at the next scheduled General Conference Committee meeting. If the Technical Committee recommends approval, the final approval will be granted in accordance with the procedures described in §§ 147.46, 147.47, and 147.48.

(6) Diagnostic test kits that are not licensed by the Service (*e.g.,* bacteriological culturing kits) and that have been approved for use in the NPIP in accordance with this section are listed in the NPIP Program Standards.

(b) *Approved tests modification and removal.* (1) The specific data required for modifications of previously approved tests will be taken on a case-by-case basis by the technical committee.

(2) If the Technical Committee determines that only additional field data is needed at the time of submission for a modification of a previously approved test, allow for a conditional approval for 60 days for data collection side-by-side with a current test. The submitting party must provide complete protocol and study design, including criteria for pass/fail to the Technical Committee. The Technical Committee must review the data prior to final approval. This would only apply to the specific situation where a modified test needs additional field data with poultry to be approved.

(3) Approved diagnostic tests may be removed from the Plan by submission of a proposed change from a participant, Official State Agency, the Department, or other interested person or industry organization. The data in support of removing an approved test will be compiled and evaluated by the NPIP Technical Committee, and the Technical Committee will make a majority recommendation whether to remove the test kit to the General Conference Committee at the next scheduled General Conference Committee meeting. If the Technical Committee recommends removal, the final decision to remove the test will be granted in accordance with the procedures described in §§ 147.46, 147.47, and 147.48.

Done in Washington, DC, this 18th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06664 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–77407; File No. S7–03–16]

Notice of Proposed Commission Interpretation Regarding Automated Quotations Under Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed interpretation; request for comment.

SUMMARY: The Securities and Exchange Commission is publishing for comment a proposed interpretation with respect to the definition of automated quotation under Rule 600(b)(3) of Regulation NMS.

DATES: Comments should be received on or before April 14, 2016.

ADDRESSES: 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 S7–03–16 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 S7–03–16. 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 Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also 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.

FOR FURTHER INFORMATION CONTACT: Richard Holley III, Assistant Director, at (202) 551–5614, Michael Bradley, Special Counsel, at (202) 551–5594, or Michael Ogershok, Attorney-Advisor, at 202–551–5541, all in the Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Background

A. IEX's Form 1

On August 21, 2015, Investors' Exchange LLC (''IEX'') submitted to the Commission a Form 1 application seeking registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 (''Act'').[1] On September 9, 2015, IEX submitted Amendment No. 1 to its Form 1 application.[2] Notice of IEX's filing of its Form 1 application, as amended, was published for comment in the **Federal Register** on September 22, 2015.[3] Recently, IEX submitted three additional amendments to its Form 1 application.[4] Simultaneously with the

[1] 15 U.S.C. 78f.

[2] In Amendment No. 1, IEX submitted updated portions of its Form 1 application, including revised exhibits, a revised version of the proposed IEX Rule Book, and revised Addenda C–2, C–3, C–4, D–1, D–2, F–1, F–2, F–3, F–4, F–5, F–6, F–7, F–8, F–9, F–10, F–11, F–12, and F–13. IEX's Form 1 application, as amended, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as at the Commission's Public Reference Room.

[3] *See* Securities Exchange Act Release No. 75925 (September 15, 2015), 80 FR 57261. On December 18, 2015, IEX consented to an extension of time to March 21, 2016 for Commission consideration of its Form 1 application. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated December 18, 2015.

[4] In Amendment No. 2, filed on February 29, 2016, IEX proposed changes to its Form 1 application to, among other things, redesign its outbound routing functionality to direct routable orders first to the IEX router instead of directly to the IEX matching engine. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 1. In this manner, the IEX router would ''interact with the IEX matching system over a 350 microsecond speed-bump in the same way an independent third party broker would be subject to a speed bump.'' *See id.* In Amendment No. 3, filed on March 4, 2016, IEX proposed changes to its Form 1 application to clarify and correct revisions to its

issuance of this proposed interpretation, the Commission issued a release to notice Amendment Nos. 2, 3, and 4 to IEX's Form 1 application, instituted proceedings to consider whether to grant or deny IEX's application, and designated a longer period for Commission action to accommodate those proceedings.[5]

The Commission has received extensive comments on IEX's Form 1 application,[6] and IEX has submitted several letters in response to concerns raised by commenters.[7] Among other things, a number of commenters on IEX's Form 1 application asserted that a unique feature of IEX's design—specifically, its Point-of-Presence (''POP'') and ''coil'' access delay—would preclude IEX's best-priced quotation from being a ''protected quotation'' under Regulation NMS if the Commission grants IEX's exchange registration.[8] IEX contests this assertion, as do certain other commenters.[9]

As discussed more fully below and as highlighted by a number of commenters on IEX's Form 1 application,[10] the Commission preliminarily believes that IEX's proposed POP/coil structure raises questions about prior Commission statements with respect to the definition of an ''automated quotation'' under Regulation NMS. In light of market and technological developments since the adoption of Regulation NMS in 2005, the Commission is proposing and requesting comment on an updated interpretation to permit more flexibility for trading centers with respect to automated quotations to allow them to develop innovative business models that do not undermine the goals of Rule 611 of Regulation NMS. Specifically, the Commission is proposing to interpret ''immediate'' when determining whether a trading center maintains an ''automated quotation'' for purposes of Rule 611 to include response time delays at trading centers that are *de minimis,* whether intentional or not.

B. Regulation NMS Concept of an Automated Quotation and Protected Quotation

In general, Rule 611 under Regulation NMS (the ''Order Protection Rule,'' or ''Trade-Through Rule'') protects the best automated quotations of exchanges by obligating other trading centers to honor those quotes by not executing trades at inferior prices or ''trading through'' such best automated quotations.[11] Only an exchange that is an ''automated trading center'' [12] displaying an ''automated quotation'' [13] is entitled to this protection.[14] Trading centers must establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations, unless an exception or exemption applies.[15]

When it adopted Regulation NMS, the Commission explained that the purpose of the Order Protection Rule was to incentivize greater use of displayed limit orders, which contribute to price discovery and market liquidity.[16] In discussing whether to apply order protection to manual quotations, the Commission stated that ''providing protection to manual quotations, even limited to trade-throughs beyond a certain amount, potentially would lead to undue delays in the routing of investor orders, thereby not justifying the benefits of price protection.'' [17] The Commission also noted that ''those who route limit orders will be able to control whether their orders are protected by evaluating the extent to which various trading centers display automated versus manual quotations.'' [18]

There are several provisions in Regulation NMS that impact whether the Order Protection Rule applies. First, Rule 600(b)(58) defines a ''protected quotation'' as a ''protected bid or a protected offer.'' [19] Rule 600(b)(57), in turn, defines a ''protected bid or protected offer'' as a quotation in an NMS stock that is: (i) Displayed by an ''automated trading center,'' (ii) disseminated pursuant to an effective national market system plan, and (iii) an ''automated quotation'' that is the best bid or best offer of a national securities exchange.[20]

In order for an exchange to operate as an ''automated trading center,'' it must, among other things, have ''implemented such systems, procedures, and rules as are necessary to render it capable of displaying quotations that meet the requirements for an 'automated quotation' set forth in [Rule 600(b)(3) of Regulation NMS].'' [21] Rule 600(b)(3) defines an ''automated quotation'' as one that:

i. Permits an incoming order to be marked as immediate-or-cancel;

ii. Immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size;

iii. Immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

iv. Immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and

v. Immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.[22]

Any quotation that does not meet the requirements for an automated quotation is defined in Rule 600(b)(37) as a ''manual'' quotation.[23]

In the Regulation NMS Adopting Release, the Commission elaborated on the meaning of the terms ''immediate'' and ''automatic'' as those terms are used in the Rule 600(b)(3) definition of an automated quotation. Specifically, with respect to the meaning of the term ''immediate,'' the Commission stated that ''[t]he term 'immediate' precludes any coding of automated systems or other type of intentional device that would delay the action taken with

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rulebook that it made in Amendment No. 2. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 4, 2016. In Amendment No. 4, filed on March 7, 2016, IEX proposed changes to its Form 1 application to update Exhibit E to reflect changes it proposed in Amendment No. 2. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 7, 2016.

[5] *See* Securities Exchange Act Release No. 77406 (March 18, 2016) (File No. 10–222).

[6] The public comment file for IEX's Form 1 application (File No. 10–222) is available on the Commission's Web site at: *http://www.sec.gov/comments/10-222/10-222.shtml.*

[7] *See* Letters from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated November 13, 2015 (''IEX First Response''); November 23, 2015 (''IEX Second Response''); and February 9, 2016 (''IEX Third Response''). *See also* Letter from Donald Bollerman, Head of Markets and Sales, IEX Group, Inc., to File No. 10–222, dated February 16, 2016 (''IEX Fourth Response'') and Letter from IEX Group, Inc., to File No. 10–222, dated February 19, 2016 (''IEX Fifth Response'').

[8] *See, e.g.,* FIA First Letter; NYSE First Letter; Citadel First Letter.

[9] *See* IEX First Response and IEX Second Response. *See also, e.g.,* Verret Letter; Leuchtkafer Second Letter.

[10] *See infra* text accompanying notes 49–57 (discussing comments on IEX's Form 1).

[11] *See* 17 CFR 242.611.

[12] *See* 17 CFR 242.600(b)(4).

[13] *See* 17 CFR 242.600(b)(3).

[14] *See* 17 CFR 242.600(b)(57) (defining ''protected bid or protected offer''), 242.600(b)(58) (defining ''protected quotation''); *see also* Securities Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496, 37504 (June 29, 2005) (''Regulation NMS Adopting Release'') (stating that ''[t]o qualify for protection, a quotation must be automated'').

[15] 17 CFR 242.611(a)(1).

[16] *See* Regulation NMS Adopting Release, *supra* note 14, at 37516 and 37517.

[17] *Id.* at 37518.

[18] *Id.*

[19] 17 CFR 242.600(b)(58).

[20] 17 CFR 242.600(b)(57).

[21] 17 CFR 242.600(b)(4). Rule 600(b)(4) contains additional requirements that must be satisfied in order to be an automated trading center. Those requirements are not at issue for purposes of this proposed interpretation.

[22] *See* 17 CFR 242.600(b)(3). *See also* Regulation NMS Adopting Release, *supra* note 14, at 37504.

[23] Regulation NMS Adopting Release, *supra* note 14, at 37534. *See also* 17 CFR 242.600(b)(37) (defining ''manual quotation'').

respect to a quotation,'' [24] and that the standard for responding to an incoming order ''should be 'immediate,' *i.e.,* a trading center's systems should provide the fastest response possible without any programmed delay.'' [25]

The Commission provided context in the Regulation NMS Adopting Release as to the intent behind the Order Protection Rule and the distinction between ''automated quotations'' and ''manual quotations.'' At the time of the adoption of Regulation NMS, manual quotations and markets that primarily were centered around human interaction in a floor-based trading environment, including ''hybrid'' trading facilities that offer automatic execution of orders seeking to interact with displayed quotations while also maintaining a physical trading floor, experienced processing delays for inbound orders that were measured in multiple seconds.[26] In contrast to floor-based and hybrid markets, at the time Regulation NMS was adopted, newer automated matching systems removed the human element and instead immediately matched buyers and sellers electronically. The Commission sought to achieve the goals of the Order Protection Rule and maintain the efficiencies of the markets by protecting only automated quotations that were ''immediately'' accessible, and allowing trade-throughs of those that were not.[27]

In Rules 600 and 611, the Commission did not set a maximum response time for a quotation to be an ''automated quotation.'' [28] While a number of commenters on Regulation NMS advocated for a specific time standard, ranging from one second down to 250 milliseconds,[29] for distinguishing between manual and automated quotations,[30] the Commission declined to set such a standard, noting that ''[t]he definition of automated quotation as adopted does not set forth a specific time standard for responding to an incoming order.'' [31] Rather, the Commission specifically sought to avoid ''specifying a specific time standard that may become obsolete as systems improve over time,'' and agreed with commenters that ''the standard should be 'immediate' *i.e.,* a trading center's systems should provide the fastest response possible without any programmed delay.'' [32]

However, the Commission believed that ''immediate'' should not be construed in a way to frustrate the purposes of Rule 611 and crafted several exceptions to Rule 611, two of which use a one second standard.[33] Specifically, Rule 600(b)(1) addresses the applicability of the trade-through requirements with respect to quotations of automated trading centers that experience a ''failure, material delay, or malfunction,'' by allowing other trading centers to trade-through such quotations.[34] In the Regulation NMS Adopting Release, the Commission provided an interpretation of the phrase ''material delay'' as one where a market was ''repeatedly failing to respond within one second after receipt of an order.'' [35] The Commission similarly established a one-second standard for the exception in Rule 611(b)(8), which excepts trade-throughs where the trading center that was traded-through had displayed, within the prior one second, a price equal or inferior to the price of the trade-through transaction.[36] In discussing the 611(b)(8) exception, the Commission stated that it ''generally does not believe that the benefits would justify the costs imposed on trading centers of attempting to implement an intermarket price priority rule at the level of sub-second time increments. Accordingly, Rule 611 has been formulated to relieve trading centers of this burden.'' [37]

C. IEX's Access Delay

IEX, which currently operates a trading platform as an alternative trading system, is seeking to register as a national securities exchange. If its registration is granted, IEX would operate an electronic order book for NMS stocks.[38] IEX's POP and coil infrastructure is how IEX users (''Users'') would connect to IEX.[39]

IEX has represented that access to IEX by all Users would be obtained through a POP located in Secaucus, New Jersey.[40] According to IEX, after entering through the POP, a User's electronic message sent to the IEX trading system would traverse the IEX ''coil,'' which is a box of compactly coiled optical fiber cable equivalent to a prescribed physical distance of 61,625 meters (approximately 38 miles).[41] After exiting the coil, the User's message would travel an additional physical distance to the IEX system, located in Weehawken, New Jersey.[42] IEX has represented that routable orders would thereafter be directed to the IEX routing logic, and non-routable orders would be directed to the IEX matching engine.[43] According to IEX, the coil, when combined with the physical distance between the POP and the IEX system, would provide IEX Users sending non-

[24] Regulation NMS Adopting Release, *supra* note 14, at 37534. The Commission also stated that, for a quotation ''[t]o qualify as 'automatic,' no human discretion in determining any action taken with respect to an order may be exercised after the time an order is received,'' and ''a quotation will not qualify as 'automated' if any human intervention after the time an order is received is allowed to determine the action taken with respect to the quotation.'' *Id.* at 37519 and 37534.

[25] *Id.* at 37519. In the case of IEX, its access delay involves hardware (*i.e.,* coiled cable) and geographic dispersion, not software programming. *See infra* text accompanying notes 40–45. Nevertheless, it is an intentional delay. *See id.*

[26] *See* Regulation NMS Adopting Release, *supra* note 14, at 37500 n.21 (''One of the primary effects of the Order Protection Rule adopted today will be to promote much greater speed of execution in the market for exchange-listed stocks. The difference in speed between automated and manual markets often is the difference between a 1-second response and a 15-second response. . . .'').

[27] *See id.* at 37501. More broadly, the Commission stated that the definition of ''automated trading center'' in Rule 600(b)(4) ''offers flexibility for a hybrid market to display both automated and manual quotations, but only when such a market meets basic standards that promote fair and efficient access by the public to the market's automated quotations.'' *Id.* at 37520. This definition was an outgrowth of two floor-based exchanges' intention to operate ''hybrid'' trading facilities that would offer automatic execution against their displayed quotations, while at the same time maintaining a traditional trading floor. *See id.* at 37518. The Commission also explained that the Order Protection Rule took a substantially different approach to intermarket price protection than the existing trade-through protection regime at the time—the Intermarket Trading System (''ITS'') Plan. *See id.* at 37501. As the Commission noted, the ITS provisions did not distinguish between manual and automated quotations and ''fail[ed] to reflect the disparate speed of response between manual and automated quotations'' as they ''were drafted for a world of floor-based markets.'' *Id.* As a result, ''[b]y requiring order routers to wait for a response from a manual market, the ITS trade-through provisions can cause an order to miss both the best price of a manual quotation and slightly inferior prices at automated markets that would have been immediately accessible.'' *Id. See also supra* note 26 (citing to footnote 21 of the Regulation NMS Adopting Release).

[28] *See also id.* at 37519 (''The definition of automated quotation as adopted does not set forth a specific time standard for responding to an incoming order.'').

[29] A millisecond is one thousandth of a second.

[30] *See id.* at 37518.

[31] *Id.* at 37519.

[32] *Id.*

[33] *See* 17 CFR 242.611(b)(1) and (8).

[34] *See* 17 CFR 242.611(b)(1).

[35] *See* Regulation NMS Adopting Release, *supra* note 14, at 37519.

[36] *See* 17 CFR 242.611(b)(8).

[37] *See* Regulation NMS Adopting Release, *supra* note 14, at 37523.

[38] For more detail on IEX's proposed trading system, *see* IEX's full Form 1 application and Exhibits, as amended, which are available on the Commission's Web site at *http://www.sec.gov/rules/other/otherarchive/other2015.shtml.*

[39] To obtain authorized access to the IEX System, each User must enter into a User Agreement with the Exchange. *See* IEX Rule 11.130(a). The term ''Users,'' for purposes of this notice, does not include IEX Services LLC, IEX's affiliated outbound routing broker-dealer.

[40] *See* IEX Second Response at 2.

[41] *See* IEX First Response at 3.

[42] *See* Exhibit E to IEX's Form 1 submission, at 12. *See also* IEX First Response at 3.

[43] *See* Amendment Nos. 2 and 3 to IEX's Form 1 application.

routable orders to IEX with 350 *micro*seconds [44] of one-way latency.[45] For purposes of this notice, IEX's process for handling non-routable orders is hereinafter referred to as the ''POP/coil delay.''

According to IEX, all *incoming* messages (*e.g.,* orders to buy or sell and any modification to a previously sent open order) from any User would traverse the proposed POP/coil delay.[46] In addition, all *outbound* messages from IEX back to a User (*e.g.,* confirmations of an execution that occurred on IEX) would pass through the same route in reverse.[47] IEX's direct proprietary market data feed, which is an optional data feed that IEX would make available to subscribers, also would traverse the coil before exiting at the POP.[48] As a result, a non-routable immediate-or-cancel (''IOC'') order, which is a type of order that IEX would permit Users to send to the IEX system, would traverse the proposed POP/coil (and its attendant 350 microsecond delay) before arriving at the IEX system and potentially executing against a displayed quotation on IEX. Likewise, the response from the IEX system to the User indicating the action taken by the IEX system with respect to such IOC order also would traverse the POP/coil and experience a 350 microsecond delay.[49]

D. Comments on IEX's Proposed Access Delay

Several commenters on IEX's Form 1 application questioned whether IEX's operation of the proposed POP/coil would be consistent with the Order Protection Rule.[50] Their main assertion is that the 350 microsecond latency caused by the POP/coil calls into question whether IEX's quotations meet the definition of ''automated quotation,'' and therefore would be a ''protected quotation,'' under Regulation NMS and Rule 611 in particular.[51] These commenters generally cited to language, discussed above, from the Regulation NMS Adopting Release where the Commission elaborated on what it means for a quotation to be an ''automated quotation,'' including statements that the term ''immediate,'' as it relates to the definition of an automated quotation, means that ''a trading center's systems should provide the *fastest response possible* without any *programmed delay''* [52] and ''precludes any coding of automated systems or *other type of intentional device that would delay the action taken* with respect to a quotation'' (emphasis added).[53] Based on this language, these commenters contended that IEX's quotation is not consistent with the definition of automated quotation, or at least questioned whether it can be so considered.[54]

Several commenters urged the Commission not to decide this question in the context of IEX's Form 1 application.[55] One commenter urged the Commission, should it disagree with the contention that IEX's quotation cannot be protected, to explain its reasoning in a rulemaking proceeding or exemptive order that is subject to public vetting.[56] Another commenter urged the Commission ''to articulate clear standards regarding the precise amount of time an intentional device can delay access to the quotation of a registered exchange and still be considered an automated quotation.'' [57] This commenter supported an interpretation of the definition of an automated quotation that would include the delay resulting from IEX's POP/coil, but further urged the Commission to articulate clear regulatory standards that would be applicable to all trading venues and market participants.[58]

Other commenters offered support for IEX's proposed access delay, and challenged the assertion that IEX's quotation would not meet the definition of ''automated quotation'' under Regulation NMS.[59] According to one commenter, the Commission's ''larger plan'' in requiring protected quotes to be ''immediately and automatically'' accessible under Regulation NMS was ''to encourage automated markets and prevent exchanges from favoring their own *manual markets,* so the SEC protected an exchange's lit, automated quotes and banned any programmed tricks or devices an exchange might use to give human traders a chance to intervene or any kind of an edge over automated quotes.'' [60] In addition, this commenter further asserted, ''[t]hat 'immediately' simply prohibits discrimination favoring manual markets is all the more obvious in the [Regulation NMS] Adopting Release's discussion of self-help'' where, according to the commenter, ''[t]he SEC had every opportunity to define 'immediately' in absolute terms and declined to do it,'' and instead ''only went as far as suggesting one second was a reasonable upper bound for declaring self-help and left it up to the marketplace to reward fast markets or punish slow markets.'' [61]

[44] A microsecond is one millionth of a second.

[45] *See* IEX First Response at 3. *See also* Amendment Nos. 2 and 3. Users sending *routable* orders would experience 700 microseconds of one-way latency. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 2.

[46] *See* IEX First Response at 3–4.

[47] *See id.*

[48] *See id.*

[49] *See id.* at 3. Outbound transaction and quote messages from IEX to the applicable securities information processor (''SIP'') would *not* pass through the POP/coil, but instead would be sent directly from the IEX system to the SIP processor. *See id.* at 3–4.

[50] *See, e.g.,* NYSE First Letter at 5; BATS First Letter at 3; FIA First Letter at 2; Nasdaq First Letter at 2; Citadel First Letter at 3.

[51] *See, e.g.,* BATS First Letter at 2–4; FIA First Letter at 2; NYSE First Letter at 5–7; Nasdaq First Letter at 2; Citadel First Letter at 2–4.

[52] *See, e.g.,* Nasdaq First Letter at 2; NYSE First Letter at 6. *See also* Regulation NMS Adopting Release, *supra* note 14, at 37519.

[53] *See, e.g.,* BATS First Letter at 3; FIA First Letter at 2; Citadel First Letter at 3; Citadel Second Letter at 3; *see also* Regulation NMS Adopting Release, *supra* note 14, at 37534.

[54] *See* BATS First Letter at 3; FIA First Letter at 2; NYSE First Letter at 6–7; Nasdaq First Letter at 2–3; Citadel First Letter at 3–4; Citadel Second Letter at 3–4; Hudson River Trading Second Letter at 3–4.

[55] *See, e.g.,* Citadel Second Letter at 4; Nasdaq Second Letter at 1–4; Direct Match Letter at 2–4; Scott Letter.

[56] *See, e.g.,* Citadel Second Letter at 4.

[57] BATS First Letter at 3; *see also* BATS First Letter at 4, 6. A second commenter writing in support of IEX's POP/coil similarly urged the Commission to articulate the extent of permissible intentional, geographical, or technological delays for registered exchanges. *See* T. Rowe Price Letter at 2. A third commenter urged the Commission to not approve IEX's POP/coil without also establishing a maximum permissible delay for registered exchanges. *See* Jon D. Letter.

[58] *See* BATS Second Letter at 2.

[59] One commenter argued that such an assertion ''rests on an overly formalistic reading of Regulation NMS that fails to account for the rise of high speed trading in the last decade.'' *See* Verret Letter at 4. Another commenter similarly criticized that assertion as dependent ''on a self-serving read of Reg NMS, leaving out its history, its original meaning, and its subsequent interpretation.'' *See* Leuchtkafer Second Letter at 1.

[60] Leuchtkafer Second Letter at 1–2 (emphasis in original). This commenter pointed out that ''[t]he standard by which to measure automated and protected quotes was ITS, or, more precisely, human intervention, because it was human intervention the SEC wanted to firewall'' and asserted that '''[i]mmediately and automatically' means without human intervention and with no chance of human intervention'' and ''does not mean as fast as an exchange, or any exchange, can go.'' *Id.* at 2.

[61] *Id.* at 2. Another commenter asserted that IEX's POP/coil structure is ''entirely consistent with the overall policy objectives of Regulation NMS.'' Franklin Templeton Letter at 2. One commenter argued that IEX's proposed POP/coil delay does not constitute an ''intentional device'' under Rule 600 of Regulation NMS because IEX's dissemination of quote information to the SIP would not be subject to the delay, and thus IEX's POP/coil would not increase the uncertainty of the NBBO relative to current latencies. *See* Upson Letter at 2. One commenter noted that ''the flip side of faster access is slower access if you don't pay'' and with co-location ''[t]he problem is that you have to pay to get into their data centers in the first place, and if you don't it sure looks like you are intentionally delayed compared to those who can and do pay.''

Continued

Several commenters noted that there is latency associated with the transmission of orders to protected quotations at existing market venues—and in some cases, those latencies are greater than that associated with transmitting orders to IEX even factoring in the proposed POP/coil delay.[62] One commenter argued that the 350 microsecond proposed POP/coil delay ''would be so *de minimis* as to have no appreciable impact on market behavior'' and is ''not much more than the normal latency that all trading platforms impose.'' [63] Another commenter did not find the proposed POP/coil delay ''particularly problematic, as the time gap is minimal, and (even including the speed bump) IEX matches orders faster than a number of other markets.'' [64] One commenter noted that the POP/coil 350 microsecond delay ''is orders of magnitude shorter than the variable lags between the SIP and the proprietary feeds,'' and asserted that the proposed POP/coil delay is consistent with existing practices already approved by the Commission.[65]

IEX asserted that the language of the Order Protection Rule and the Regulation NMS Adopting Release, when considered in light of the context in which the Order Protection Rule was adopted, do not compel the conclusion that IEX's quotes should be considered ''manual quotations'' instead of ''automated quotations.'' [66] In addition, IEX noted that not all exchange matching systems are located in the same vicinity and asserted that ''there is no reason to think that the Commission by referring to 'intentional device' meant somehow to set geographic standards with regard to exchange matching system connections generally, or to prescribe the exact length of cable that is or is not allowable.'' [67]

According to IEX, its POP/coil structure ''represents a form of prescribed physical distance to which all users are subject when submitting orders to IEX's trading system'' and ''[i]n this sense, it is no different from means that all exchanges impose to set the terms by which users can connect to their systems.'' [68] IEX stated that ''the amount of latency imposed by the POP is less than or not materially different than that currently involved in reaching various exchanges based on geographic factors,'' and refers, by way of example, to the geographic distance that an order from the Chicago Stock Exchange's Secaucus, New Jersey data center must physically traverse before reaching the Chicago Stock Exchange's trading system in Chicago.[69] IEX also provided data from certain subscribers to IEX's ATS that, according to IEX, indicate that those subscribers' average latency when trading on IEX is comparable to that when trading on certain other exchanges, ''is an order of magnitude less than that of the Chicago Stock Exchange,'' and ''is on average less than the round-trip latency of the NYSE as well.'' [70]

II. Commission's Proposed Interpretation

As discussed above, at the time Regulation NMS was adopted, the concept of an ''automated quotation'' was intended to address manual and hybrid automated-manual trading systems in relation to the trade-through requirements of Rule 611. Under Regulation NMS, a trading center must provide an ''immediate'' response for its quotation to be an ''automated quotation.'' [71] Although the Commission did not set a maximum response time in Rule 600 or Rule 611 for a quotation to be an automated quotation, in the Regulation NMS Adopting Release the Commission stated that an immediate response meant ''the fastest response possible without any programmed delay.'' [72] When Regulation NMS was adopted, however, the Commission was focused on the response time delays generated by manual interaction, and crafted exceptions to Rule 611 based on response times of one second.[73] Delays in the realm of sub-milliseconds, as presented by the IEX Form 1 application, were not contemplated by the Commission because they generally were not relevant or material for the slower trading technologies used by market participants at the time.[74]

As the speed of trading technology has increased since the adoption of Regulation NMS,[75] some trading centers have begun to explore ways to reduce the relevance of speed differentials of

See Leuchtkafer First Letter at 1. That commenter noted that ''if the IEX critics are right, by their own reasoning the exchanges will have to dismantle their co-location facilities and stop offering tiered high-speed network facilities. They are selling faster access to their markets, and if you don't pay, aren't you slower than you could be, aren't you intentionally delayed?'' *Id.* at 2.

[62] *See, e.g.,* BATS First Letter at 4; BATS Second Letter at 2–3; Healthy Markets Letter at 4; Angel Letter at 2; Kim Letter; Mannheim Letter; Wilcox Letter.

[63] Angel Letter at 3.

[64] Tabb Letter at 1.

[65] Healthy Markets Letter at 3.

[66] *See* IEX First Response at 6–7; *see also* IEX Third Response at 1–3. IEX noted that the Regulation NMS Adopting Release does not define a maximum allowable latency in order for quotations to qualify as automated quotations, and stated that ''[t]he POP does not enable any human intervention to determine the action taken with respect to a quote or the order itself'' and that ''the POP clearly does not involve a 'coding of automated systems'. . . .'' IEX First Response at 6–7. IEX suggested that the POP is consistent with the purpose of Regulation NMS because ''the POP helps to *promote* access to quotations by limiting the chance that a party displaying a quote on an exchange will use a signal from an execution on IEX to cancel its quote on that other market within microseconds.'' *See* IEX Second Response at 4 (emphasis in original).

[67] IEX First Response at 7; *see also* IEX Second Response at 4.

[68] IEX First Response at 5.

[69] *See id.* at 6; *see also* IEX Third Response at 2. One commenter made the same observation, noting that ''[t]he NBBO already includes quotes with varied degrees of time lag'' and that the length of IEX's coiled cable ''is far less than the distance between NY and Chicago, and is remarkably similar to the distance between Carteret and Mahwah (36 miles).'' *See* Healthy Markets Letter at 4. *See also* IEX Second Response at 11 (noting that the distance between Nasdaq's Carteret facility and NYSE's Mahwah facility is 42.8 miles (compared to the IEX coil's approximately 38 mile equivalent)). Other commenters similarly understood that the POP/coil latency is comparable to or shorter than natural and geographic latencies in today's market. *See* Angel Letter at 2; BATS First Letter at 4; BATS Second Letter at 2–3; Kim Letter; Mannheim Letter; T. Rowe Price Letter at 2–3; Wilcox Letter. Two commenters specifically suggested that such a delay would be inconsequential or *de minimis. See* Angel Letter at 2; Abel/Noser Letter at 2.

[70] IEX Second Response at 4 and 7. IEX compared its POP to the coiling of cable that existing exchanges utilize in their respective data centers for purposes of co-location access. *See* IEX First Response at 3–6; IEX Third Response at 2. IEX further contended that ''the POP should no more be considered prohibited than existing access arrangements could be considered as designed to intentionally delay access to quotes by anyone who declines to pay for the privilege of the fastest access.'' IEX First Response at 7. According to IEX, ''the POP clearly is not a 'programmed delay' any more than the coiled cables connecting to every other exchange's matching systems could be considered as such.'' IEX Second Response at 4. IEX claimed that its 350 microsecond latency on inbound orders is actually *less* than the latency differential between the non-co-located access and the highest level of co-location offered by the Nasdaq Stock Market. *See id.* at 5–6.

[71] *See* 17 CFR 242.600(b)(3) (defining ''automated quotation'').

[72] Regulation NMS Adopting Release, *supra* note 14, at 37519.

[73] *See supra* note 26 (citing to footnote 21 of the Regulation NMS adopting release where the Commission noted that ''[t]he difference in speed between automated and manual markets often is the difference between a 1-second response and a 15-second response—a disparity that clearly can be important to many investors'').

[74] The Commission notes that the smallest time increment suggested by commenters at the time Regulation NMS was adopted—250 milliseconds—is magnitudes slower than the latency introduced by IEX's proposed POP/coil delay. *See* Regulation NMS Adopting Release, *supra* note 14, at 37518.

[75] A number of factors affect the speed at which a market participant can receive market and quote data, submit orders, obtain an execution, and receive information on trades, including hardware, software, and physical distance. *See, e.g.,* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3610–11 (January 21, 2010) (Concept Release on Equity Market Structure). Recent technological advances have reduced the ''latency'' that these factors introduce into the order handling process, both in absolute and relative terms, and some market participants and liquidity providers have invested in low-latency systems that take into account the advances in technology. *See id.* at 3606.

very small increments.[76] Proposals like IEX's POP/coil that intentionally delay access to an exchange's quotation, albeit by a sub-millisecond amount, raise questions about the prior interpretation with respect to the definition of an automated quotation under Regulation NMS. Accordingly, the Commission is proposing and soliciting comment on an updated interpretation from that provided in the Regulation NMS Adopting Release.[77]

Specifically, the Commission preliminarily believes that, in the current market, delays of less than a millisecond in quotation response times may be at a *de minimis* level that would not impair a market participant's ability to access a quote, consistent with the goals of Rule 611 and because such delays are within the geographic and technological latencies experienced by market participants today. For example, IEX's proposed POP/coil would introduce a 350 microsecond delay for a non-routable IOC order before it could access the IEX matching engine. The additional delay introduced by the coil itself, which is approximately 38 miles long, is effectively equivalent to the communications latency between venues that are 38 miles apart.[78] The Commission understands that today the distances between exchange data centers, or between the order entry systems of market participants and exchange data centers, may exceed, sometimes by many multiples, a distance of 38 miles. The Commission does not believe that these naturally-occurring response time latencies resulting from geography are inconsistent with the purposes of Rule 611.[79] At the same time, permitting the quotations of trading centers with very small response time delays, such as those proposed by IEX, to be treated as automated quotations, and thereby benefit from trade-through protection under Rule 611, could encourage innovative ways to address market structure issues.

Accordingly, the Commission today is proposing to interpret ''immediate'' when determining whether a trading center maintains an ''automated quotation'' for purposes of Rule 611 of Regulation NMS to include response time delays at trading centers that are *de minimis,* whether intentional or not.[80]

III. Solicitation of Comment

The Commission requests comment all aspects of this proposed interpretation, including:

1. Would delays of less than a millisecond in quotation response times impair a market participant's ability to access a quote or impair efficient compliance with Rule 611?

2. In the current market, should the Commission interpret ''immediate'' as including a *de minimis* delay of less than one millisecond? Should the Commission consider other lengths? If so, what should they be?

3. Should the Commission be concerned about market manipulation? If so, specifically, what should the Commission focus on?

4. Should the Commission consider an alternative interpretation? If so, what should it be?

By the Commission.

Dated: March 18, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–06633 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

[76] *See, e.g.,* Securities Exchange Act Release No. 67639 (August 10, 2012), 77 FR 49034 (August 15, 2012) (SR–NASDAQ–2012–071) (order approving proposed rule change to provide for simultaneous routing).

[77] In particular, the POP/coil, because it delays inbound and outbound messages to and from IEX Users, raises a question as to whether IEX will, among other things, ''immediately'' execute IOC orders under Rule 600(b)(3)(ii), ''immediately'' transmit a response to an IOC order sender under Rule 600(b)(3)(iv), and ''immediately'' display information that updates IEX's displayed quotation under Rule 600(b)(3)(v). *See* 17 CFR 242.600(b)(3); *see also* Regulation NMS Adopting Release, *supra* note 14, at 37504.

[78] *See supra* note 69 (citing to the Healthy Markets Letter, which observed that the length of IEX's coiled cable ''is far less than the distance between NY and Chicago, and is remarkably similar to the distance between Carteret and Mahwah (36 miles)''). *See also* IEX Second Response at 11 (noting that the distance between Nasdaq's Carteret facility and NYSE's Mahwah facility is 42.8 miles).

[79] *See supra* note 69 (citing to commenters who believe that IEX's POP/coil latency is comparable to or shorter than natural and geographic latencies in today's market). One market maker and liquidity provider on the IEX ATS notes that it ''engages in precisely the same market making strategies on IEX as [it does] on automated trading systems run by other broker-dealers . . . as well as on registered stock exchanges'' and that ''IEX's 'speed bump' has had no impact on [its] market making and liquidity provisioning on the platform.'' Virtu Letter at 1–2.

[80] An exchange that proposed to provide any member or user (including the exchange's inbound or outbound routing functionality, or the exchange's affiliates) with *exclusive* privileged faster access to its facilities over any other member or user would raise concerns under the Act, including under Section 6(b)(5) and 6(b)(8) of the Act, and would need to address those concerns in a Form 1 exchange registration application or a proposed rule change submitted pursuant to Section 19 of the Act, as applicable.

DEPARTMENT OF EDUCATION

34 CFR Parts 270, 271, and 272

RIN 1810–AB26

[Docket ID ED–2016–OESE–0006]

Equity Assistance Centers (Formerly Desegregation Assistance Centers)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations that govern the Equity Assistance Centers (EAC) program, authorized under Title IV of the Civil Rights Act of 1964, and to remove the regulations that govern the State Educational Agency Desegregation (SEA) program, authorized under Title IV of the Civil Rights Act of 1964. Once final and effective, these amended EAC regulations would govern the application process for new EAC grant awards. The proposed regulations would update the definitions applicable to this program; remove the existing selection criteria; and provide the Secretary with flexibility to determine the number and composition of geographic regions for the program. Additionally, the proposed regulations would remove the regulations for the SEA program, which is no longer funded.

DATES: We must receive your comments on or before April 25, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted 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.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202–6135. Telephone: (202) 205–4513.

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: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202–6135. Telephone: (202) 205–4513 or by email: *britt.jung@ed.gov.*

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:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. 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.

Specific Issues Open for Comment

In addition to your general comments, we are interested in your feedback on the proposed flexibility in selecting the number and boundaries of the geographic regions. The Department currently plans to reduce the number of regional centers in the first competition after these final regulations become effective. We are particularly interested in your feedback on the following questions:

- Do applicants or program beneficiaries support the proposed flexibility allowing the Secretary to choose the number of regional centers?
- What factors should the Secretary consider when determining the composition of States in each geographic region?
- Are there potential costs or benefits associated with the proposed approach that we have not addressed?

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 3E231, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4 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

The Secretary proposes to revise the general regulations in 34 CFR part 270 that apply to both the EAC and the SEA programs and to revise the regulations in 34 CFR part 272 that apply only to the EAC program. We propose five key changes to these regulations. First, we propose to amend the section that governs the existing geographic regions to allow the Secretary flexibility in choosing the number and composition of geographic regions to be funded with each competition. Second, we propose to add religion to the areas of desegregation assistance, add a definition for ''special educational problems occasioned by desegregation,'' and amend the definition of ''sex desegregation'' to clarify the protected individuals identified by this term. Third, we propose to remove the existing selection criteria (to instead rely on the General Selection Criteria listed under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210). Fourth, we propose to remove the limitations and exceptions established in current 34 CFR 270.6 on providing desegregation assistance, to align these regulations with those of other technical assistance centers. Fifth, we propose to remove 34 CFR part 271, as the SEA program has not been funded in twenty years. We also propose to merge part 272 into part 270, so that a single part covers the EAC program.

We propose regulations that would permit the Secretary to establish the geographic regions for the EAC program with each competition, so the Department could respond to the magnitude of the need for desegregation assistance across the nation, taking into account funding levels and the circumstances that exist at the time of each competition. The Department currently plans to fund four regional centers in the first competition after these final regulations become effective.

The proposed regulations would allow the Department to reduce the current number of regional centers while still providing technical assistance to beneficiaries across the nation. Presuming funding levels for the program remain constant, this would increase the funding available for each center and enable the centers to operate in the most effective and efficient manner. Reducing the current number of regions would limit the duplication of effort for overhead costs (such as start-up costs, administrative support, rent, etc.), and redirect those funds to technical assistance and support using the latest technology available. Furthermore, reducing the number of regions would allow the Department to provide more thorough support and monitoring of those consolidated centers, while ensuring technical assistance is still available to reach beneficiaries across the country. However, the proposed regulations would provide the flexibility to change the number and the composition of the regions in the future, in the event that funding levels or technical assistance delivery platforms were to change significantly. These decisions would necessarily take into consideration the need for centers to continue to provide support for communities across the country.

The proposed regulations would add religion to the areas of desegregation assistance, as religion is specifically cited in Title IV of the Civil Rights Act of 1964 as an area of desegregation assistance, and add a definition for the term ''religion desegregation'' that is consistent with the terms describing race, sex, and national origin desegregation. The Department would amend the definition of a ''Desegregation Assistance Center'' to refer to it as an Equity Assistance Center. The proposed regulations would also amend the definition of ''sex desegregation'' to explain that the Department interprets sex discrimination under Title IX to include discrimination based on transgender status, gender identity, sex stereotypes, and pregnancy and related conditions. Finally, the proposed regulations would add a definition for ''special educational problems occasioned by desegregation'' to clarify that this term does not refer to the provision of special education and related services as defined by the

Individuals with Disabilities Education Act (IDEA). Children with disabilities or staff providing services to them could be potential beneficiaries of technical assistance if they are affected by desegregation efforts.

The proposed regulations would also eliminate the selection criteria and the prescribed point values under § 272.30. At present, the prescribed point values are unduly restrictive on the Secretary's ability to structure each grant competition. Furthermore, there is significant overlap between the existing selection criteria and 34 CFR 75.210. As such, this change would provide the Secretary with greater flexibility to address program needs at the time of each competition, by allowing the use of any of the General Selection Criteria listed in 34 CFR 75.210, while ensuring that the selected projects for any competition meet the highest standards of professional excellence.

The proposed regulations would remove current § 270.6(b) in its entirety and amend current § 270.6(a) to broaden this section to address all technical assistance activities under this program, rather than only those for race and national origin desegregation assistance. We propose to amend current § 270.6 for clarity, and to align these regulations with the limitations on developing curriculum that apply to other technical assistance centers, such as the Comprehensive Centers. Consistent with the General Education Provisions Act, 20 U.S.C. 1232(a), we cannot and do not authorize centers to exercise direction or control over the curriculum. As currently drafted, § 270.6(b) could be misconstrued to permit the development or implementation of activities for direct instruction; removing this provision will ensure clarity. Moreover, this approach is similar to that taken in the most recent notice of final requirements, priorities, and selection criteria for the Comprehensive Centers Program published in the **Federal Register** on June 6, 2012 (77 FR 33573). In that notice, we included a reminder that an applicant could not meet the program requirements by proposing a technical assistance plan that included designing or developing curricula or instructional materials for use in classrooms.

Finally, the proposed regulations would remove 34 CFR part 271, and merge current parts 270 and 272 into a single part under proposed 34 CFR part 270. The current regulations for the Desegregation of Public Education Programs under 34 CFR part 270 govern both the SEA Program and the EAC Program. The current regulations for part 272 govern the EAC program. The current regulations for part 271 govern the SEA program. We propose to remove 34 CFR part 271 (and any references to part 271 in current parts 270 and 272), because the SEA Program has not received funding in two decades and is no longer administered by the Department. As the only program currently administered under the Desegregation of Public Education Programs is the EAC Program, we propose to move sections in current part 272 into part 270 so that there is a single part governing the EAC program. As a result of merging parts 270 and 272, we would reorder the sections within proposed part 270. Additionally, we propose to remove current sections §§ 270.1 (desegregation of public education programs), 270.4 (types of projects funded by the desegregation of public education programs), 272.3 (applicable regulations), and 272.4 (definitions), as these sections would become redundant with the merger.

TABLE DEMONSTRATING HOW THE CURRENT REGULATIONS WOULD BE RENUMBERED UNDER THE PROPOSED REGULATIONS

Current section	Proposed section	Substantive changes
270.1	(removed)	N/A.
270.2	270.6	None.
270.3	270.7	The proposed regulations would update certain definitions applicable to this program including adding a new definition of religion desegregation.
270.4	(removed)	N/A.
270.5	270.31	None.
270.6	270.32	The proposed regulations would revise the prohibition against providing materials for the direct instruction of students and remove the exception under current 270.6(b).
Part 271	(removed)	The proposed regulations would remove the regulations for the SEA program, which is no longer funded.
272.1	270.1	The proposed regulations would update program name to Equity Assistance Centers.
272.2	270.2	None.
272.3	(removed)	N/A.
272.4	(removed)	N/A.
272.10	270.4	The proposed regulations would add ''community organizations'' to the list of parties that may receive desegregation assistance under this program.
272.11	270.3	None.
272.12	270.5	The proposed regulations would revise the number of geographic regions served by the EACs.
272.30	(removed).	The proposed regulations would remove the existing selection criteria.
272.31	270.20	None.
272.32	270.21	The proposed regulations would replace ''expected need'' with ''evidence supporting the magnitude of the demonstrated need'' as it relates to the Secretary's determination of the amount of a grant.
272.40	270.30	The proposed regulations would broaden EAC coordination of technical assistance to include ''Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers.''

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

PART 270—DESEGREGATION OF PUBLIC EDUCATION

Section 270.1 What is the Equity Assistance Center Program?

Statute: Under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2 and 2000c–5, the Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools.

Current Regulations: Current § 270.1 refers to the ''Desegregation of Public Education programs,'' which includes both the SEA Program and the DAC Program.

Proposed Regulations: We propose to replace this section with the language of current § 272.1; in addition, we propose to change the name of the centers from Desegregation Assistance Centers (DACs) to Equity Assistance Centers. Our proposed regulations would also remove the reference to the SEA Program.

Reasons: When first implemented, the Desegregation of Public Education Programs under 34 CFR part 270 covered both the SEA Program (current part 271) and the DAC Program (current part 272). The SEA Program under current part 271 has not received funding since 1995 and is not currently administered by the Department. Therefore, we propose to remove all regulations for this program.

We propose to change the name from Desegregation Assistance Centers to Equity Assistance Centers because the term ''equity'' better reflects the breadth of the types of desegregation issues faced in schools now, as students from different backgrounds and experiences are brought together. Ultimately, the purpose of the regional centers is to ensure access to educational opportunities for all students without regard to their race, sex, national origin, or religion. In the 21st century, issues related to desegregation include harassment, school climate, resource equity gaps, discrimination, and instructional practices designed to reach all students. The Department has for some time referred to the regional assistance centers as ''Equity Assistance Centers'' in the notices inviting applications, in cooperative agreements, and on OESE's Web page for the grant program. The majority of the current regional centers refer to themselves as ''Equity Centers'' or ''Equity Assistance Centers.'' Therefore, we believe it is appropriate to formally refer to the regional centers as ''Equity Assistance Centers.''

Section 270.2 Who is eligible to receive a grant under this program?

Statute: Section 403 of Title IV of the Civil Rights Act of 1964 states that the Secretary may render technical assistance upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

Current Regulations: Under current § 272.2, any public agency (other than an SEA or school board) or private, nonprofit organization is eligible to receive an EAC grant.

Proposed Regulations: We propose to move current § 272.2 (without any changes) to part 270 as § 270.2.

Reasons: We propose to move this section so that there is a single part covering the EAC program.

Section 270.3 Who may receive assistance under this program?

Statute: Under section 403 of title IV of the Civil Rights Act of 1964, any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools may, upon request, receive technical assistance. The Secretary has the authority to prescribe how the technical assistance is provided, *i.e.,* through regional centers, and who the beneficiaries are of the technical assistance under this program in accordance with 20 U.S.C. 1221e–3 and 3474.

Current Regulations: The current regulation § 272.11 states that a recipient of a grant under these parts, *i.e.,* the regional centers, may provide assistance only if requested by a governmental unit legally responsible for operating a public school or schools located in its geographical service area. The regional centers are permitted to provide assistance to public school personnel and students enrolled in public schools, parents of those students, and other community members.

Proposed Regulations: We propose to move current § 272.11 to part 270 as § 270.3. We also propose to expand the list of beneficiaries who may receive technical assistance from the regional centers to include ''community organizations'' in addition to ''community members.''

Reasons: We propose to include community organizations within the list of beneficiaries who may receive assistance from the regional centers to clarify that all stakeholders with significant ties to public schools and students may assist in preparing, adopting, and implementing plans for the desegregation of public schools.

Section 270.4 What types of projects are authorized under this program?

Statute: Section 403 of Title IV of the Civil Rights Act of 1964 authorizes the Secretary to provide for technical assistance to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, upon request, by making available information regarding effective methods of coping with special educational problems occasioned by desegregation, and by making available the Department's personnel or other persons specially equipped to advise and assist in coping with such problems. The statute specifies that this technical assistance may include these actions ''among other activities.'' The Secretary has the authority to regulate other technical assistance activities that apply to the Equity Assistance Centers program under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Current § 272.10 states that the Secretary may award funds to DACs for projects offering technical assistance to governmental units legally responsible for operating a public school or schools, at their request, for assistance in the preparation, adoption, and implementation of desegregation plans. These projects must provide technical assistance in each of the following three areas of desegregation assistance: (1) Race, (2) sex, and (3) national origin. The section includes a non-exhaustive list of categories of desegregation assistance activities that are permissible under the statute, including training designed to improve the ability to effectively address special educational problems occasioned by desegregation, and identifies certain beneficiaries of such training.

Proposed Regulations: We propose to move current § 272.10 to part 270 as § 270.4 and to make the following changes in proposed § 270.4. We propose to amend the reference to DACs in current § 272.10(a) to ''EACs.'' We also propose to add ''community organizations'' to the list of beneficiaries of desegregation technical assistance

activities in current § 272.10(c)(3). Finally, we propose to update the number of desegregation assistance areas from ''all three'' in current § 272.10(b) to ''all four.''

Reasons: We propose to update all references to DACs to now refer to EACs, to be consistent with our change to describe the centers as ''Equity Assistance Centers'' set forth in proposed § 270.7. We propose to add ''community organizations'' to the list of beneficiaries of desegregation technical assistance activities because the Department believes that community organizations with substantive ties to a public school can be effective stakeholders in working with schools and other responsible governmental agencies on issues this program seeks to address. We propose to revise § 272.10(b) to refer to four desegregation assistance areas, instead of three, to reflect the addition of religion desegregation to the existing desegregation assistance areas, as discussed in the explanation of proposed § 270.6.

Section 270.5 What geographic regions do the EACs serve?

Statute: Under section 403 of Title IV of the Civil Rights Act of 1964, the Secretary may render technical assistance upon application to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools. The statute does not prescribe the specific number of centers or geographic regions under the program. The Secretary has the authority to regulate the provision of technical assistance under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Current § 272.12 provides that the Secretary awards grants for desegregation assistance in ten geographic regions. The current regulations specify the States located within each of the ten geographic regions.

Proposed Regulations: We propose to eliminate the current requirement that EACs serve ten geographic regions and reduce the number of regional centers. The proposed regulations state that the Secretary would announce in the **Federal Register** the number of centers and regions to be covered for each competition and identify the criteria the Secretary considers when determining the number and boundaries of the geographic regions. Thus, the proposed regulations would allow the Secretary to choose the number of centers and the geographic composition of each center in any given grant cycle. The criteria the Secretary considers when determining the number and boundaries of the regions would include (1) size and diversity of the student population; (2) the number of LEAs; (3) the composition of urban, city, and rural LEAs; (4) the history of Equity Assistance Center and other Department technical assistance activities carried out in each geographic region; and (5) the amount of funding available for the competition. We also propose to move current § 272.12 to proposed § 270.5.

Reasons: The proposed regulations would allow the Secretary to choose the number of centers and the geographic composition of each center in any given grant cycle, which would allow the Secretary to reduce the number of regional centers moving forward. The proposed regulations identify criteria the Secretary considers when determining the number and boundaries of geographic regions for a given grant year, which are designed to provide a variety of criteria the Secretary would use to determine the demand and underlying needs of each geographic region.

This proposed change would allow the Secretary the flexibility to consider the amount of available funding for the EAC program and distribute it among an appropriate number of geographic regions. Since the Department was created, the amount of funding for the EAC program has dropped significantly, from $45 million in FY 1980 (for all Desegregation of Public Education programs) to $6.6 million in FY 2016 for EAC grants. In developing the proposed regulations for this section, the Department reasoned that limiting the number of centers may be appropriate at times to reduce overhead costs and to ensure that a greater percentage of funds are used to directly serve beneficiaries. We also believe this change would improve each individual center's capacity to carry out robust technical assistance. Consolidating the number of regional centers would also help the Department to award grants to the highest-quality applications in future grant cycles.

The proposed regulations would enable the centers to operate in the most effective and efficient manner by limiting the duplication of effort for overhead costs and redirecting those funds to technical assistance. In addition, providing each center with more resources would help each individual center attract and retain the highest-quality experts in the field. Similarly, flexibility to determine the boundaries of geographic regions may enable more effective responses to new or emerging issues in the field by allowing the Secretary to create geographic regions based on areas facing similar issues. Furthermore, the capabilities of technology have changed dramatically since this program's enactment; the Internet now allows EACs to provide effective and coordinated technical assistance across much greater geographic distances than would have been possible when the current regulations were promulgated in 1987. Finally, allowing the Secretary to establish the number of regional centers for each competition will allow the Department to try different numbers to reach the optimal number of regional centers, without undergoing rulemaking each time it is necessary to alter the regions served under this program.

Section 270.6 What definitions apply to this program?

Statute: Under section 401 of title IV of the Civil Rights Act of 1964, the terms ''Secretary,'' ''Desegregation,'' ''Public school,'' and ''School board'' are defined. The Secretary has the authority to define through regulation other terms that apply to the Equity Assistance Centers program under 20 U.S.C. 1221e-3 and 3474.

Current Regulations: Current § 270.3 defines key terms used by the Department in administering the program. Under the current regulations:

- ''Desegregation assistance'' means the provision of technical assistance (including training) in the areas of race, sex, and national origin desegregation of public elementary and secondary schools.
- ''Desegregation assistance areas'' means the areas of race, sex, and national origin desegregation.
- ''Desegregation Assistance Center'' means a regional desegregation technical assistance and training center funded under 34 CFR part 272.
- ''Limited English proficiency'' has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.
- ''National origin desegregation'' means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for participation in all educational programs.
- ''Race desegregation'' means the assignment of students to public schools and within those schools without regard to their race including providing students with a full opportunity for participation in all educational programs regardless of their race. ''Race desegregation'' does not mean the assignment of students to public schools

to correct conditions of racial separation that are not the result of State or local law or official action.

• ''Sex desegregation'' means the assignment of students to public schools and within those schools without regard to their sex including providing students with a full opportunity for participation in all educational programs regardless of their sex.

Proposed Regulations: First, we propose to change the name from ''Desegregation Assistance Center'' to ''Equity Assistance Center.'' ''Equity Assistance Center'' would be defined as a regional desegregation technical assistance and training center funded under this part. Second, we propose to clarify and update the definition of ''sex desegregation'' to explain that sex desegregation includes desegregation based on transgender status, gender identity, sex stereotypes, and pregnancy and related conditions. Third, we propose to add religion desegregation to the definition of ''desegregation assistance'' and the ''desegregation assistance areas,'' and to define ''religion desegregation'' in this section. Fourth, we propose to replace the current definition of ''limited English proficiency (LEP)'' with the definition of ''English learner'' under section 8101(20) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, Public Law 114–95 (2015) (ESSA), and make conforming changes to the definition of ''national origin discrimination'' including replacing the reference to students of ''limited English .proficiency'' to ''English learner'' students. Fifth, we propose to add a definition of ''special educational problems occasioned by desegregation'' to clarify this term. We would also move current § 270.3 to proposed § 270.7.

Reasons: In the definitions we propose to change the name of the centers from ''Desegregation Assistance Centers'' to ''Equity Assistance Centers'' for the reasons discussed under proposed § 270.1.

We propose to update the definition of ''sex desegregation'' to clarify the protected individuals identified by this term. We propose to clarify that ''sex desegregation'' includes the treatment of students on the basis of pregnancy and related conditions, which include childbirth, false pregnancy, termination of pregnancy and recovery therefrom, consistent with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 (Title IX) and its implementing regulations at 34 CFR 106.40. We also propose to clarify that ''sex desegregation'' includes the treatment of students without regard to sex stereotypes, or their transgender status or gender identity, to highlight some emerging issues for which EACs may provide technical assistance in this area. This change reflects the Supreme Court's reasoning that discrimination based on ''sex'' includes differential treatment based on any ''sex-based conditions,'' *Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 242 (1989) (case decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*), and subsequent court decisions recognizing that the prohibitions on sex discrimination protect transgender individuals from discrimination. *See e.g., Glenn* v. *Brumby,* 663 F.3d 1312 (11th Cir. 2011); *Smith* v. *City of Salem,* 378 F.3d 566 (6th Cir. 2004); *Schwenk* v. *Hartford,* 204 F.3d 1187 (9th Cir. 2000). The change also aligns with our Office for Civil Rights' interpretation of the prohibition of sex discrimination in Title IX and its regulations as reflected in its ''Questions and Answers on Title IX and Sexual Violence'' (Apr. 29, 2014), *www.ed.gov/ocr/docs/qa-201404-title-ix.pdf*; ''Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities'' (Dec. 1, 2014), *www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf*; and ''Title IX Resource Guide'' (Apr. 24, 2015), *www.ed.gov/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf.* The Department interprets ''sex discrimination'' under Title IX and its regulations in a similar manner. See amicus brief filed in *G.G* v. *Gloucester County Sch. Bd.,* No. 15–2056 (4th Cir.), available at *www.justice.gov/crt/case-document/gg-v-gloucester-county-school-board-brief-amicus.* These interpretations of Title IX and its regulations are particularly relevant to the meaning of ''sex'' under Title IV because Congress's 1972 amendment to Title IV to add sex as an appropriate desegregation assistance area was included in Title IX of the Education Amendments. This change is also consistent with other Federal agencies' recent regulatory proposals to codify similar interpretations of sex discrimination, including treatment of students without regard to transgender status, gender identity, or sex stereotypes (such as treating a person differently because he or she does not conform to sex-role expectations by being in a relationship with a person of the same sex). 80 FR 5246, 5277, 5279 (Jan. 30, 2015) (Office of Federal Contract Compliance Programs, Department of Labor; proposed 41 CFR 60–20.2(a) and 60–20.7); 80 FR 54172, 54216–217 (Sept. 8, 2015) (Office for Civil Rights, Department of Health and Human Services; proposed 41 CFR 92.4); 81 FR 4494, 4550 (Jan. 26, 2016) (Office of the Secretary, Department of Labor; proposed 29 CFR 38.7). Thus, the proposed definition would more accurately reflect the Office for Civil Rights' and the Department's interpretation of Title IX and its regulations, our existing practices regarding sex desegregation and equity, and would be consistent with the interpretations and rulemakings of other Federal agencies.

We propose to add a definition of ''religion desegregation,'' and to incorporate religion into the definitions of ''desegregation assistance'' and ''desegregation assistance areas.'' Sections 401 and 403 of Title IV of the Civil Rights Act of 1964 authorize the Secretary to render technical assistance to support the desegregation of public schools and the assignment of students to schools without regard to religion. While the current regulations do not address religion desegregation, the Secretary's authority to render technical assistance for the desegregation of public schools is clear under sections 401 and 403 of Title IV of the Civil Rights Act of 1964, and desegregation is therein defined to include the assignment of students to public schools and within such schools without regard to their religion. Given the increasing religious diversity in the United States, and the increased tension that has developed in many of our schools related to a student's actual or perceived religion, the Department believes it would be beneficial to provide resources for schools to assist in developing effective strategies to ensure all students have a full opportunity to participate in educational programs, regardless of religion. Further, adding religion desegregation to the desegregation assistance areas will allow the Department to build upon and support the work of the United States Department of Justice under Title IV to ensure compliance with Federal laws prohibiting discrimination on the basis of religion.

We propose to amend the current definition of ''limited English proficiency (LEP)'' so that this term is identical to, and has the same meaning as, ''English Learner'' under ESEA section 8101(20), as the statutory definition reflects the Department's current understanding of this target population. We also propose to amend the definition of ''national origin desegregation'' to clarify that this term includes providing students who are English learners with a full opportunity for participation in all educational

programs ''regardless of their national origin.''

Lastly, we propose to add a definition of ''special educational problems occasioned by desegregation.'' This phrase is included within the statute and regulations, but could be confused with requirements to provide special education and related services under IDEA. The new definition clarifies the distinction between the term ''special educational problems occasioned by desegregation'' under Title IV and ''special education and related services'' under the IDEA. Under this proposed definition, children with disabilities or staff providing services to them would not be precluded from being potential beneficiaries of technical assistance if they are affected by desegregation efforts.

Section 270.20 How does the Secretary evaluate an application for a grant?

Statute: Title IV of the Civil Rights Act of 1964 does not address how the Secretary evaluates an application for a grant under these programs, and the Secretary has the authority to regulate these requirements under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Current § 272.31 provides that the Secretary evaluates the application on the basis of all of the selection criteria in § 272.30. The Secretary cannot pick and choose from the selection criteria. These selection criteria include mission and strategy, organizational capacity, plan of operation, quality of key personnel, budget and cost effectiveness, evaluation plan, and adequacy of resources. The Secretary then selects the highest ranking application for each geographical service area to receive a grant.

Proposed Regulations: We propose to remove the program specific selection criteria and the associated point values in current § 272.30. We propose to amend current § 272.31(a) to state that the Secretary evaluates applications on the basis of criteria in 34 CFR 75.210, and may select from among the list of factors under each criterion in 34 CFR 75.210. We also propose to move current § 272.31 to proposed part 270, as § 270.20.

Reasons: We propose to remove the selection criteria and the associated point values in current § 272.30, and revise current § 272.31, to provide the Secretary with greater flexibility in identifying the most relevant factors for each grant competition.

Under current § 272.30, the Secretary is required to use all of the established selection criteria and the associated point values for each competition. As a result, the Secretary has no flexibility to adjust the selection criteria in accordance with the needs of the program at the time of each competition. The current selection criteria also limit the opportunities to improve the selection process, based upon experience gained in running the program.

Using the general selection criteria listed in 34 CFR 75.210 would ensure that the program selection process can be refined over time, based upon the needs and concerns identified at the time of each competition. The general selection criteria have been vetted and tested across many Departmental programs, and provide a wide range of factors for evaluating applications in any competition.

Substantively, there is significant overlap between current § 272.30 and the general selection criteria of 34 CFR 75.210, which would allow the Secretary to continue to use some similar elements of the selection criteria, if those elements are deemed the most appropriate choices for ensuring high-quality applicants.

Similarly, allowing the Secretary to identify the point values for each selection criterion at the time of the competition would allow the Secretary to hone the selection process over time. The Secretary will have the flexibility to weight more heavily those selection criteria determined to be most important in identifying effective centers.

Finally, this change will bring the EAC regulations into alignment with many other Departmental regulations for discretionary grant programs.

Section 270.21 How does the Secretary determine the amount of a grant?

Statute: Title IV of the Civil Rights Act of 1964 is silent about how the Secretary may determine the amount of each grant. The Secretary has the authority to regulate this issue under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Under current § 272.32, the Secretary determines the amount of an EAC grant award on the basis of the amount of funds available under this part. The Secretary also conducts a cost analysis of the project. The Secretary considers the magnitude of the expected needs of responsible governmental agencies for desegregation assistance in the geographic region, as well as the costs required to meet the expected needs. Further, under current § 272.32(d), the Secretary considers the size and racial or ethnic diversity of the student population of the geographic region. Finally, the Secretary considers any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's geographic region.

Proposed Regulations: We propose to amend current § 272.32(c) to consider the ''evidence supporting the magnitude of the demonstrated need of the responsible governmental agencies for desegregation assistance,'' instead of ''expected need.'' We propose to update current § 272.32(d) to replace the reference to ''the DAC'' with ''the EAC.'' We also propose to move current § 272.32 to part 270, as proposed § 270.21.

Reasons: We propose that the Secretary determines the amount of a grant on the basis of ''evidence supporting the magnitude of the demonstrated need'' rather than ''expected need'' to encourage applicants to support their stated needs with data demonstrating the technical assistance needs of the geographic region.

An approach to technical assistance informed by data and evidence would promote comprehensive and preventative policies to combat segregation. Encouraging applicants to analyze needs of their geographic regions during the application process will jumpstart these efforts. Finally, a data-driven approach to geographic need will help potential applicants anticipate the future needs of their regions and make better use of existing resources.

Section 270.30 What conditions must be met by a recipient of a grant?

Statute: Title IV of the Civil Rights Act of 1964 is silent about the conditions that must be met by a recipient. The Secretary has the authority to regulate on this issue under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Pursuant to current § 272.40, a recipient of EAC grant funds must operate an EAC in the geographic region to be served and have a full-time project director. The EAC must also coordinate assistance in its geographic region with appropriate SEAs funded under 34 CFR part 271.

Proposed Regulations: We propose to replace all references to ''DAC'' or ''DACs'' with ''EAC'' or ''EACs.'' We also propose to amend current § 272.40(c) to state that a recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. As part of this coordination, the recipient would seek to prevent duplication of assistance where an SEA, Comprehensive Center,

or Regional Educational Laboratory may have already provided assistance to the responsible governmental agency. Finally, we propose to move current § 272.40 to part 270, as proposed § 270.30.

Reasons: The Department is proposing to replace all reference to DACs with the equivalent reference to EACs to reflect the proposal to change the term to Equity Assistance Centers.

Proposed § 270.30(c) would specify that a recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories and other Federal technical assistance centers. This change is meant to reflect two important updates: First, the EACs would not be required to coordinate with SEAs funded under the SEA program, because the SEA Program no longer exists and no SEAs are funded under this program. Second, the proposed regulations would highlight the centers' responsibilities to work with a variety of stakeholders by noting that they ''must coordinate'' with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. We propose to promote this coordination to prevent technical assistance centers from duplicating work and to encourage technical assistance centers to share expertise regarding equity and desegregation issues.

Section 270.32 What limitation is imposed on providing Equity Assistance under this program?

Statute: Under section 403 of Title IV of the Civil Rights Act of 1964, the Secretary may render technical assistance upon application to any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools. The Secretary has the authority to regulate the provision of technical assistance under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Current § 270.6(a) states that a recipient of a grant for race or national origin desegregation assistance may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels. However, current § 270.6(b) provides that a recipient of a grant for national origin desegregation assistance may use funds to assist in the development and implementation of activities or the development of curriculum materials for the direct instruction of students of limited English proficiency, to afford these students a full opportunity to participate in all educational programs.

Proposed Regulations: We propose to remove current § 270.6(b) in its entirety. We also propose to amend current § 270.6(a) to simply state that a recipient of a grant under this program may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

Reasons: We propose to clarify that the prohibition on the development of curriculum materials for direct instruction applies to technical assistance activities under this program. Consistent with the General Education Provisions Act (GEPA), 20 U.S.C. 1232(a), we cannot and do not authorize centers to exercise direction or control over the curriculum. As currently drafted, these provisions could be misconstrued to permit the development or implementation of activities for direct instruction; removing the provisions will ensure clarity. Moreover, this approach is similar to that taken in the most recent notice of final priorities, requirements, and selection criteria for the Comprehensive Centers Program published in the **Federal Register** on June 6, 2012 (77 FR 33573). In that notice, we stated that an applicant could not meet the program requirements by proposing a technical assistance plan that included designing or developing curricula or instructional materials for use in classrooms. Finally, we have removed the limitation under current § 270.6(a) that these regulations only apply to grants ''for race or national origin desegregation assistance'' because the limitations on curriculum development under GEPA 1232(a) apply to all technical assistance activities under this program. Thus, the proposed changes align these regulations with the statutory limitations on developing curriculum that apply to other technical assistance centers.

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 its 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 the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including 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 on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would 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 have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits: We have determined that the potential costs associated with this regulatory action would be minimal while the potential benefits are significant.

For Equity Assistance Center grants, applicants may anticipate costs in developing their applications. Application, submission, and participation in a competitive discretionary grant program are voluntary. The proposed regulations would create flexibility for us to use general selection criteria listed in EDGAR 75.210. We believe that any criterion from EDGAR 75.210 that would be used in a future grant competition would not impose a financial burden that applicants would not otherwise incur in the development and submission of a grant application. Other losses may stem from the reduction of the number of regional centers for those applicants that do not receive a grant in future funding years, including the costs of eliminating those centers and associated job losses.

Notably, we do not believe that reducing the number of regions would prevent EACs from providing technical assistance to beneficiaries across the country. Technological advancements allow EACs to provide effective and coordinated technical assistance across much greater geographic distances than when the current regulations were promulgated in 1987.

The benefits include enhancing project design and quality of services to better meet the statutory objectives of the programs. These proposed changes would also allow more funds to be used directly for providing technical assistance to responsible governmental agencies for their work in equity and desegregation by reducing the amount of funds directed to overhead costs. The proposed flexibility of the geographic regions would increase the Department's ability to be strategic with limited resources. In addition, these changes would result in each center receiving a greater percentage of the overall funds for the program, and this greater percentage and amount of funds for each selected applicant would help to incentivize a greater diversity of applicants.

In addition, the Secretary believes that students covered under sex desegregation and religion desegregation would strongly benefit from the proposed regulations. The revised definition of ''sex desegregation'' would eliminate lost opportunities for assistance by providing clarification regarding the scope of issues covered under sex desegregation, thus removing any confusion for EACs and the beneficiaries they serve as to which parties are entitled to assistance under this term. For religion desegregation, grantees would need to provide technical assistance to responsible governmental agencies seeking assistance on this subject, but the costs associated with these new technical assistance activities would be covered by program funds.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

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?
- Does the format of the proposed regulations (grouping and order of sections, 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, *§ 270.1 What is the Equity Assistance Center Program?*)
- 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 Size Standards define institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $15,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief. The Secretary believes that the small entities which will be primarily affected by these regulations are public agencies and private, nonprofit organizations that would be eligible to receive a grant under this program. However, the Secretary believes that the proposed regulations would not have a significant economic impact on these small entities because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision, and will not affect the current status quo for the burden imposed on these small entities under existing regulations. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of

the Equity Assistance Center grant program.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

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 our specific plans and actions for these programs.

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: 84.004D)

List of Subjects in 34 CFR Parts 270, 271, and 272

Elementary and secondary education, Equal educational opportunity, Grant programs—education, Reporting and recordkeeping requirements.

Dated: March 17, 2016.

Ann Whalen,

Senior Advisor to the Secretary, Delegated the Duties of Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, and under the authority of 20 U.S.C. 3474, the Secretary of Education proposes to amend parts 270, 271, and 272 of title 34 of the Code of Federal Regulations as follows:

■ 1. Part 270 is revised to read as follows:

PART 270— EQUITY ASSISTANCE CENTER PROGRAM

Subpart A—General

Sec.

Subpart B—[RESERVED]

Subpart C—How Does the Secretary Award a Grant?

Sec.

Subpart D—What Conditions Must I Meet After I Receive a Grant?

Sec.

Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

PART 270—EQUITY ASSISTANCE CENTER PROGRAM

Subpart A—General

§ 270.1 What is the Equity Assistance Center Program?

This program provides financial assistance to operate regional Equity Assistance Centers (EACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools, and in the development of effective methods of coping with special educational problems occasioned by desegregation.

§ 270.2 Who is eligible to receive a grant under this program?

A public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to receive a grant under this program.

§ 270.3 Who may receive assistance under this program?

(a) The recipient of a grant under this part may provide assistance only if requested by school boards or other responsible governmental agencies located in its geographic region.

(b) The recipient may provide assistance only to the following persons:

(1) Public school personnel.

(2) Students enrolled in public schools, parents of those students, community organizations and other community members.

§ 270.4 What types of projects are authorized under this program?

(a) The Secretary may award funds to EACs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools.

(b) A project must provide technical assistance in all four of the desegregation assistance areas, as defined in § 270.7.

(c) Desegregation assistance may include, among other activities:

(1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(2) Assistance and advice in coping with these problems; and

(3) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, community organizations, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

§ 270.5 What geographic regions do the EACs serve?

(a) The Secretary awards a grant to provide race, sex, national origin, and religion desegregation assistance under this program to regional Equity Assistance Centers serving designated geographic regions.

(b) The Secretary announces in the **Federal Register** the number of centers and geographic regions for each competition.

(c) The Secretary determines the number and boundaries of each geographic region for each competition

on the basis of one or more of the following:

(1) Size and diversity of the student population;

(2) The number of LEAs;

(3) The composition of urban, city, and rural LEAs;

(4) The history of the Equity Assistance Center technical assistance activities, and other Department technical assistance activities, carried out in each geographic region; and

(5) The amount of funding available for the competition.

§ 270.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 81 (General Education Provisions Act—Enforcement), except that 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under this program.

(b) The regulations in this part.

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

§ 270.7 What definitions apply to this program?

In addition to the definitions in 34 CFR 77.1, the following definitions apply to the regulations in this part:

Desegregation assistance means the provision of technical assistance (including training) in the areas of race, sex, national origin and religion desegregation of public elementary and secondary schools.

Desegregation assistance areas means the areas of race, sex, national origin and religion desegregation.

Equity Assistance Center means a regional desegregation technical assistance and training center funded under this part.

English learner has the same meaning under this part as the same term defined in section 8101(20) of the Elementary and Secondary Education Act, as amended.

(Authority: Section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Pub. L. 114–95 (2015) (ESSA))

National origin desegregation means the assignment of students to public schools and within those schools without regard to their national origin, including providing students such as those who are English learners with a full opportunity for participation in all educational programs regardless of their national origin.

Public school means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from governmental sources.

Public school personnel means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

Race desegregation means the assignment of students to public schools and within those schools without regard to their race, including providing students with a full opportunity for participation in all educational programs regardless of their race. ''Race desegregation'' does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

Religion desegregation means the assignment of students to public schools and within those schools without regard to their religion, including providing students with a full opportunity for participation in all educational programs regardless of their religion.

Responsible governmental agency means any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

School board means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

Sex desegregation means the assignment of students to public schools and within those schools without regard to their sex (including transgender status, gender identity, sex stereotypes, and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.

Special educational problems occasioned by desegregation means those issues that arise in classrooms, schools, and communities as a result of desegregation efforts based on race, national origin, sex, or religion. The phrase does not refer to the provision of special education and related services for students with disabilities as defined under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Award a Grant?

§ 270.20 How does the Secretary evaluate an application for a grant?

(a) The Secretary evaluates the application on the basis of the criteria in 34 CFR 75.210.

(b) The Secretary selects the highest ranking application for each geographic region to receive a grant.

§ 270.21 How does the Secretary determine the amount of a grant?

The Secretary determines the amount of a grant on the basis of:

(a) The amount of funds available for all grants under this part;

(b) A cost analysis of the project (that shows whether the applicant will achieve the objectives of the project with reasonable efficiency and economy under the budget in the application), by which the Secretary:

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations;

(c) Evidence supporting the magnitude of the need of the responsible governmental agencies for desegregation assistance in the geographic region and the cost of providing that assistance to meet those needs, as compared with the evidence supporting the magnitude of the needs for desegregation assistance, and the cost of providing it, in all geographic regions for which applications are approved for funding;

(d) The size and the racial, ethnic, or religious diversity of the student population of the geographic region for which the EAC will provide services; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's geographic region.

Subpart D—What Conditions Must I Meet After I Receive a Grant?

§ 270.30 What conditions must be met by a recipient of a grant?

(a) A recipient of a grant under this part must:

(1) Operate an EAC in the geographic region to be served; and

(2) Have a full-time project director.

(b) A recipient of a grant under this part must coordinate assistance in its geographic region with appropriate SEAs, Comprehensive Centers, Regional Educational Laboratories, and other Federal technical assistance centers. As part of this coordination, the recipient shall seek to prevent duplication of assistance where an SEA, Comprehensive Center, Regional Educational Laboratory, or other Federal technical assistance center may have already provided assistance to the responsible governmental agency.

§ 270.31 What stipends and related reimbursements are authorized under this program?

(a) The recipient of an award under this program may pay:

(1) Stipends to public school personnel who participate in technical assistance or training activities funded under this part for the period of their attendance, if the person to whom the stipend is paid receives no other compensation for that period; or

(2) Reimbursement to a responsible governmental agency that pays substitutes for public school personnel who:

(i) Participate in technical assistance or training activities funded under this part; and

(ii) Are being compensated by that responsible governmental agency for the period of their attendance.

(b) A recipient may pay the stipends and reimbursements described in this section only if it demonstrates that the payment of these costs is necessary to the success of the technical assistance or training activity, and will not exceed 20 percent of the total award.

(c) If a recipient is authorized by the Secretary to pay stipends or reimbursements (or any combination of these payments), the recipient shall determine the conditions and rates for these payments in accordance with appropriate State policies, or in the absence of State policies, in accordance with local policies.

(d) A recipient of a grant under this part may pay a travel allowance only to a person who participates in a technical assistance or training activity under this part.

(e) If the participant does not complete the entire scheduled activity, the recipient may pay the participant's transportation to his or her residence or place of employment only if the participant left the training activity because of circumstances not reasonably within his or her control.

§ 270.32 What limitation is imposed on providing Equity Assistance under this program?

A recipient of a grant under this program may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

PART 271 [REMOVED AND RESERVED]

■ 2. Part 271 is removed and reserved.

PART 272 [REMOVED AND RESERVED]

■ 3. Part 272 is removed and reserved.

[FR Doc. 2016–06439 Filed 3–23–16; 8:45 am]

BILLING CODE 4000–01–P

Notices

Federal Register
Vol. 81, No. 57
Thursday, March 24, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0003]

Asian Longhorned Beetle Eradication Program; Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a record of decision for the final environmental impact statement for the Asian Longhorned Beetle Eradication Program.

DATES: Effective March 24, 2016.

ADDRESSES: You may read the documents referenced in this notice and any comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Those documents are posted with the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0003.*

FOR FURTHER INFORMATION CONTACT: For questions related to the Asian Longhorned Beetle Eradication Program, contact Dr. Robyn Rose, National Asian Longhorned Beetle Eradication Program Manager, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737; (301) 851–2283. For questions related to the environmental impact statement, contact Dr. Jim E. Warren, Environmental Protection Specialist/Environmental Toxicologist, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737; (202) 316–3216.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2013, the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (78 FR 50022–50023) announcing the agency's plans to prepare an environmental impact statement to analyze the effects of a program to eradicate the Asian longhorned beetle from wherever it might occur in the United States. The notice identified potential issues and alternatives that would be studied in the environmental impact statement and requested public comments to further delineate the scope of the alternatives and environmental impacts and issues.

A notice of availability for the draft EIS was initially published by the Environmental Protection Agency (EPA) in the **Federal Register** on March 13, 2015 (80 FR 13373, Docket No. ER–FRL–9019–9), and a notice of availability regarding the final EIS was published by EPA in the **Federal Register** on September 11, 2015 (80 FR 54785–54786, Docket No. ER–FRL–9022–8).

The National Environmental Policy Act (NEPA) implementing regulations in 40 CFR 1506.10 require a minimum 30-day waiting period between the time a final EIS is published and the time an agency makes a decision on an action covered by the EIS. APHIS has reviewed the final EIS and comments received during the 30-day waiting period and has concluded that the final EIS fully analyzes the issues covered by the draft EIS and the comments and suggestions submitted by commenters. Based on our final EIS, the responses to public comments, and other pertinent scientific data, APHIS has prepared a record of decision.

The record of decision has been prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 17th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06660 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0094]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a revision to and extension of an information collection associated with regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions.

DATES: We will consider all comments that we receive on or before May 23, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0094.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0094, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0094* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m.,

Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of live poultry, poultry meat, and other poultry products from specified regions into the United States, contact Dr. Magde Elshafie, Senior Staff Veterinarian, National Import Export Services, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851–3332. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions.

OMB Control Number: 0579–0228.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out the mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in 9 CFR parts 92 through 98.

In part 94, § 94.33 allows the importation, subject to certain conditions, of live poultry, poultry meat, and other poultry products from certain regions, including Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan, that are free of Newcastle disease. The conditions for importation require, among other things, certification from a full-time salaried veterinary officer of the national government of the exporting region that poultry and poultry products exported from one of these regions originated in that region (or in another region recognized by APHIS as free of Newcastle disease) and that before the export to the United States, the poultry and poultry products were not commingled with poultry and poultry products from regions where Newcastle disease exists.

In addition, the regulations in § 94.6 include provisions that allow poultry meat that originates in the United States to be shipped, for processing purposes, to a region where Newcastle disease exists and then returned to the United States. These provisions require the use of four information collection activities: (1) A certificate of origin that must be issued, including serial numbers that must be recorded; (2) maintenance of records; (3) cooperative service agreements that must be signed; and (4) certificates for shipment back to the United States.

The information collection requirements above are currently approved by the Office of Management and Budget (OMB) for the importation of live poultry, poultry meat, and other poultry products from specified regions under number 0579–0228, and U.S. origin poultry meat shipped, for processing purposes, to a region where Newcastle disease exists and returned to the United States under number 0579–0141. After OMB approves and combines the burden for both collections under one collection (number 0579–0228), the Department will retire number 0579–0141.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities of certain regions that export live poultry, poultry meat, and other poultry products; importers; pet bird owners; and zoological facilities.

Estimated Annual Number of Respondents: 48.

Estimated Annual Number of Responses per Respondent: 4.229.

Estimated Annual Number of Responses: 203.

Estimated Total Annual Burden on Respondents: 205 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06659 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0044]

Environmental Impact Statement; Animal Carcass Management: Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a record of decision for the programmatic environmental impact statement titled ''Carcass Management During a Mass Animal Health Emergency.''

DATES: *Effective Date:* March 24, 2016.

ADDRESSES: You may read the documents referenced in this notice and any comments we received in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Those documents are also posted with the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0044.*

FOR FURTHER INFORMATION CONTACT: For questions related to the carcass management program, contact Ms. Lori P. Miller, PE, Senior Staff Officer, Science, Technology and Analysis Services, VS, APHIS, 4700 River Road, Unit 41, Riverdale, MD 20737; (301) 851–3512. For questions related to the

programmatic environmental impact statement and record of decision, contact Ms. Samantha Floyd, Environmental Protection Specialist, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737; (301) 851–3053.

SUPPLEMENTARY INFORMATION: On October 25, 2013, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (78 FR 63959, Docket No. APHIS–2013–0044) a notice of intent to prepare a programmatic environmental impact statement (PEIS) for the purpose of analyzing the use of various carcass management options during a mass animal health emergency. On August 24, 2015, the Environmental Protection Agency (EPA) published in the **Federal Register** (80 FR 51256) a notice of the availability of the draft PEIS. The public comment period for the draft PEIS was 60 days. APHIS accepted comments on the draft PEIS during and after the comment period until November 3, 2015.

On December 11, 2015, APHIS published and distributed the final PEIS, which included responses to all comments received by November 3, 2015. On December 18, 2015, EPA published in the **Federal Register** (80 FR 79041) a notice of availability of the final PEIS.

The National Environmental Policy Act (NEPA) implementing regulations in 40 CFR 1506.10 require a minimum 30-day waiting period between the time a final EIS is published and the time an agency makes a decision on an action covered by the EIS. APHIS has reviewed the final PEIS and comments received during the 30-day waiting period and has concluded that the final PEIS fully analyzes the issues covered by the draft PEIS and addresses the comments and suggestions submitted by commenters. This notice advises the public that the waiting period has elapsed, and APHIS has issued a record of decision (ROD) to implement the preferred alternative described in the final PEIS.

The ROD has been prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 17th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06657 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0099]

Availability of an Environmental Assessment for the Biological Control of Cape Ivy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment relative to the control of Cape ivy, *Delairea odorata.* The environmental assessment considers the effects of, and alternatives to, the field release of a gall-forming fly, *Parafreutreta regalis,* into the continental United States for use as a biological control agent to reduce the severity of Cape Ivy infestations. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 25, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0099.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0099, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0099* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Tichenor, Senior Entomologist, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2198.

SUPPLEMENTARY INFORMATION: Cape ivy (*Delairea odorata*), a native of South Africa, has become one of the most pervasive non-native plants to invade the coastal west region of the United States, particularly in California and Oregon. Cape ivy is a weedy vine that prefers moist, partly-shaded environments along the Pacific coast; however, there are reports of infestations at inland riparian locations. Fragments of the plant easily root, which facilitates the spread of this invasive plant. Overgrowth of cape ivy, a climbing vine, causes native plants to die. The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a gall-forming fly, *Parafreutreta regalis,* into the continental United States to reduce the severity of cape ivy infestations.

APHIS' review and analysis of the proposed action are documented in detail in a draft environmental assessment (EA) entitled ''Field Release of the Gall-forming Fly, *Parafreutreta regalis* Munro (Diptera: Tephritidae), for Biological Control of Cape-ivy, *Delairea ordorata* (Asterales: Asteraceae), in the Contiguous United States'' (February 2015). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the draft EA by calling or writing to the person listed under **FOR FURTHER INFORMAITON CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 17th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06658 Filed 3–23–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha East Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Hiawatha East Resource Advisory Committee (RAC) will meet in Kincheloe, Michigan. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.comlFSSRSlRAC_Page?id=OOIt0000002JcwPAAS.*

DATES: The meeting will be held on April 28, 2016, at 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 Chippewa County 911 Center, 4657 West Industrial Park Drive, Kincheloe, Michigan.

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 Hiawatha National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janel Crooks, RAC Coordinator, by phone at 906–428–5800 or via email *atHiawathaNF@ftfed.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. Provide updates regarding implementation of past projects;
2. Review the role of the RAC, especially for new members;
3. Review and discuss proposals; and
4. Vote to recommend proposals to the Deciding Federal Official.

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 April 8, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Hiawatha National Forest; Attention: RAC; 820 Rains Drive, Gladstone, Michigan 49837; by email to *HiawathaNF@ftfed.us;* or via facsimile to 906–428–9030.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 26, 2016.

Robert West,

District Ranger.

[FR Doc. 2016–06647 Filed 3–23–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Summary of State and Local Government Tax Revenue

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before May 23, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cheryl H. Lee, Chief, State Finance and Tax Statistics Branch, Economy-Wide Statistics Division, U.S. Census Bureau, Headquarters: 8K057, Washington, DC 20233; telephone: 301.763.5635; email: *cheryl.h.lee@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Quarterly Summary of State and Local Government Tax Revenue, using the F–71 (Quarterly Survey of Property Tax Collections), F–72 (Quarterly Survey of State Tax Collections), and F–73 (Quarterly Survey of Non-Property Taxes) forms. The Quarterly Summary of State and Local Government Tax Revenue provides quarterly estimates of state and local government tax revenue at the national level, as well as detailed tax revenue data for individual states. The information contained in this survey is the most current information available on a nationwide basis for state and local government tax collections.

The Census Bureau needs state and local tax data to publish benchmark statistics on taxes, to provide data to the Bureau of Economic Analysis for Gross Domestic Product (GDP) calculations and other economic indicators, and to provide data for economic research and comparative studies of governmental finances. Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various states. Economists and public policy analysts use the data to assess general economic conditions and state and local government financial activities.

The Census Bureau is requesting an extension of the approval of the current forms. No changes to the forms are being requested.

For the Quarterly Survey of Non-Property Taxes (Form F–73) we will mail letters quarterly to a sample of approximately 1,800 local tax collection agencies known to have substantial collections of local general sales and/or local individual/corporation net income

taxes requesting their online data submissions.

For the Quarterly Survey of Property Tax Collections (Form F–71) we will mail letters quarterly to a sample of approximately 5,500 local tax collection agencies known to have substantial collections of property tax requesting their online data submissions.

For the Quarterly Survey of State Tax Collections (F–72) we will mail letters to each of the 50 state governments quarterly requesting their online data submissions or continued coordinated submission through the state government revenue office.

II. Method of Collection

F–71 and F–73 survey data will be collected via the Internet. Data for the F–72 survey are collected via the Internet or compilation of data in coordination with the state government revenue office.

In addition to reporting current quarter data, respondents may report data for the previous eight quarters or submit revisions to their previously submitted data. In the event that a respondent cannot report online, they may request a form as a last resort.

In those instances when we are not able to obtain a response, we conduct follow-up operations using email and phone calls. Nonresponse weighting adjustments are used to adjust for any unreported units in the sample from the latest available data.

III. Data

OMB Control Number: 0607–0112.

Form Number: F–71, F–72, F–73.

Type of Review: Regular submission.

Affected Public: State and Local governments.

Estimated Number of Respondents: 7,350.

Estimated Time per Response: F–71 = 15 minutes, F–72 = 30 minutes, F–73 = 20 minutes.

Estimated Total Annual Burden Hours: 8,000.

Estimated Total Annual Cost: $0.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 161 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 21, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–06649 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2016]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico, Notification of Proposed Production Activity, Lilly Del Caribe, Inc., Subzone 7K (Pharmaceutical Products), Carolina and Guayama, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the FTZ Board on behalf of Lilly Del Caribe, Inc. (Lilly), located within Subzone 7K in Carolina and Guayama, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 08, 2016.

Lilly already has FTZ authority for the production of finished pharmaceuticals and their intermediates, including the active ingredients humalog and duloxetine. The current request would add finished products and foreign-status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lilly from customs duty payments on the foreign-status components used in export production. On its domestic sales, Lilly would be able to choose the duty rate during customs entry procedures that applies to finished abemaciclib capsules (breast cancer treatment) and barcitinib tablets (rheumatoid arthritis treatment) (duty free) for the foreign-status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include abemaciclib and barcitinib active ingredients (duty rate, 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 3, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: March 17, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–06584 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States—Peru Trade Promotion Agreement (US–PERU TPA)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 23, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW.,

Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202–482–2043, Email: *Laurie.Mease@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the ''Agreement''), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Peru or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The items listed are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President publish procedures for parties to exercise the right to make these requests. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (*See* Proclamation No. 8341, 74 FR 4105, January 22, 2009). Interim procedures to implement these responsibilities were published in the **Federal Register** on August 14, 2009. (*See* Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States—Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information, 74 FR 41111, August 11, 2009).

The intent of the U.S.-Peru TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to Section 203(o) of the Agreement.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's Web site. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

III. Data

OMB Control Number: 0625–0265.
Form Number(s): N/A.
Type of Review: Regular submission.
Affected Public: Business or for-profit organizations.
Estimated Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).
Estimated Time per Response: 8 hours per Request, 2 hours per Response, and 1 hour per Rebuttal.
Estimated Total Annual Burden Hours: 89.
Estimated Total Annual Cost to Public: $5,340.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 18, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–06599 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE515

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); SEDAR Data Best Practices Standing Panel Webinar

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

ACTION: Notice of SEDAR Data Best Practices Standing Panel Webinar.

SUMMARY: The SEDAR Data Best Practices Panel will develop, review, and evaluate best practice recommendations for SEDAR Data Workshops, see **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Data Best Practices Standing Panel Webinar will be held on Wednesday, April 13, 2016, from 1 p.m. to 3 p.m.

ADDRESSES: The Webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see Contact Information below) to request an invitation providing Webinar access information. Please request Webinar invitations at

least 24 hours in advance of each Webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405. *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION:

Agenda

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The SEDAR Data Best Practices Standing Panel is charged with developing, reviewing, and evaluating best practice recommendations for SEDAR Data Workshops. This will be the first meeting of this group. The items of discussion for this webinar are as follows:

1. Select Panel Chair.
2. Develop terms of reference specifying the Panel's purpose and approach.
3. Recommend organizing committee for Stock ID/Meristics workshop.
4. Provide input on topic for next SEDAR Procedural Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least ten working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 21, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–06671 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE492

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that Exempted Fishing Permits to facilitate the use of monkfish research set-aside days-at-sea warrants further consideration. This notice is to provide interested parties the opportunity to comment on the proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 8, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on 2016 Monkfish RSA EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2016 Monkfish RSA EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 282–9112, *Reid.Lichwell@noaa.gov.*

SUPPLEMENTARY INFORMATION: These Exempted Fishing Permits (EFPs) would facilitate monkfish research set-aside (RSA) compensation fishing in support of projects funded under the 2016 monkfish RSA competition. Project proposals are currently under review. Consistent with previous monkfish RSA compensation fishing EFPs, vessels fishing under a RSA days-at-sea (DAS) would be authorized to harvest monkfish in excess of the landing limits in the Northern and Southern Monkfish Fishery Management Areas.

The monkfish RSA program has been allocated 500 monkfish RSA DAS as established by the New England and Mid-Atlantic Fishery Management Councils (70 FR 21929, April 28, 2005). These monkfish RSA DAS would be divided between research award recipients and sold to fishermen to fund approved monkfish research projects. Award recipients receive an allocation of RSA DAS and a maximum amount of landed weight that may be landed under available DAS. Projects are constrained to the total DAS or maximum available landing weight, whichever is reached first. NOAA's National Marine Fisheries Service uses 32,000 lb (14.51 mt) of whole monkfish for each RSA DAS to calculate a maximum allocation of 1,600,000 lb (725.75 mt) to be harvested under these projects. As an example, a project awarded 100 RSA DAS would receive a maximum RSA harvest limit of 320,000 lb (144.1 mt) of whole monkfish (or tail weight equivalent) to be landed. Allowing vessels an exemption from monkfish landing limits provides an incentive for vessels to purchase RSA DAS to catch more monkfish per-trip, while constraining each project to a maximum available harvest limit

ensures that the overall monkfish RSA allocation will not be exceeded.

If approved, the applicants may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 21, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–06687 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE517

Endangered Species; File No. 19697

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Carlos E. Diez, Departamento de Recursos Naturales y Ambientales de Puerto Rico, Programa de Especies Protegidas, P.O. Box 366147, San Juan, Puerto Rico, 00936, has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 25, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19697 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year research permit to continue long-term projects studying green and hawksbill sea turtle aggregations in the coastal waters of Puerto Rico, including Mona, Monito, and Desecheo Islands, and Culebra Archipelago. Proposed research would involve vessel surveys for abundance counts and capture by hand or tangle nets to assess the population structure, trends in relative abundance, habitat utilization, genetics, zoogeography, and epidemiology of sea turtles in their foraging habitats. Annually, up to 150 green and 150 hawksbill sea turtles would be captured. Each turtle would be flipper and passive integrated transponder tagged, measured, weighed, photographed/videoed, and may be blood and tissue sampled. A subset of up to 10 sea turtles annually of each species may also be outfitted with satellite transmitters to track movements post-release. Another subset of up to 10 green sea turtles would also be authorized for ultrasound and tumor removal surgery in a local facility.

Dated: March 18, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–06682 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE503

Takes of Marine Mammals Incidental to Specified Activities; Seabird Monitoring and Research in Glacier Bay National Park, Alaska, 2016

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS (hereinafter, ''we'' or ''our'') received an application from Glacier Bay National Park (Glacier Bay NP) requesting an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment, incidental to conducting proposed seabird monitoring and research activities within Glacier Bay National Park from May through September, 2016. Per the Marine Mammal Protection Act, we request comments on our proposal to issue an Authorization to Point Blue to incidentally take, by Level B harassment only, one species of marine mammal, the harbor seal (*Phoca vitulina*) during the specified activity.

DATES: NMFS must receive comments and information no later than April 25, 2016.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Pauline@noaa.gov*. You must include 0648–XE503 in the subject line. We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential

business information or otherwise sensitive or protected information.

To obtain an electronic copy of the renewal request, application, our Environmental Assessment (EA), or a list of the references, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm*.

Information in Glacier Bay NP's application, NMFS' EA, and this notice collectively provide the environmental information related to proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Summary of Request

On January 12, 2016, NMFS received an application from Glacier Bay NP requesting taking by harassment of marine mammals, incidental to conducting monitoring and research studies on glaucus-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska. We considered the renewal request for the 2016 activities as adequate and complete on February 25, 2016. NMFS previously issued two Authorizations to Glacier Bay NP for the same activities in 2014 and 2015 (79 FR 56065, September 18, 2014 and 80 FR 28229, May 18, 2015).

For the 2016 research season, Glacier Bay NP again proposes to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within five study sites in Glacier Bay, AK. The proposed activities would occur over the course of five months, from May through September, 2016.

The following aspects of the proposed seabird research activities have the potential to take marine mammals: Acoustic stimuli from noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence during the monitoring and research activities. Harbor seals hauled out in the five research areas may flush into the water or exhibit temporary modification in behavior and/or low-level physiological effects (Level B harassment). Thus, Glacier Bay NP has requested an authorization to take 500 harbor seals by Level B harassment only. Although Steller sea lions (*Eumetopias jubatus*) may be present in the action area, Glacier Bay NP has proposed to avoid any site used by Steller sea lions.

To date, we have issued two, five-month Authorizations to Glacier Bay NP for the conduct of the same activities in 2014 and 2015 (79 FR 56065, September 18, 2014 and 80 FR 28229, May 18, 2015). This is Glacier Bay NP's third request for an Authorization. Their 2015 Authorization expired on September 30, 2015 and the monitoring report associated with the 2015 Authorization is available at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* The report provides additional environmental information related to proposed issuance of this Authorization for public review and comment.

Description of the Specified Activity

Overview

Glacier Bay NP proposes to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP proposes to visit each study site up to five times during the research season.

Glacier Bay NP must conduct the gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010). Glacier Bay NP also coordinates pinniped monitoring programs with NMFS' National Marine Mammal Laboratory and the Alaska Department of Fish & Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

Dates and Duration

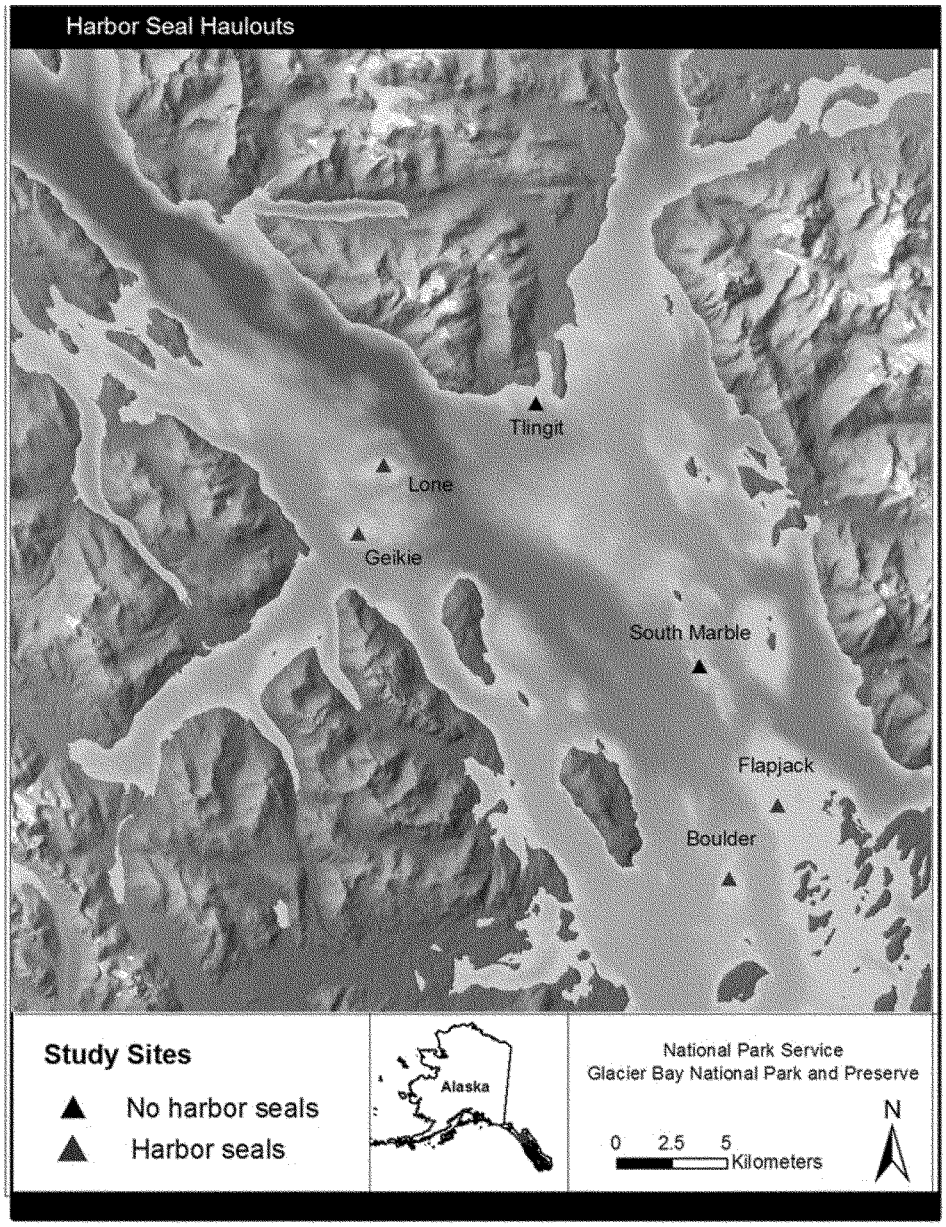
Glacier Bay NP proposes to conduct the proposed activities from the period of May through September, 2016. Glacier Bay NP proposes to conduct a maximum of three ground-based surveys per each study site and a maximum of two vessel-based surveys per each study site.

Thus, the proposed Authorization, if issued, would be effective from May 1, 2016 through September 30, 2016. NMFS refers the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

Specified Geographic Region

The proposed study sites would occur in the vicinity of the following locations: Boulder, Lone, and Flapjack Islands, and Geikie Rock in Glacier Bay, Alaska. Glacier Bay NP will also conduct studies at Tlingit Point Islet located at 58°45′16.86″ N.; 136°10′41.74″ W.; however, there are no reported pinniped haulout sites at that location.

Figure 1. Proposed locations of the gull monitoring and research sites in Glacier Bay, AK, May through September, 2016.



Detailed Description of Activities

Glacier Bay NP proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site from the period of May 1 through September 30, 2016.

Ground-Based Surveys: These surveys involve two trained observers visiting the largest gull colony on each island to: (1) Obtain information on the numbers of nests, their location, and contents (*i.e.,* eggs or chicks); (2) determine the onset of laying, distribution, abundance, and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph). Ground surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

Vessel-Based Surveys: These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammals most likely to be harassed incidental to conducting the

proposed seabird research activities within the research areas are primarily harbor seals. Table 1 in this notice provides the following information: All marine mammal species with possible or confirmed occurrence in the proposed survey areas on land; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; occurrence and seasonality in the activity area.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY HAUL OUT IN THE PROPOSED STUDY AREAS IN MAY THROUGH SEPTEMBER 2016

Species	Stock name	Regulatory status [1] [2]	Stock/species abundance [3]	Occurrence and range	Season
Harbor seal (*Phoca vitulina*)	Glacier Bay/Icy Strait	MMPA–NC, ESA–NL	7,210	common coastal	year-round.
Steller sea lion (*Eumetopias jubatus*) ...	Eastern U.S	MMPA–D, S, ESA–NL	60,131–74,448	uncommon coastal ..	year-round.
Steller sea lion (*Eumetopias jubatus*) ...	Western U.S	MMPA–D, S, ESA–T	49,497	rare coastal	unknown.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2015 NMFS Draft Stock Assessment Report (Muto and Angliss, 2015).

NMFS refers the public to Muto and Angliss (2015) for additional information on the status, distribution, seasonal distribution, and life history of these species. The publications are available on the internet at *http://www.nmfs.noaa.gov/pr/sars/draft.htm*.

Other Marine Mammals in the Proposed Action Area

Northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursis maritimus*) listed as threatened under the Endangered Species Act could occur in the proposed area. The U.S. Fish and Wildlife Service manages these species and NMFS does not consider them further in this notice.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* exposure to vessel noise and approaches and human presence), including mitigation, may impact marine mammals. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect Glacier Bay NP to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity would impact marine mammals. We will consider the content of the following sections: ''Estimated Take by Incidental Harassment'' and ''Proposed Mitigation'' to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

In the following discussion, we provide general background information on sound and marine mammal hearing. Acoustic and visual stimuli generated by: (1) Motorboat operations; and (2) the appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock. The effects of sounds from motorboat operations and the appearance of researchers might include hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

Hearing Impairment

Marine mammals produce sounds in various important contexts—social interactions, foraging, navigating, and responding to predators. The best available science suggests that pinnipeds have a functional aerial hearing sensitivity between 75 hertz (Hz) and 75 kilohertz (kHz) and can produce a diversity of sounds, though generally from 100 Hz to several tens of kHz (Southall, *et al.,* 2007).

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is called temporary threshold shift (Southall *et al.,* 2007).

Pinnipeds have the potential to be disturbed by airborne and underwater noise generated by the small boats equipped with outboard engines (Richardson, Greene, Malme, and Thomson, 1995). However, there is a dearth of information on acoustic effects of motorboats on pinniped hearing and communication and to our knowledge there has been no specific documentation of hearing impairment in free-ranging pinnipeds exposed to small motorboats during realistic field conditions.

Behavioral Disturbance

Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.,* 2000; and Kucey and Trites, 2006). Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007).

Numerous studies have shown that human activity can flush pinnipeds off haul-out sites and beaches (Kenyon, 1972; Allen *et al.,* 1984; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999; and

Mortenson *et al.,* 2000). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats and sailboats) on harbor seal haul-out behavior in Métis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks-canoes which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haul-out behavior of harbor seals in the Métis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haul-out sites on Yellow Island, Washington state. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haul-out site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007).

As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels re: 20 μPa) non-pulse sounds often leave haul-out areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007). Based on the available data, previous monitoring reports from Glacier Bay NP, and studies described here, we anticipate that any pinnipeds found in the vicinity of the proposed project could have short-term behavioral reactions to the noise attributed to motorboat operations and human presence related to the seabird research activities. We would expect the pinnipeds to return to a haul-out site within 60 minutes of the disturbance (Allen *et al.,* 1985). The effects to pinnipeds appear at the most, to displace the animals temporarily from their haul-out sites and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of the proposed research.

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. The three situations are: (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of pups by large males during a stampede. However, NMFS does not expect any of these scenarios to occur at the proposed survey sites.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.,* cliffs). However, while high-elevation sites exist on the islands, the haulout sites consist of ridges with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out adult animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area.

The probability of vessel and marine mammal interactions (*i.e.,* motorboat strike) occurring during the proposed research activities is unlikely due to the motorboat's slow operational speed, which is typically 2 to 3 knots (2.3 to 3.4 mph) and the researchers continually scanning the water for marine mammals presence during transit to the islands. Thus, NMFS does not anticipate that strikes or collisions would result from the movement of the motorboat.

In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because the timing of research visits would preclude separation of mothers and pups, as activities would not occur in pupping/breeding areas or if pups are present in the research areas. The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Marine Mammal Habitat

NMFS does not expect the proposed research activities to have any habitat-related effects, including to marine mammal prey species, which could cause significant or long-term consequences for individual marine mammals or their populations. NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to noise generated by: (1) Motorboat approaches and departures; (2) human presence during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities. NMFS considers this impact to habitat as temporary and reversible and considered this aspect in more detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Glacier Bay NP has based the mitigation measures which they will

implement during the proposed research, on the following: (1) Protocols used during previous seabird research activities as required by our previous authorizations for these activities; and (2) Recommended best practices in Womble *et al.* (2013); Richardson *et al.* (1995); Pierson *et al.* (1998); and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Glacier Bay NP and/or its designees has proposed to implement the following mitigation measures for marine mammals:

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site based on a pre-determined threshold number of animals present; sites used by pinnipeds for pupping; or sites used by Steller sea lions;
- Perform controlled and slow ingress to the study site to prevent a stampede and select a pathway of approach to minimize the number of marine mammals harassed;
- Monitor for offshore predators at study sites. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If Glacier Bay NP and/or its designees see predators in the area, they must not disturb the pinnipeds until the area is free of predators.
- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

Pre-Survey Monitoring

Prior to deciding to land onshore to conduct the study, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. During every visit, the researchers will examine each study site closely using high powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled out marine mammals.

Site Avoidance

Researchers would decide whether or not to approach the island based on the species present, number of individuals, and the presence of pups. If there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers would not approach the island and would not conduct gull monitoring research.

Controlled Landings

The researchers would determine whether to approach the island based on the number and type of animals present. If the island has 25 or fewer individuals without pups, the researchers would approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic or stampede. The researchers would also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

Minimize Predator Interactions: If the researchers visually observe marine predators (*i.e.* killer whales) present in the vicinity of hauled out marine mammals, the researchers would not approach the study site.

Noise Reduction Protocols: While onshore at study sites, the researchers would remain vigilant for hauled out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

Mitigation Conclusions

We have carefully evaluated Glacier Bay NP's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by us should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to stimuli that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to training exercises that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Glacier Bay NP's proposed measures, as well as other measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their Authorization application. We

may modify or supplement the plan based on comments or new information received from the public during the public comment period. Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

As part of its 2016 application, Glacier Bay NP proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances follows those in Mortenson (1996). Glacier Bay NP would record disturbances on a three-point scale that represents an increasing seal response to the disturbance (Table 2). Glacier Bay will record the time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out. We note that we would consider only responses falling into Mortenson's Levels 2 and 3 as harassment under the MMPA, under the terms of this proposed Authorization.

TABLE 2—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight	All retreats (flushes) to the water, another group of seals, or over the beach.

Glacier Bay NP has complied with the monitoring requirements under the previous authorizations. We have posted the 2015 l report on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* and the results from the previous Glacier Bay NP monitoring reports support our findings that the proposed mitigation measures required under the 2014 and 2015 Authorizations, provide the means of effecting the least practicable adverse impact on the species or stock.

Glacier Bay NP can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Encouraging and Coordinating Research

Glacier Bay NP actively monitors harbor seals at breeding and molting haul out locations to assess trends over time (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.* 2010, Womble and Gende, 2013b). This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the National Marine Mammal Laboratory. Glacier Bay NP will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, they would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and federal agencies.

Proposed Reporting

Glacier Bay NP will submit a draft monitoring report to us no later than 90 days after the expiration of the Incidental Harassment Authorization, if issued. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization. Glacier Bay NP will submit a final report to the NMFS Director, Office of Protected Resources within 30 days after receiving comments from NMFS on the draft report. If Glacier Bay NP receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.
3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities.
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified

activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with Glacier Bay to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Glacier Bay will report the incident to the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248 within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Glacier Bay NP personnel could disturb animals hauled out and that the animals may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the surveyors' presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

Based on pinniped survey counts conducted by Glacier Bay NP (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010), NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 500 harbor seals over the course of the Authorization (Table 3). This estimate represents 6.9 percent of the Glacier Bay/Icy Strait stock of harbor seals and accounts for a maximum disturbance of 25 harbor seals each per visit at Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska over a maximum level of five visits.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ACOUSTIC AND VISUAL STIMULI DURING THE PROPOSED RESEARCH ACTIVITIES ON BOULDER, LONE, AND FLAPJACK ISLANDS, AND GEIKIE ROCK, ALASKA, MAY THROUGH SEPTEMBER, 2015.

Species	Est. number of individuals exposed	Proposed take authorization	Percent of species or stock [1]	Population trend [2]
Harbor seal	500	500	9.9	Declining.
Steller sea lion	0	0	0	Increasing.

[1] Table 1 in this notice lists the stock species abundance estimates that NMFS used to calculate the percentage of species/stock.
[2] The population trend information is from Muto and Angliss, 2015.

Harbor seals tend to haul out in small numbers (on average, less than 50 animals) at most sites with the exception of Flapjack Island (Womble, Pers. Comm.). Animals on Flapjack Boulder Islands generally haul out on the south side of the Islands and are not located near the research sites located on the northern side of the Islands. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 in Glacier Bays NP's application), and sometimes individuals and mother/pup pairs occupy different terrestrial locations than the main haulout (J. Womble, personal observation).

Considering the conservation status for the Western stock of the Steller sea lion, the Glacier Bay NP researchers would not conduct ground-based or vessel-based surveys if they observe Steller sea lions before accessing Boulder, Lone, and Flapjack Islands, and Geikie Rock. Thus, NMFS expects no takes to occur for this species during the proposed activities.

NMFS does not propose to authorize any injury, serious injury, or mortality.

NMFS expect all potential takes to fall under the category of Level B harassment only.

Negligible Impact Analysis and Preliminary Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all four species discussed in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Glacier Bay NP's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

1. The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

2. The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Anecdotal observations and results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

3. There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers would delay ingress into the landing areas only after the pinnipeds have slowly entered the water.

4. Glacier Bay NP would limit access to Boulder, Lone, and Flapjack Islands, and Geikie Rock when there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers would not approach the island and would not conduct gull monitoring research.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Glacier Bay NP's proposed activities and we do not propose to authorize injury, serious injury, or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual seabird monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during Glacier Bay NP's research activities would be behavioral harassment of limited duration (*i.e.,* up to two hours per visit) and limited intensity (*i.e.,* temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality, to occur (see ''Mitigation'' for more details).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the total marine mammal take from Glacier Bay NP's proposed research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Glacier Bay NP's activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (6.9 percent) relative to the population size.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Glacier Bay National Park prohibits subsistence harvest of harbor seals within the Park (Catton, 1995). Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

NMFS does not expect that Glacier Bay NP's proposed research activities (which include mitigation measures to avoid harassment of Steller sea lions) would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2014, NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of an Authorization to Glacier Bay NP for their seabird research activities.

In September 2014, NMFS issued a Finding of No Significant Impact

(FONSI) on the issuance of an Authorization for Point Blue's research activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Glacier Bay NP's proposed activities and impacts for 2015 are within the scope of the 2014 EA and FONSI. NMFS provided relevant environmental information to the public through a previous notice for the proposed Authorization (79 FR 32226, June 4, 2014) and considered public comments received in response prior to finalizing the 2014 EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS has reviewed the 2014 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS,

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Glacier Bay NP's seabird research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The next section provides the proposed Authorization language which we propose for inclusion in the Authorization (if issued).

Glacier Bay National Park, P.O. Box 140, Gustavus, Alaska 99826 and/or its designees (holders of the Authorization) are hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) to harass small numbers of marine mammals incidental to conducting monitoring and research studies on glaucus-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska.

1. This Authorization is valid from May 1 through September 30, 2016.

2. This Authorization is valid only for research activities that occur in the following specified geographic areas: Boulder (58°33′18.08″ N; 136°1′13.36″ W); Lone (58°43′17.67″ N; 136°17′41.32″ W), and Flapjack (58°35′10.19″ N; 135°58′50.78″ W) Islands, and Geikie Rock (58°41′39.75″ N; 136°18′39.06″ W); and Tlingit Point Islet (58°45′16.86″ N; 136°10′41.74″ W) in Glacier Bay, Alaska.

3. Species Authorized and Level of Takes

a. The taking, by Level B harassment only, is limited to the following species: 500 Pacific harbor seals (*Phoca vitulina*).

b. The taking by injury (Level A harassment), serious injury or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

c. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS.

4. General Conditions

A copy of this Authorization must be in the possession of Glacier Bay National Park, its designees, and field crew personnel (including research collaborators) operating under the authority of this Authorization at all times.

5. Mitigation Measures

The Holder of this Authorization is required to implement the following mitigation measures:

a. Conduct pre-survey monitoring before deciding to access a study site. Prior to deciding to land onshore of Boulder, Lone, or Flapjack Island or Geikie Rock, the Holder of this Authorization will use high-powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled out marine mammals. The vessels will maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline.

i. If the Holder of the Authorization determines that there are 25 or more harbor seals (with or without young pups present) hauled out on the shoreline, the holder will not access the island and will not conduct the study at that time.

ii. If the Holder of the Authorization determines that any Steller sea lions (*Eumetopias jubatus*) are present at the study site, the Holder will not access the island and will not conduct the study at that time.

iii. If the Holder of the Authorization determines that there are any pups hauled out on the shoreline and vulnerable to being separated from their mothers, the Holder will not access the island and will not conduct the study at that time.

b. Minimize the potential for disturbance by: (1) Performing controlled and slow ingress to the study site to prevent a stampede; and (2) selecting a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

c. Monitor for offshore predators at the study sites and avoid research activities when predators area present. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If the Holder of this Authorization observes predators in the area, they must not disturb the pinnipeds until the area is free of predators.

d. Maintain a quiet working atmosphere, avoid loud noises, and use hushed voices in the presence of hauled out pinnipeds.

6. Monitoring

Glacier Bay NP is required to record the following:

a. BLM and/or its designees shall record the following:

i. Species counts (with numbers of adults/juveniles); and:

ii. Numbers of disturbances, by species and age, according to a three-point scale of intensity including: (1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 meter; ''alert'' (2) Movements in response to or away from disturbance, typically over short distances (1–3 meters) and including dramatic changes in direction or speed of locomotion for animals already in motion; ''movement'' and (3) All flushes to the water as well as lengthier retreats (≤3 meters); ''flight''.

iii. Information on the weather, including the tidal state and horizontal visibility.

b. If applicable, the observer shall note observations of marked or tag-bearing pinnipeds or carcasses, as well as any rare or unusual species of marine mammal.

c. If applicable, the observer shall note the presence of any offshore predators (date, time, number, and species).

7. Reporting

The holder of this Authorization is required to:

a. Draft Report: Submit a draft monitoring report to the Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service within 90 days after the Authorization expires. NMFS will review the Draft Report which is subject to review and comment by NMFS. Glacier Bay NP must address any recommendations made by NMFS in the Final Report prior to submission to NMFS. If NMFS decides that the draft

final report needs no comments, NMFS will consider the draft report as the Final Report.

b. Final Report: Glacier Bay shall prepare and submit a Final Report to NMFS within 30 days following resolution of any comments on the draft report from NMFS.

8. Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* vessel-strike, stampede, etc.), BLM and/or its designees shall immediately cease the specified activities and immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Glacier Bay NP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Glacier Bay NP will report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator within 24 hours of the discovery. Glacier Bay NP personnel will provide photographs or video footage (*if available*) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their survey activities while NMFS reviews the circumstances of the incident.

Request for Public Comments

NMFS requests comment on the analyses, the draft Authorization, and any other aspect of the Notice of Proposed Incidental Harassment Authorization for Glacier Bay NP's activities.

Please include any supporting data or literature citations with your comments to help inform our final decision on Glacier Bay NP's request for an Authorization.

Dated: March 18, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–06673 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2016–0008]

Request for Information Related to Intellectual Property, Genetic Resources and Associated Traditional Knowledge

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for Comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is requesting information from its stakeholders regarding issues to be discussed in upcoming World Intellectual Property Organization (WIPO) meetings related to intellectual property, genetic resources, and associated traditional knowledge.

DATES: *Submission Deadline Date:* To be ensured of consideration, submissions must be received on or before May 23, 2016.

ADDRESSES: Written submissions should be sent by electronic mail over the Internet addressed to: *InfoForWIPOIGC@uspto.gov.* Submissions may also be submitted by postal mail addressed to: Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Karin Ferriter, Office of Policy and International Affairs. Although submissions may be sent by postal mail, the USPTO prefers to receive submissions by electronic mail message over the Internet because sharing submissions with the public is more easily accomplished.

Electronic submissions are preferred to be formatted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Submissions not sent electronically should be on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

Timely filed submissions will be available for public inspection at the Office of Policy and International Affairs, currently located in Madison West, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314. Submissions also will be available for viewing via the USPTO's Internet Web site (*http://www.uspto.gov/patents-getting-started/international-protection/patent-policy*). Because submissions will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included. It would be helpful to the USPTO if written submissions include the following information: (1) The name and affiliation of the individual responding; and (2) an indication of whether submissions offered represent the views of the respondent's organization or are the respondent's personal views.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter, Attorney-Advisor (telephone (571) 272–9300; electronic mail message *Karin.Ferriter@uspto.gov*) or Dominic Keating, Director, Intellectual Property Attaché Program (telephone (571) 272–9300; electronic mail message *Dominic.Keating@uspto.gov*), of the Office of Policy and International Affairs.

SUPPLEMENTARY INFORMATION: The World Intellectual Property Organization's (WIPO) Intergovernmental Committee

on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) will conduct its thirtieth session from May 30 to June 3, 2016. The United States will participate in that meeting.

At the meeting, the IGC will continue a longstanding discussion as to whether WIPO members should require patent applicants to disclose the source or origin of traditional knowledge and genetic resources used in an invention, as well as practices to prevent the granting of patents for inventions that are not patentable. These discussions have included definitional issues, including the definitions of genetic resources and traditional knowledge. See *http://www.wipo.int/tk/en/igc/* for more information. Such practices include searching publicly available databases of genetic resource information and traditional knowledge.

The IGC decided to invite relevant parties to provide information that could aid the IGC in its deliberations. The USPTO welcomes comments from the public on issues related to these topics. Comments regard the issues below would be particularly helpful to the USPTO.

- Currently, several resources are available which enable USPTO patent examiners to search prior art traditional knowledge and medicine, many of which are also available to the public,[1] and some of which are available only to patent examiners through the USPTO Science and Technology Information Center.
  - Are there additional databases with information about genetic resources and traditional knowledge that patent examiners should use to assess patentability?
  - What are the best practices for establishing such a database?
  - Before such a database is made publicly available, what steps should be taken to ensure that it does not include confidential information?
  - What studies have been done regarding national laws and practices that require patent applications to disclose the country of source or origin for genetic resources or traditional knowledge that may be implicated in the patent application?
- The meeting is also expected to consider a wide range of views among IGC delegations as to whether the intellectual property system should play a role in ensuring that researchers obtain informed consent before obtaining genetic resources or traditional knowledge from indigenous peoples.
  - What codes of conduct (*e.g.*, University or industry regarding research), practices (*e.g.*, State park procedures to obtain prior informed consent), and laws (*e.g.*, tribal laws regarding sharing of culture and granting prior informed consent) are relevant to the protection of genetic resources and traditional knowledge?
  - What studies have been done regarding national laws and practices requiring patent applications to disclose the country of source or origin for genetic resources or traditional knowledge?
- At various times, different IGC delegations have referred to the Universal Declaration of Human Rights, and to the United Nations Declaration on the Rights of Indigenous Peoples.
  - How, if at all, should these Declarations inform the discussions at the IGC?

Interested parties are invited to share their views on these matters. The information obtained can help ensure that the United States delegation has the most current views on relevant issues for discussion at the WIPO IGC meetings. Studies, citations of databases, codes of conduct, and laws that are provided in response to this notice may be collected and submitted to WIPO for compilation as part of the reference materials for the WIPO IGC.

Dated: March 18, 2016.

Michelle K. Lee

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–06681 Filed 3–23–16; 8:45 am]

BILLING CODE 3510–16–P

[1] *See http://www.uspto.gov/patent/laws-and-regulations/comments-public/traditional-knowledge-and-medicine-resources.*

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0010]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records, A0600–43 DAPE, entitled ''DA Conscientious Objector Review Board''. This system is used to investigate claims of a service member that he/she is a conscientious objector to participation in war or to the bearing of arms and to make final determination resulting in assignment of appropriate status or awarding of discharge.

DATES: Comments will be accepted on or before April 25, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/*. The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on March 18, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–43 DAPE

SYSTEM NAME:

DA Conscientious Objector Review Board (February 14, 2000, 65 FR 7365)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Army Review Boards Agency, 251 18th Street South, Suite 385, Arlington, VA 22202–3531.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, grade/rank, Social Security Number (SSN), duty status, results of interview evaluation by military chaplain and a psychiatrist, command's report of investigation, evidence submitted by applicant, witness statements, hearing transcript or summary, information or records from the Selective Service System if appropriate, applicant's rebuttal to commander's recommendation, DA Conscientious Objector Review Board (DACORB) correspondence with applicant, summary of evidence considered, discussion, conclusions, names of voting DACORB members, and disposition of application.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; DoDI 1300.06, Conscientious Objectors; Army Regulation 600–43, Conscientious Objection; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Selective Service System Headquarters for the purpose of identifying individuals who have less than 180 days active duty, and who have been discharged by reason of conscientious objection.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*.

The DOD Health Information Privacy Regulation (DOD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DOD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those in the Privacy Act of 1974 or mentioned in this system of records notice.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By applicant's name and SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official need-to-know who are responsible for servicing the record in the performance of their official duties. Access to computerized data is restricted by use of Common Access Cards (CACs) and is accessible only by users with an authorized account. Persons are properly screened and cleared for access. Access to computerized data is role-based and further restricted by passwords, which are changed periodically. In addition, the integrity of automated data is ensured by internal audit procedures, database access accounting reports, and controls to preclude unauthorized disclosure.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records may write to the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300.

Individuals should provide their full name, SSN, current address, year of Conscientious Objector Review Board decision, and the request must be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records may write to the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–ZXI–IC (PA Officer), 300 Army Pentagon, Washington, DC 20310–0300.

Individual should provide their full name, SSN, current address, and the request must be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual, his/her commander, and/or official records.''

* * * * *

[FR Doc. 2016–06640 Filed 3–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0024]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DFAS announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service; Office of Financial Operations; Retired and Annuitant Pay Quality Product Assurance Division ATTN: Chuck Moss, Cleveland, OH 44199–2001, or call at (216) 204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; And OMB Number: Age 18 Notice—Survivor Benefit Plan (SBP) Child Coverage; DD Form 2862; OMB Control Number 0730–XXXX.

Needs And Uses: The information collection requirement is necessary to identify a dependent child in the Defense Military Retired and Annuity Pay System to prevent overpayment to ineligible children.

Affected Public: Individuals or households.

Annual Burden Hours: 3,600.

Number of Respondents: 14,400.

Responses per Respondent: 1.

Annual Responses: 14,400.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Notice is sent to Survivor Benefit Plan child beneficiaries when they are about to turn age 18. They need to indicate any future school attendance or if the child is incapacitated in order to determine continuing entitlement.

Dated: March 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06634 Filed 3–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0026]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service; Office of Financial Operations; Retired and Annuitant Pay Quality Product Assurance Division ATTN: Chuck Moss, Cleveland, OH 44199–2001, or call at (216) 204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Voluntary Separation Incentive (VSI) Beneficiary Designation; DD Form 2864; OMB Control Number 0730–TBD.

Needs and Uses: The information collection requirement is necessary to determine the beneficiary(ies) of a deceased military member for entitlement and payment of authorized VSI benefits. This certification is required to identify the designated

beneficiary(ies) of the member upon his or her death.

Affected Public: Individuals or households.

Annual Burden Hours: 24 hours.

Number of Respondents: 96.

Responses per Respondent: 1.

Annual Responses: 96.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The form is completed initially upon establishment of the VSI entitlement. If this designation needs to be changed, for various reasons, then another form DD 2864 will be completed.

Dated: March 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06670 Filed 3–23–16; 8:45 am]

BILLING CODE 5001–06–P?≤

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, April 8, 2016. The Public Session will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: The Holiday Inn Arlington at Ballston, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public 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: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will continue deliberations on military justice case data for sexual assault offenses for fiscal years 2012–2014, hear a staff briefing about sexual assault legislation and a report on a recent special victims' counsel training course, and assess trends in the development, utilization, and effectiveness of the special victims capabilities required by section 573 of the Fiscal Year 2013 National Defense Authorization Act. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda

8:30–9:00: Administrative Work *(41 CFR 102–3.160, not subject to notice & open meeting requirements)*
9:00–10:00: Deliberations on Military Justice Case Data for Sexual Assault Offenses *(Public Meeting Begins)*
10:00–10:30: Informational Brief—Legislative Update and Report on the Army's SVC Course held in January 2016
10:30–12:00: Updates on the Special Victims' Counsel (Victims' Legal Counsel) Program
12:00–1:00: Lunch
1:00–2:00 MCIO Overview and Perspective of the SVIP Policies, Practices, and Procedures
2:00–3:00: JAG Prosecutor and Paralegal Overview and Perspective of the SVIP Policies, Practices, and Procedures
3:00–3:15: Break
3:15–4:15: Victim Witness Liaison Overview and Perspective of the SVIP Policies, Practices, and Procedures
4:15–4:30: Public Comment

Availability of Materials for the Meeting: A copy of the April 8, 2016 public meeting agenda or any updates or changes to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.* In the event the Office of Personnel Management closed the government due to inclement weather or any other reason, please consult the Web site for any changes in the public meeting date or time.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted from 4:15 p.m. to 4:30 p.m. on April 8, 2016 in front of the Panel members. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, if they determine the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Department

of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: March 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06602 Filed 3–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0025]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DFAS announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service; Office of Financial Operations; Retired and Annuitant Pay Quality Product Assurance Division ATTN: Chuck Moss, Cleveland, OH 44199–2001, or call at (216) 204–4426.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Authorization for Retired Serviceman's Family Protection Plan (RSFPP) and/or Survivor Benefit Plan (SBP) Cost Deduction; DD Form 2891; OMB Control Number 0730–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain the military member's authorization to deduct the costs for either RSFPP and/or SBP from the member's Department of Veteran Affairs monthly compensation or pension payments.

Affected Public: Individuals or households.

Annual Burden Hours: 15.

Number of Respondents: 30.

Responses per Respondent: 1.

Annual Responses: 30.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

This form is completed by the retiree and the Department of Veterans Affairs (DVA) whenever the retired member elects to have costs deducted from his DVA benefits.

Dated: March 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06637 Filed 3–23–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 8,911,145: METHOD TO MEASURE THE CHARACTERISTICS IN AN ELECTRICAL COMPONENT//Patent No. 8,336,054: HAND LAUNCHABLE UNMANNED AERIAL VEHICLE//Patent No. 8,855,961: BINARY DEFINTION FILES//Patent No. 8,904,934: SEGMENTED LINEAR SHAPED CHARGE//Patent No. 9,081,409: EVENT DETECTION CONTROL SYSTEM FOR OPERATING A REMOTE SENSOR OR PROJECTILE SYSTEM//Patent No. 8,977,507: EVENT DETECTION SYSTEM USER INTERFACE SYSTEM COUPLED TO MULTIPLE SESNOR OR PROJECTILE SYSTEMS//Patent No. 8,905,282 ACCESSORY MOUNTING APPARATUS FOR A VEHICLE//Patent No. 9,083,078 UNIVERSAL ANTENNA MOUNTING BRACKET//Patent No. 8,967,049 SOLID LINED FABRIC AND A METHOD FOR MAKING//Patent No. 8,850,950 HELICOPTER WEAPON MOUNTING SYSTEM.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: March 18, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–06653 Filed 3–23–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0031]

Agency Information Collection Activities; Comment Request; Federal Perkins Loan Program Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0031. 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–105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Federal Perkins Loan Program Regulations.

OMB Control Number: 1845–0023.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector; Individuals or Households.

Total Estimated Number of Annual Responses: 8,217,172.

Total Estimated Number of Annual Burden Hours: 149,369.

Abstract: Institutions of higher education make Federal Perkins loans. This information is necessary in order to monitor a school's due diligence in its contact with the borrower regarding repayment, billing and collections, reimbursement to its Perkins loan revolving fund, rehabilitation of defaulted loans as well as institutions use of third party collections. There has been no change to the regulations. This is a request for revision of the current approval of reporting and record-keeping requirements contained in the regulations related to the administrative requirements of the Perkins Loan Program. We are requesting a revision of the current collection due to errors in previous burden calculations.

Dated: March 18, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–06589 Filed 3–23–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 13, 2016, 8:30 a.m.–5:00 p.m.

Thursday, April 14, 2016, 9:00 a.m.–12:00 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Kristen Holmes, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–5803; or Email: *Kristen.L.Holmes@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Draft Advice
  - 2018 Hanford Cleanup Priorities
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Hanford Advisory Board (HAB) Committee Reports
  - Safety Culture Presentation
  - Waste Treatment Plant Communication Approach
  - HAB Leadership Workshop Overview
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen Holmes at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kristen Holmes at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen Holmes's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on March 18, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–06656 Filed 3–23–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 14–111–NG; et al.]

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, To Vacate Authorization, and To Dismiss Application During February 2016

	FE Docket Nos.
NUTRECO CANADA INC	14–111–NG
FORTUNA (US) L.P	14–146–NG
PIERIDAE ENERGY (USA) LTD	14–179–LNG
BEAR HEAD LNG CORPORATION AND BEAR HEAD LNG (USA), LLC	15–14–LNG
BEAR HEAD LNG CORPORATION AND BEAR HEAD LNG (USA), LLC	15–33–LNG
CONSOLIDATED EDISON ENERGY, INC	15–186–NG
BROOKFIELD ENERGY MARKETING LP	16–03–NG
PHILLIPS 66 COMPANY	16–07–NG
CENTRAL LOMAS DE REAL, S.A. DE C.V	16–06–NG
GOLDEN PASS LNG TERMINAL LLC	16–08–NG
CONOCOPHILLIPS ALASKA NATURAL GAS CORPORATION	15–149–LNG
NOCO ENERGY CORP	16–09–NG
SHELL NA LNG LLC	16–10–LNG
SHELL ENERGY NORTH AMERICA (US), L.P	16–11–NG
EXCELERATE ENERGY L.P	16–12–NG
NEW WORLD GLOBAL LLC	16–16–LNG
CNE GAS SUPPLY, LLC	16–14–NG
CONSTELLATION ENERGY GAS CHOICE, INC	16–13–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during February 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to vacate authority, and to dismiss applications. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 18, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3488–A	02/25/16	14–111–NG	Nutreco Canada Inc.	Order 3488–A vacating blanket authority to import/export natural gas from/to Canada.
3531–A	02/25/16	14–146–NG	Fortuna (US) L.P.	Order 3531–A vacating blanket authority to import/export natural gas from/to Canada.
3768	02/05/16	14–179–LNG	Pieridae Energy (USA) Ltd. (NFTA).	Order 3768 granting long-term, multi-contract authority to export U.S.-Sourced natural gas by pipeline to Canada for liquefaction and re-export in the form of LNG to Non-FTA countries.
3769	02/05/16	15–14–LNG	Bear Head LNG Corporation and Bear Head LNG (USA), LLC.	Order 3769 dismissing application for In-Transit shipments of Canadian-Sourced natural gas and directing submission of information concerning In-Transit shipments returning to the country of origin.
3770	02/05/16	15–33–LNG	Bear Head LNG Corporation and Bear Head LNG (USA), LLC.	Order 3768 granting long-term, multi-contract authority to export U.S.-Sourced natural gas by pipeline to Canada for liquefaction and re-export in the form of LNG to Non-FTA countries.
3774	02/04/16	15–186–NG	Consolidated Edison Energy, Inc.	Order 3774 granting blanket authority to import/export natural gas from/to Canada.
3780	02/02/16	16–03–NG	Brookfield Energy Marketing LP.	Order 3780 granting blanket authority to import/export natural gas from/to Canada.
3781	02/02/16	16–07–NG	Phillips 66 Company	Order 3781 granting blanket authority to import natural gas from Canada.
3782	02/02/16	16–06–NG	Central Lomas de Real, S.A. de C.V.	Order 3782 granting blanket authority to import/export natural gas from/to Mexico.
3783	02/02/16	16–08–NG	Golden Pass LNG Terminal LLC.	Order 3783 granting blanket authority to import LNG from various international sources by vessel.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3784	02/08/16	15–149–LNG	ConocoPhillips Alaska Natural Gas Corporation.	Order 3784 granting blanket authority to export LNG by vessel from the Kenai LNG Facility near Kenai, Alaska, and vacating prior authority in Order 3418.
3785	02/25/16	16–09–NG	NOCO Energy Corp	Order 3785 granting blanket authority to import/export natural gas from/to Canada.
3786	02/25/16	16–10–LNG	Shell NA LNG LLC	Order 3786 granting blanket authority to import LNG from various international sources by vessel.
3787	02/25/16	16–11–NG	Shell Energy North America (US), L.P.	Order 3787 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3788	02/25/16	16–12–NG	Excelerate Energy L.P	Order 3788 granting blanket authority to import LNG from various international sources by vessel.
3789	02/25/16	16–16–LNG	New World Global LLC	Order 3789 granting blanket authority to export LNG to Mexico by truck.
3790	02/25/16	16–14–NG	CNE Gas Supply, LLC	Order 3790 granting blanket authority to export natural gas to Canada/Mexico.
3791	02/25/16	16–13–NG	Constellation Energy Gas Choice, Inc.	Order 3791 granting blanket authority to import natural gas from Canada.

[FR Doc. 2016–06662 Filed 3–23–16; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9944–20–Region 2]

New York State Prohibition of Discharges of Vessel Sewage; Notice of Proposed Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination.

SUMMARY: By petition dated September 20, 2012 and submitted pursuant to 33 CFR 1322(f)(3) and 40 CFR 140.4(a), the State of New York certified that the protection and enhancement of the waters of the New York State portion of the St. Lawrence River and the numerous navigable tributaries, harbors and embayments thereof, requires greater environmental protection than the applicable Federal standards provide, and petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. On April 22, 2013, the EPA requested additional information regarding the population of commercial vessels using the subject waters and the availability of options for sewage removal from those vessels. Upon consideration of the petition, and subsequently obtained information regarding commercial vessels that has been made part of the administrative record, the EPA proposes to make the requested determination and hereby invites the public to comment.

DATES: Comments relevant to this proposed determination are due by April 25, 2016.

Petition: To receive a copy of the petition and/or any other part of the administrative record, please contact Moses Chang at 212 637 3867 or email at *chang.moses@epa.gov.*

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

- *Email: chang.moses@epa.gov.* Include ''Comments on Proposed Determination on New York State portion of St. Lawrence River NDZ Petition'' in the subject line of the message.
- *Mail and Hand Delivery/Courier:* Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637–3867, Email address: *chang.moses@epa.gov.*

SUPPLEMENTARY INFORMATION: *The Proposed No Discharge Zone:* The proposed Vessel Waste No Discharge Zone (NDZ) for the New York State portion of the St. Lawrence River includes the waters of the River within the New York State boundary, stretching from its southwestern boundary at Tibbetts Point, where the river meets Lake Ontario, to its northeastern boundary at the St. Lawrence-Franklin County Line, near Akwesasne, New York.[1] The proposed NDZ encompasses approximately 112 miles of river and shoreline, and the numerous navigable tributaries, harbors, and embayments of the River—including, but not limited to, the New York State portions of the Raquette River, the Grass River, Brandy Brook, Sucker Brook, Whitehouse Bay, Oswegatchie River, Morristown Bay, Blind Bay, Chippewa Creek, Chippewa Bay, Crooked Creek, Goose Bay, Lake of the Isles, Eel Bay, South Bay, Carnegie Bay, Greens Creek, Otter Creek, Swan Bay, Spicer Bay, Carrier Bay, French Creek Bay, Sawmill Bay, Sand Bay, Dodge Bay, Millen Bay, Peos Bay and Grass Bay—and other formally designated habitats and waterways of local, state and national significance.

Certification of Need: New York's petition contains a certification by the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) that the protection and enhancement of the New York State portion of the St. Lawrence River and the numerous navigable tributaries, harbors and embayments thereof, requires greater environmental protection than the applicable Federal standards provide. The certification states that the subject waters are of unique ecological, economic and public health significance, and that pathogens and chemicals contained in the currently-lawful effluent from discharging marine sanitation devices (MSDs) threaten public health and the environment and contravene the State's ongoing efforts to control point and non-

[1] New York State's petition proposes to establish a NDZ that extends, in the northeast, to the U.S.-Canadian border. However, New York State's jurisdiction over waters of the St. Lawrence River ends, in the northeast, at the St. Regis Mohawk Reservation border at the St. Lawrence-Franklin county line. Therefore, New York State does not have the authority under the Clean Water Act to establish a NDZ for the 2.9 miles of the St. Lawrence River that lie within the United States, between the St. Lawrence-Franklin county line and the U.S.-Canadian border. Accordingly, this tentative determination only regards the approximately 112 miles of the St. Lawrence River over which New York State has jurisdiction.

point source pollution from, among other things, municipal discharges, combined sewer overflows and stormwater runoff.

In support of the certification, the Commissioner notes that the St. Lawrence River supports a diversity of uses, including providing drinking water for approximately 17,000 people in New York, valuable wildlife habitat, a commercial shipping corridor, recreational boating and numerous sites for aquatic recreation. The River serves as an economic engine for the region, and is heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the watershed. The River is also home to the Thousand Islands Region, an international tourism destination encompassing communities on both sides of the U.S. and Canadian border along the River and the eastern shores of Lake Ontario. While New York acknowledges that a No Discharge Zone designation alone will not obviate the need for other water quality improvement efforts, a NDZ for the St. Lawrence River would complement the benefits of the State's other efforts to protect and improve water quality in the River.

Adequacy of Sewage Removal and Treatment Facilities: In determining whether adequate facilities exist for the safe and sanitary removal and treatment of sewage from all vessels using a water body, the EPA relies on the ''Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines,'' (CVA Guidelines) published by the U.S. Department of the Interior, which provides that at least one pumpout station should be provided for every 300 to 600 vessels over 16 feet in length. *See* 59 FR 11297. The guidelines also provide that approximately 20% of vessels between 16 and 26 feet, 50% of vessels between 26 and 40 feet and all vessels over 40 feet in length can be assumed to have an installed toilet with some type of Marine Sanitation Device (MSD). Vessels below 16 feet in length are generally presumed not to have an MSD onboard.

Estimated Recreational Vessel Population

There is no single definitive source of information on the number of vessels, or vessels with MSDs, that frequent the St. Lawrence River. The number and distribution fluctuates depending on the time of year, day of the week, weather conditions and special events. In order to develop a reasonable estimate of recreational vessel population, New York relied on two major sources of information. The first was the New York Department of State's (DOS's) Clean Vessel Act Plan (''Statewide Plan''), released in 1996. The purpose of the plan was to characterize pumpout adequacy across New York State. From August 1994 to July 1995, DOS surveyed municipalities to assess the availability of public sewage pumpout facilities. Many private marina operators were also contacted. Private pumpouts and dump stations were initially estimated from the NYSDEC and New York Sea Grant boating guides, augmented with information on vessel registration, aerial photographs of peak season use and local plans and studies. Using data from the Statewide Plan, the estimated number of recreational vessels in Jefferson and St. Lawrence Counties, which border the St. Lawrence River, is a total of 3,775 vessels (3,170 and 605, respectively).

The second, and more recent, source for information about the recreational vessel population in the proposed NDZ is the New York State Office of Parks, Recreation and Historic Preservation's 2012 Boating Report (OPRHP Report) for the counties of Jefferson and St. Lawrence, which encompass the proposed NDZ. The OPRHP Report provides a breakdown of the of the vessel registrations by vessel length for each county. Applying the CVA Guidelines, above, on the relationship between vessel length and MSDs to the data in the OPRHP Report yields an estimate of 2,611 vessels with MSDs registered in Jefferson and St. Lawrence counties, all of which, conservatively, were assumed to operate on the St. Lawrence River.

Available Pumpout Facilities to Recreational Vessels

The federal Clean Vessel Act of 1992 made grants available to states for construction, replacement and renovation of recreational vessel pumpouts. The NYSDEC applied for the first federal grant in 1994 and initiated a statewide program known as the Clean Vessel Assistance Program (CVAP), managed and administered by the New York State Environmental Facilities Corporation (NYSEFC). The NYSEFC provides three distinct grant programs: CVAP Construction Grants (for new installations or replacement), CVAP Upgrade Grants (for improvements to existing pumpouts) and CVAP Operation & Maintenance Grants (for annual upkeep of pumpouts). The NYSEFC also provides funding for information and education on the benefits, use and availability of pumpouts. New York's petition listed 22 currently operating stationary CVAP pumpout facilities that serve the St. Lawrence River in Jefferson and St. Lawrence counties in the state, but the EPA's review has determined the number to be 21. These facilities are summarized in Table 1, below.

Ratio of Pumpout Facilities-to-Recreational Vessels

In calculating the ratio of pumpout facilities-to-vessels, only CVAP-funded facilities were considered. (If all pumpout facilities (CVAP and non-CVAP) are considered, the ratios would show even greater coverage.) This calculation shows that overall, within the proposed St. Lawrence River NDZ, there are an adequate number of stationary pumpout facilities to support the proposed NDZ, with a pumpout-to-vessel ratio as high as 1:180 (using the estimate of 3,775 vessels from the 1996 CVAP Statewide Plan) and as low as 1:119 (using the estimate of 2,611 registered vessels from the 2012 OPRHP Report). By either of the methods discussed above, there are currently sufficient pumpout facilities to meet the upper/maximum 1:600 ratio, and both ratios fall well below the lower/minimum 1:300 ratio used to determine adequacy of pumpout facilities.

Adequacy of Available Pumpout Facilities to Commercial Vessels

Commercial vessel populations were estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for ships arriving at the two main commercial ports on the St. Lawrence River (U.S. side)—Ogdensburg and Massena. In calendar year 2011, ballast manifests showed eight vessels arriving in Ogdensburg and one in Massena. These vessels were either bulkers or passenger cruise ships. Most passenger cruise ships using ports in the proposed NDZ are smaller, chartered site-seeing boats, but this commercial traffic also includes two cruise passenger vessels (the St. Laurent and Pearl Mist), which can hold 200 to 300 passengers each. In calendar year 2010, there were four commercial arrivals at Ogdensburg and seven at Massena. Overall, at both ports combined, annual commercial traffic averages approximately one vessel per month. While other commercial vessels move through the proposed NDZ, they do not stop at the main commercial ports.

Commercial vessels in the proposed NDZ that are too large to use a CVAP stationary pumpout facility may dock at either commercial port, and call a mobile septic waste hauler (pumpout truck) to meet the vessel and provide pumpout services at the dock. There are

at least four mobile septic waste hauling companies with trucks that have the capacity to pumpout and transfer a combined total of 36,400 gallons of sewage to a local sewage treatment plant. Based on the low level of commercial vessel traffic using the ports in the proposed NDZ, and the transience of these vessels, the availability of four septic hauler pumpout truck companies provides adequate pumpout capacity for commercial vessels. These services are summarized in Table 2, below.

TABLE 1—LIST OF STATIONARY SEWAGE PUMPOUT FACILITIES SERVING VESSELS IN THE PROPOSED ST. LAWRENCE RIVER NO DISCHARGE ZONE

Number	Marina name	Location lat./long.	Contact information	* Days and hours of operation	Water depth (feet)	Fee
1	Navy Point Marina	Black River Bay, 43.950172/ −76.120633.	315–646–3364, VHF–Channel 9.	May 1–November 30, 8:00 a.m. to 5:00 p.m.	10	$0.00
2	Kitto's Marina	Chaumont Bay, 44.003881/ −76.171825.	315–639–6043, 315–639–6922.	April–October 15, 8:00 a.m. to 7:00 p.m.	7	5.00
3	Henchen Marina	Henderson Bay and Harbor, 43.862222/ −76.202500.	315–345–4294, VHF–Channel 16.	April 1–October 31, 7:00 a.m.–8:00 p.m.	8	10.00
4	Village of Morristown—Bayside Park.	Morristown Bay, 44.585944/ −75.650281.	315–375–8822	May 1–October 30, Dawn to Dusk.	6	5.00
5	Spicer Marina Basin	Spicer Bay, 44.255990/ −76.036610.	315–686–3141, VHF–Channel 16.	May 1–October 15, 8:00 a.m.–6:00 p.m.	8	5.00
6	Northern Marine, Inc.	Spicer Bay, 44.257500/ −76.035833.	315–686–4398, VHF–Channel 16.	April 1–September 30, 9:00 a.m.–6:00 p.m.	8	5.00
7	French Bay	French Creek Bay, 44.234444/ −76.090833.	315–686–5574, VHF–Channel 16.	April 1–November 15, 8:00 a.m.–5:00 p.m.	8	3.00
8	Madison Barracks Marina.	Black River Bay, 43.953333/ −76.113333.	315–646–3374	May 15–October 15, 8:00 a.m.–6:00 p.m.	10	0.00
9	French Creek Marina—North.	French Creek Bay, 44.235160/ −76.089050.	315–686–3621, VHF–Channel 16.	April 15–October 15, 8:00 a.m.–5:00 p.m.	8	2.00
10	French Creek Marina—South.	French Creek Bay, 44.232689/ −76.086183.	315–686–3621, VHF–Channel 16.	April 15–October 15, 8:00 a.m.–5:00 p.m.	4	2.00
11	Harbor's End, Inc.	Henderson Bay and Harbor, 43.849083/ −76.210714.	315–938–5425, VHF–Channel 67.	April 1–November 1, 8:00 a.m.—4:30 p.m.	4.5	5.00
12	Chaumont Yacht Club ...	Black River Bay, 44.063200/ −76.131360.	315–523–5055	April 15–November 1, 7:00 a.m.–5:00 p.m.	6.5′–7	0.00
13	Bonnie Castle Yacht Basin.	Alexandria Bay, 44.342780/ −75.911980.	315–482–2526, VHF–Channel 16.	May15–October 15, 8:00 a.m.–7:00 p.m.	5′–6	5.00
14	Hutchinson's Boat Works, Inc..	Alexandria Bay, 44.334053/ −75.920244.	315–482–9931	April–October, 8:00 a.m.–5:00 p.m.	6	0.00
15	RJ Marine Associates, Ltd..	French Creek Bay, 44.239989/ −76.090391.	315–686–9805	April–October, 7:00 a.m.–7:00 p.m.	11	15.00
16	City of Ogdensburg	Ogdensburg 44.700478/ −75.495156.	315–393–1980, VHF–Channel 16.	May 1–October 15, 8:00 a.m.–8:00 p.m.	11	5.00
17	Cedar Point State Park	Alexandria Bay, 44.204810/ −76.196740.	315–654–2522, VHF–Channel 16.	Memorial Day to Labor Day, 7:30 a.m.–8:00 p.m.	3 to 4	5.00
18	Village of Waddington—Island View Park.	Lisbon-Waddington, 44.865264/ −75.206024.	315–388–5534 ..... None	April–November, 24 Hours.	3–4	5.00
19	Millens Bay Marina	Cape Vincent, 44.171790/ −76.244780.	315–654–2174, VHF–Channel 16.	April–November, 8:00 a.m.–7:00 p.m.	8	5.00
20	Village of Waddington—Whitaker Park Dock.	St. Lawrence River, 44.867821/ −75.193852.	315–388–5534 ..... None	April–November, 24 Hours.	8	5.00
21	Blind Bay Marina Corp.	Chippewa Bay, 44.477440/ −75.776520.	315–322–3762 ..... None	May 15–September 15, 7:00 a.m.–10:00 p.m.	5	5.00

*** Please note that the actual days of operation depend on the weather.**

TABLE 2—LIST OF MOBILE SEWAGE PUMPOUT SERVICES SERVING VESSELS IN THE PROPOSED ST. LAWRENCE RIVER NO DISCHARGE ZONE

Number	Name of company	Location and contact information	Number of sewage hauler pumpout trucks/ holding capacity	Days and hours of operation	Hose fittings & length (feet)	Truck serves the port area	Estimated fee/cost per 1,000 gal
1	Pomerville's Septic Service.	27440 Ridge Road, Watertown, NY 13601, Tel. 315–782–6056.	2 trucks—1 × 4,600 gal and 1 × 2,500 gal.	Mon–Fri, 7:00 a.m.–5:00 p.m.; or by appointment.	Flexible up to 250 ft.	Yes	$225
2	Gleason's Septic Service.	Route 3, Black River, NY 13612, Tel. 315–773–4135.	3 trucks—2 × 2,500 gal and 1 × 4,400 gal.	Mon–Fri, 7:00 a.m.–3:00 p.m.; or by appointment.	Flexible up to 175 ft.	Yes	250
3	Bach & Co	11176 County Road 9, Clayton, NY 13624, Tel. 315–686–3083.	1 truck × 1,500 gal	Mon–Fri, 7:00 a.m.–5:00 p.m.; or by appointment.	Flexible up to 100 ft.	Yes	250
4	Gilco Trucking Co.	20892 NYS Route 411, P.O. Box 112, LaFargeville, NY 13656, Tel. 315–658–9916.	2 trucks × 9,200 gal	Mon–Fri, 7:00 a.m.–5:00 p.m.; or by appointment.	Flexible up to 250 ft.	Yes	NA

Based on a total recreational vessel population of 3,775 and 21 currently available pumpout facilities, the ratio of vessels to pumpouts is 180:1, which means there are significantly more pumpouts than the recommended range of 300–600:1. Also, based on the low level of commercial vessel traffic (approximately one vessel per month) at the two St. Lawrence River commercial ports and the transience of these vessels, the availability of four septic hauler pumpout truck companies provides adequate pumpout capacity for vessels that are too large to use the stationary pumpout facilities. Therefore, the EPA proposes to issue a determination that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for all vessels are reasonably available for the waters of the New York portion of the St. Lawrence River.

A 30-day period for public comment has been opened on this matter and the EPA invites any comments relevant to its proposed determination. If, after the public comment period ends, the EPA makes a final determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the New York State portion of the St. Lawrence River, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

Dated: March 4, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–06701 Filed 3–23–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2016–0210; FRL 9944–18–OA]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 15 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 14 members representing state, local, and tribal governments. The committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of the meeting is to provide advice on issues related to the CEC's 2016 Council Session theme and to discuss additional trade and environment issues in North America. The meeting will also include a public comment session. The agenda, meeting materials, and general information about the NAC and GAC will be available at *http://www2.epa.gov/faca/nac-gac.*

DATES: The National and Governmental Advisory Committees will hold an open meeting on Wednesday, April 20, 2016 from 9:00 a.m. to 5:00 p.m., and Thursday, April 21, 2016 from 9:00 a.m. until 3:00 p.m.

ADDRESSES: The meeting will be held at the U.S. EPA, Conference Room 2138, located in the William Jefferson Clinton South Building, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Telephone: 202–564–2294. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov*, 202–564–0347, U.S. EPA, Office of Diversity, Advisory Committee Management and Outreach (1601–M), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Requests to make oral comments, or provide written comments to the NAC/GAC should be sent to Oscar Carrillo at *carrillo.oscar@epa.gov* by Friday, April 8, 2016. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to participate in the teleconference should contact Oscar

Carrillo at *carrillo.oscar@epa.gov* or (202) 564–0347 by April 8, 2016.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or *carrillo.oscar@epa.gov.* To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 14, 2016.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 2016–06700 Filed 3–23–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0016]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 23, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0016.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule C (Former FCC Form 346); Sections 74.793(d) and 74.787, LPTV Out-of-Core Digital Displacement Application; Section 73.3700(g)(1)–(3), Post-Incentive Auction Licensing and Operations; Section 74.800, Low Power Television and TV Translator Channel Sharing.

Form No.: FCC Form 2100, Schedule C.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 4,450 respondents and 4,450 responses.

Estimated Time per Response: 2.5–7 hours (total of 9.5 hours).

Frequency of Response: One-time reporting requirement; on occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 42,275 hours.

Annual Cost Burden: $24,688,600.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On December 17, 2015, the Commission adopted the Third Report and Order and Fourth Notice of Proposed Rulemaking, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 15–175 (''LPTV Digital Third Report and Order and Fourth Notice''). This document approved channel sharing between LPTV and TV translator stations as well as created a new digital-to-digital replacement translator.

There are changes to FCC Form 2100, Schedule C to implement channel sharing between low power television (LPTV) and TV translator stations. There are also changes to the substance, burden hours, and costs for the collection.

47 CFR 74.800 permits LPTV and TV translator stations to seek approval to share a single television channel. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule C in order to have the channel sharing arrangement approved. If the sharing station is proposing to make changes to its facility to accommodate the channel sharing, it must also file FCC Form 2100 Schedule C.

47 CFR 74.787 permits full power television stations to obtain a digital-to-digital replacement translator to replace service areas lost as a result of the incentive auction and repacking processes. Stations submit FCC Form 2100 Schedule C to obtain a construction permit for the new replacement translator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–06684 Filed 3–23–16; 8:45 am]

'BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (3064–0169)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on the renewal of the information collection described below.

DATES: Comments must be submitted on or before May 23, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, MB–3016 or Manuel E. Cabeza (202.898.3767), Counsel MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary Kuiper or Manuel Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

Title: Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Form Numbers: None.

Affected Public: Private sector and insured state nonmember banks and savings associations.

Burden Estimate:

	Number of respondents	Average hours per response	Responses per year	Total hours
Investor Reports on Affiliates (reporting burden)	20	2	12	480
Maintenance of Business Books (record keeping burden)	5	2	4	40
Disclosures Regarding Investors and Entities in Ownership Chain (reporting burden)	20	4	4	≤320
Total Burden Hours				840

General Description: The FDIC's policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 21st day of March 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–06648 Filed 3–23–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–03]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day Notice of Submission of Information Collection for Approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the information collection known as the ''American Survey of Mortgage Borrowers'' (in a prior PRA Notice, this information collection was referred to as the ''National Survey of Existing Mortgage Borrowers''). This is a new collection that has not yet been assigned a control number by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year control number.

DATES: Interested persons may submit comments on or before April 25, 2016.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'American Survey of Mortgage Borrowers, (No. 2016–N–03)' '' by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''American Survey of Mortgage Borrowers, (No. 2016–N–03)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect

comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Forrest Pafenberg, Supervisory Policy Analyst, Office of the Chief Operating Officer, by email at *Forrest.Pafenberg@fhfa.gov* or by telephone at (202) 649–3129; or Eric Raudenbush, Assistant General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

FHFA is seeking OMB clearance under the PRA for a new collection of information known as the ''American Survey of Mortgage Borrowers'' (ASMB).[1] The ASMB will be a periodic, voluntary survey of individuals who currently have a first mortgage loan secured by single-family residential property. The survey questionnaire will consist of approximately 90 questions designed to learn directly from mortgage borrowers about their mortgage experience, any challenges they may have had in maintaining their mortgage and, where applicable, terminating a mortgage. It will request specific information on: The mortgage; the mortgaged property; the borrower's experience with the loan servicer; and the borrower's financial resources and financial knowledge. FHFA is also seeking clearance to pretest the survey questionnaire and related materials from time to time through the use of focus groups. A draft of the survey questionnaire appears at the end of this notice.

The ASMB will be a component of the larger ''National Mortgage Database'' (NMDB) Project, which is a multi-year joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB) (although the ASMB is being sponsored only by FHFA). The NMDB Project is designed to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008.[2] Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public.

In order to fulfill those and other statutory mandates, as well as to support policymaking and research efforts, FHFA and CFPB committed in July 2012 to fund, build and manage the NMDB Project. When fully complete, the NMDB will be a de-identified loan-level database of closed-end first-lien residential mortgages. It will: (1) Be representative of the market as a whole; (2) contain detailed, loan-level information on the terms and performance of mortgages, as well as characteristics of the associated borrowers and properties; (3) be continually updated; (4) have an historical component dating back before the financial crisis of 2008; and (5) provide a sampling frame for surveys to collect additional information.

The core data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgage files outstanding at any time between January 1998 and the present in the files of Experian, one of the three national credit repositories. A random 1-in-20 sample of mortgages newly reported to Experian is added each quarter. The NMDB also draws information on mortgages in the NMDB datasets from other existing sources, including the Home Mortgage Disclosure Act (HMDA) database that is maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, and data files maintained by Fannie Mae and Freddie Mac and by federal agencies. Currently, FHFA obtains additional data from its quarterly National Survey of Mortgage Borrowers (NSMB), which provides critical and timely information on newly-originated mortgages and those borrowing that are not available from any existing source, including: The range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans.[3]

While the quarterly NSMB provides information on newly-originated mortgages, it does not solicit borrowers' experience with maintaining their existing mortgages; nor is detailed information on that topic available from any other existing source. The ASMB will solicit such information, including information on borrowers' experience with maintaining a mortgage under financial stress, their experience in soliciting financial assistance, their success in accessing federally-sponsored programs designed to assist them, and, where applicable, any challenges they may have had in terminating a mortgage loan. The ASMB questionnaire will be sent out to a stratified random sample of 10,000 borrowers in the NMDB. The ASMB assumes a 25 percent overall response rate, which would yield 2,500 survey responses.

The information collected through the ASMB questionnaire will be used, in combination with information obtained from existing sources in the NMDB, to assist FHFA in understanding how the performance of existing mortgages is influencing the residential mortgage market, what different borrower groups are discussing with their servicers when they are under financial stress, and consumers' opinions of federally-sponsored programs designed to assist them. This important, but currently unavailable, information will assist the Agency in the supervision of its regulated entities (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and in the development and implementation of appropriate and effective policies and programs. The information may also be used for research and analysis by other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets and to provide a resource for research and analysis by academics and other interested parties outside of the government.

FHFA expects that, in the process of developing the initial and any subsequent ASMB survey questionnaires and related materials, it will sponsor one or more focus groups to pretest those materials. Such pretesting will ultimately help to ensure that the survey respondents can and will answer the survey questions and will provide useful data on their experiences with maintaining their existing mortgages. FHFA will use

[1] In the initial PRA Notice published in the **Federal Register** for this information collection, the survey was referred to as the ''National Survey of Existing Mortgage Borrowers.'' *See* 80 FR 69664 (Nov. 10, 2015).

[2] 12 U.S.C. 4544(c).

[3] OMB has cleared the NSMB under the PRA and assigned it control no. 2590–0012. The current OMB clearance expires on December 31, 2016.

information collected through the focus groups to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information will also be used to help the Agency decide on how best to organize and format the survey questionnaire.

B. Burden Estimate

While FHFA currently has firm plans to conduct the survey only once—in the second quarter of 2016—it may decide to conduct further periodic ASMB surveys once the first survey is completed. The Agency therefore estimates that the survey will be conducted, on average, once annually over the next three years and that it will conduct pre-testing on each set of annual survey materials. FHFA has analyzed the hour burden on members of the public associated with conducting the survey (5,000 hours) and with pre-testing the survey materials (24 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 5,024 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the ASMB questionnaire will be sent to 10,000 recipients each time it is conducted. Although the Agency expects only 2,500 of those surveys to be returned, it assumes that all of the surveys will be returned for purposes of this burden calculation. Based on the reported experience of respondents to the quarterly NSMB questionnaire, which contains a similar number of questions, FHFA estimates that it will take each respondent 30 minutes to complete each survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 5,000 hours for the survey phase of this collection (1 survey per year × 10,000 respondents per survey × 30 minutes per respondent = 5,000 hours).

II. Pre-Testing the Materials

FHFA estimates that it will sponsor two focus groups prior to conducting each survey, with 12 participants in each focus group, for a total of 24 focus group participants. It estimates the participation time for each focus group participant to be one hour, resulting in a total annual burden estimate of 24 hours for the pre-testing phase of the collection (2 focus groups per year × 12 participants in each group × 1 hour per participant = 24 hours).

C. Comment Request

Comments Received in Response to the Initial Notice

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published a request for public comments regarding this information collection in the **Federal Register** on November 10, 2015.[4] The 60-day comment period closed on January 11, 2016. FHFA received two comment letters—one from an individual and one from a group of trade associations representing various constituencies in the financial services industry. The letter from the individual was not responsive to any of the questions in the notice and contained no comments relating to the ASMB, the NMBD Project, or any issues arising under the PRA.

The trade associations' letter raised two issues that are relevant to the compliance of the ASMB with the PRA. First, the trade associations asserted that the information FHFA seeks to collect through the ASMB is, or could soon be, available from other sources and urged the Agency ''to again review existing surveys and data collection efforts to identify redundancies.'' The letter cites numerous existing sources of quantitative data about mortgage borrowers, loan terms, mortgaged properties and the origination and maintenance of first lien mortgages. However, most of the data sources cited are those from which the NMDB has drawn the bulk of its existing data. None of those sources (nor any other sources of which FHFA is aware) provide the type of qualitative information regarding borrowers' experience with maintaining a mortgage or their interactions with mortgage servicers that FHFA seeks to obtain through this information collection.

Second, noting that the draft ASMB questionnaire published with the initial PRA Notice in the **Federal Register** was not the final version of the survey instrument, the trade associations urged FHFA ''to solicit additional public input on the substance of the survey when it is complete and before FHFA puts it into use.'' An updated draft of the survey questionnaire appears at the end of this notice. The trade associations, as well as any other interested parties, will have 30 days within which to review the updated survey and to provide comments to both OMB and FHFA.

Further Comments Requested in Response to This Notice

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: March 17, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[4] *See* 80 FR 69664 (Nov. 10, 2015).

1. Looking back to January 1, 2015 did you have at least one mortgage loan on a residence that was outstanding at that time *(could be your home or house lived in by others)***?**

☐ Yes → If you had more than one mortgage loan outstanding on January 1, 2015, please refer to your experience with a first lien on a property, NOT a second lien, home equity loan, or a home equity line of credit (HELOC). If you had more than one such mortgage please refer to the one with the largest balance.

☐ No → If you did not have a mortgage loan outstanding please return the blank questionnaire so we know the survey does not apply to you. The money enclosed is yours to keep.

2. Did we mail this survey to the address of the house or property that has this mortgage?

☐ Yes
☐ No

3. What was the primary purpose of the mortgage you had on January 1, 2015?
Mark one answer.

☐ To purchase the property
☐ To refinance or modify an earlier mortgage
☐ Permanent financing of a construction loan
☐ New loan on a mortgage-free property
☐ Some other purpose (specify) _____
_____

4. When did you take out this mortgage?

_____/_____
month year

5. What was the amount of this loan (the dollar amount you borrowed)?

$_____ . 00

☐ Don't know

6. In January 2015, what was the monthly payment (including the amount paid to escrow for taxes and insurance, if any)?

$_____. 00

☐ Don't know

7. In January 2015, what was the interest rate on this mortgage?

_____%

☐ Don't know

8. Including you, how many people signed/co-signed for this mortgage?

☐ 1 ☐ 2 ☐ 3 ☐ 4 or more

9. Does/did this mortgage have any of the following features?

	Yes	No	Don't Know
A prepayment penalty *(fee if the mortgage is paid off early)*	☐	☐	☐
An escrow account for taxes and/or homeowner insurance	☐	☐	☐
An adjustable rate *(one that can change over the life of the loan)*	☐	☐	☐
A balloon payment	☐	☐	☐
Interest-only monthly payments	☐	☐	☐

10. When you took out this mortgage, how satisfied were you with the…

	Very	Somewhat	Not At All
Lender/broker you used	☐	☐	☐
Application process	☐	☐	☐
Documentation process required for the loan	☐	☐	☐
Loan closing process	☐	☐	☐
Information in mortgage disclosure documents	☐	☐	☐
Timeliness of mortgage disclosure documents	☐	☐	☐
Settlement agent	☐	☐	☐

11. Overall, how satisfied were you at the time you took out this mortgage that it was the one with the…

	Very	Somewhat	Not At All
Best terms to fit your needs	☐	☐	☐
Lowest interest rate you could qualify for	☐	☐	☐
Lowest closing cost	☐	☐	☐

12. What type of house is/was on the property associated with the mortgage you had on January 1, 2015? *Mark one answer.*

- ☐ Single-family detached house
- ☐ Townhouse, rowhouse, or villa
- ☐ Mobile home or manufactured home
- ☐ 2-unit, 3-unit, or 4-unit dwelling
- ☐ Condo, apartment house, or co-op
- ☐ Unit in a partly commercial structure
- ☐ Other (specify) _____

13. When did you buy or acquire this property? If you refinanced, the date you originally acquired the property.

_____/_____
month year

14. What was the purchase price of this property, or if you built it, the construction and land cost?

$_____. 00 ☐ Don't know

15. About how much do you think this property is worth today; that is, what could it sell for now?

$_____. 00 ☐ Don't know

16. How did you use this property on January 1, 2015? *Mark one answer.*

- ☐ Primary residence *(where you spent the majority of your time)*
- ☐ Seasonal or second home
- ☐ Home for other relatives
- ☐ Rental or investor property
- ☐ Other (specify)_____

17. How do you use this property today? *Mark one answer.*

- ☐ Primary residence *(where you spend the majority of your time)*
- ☐ Seasonal or second home
- ☐ Home for other relatives
- ☐ Rental or investor property
- ☐ Other (specify) _____
  _____
- ☐ No longer have the property

The Neighborhood

18. Thinking about the neighborhood where this property is located, how have the following changed in the last couple of years?

	Significant Increase	Little/No Change	Significant Decrease
Number of homes for sale	☐	☐	☐
Number of vacant homes	☐	☐	☐
Number of homes for rent	☐	☐	☐
Number of foreclosures or short sales	☐	☐	☐
House prices	☐	☐	☐
Overall desirability of living there	☐	☐	☐

19. What do you think will happen to the prices of homes in this neighborhood over the next couple of years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Remain about the same
- ☐ Decrease a little
- ☐ Decrease a lot

20. In the next couple of years, how do you expect the overall desirability of living in this neighborhood to change?

- ☐ Become more desirable
- ☐ Stay about the same
- ☐ Become less desirable

Paying On This Mortgage

21. At any time did the loan servicer, the company where you send your monthly payments, of the loan you had in January 2015, change?

- ☐ No ***Skip to Q23 on page 3***
- ☐ Yes ↴

22. When the servicer changed…

	Yes	No
Did the new servicer inform you when and where to send your payments?	☐	☐
Did the due date or frequency of payments change?	☐	☐
Were payments applied correctly?	☐	☐

23. Thinking about the current servicer (or last one if you no longer have this loan) do they or did they…

	Yes	No
Send out monthly statements	☐	☐
Apply payments correctly	☐	☐
Provide clear information on how to contact them	☐	☐

24. Did this servicer ever contact you other than to provide regular statements?

☐ Yes
☐ No

25. Did you ever contact this servicer to…

	Yes	No
Confirm receipt of a payment	☐	☐
Correct errors in your file	☐	☐
Ask about escrow or property taxes	☐	☐
Ask about pre-paying or paying more than the required regular payment	☐	☐

26. At any point during the past several years, did you face any difficulties making payments on the loan you had in January 2015?

☐ No *Skip to Q40 on page 4*
☐ Yes

27. Were these difficulties serious enough that you or your lender/servicer had concerns that you might not be able to afford the mortgage or continue living in your home?

☐ Yes
☐ No

28. Thinking about the most serious of these occasions, did any of these factors contribute or not contribute to your difficulties?

	Yes	No
Job loss	☐	☐
Business failure	☐	☐
Separation or divorce	☐	☐
Illness, disability or death of someone in your household	☐	☐
Disaster affecting this property	☐	☐
A change in mortgage payments	☐	☐
Unexpected expenses	☐	☐
Large credit card debt	☐	☐
Something else (specify)_____	☐	☐

☐ None of the above

29. Did you do any of the following when you had concerns or difficulties paying this mortgage?

	Yes	No
Got help from family or friends	☐	☐
Borrowed money (e.g. credit cards, payday loans)	☐	☐
Reduced monthly expenses	☐	☐
Sold other assets	☐	☐
Loan or cash out of a retirement account	☐	☐
Rented part of the house	☐	☐
Increased work hours	☐	☐
Found a better paying job	☐	☐
Found a second job	☐	☐
Spouse or partner started working	☐	☐
Consolidated debt	☐	☐
File or considered filing for bankruptcy	☐	☐
Put the property on the market, but did not receive an acceptable offer	☐	☐
Other (specify) _____	☐	☐

☐ None of the above

30. When you faced these difficulties, what happened to the mortgage payments?

☐ Still made all the payments on time
☐ Made (at least) one late payment but did not miss any payment
☐ Missed (at least) one payment but did not stop paying
☐ Stopped paying altogether

31. Did you ever speak with the servicer?

☐ Yes *Skip to Q34 on page 4*
☐ No

32. Did the servicer ever attempt to contact you?

☐ Yes
☐ No

33. Did you try to reach the servicer but they did not respond?

☐ Yes
☐ No

Now skip to Q36 on page 4

34. When you talked with your mortgage lender/servicer, did you talk or not talk about each of the following?

	Yes	No
Refinancing	☐	☐
Loan modification	☐	☐
Government programs	☐	☐
Housing/credit counseling	☐	☐
Debt consolidation	☐	☐
Borrowing money	☐	☐
Other (specify) _____ _____	☐	☐

35. Did the lender/servicer offer you…

	Yes	No
A program to modify the terms of your mortgage to make it more affordable	☐	☐
A way to sell the house to satisfy the mortgage	☐	☐
A way to give the house to the lender to satisfy the mortgage	☐	☐

36. What action, if any, was taken to address the payment difficulties? *Mark one answer.*

- ☐ Refinanced with a special government program (e.g. HARP, FHA short refi)
- ☐ Other refinance
- ☐ Kept loan and obtained mortgage assistance with a government program
- ☐ Kept loan and eliminated second lien loans with a government program
- ☐ Modified the existing loan
- ☐ Returned home to lender to cancel mortgage debt (deed-in-lieu)
- ☐ Sold home at reduced price agreed to by lender (short sale)
- ☐ Sold home – regular sale
- ☐ Home was taken in foreclosure
- ☐ Other (specify) _____
- ☐ No action taken

37. Were any of the following a challenge to you in taking steps in response to payment difficulties?

	Yes	No
I didn't know how or where to apply for programs	☐	☐
I thought the application process for programs was too much trouble	☐	☐
I didn't think I could qualify for any program	☐	☐
I was turned down for the programs I applied to	☐	☐
Other problem (specify) _____	☐	☐

38. How well did you understand the options presented to you by the lender/servicer?

☐ Very ☐ Somewhat ☐ Not at all

39. Did you seek input or not about possible steps to address your payment difficulties with any of the following?

	Yes	No
Mortgage lender/servicer	☐	☐
Family	☐	☐
Friends	☐	☐
Housing/credit counselor	☐	☐
Lawyer	☐	☐
Financial planner	☐	☐
Banker	☐	☐
Other (specify) _____	☐	☐

40. In the course of taking out or paying the mortgage you had in January 2015, did you ever talk to a counselor or take a course about home buying or managing your finances?

☐ No ***Skip to Q45 on page 5***

☐ Yes

41. What type of counseling or course did you participate in?

	Before taking out loan	During loan process	After taking out loan	Did not do
Credit counseling	☐	☐	☐	☐
Home buying counseling	☐	☐	☐	☐
Credit /financial management course	☐	☐	☐	☐
Home buying course	☐	☐	☐	☐

42. If you participated, how was the course or counseling provided?

	One-on-one in person	Group session	On the phone	Online
Credit counseling	☐	☐	☐	☐
Home buying counseling	☐	☐	☐	☐
Credit /financial management course	☐	☐	☐	☐
Home buying course	☐	☐	☐	☐

43. In total, how many hours did you spend in counseling or working through the courses?

- ☐ Less than 3 hours
- ☐ 3 – 6 hours
- ☐ 7 – 12 hours
- ☐ More than 12 hours

44. Overall, how helpful was the counseling or courses?

☐ Very ☐ Somewhat ☐ Not at all

45. Do you still have this mortgage today *(answer no if you refinanced, modified or paid off the loan, sold or otherwise gave up the property)***?**

- ☐ No ***Skip to Q52***
- ☐ Yes

46. Is the amount you owe on this mortgage today…

- ☐ Significantly less than your property value
- ☐ Slightly less than your property value
- ☐ About the same as your property value
- ☐ Slightly more than your property value
- ☐ Significantly more than your property value

47. How likely is it that in the next couple of years you will…

	Very	Somewhat	Not At All
Sell this property	☐	☐	☐
Move but keep this property	☐	☐	☐
Refinance the mortgage on this property	☐	☐	☐
Pay off this mortgage and own property mortgage-free	☐	☐	☐
Lose the property because you cannot afford the payment	☐	☐	☐

48. At any time in the last few years, did you consider refinancing the loan you had in January 2015?

- ☐ No ***Skip to Q64 on page 6***
- ☐ Yes

49. In considering refinancing, did you ask for a quote from a lender or broker?

- ☐ Yes
- ☐ No

50. What was the outcome resulting from your considering to refinance?

- ☐ Applied for a loan, but withdrew the application
- ☐ Applied for a loan, it was accepted, but I decided not to refinance
- ☐ Applied for a loan, but was denied
- ☐ Did not apply for a refinance

51. Was each of the following a reason or not a reason you did not refinance this loan?

	Yes	No
New loans available were not better than what I already had	☐	☐
New loan not worth the cost or hassle to refinance	☐	☐
Home value/appraisal too low to qualify for a good refinance	☐	☐
Low credit score or other credit issues	☐	☐
Too much other debt	☐	☐
Insufficient income to qualify	☐	☐
Could not document income	☐	☐
Did not think I would qualify for a good refinance	☐	☐
Incomplete mortgage application	☐	☐
Other (specify) _____	☐	☐

Now please skip to Q64

Mortgage No Longer Held

52. (If you said No to Q45) You indicated you no longer have this mortgage, when did this happen?

_____/_____
month year

53. What happened to this mortgage and/or property?

- ☐ I paid off the loan and kept the property
- ☐ I sold the property
- ☐ The property was taken as part of foreclosure (couldn't make payments)
- ☐ I decided to walk away and let the lender have the property

Skip to Q56 on page 6

- ☐ I refinanced or modified the loan

54. Did you refinance or modify this loan…

- ☐ With the same lender you used for the mortgage you had on January 1, 2015

☐ With a new lender/broker

55. How did the terms of the new loan compare to the loan you had on Jan 1, 2015?

	Higher	Same	Lower
Interest rate	☐	☐	☐
Principal balance	☐	☐	☐
Monthly payments	☐	☐	☐

56. Were any of the following a reason or not a reason you no longer have the mortgage you had in January 2015?

	Yes	No
Needed to reduce my total debt	☐	☐
Needed to reduce monthly expenses	☐	☐
Found a lower interest rate	☐	☐
Divorce or separation	☐	☐
Death of a household member	☐	☐
Illness or disability	☐	☐
Kept property as a rental	☐	☐
Wanted to rent rather than own a home	☐	☐
House maintenance too difficult or costly	☐	☐
Wanted a different house	☐	☐
Moved to be closer to family	☐	☐
Owed more on the loan than the property was worth or could sell it for	☐	☐
Other (specify)_____	☐	☐

_____

57. Did you get advice or information from any of the following for this loan transaction?

	Yes	No
A credit counselor	☐	☐
A home ownership counselor	☐	☐
Family/friends	☐	☐
Other professionals – attorney, tax advisor, etc.	☐	☐
The internet	☐	☐

58. Considering the circumstances around this last loan transaction, would you say the decision was…

☐ Your or your family's decision
☐ Action taken by someone else (lender/servicer)

59. Did you purchase or co-sign for any other property around the time of this loan transaction?

☐ No *Skip to Q61*
☐ Yes

60. Do you use this new property as your primary residence?

☐ Yes *Skip to Q64*
☐ No

61. Do you currently own or rent your primary residence?

☐ Own *Skip to Q64*
☐ Rent
☐ Live with family and help with expenses
☐ Live rent free with family or friends

62. When do you think you might purchase another primary residence?

☐ Within 1-2 years
☐ Within 3-5 years
☐ Not for at least 5 years
☐ Never

63. Would any of the following events cause you to consider or not consider buying sooner or at all?

	Yes	No
Increase in income/more hours at work	☐	☐
Improved credit score	☐	☐
Improved health	☐	☐
Paying off other debts first	☐	☐
Saving more for a down payment	☐	☐
Decrease in interest rate	☐	☐
Decrease in required credit score	☐	☐
Other (specify) _____	☐	☐

☐ Nothing, will not buy again

Your Household

64. What is your current marital status?

☐ Married *Skip to Q66 on page 7*
☐ Separated
☐ Never married
☐ Divorced
☐ Widowed

65. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

☐ Yes ☐ No

Please answer the following questions for you and your spouse or partner, if applicable.

66. Age at last birthday:

	You	Spouse/ Partner
	____ years	____ years

67. Sex:

	You	Spouse/ Partner
Male	☐	☐
Female	☐	☐

68. Highest level of education achieved:

	You	Spouse/ Partner
Some schooling	☐	☐
High school graduate	☐	☐
Technical school	☐	☐
Some college	☐	☐
College graduate	☐	☐
Postgraduate studies	☐	☐

69. Hispanic or Latino:

	You	Spouse/ Partner
Yes	☐	☐
No	☐	☐

70. Race: *Mark all that apply.*

	You	Spouse/ Partner
White	☐	☐
Black or African American	☐	☐
American Indian or Alaska Native	☐	☐
Asian	☐	☐
Native Hawaiian or Pacific Islander	☐	☐

71. Current work status: *Mark all that apply.*

	You	Spouse/ Partner
Self-employed/work for self	☐	☐
Employed full time	☐	☐
Employed part time	☐	☐
Retired	☐	☐
Temporarily laid-off or on leave	☐	☐
Not working for pay (*student, homemaker, disabled, unemployed)*	☐	☐

72. Have you ever served on active duty in the U.S. Armed Forces? *Active duty includes serving in the U.S. Armed Forces as well as activation from the Reserves or National Guard.*

	You	Spouse/ Partner
Yes, now on active duty	☐	☐
Yes, on active duty in the past, but not now	☐	☐
No, never on active duty except for initial/basic training	☐	☐
No, never served in the U.S. Armed Forces	☐	☐

73. Besides you (and your spouse/partner), who else lives in your household? *Mark all that apply.*

- ☐ Children/grandchildren under age 18
- ☐ Children/grandchildren age 18-22
- ☐ Children/grandchildren age 23 or older
- ☐ Parents of you or your spouse or partner
- ☐ Other relatives like siblings or cousins
- ☐ Non-relatives

- ☐ No one else

74. Approximately how much is your total annual household income from all sources *(wages, salaries, tips, interest, child support, investment income, retirement, social security, and alimony)***?**

- ☐ Under $35,000
- ☐ $35,000 to $49,999
- ☐ $50,000 to $74,999
- ☐ $75,000 to $99,999
- ☐ $100,000 to $174,999
- ☐ $175,000 or more

75. How does this total annual household income compare to what it is in a "normal" year?

- ☐ Higher than normal
- ☐ Normal
- ☐ Lower than normal

76. Does your total annual household income include any of the following sources?

	Yes	No
Wages or salary	☐	☐
Business or self-employment	☐	☐
Interest or dividends	☐	☐
Alimony or child support	☐	☐
Social Security benefits	☐	☐

77. Which one of the following best describes how your household's income changes from month to month, if at all?

- ☐ Roughly the same amount each month
- ☐ Roughly the same most months, but some unusually high or low months during the year
- ☐ Often varies quite a bit from one month to the next

78. Does anyone in your household have any of the following?

	Yes	No
401(k), 403(b), IRA, or pension plan	☐	☐
Stocks, bonds, or mutual funds *(not in retirement accounts or pension plans)*	☐	☐
Certificates of deposit	☐	☐
Investment real estate	☐	☐

79. Which <u>one</u> of the following statements best describes the amount of financial risk you are willing to take when you make investments?

- ☐ Take substantial risks expecting to earn substantial returns
- ☐ Take above-average risks expecting to earn above-average returns
- ☐ Take average risks expecting to earn average returns
- ☐ Not willing to take any financial risks

80. How well could you explain to someone the …

	Very	Somewhat	Not At All
Process of taking out a mortgage	☐	☐	☐
Difference between a fixed- and an adjustable-rate mortgage	☐	☐	☐
Difference between a prime and a subprime loan	☐	☐	☐
Difference between a mortgage's interest rate and its APR	☐	☐	☐
Amortization of a loan	☐	☐	☐
Consequences of not making required mortgage payments	☐	☐	☐
Difference between lender's and owner's title insurance	☐	☐	☐

81. Do you agree or disagree with the following statements?

	Agree	Disagree
Owning a home is a good financial investment	☐	☐
Most mortgage lenders generally treat borrowers well	☐	☐
Most mortgage lenders would offer me roughly the same rates and fees	☐	☐
Late payments will lower my credit rating	☐	☐
Lenders shouldn't care about any late payments only whether loans are fully repaid	☐	☐
It is okay to default or stop making mortgage payments if it is in the borrower's financial interest	☐	☐

82. Do you know anyone who…

	Yes	No
Is behind in making their mortgage payments	☐	☐
Has gone through foreclosure where the lender took over the property	☐	☐
Stopped making monthly mortgage payments, even if they could afford it, because they owed more than the property was worth	☐	☐

83. Do you currently provide caregiving support to any family members or friends living within a few hours' drive from you?

- ☐ Yes
- ☐ No

84. Do you have any adult children living within a few hours' drive from you?

- ☐ Yes
- ☐ No

84.

85. In the last couple of years, have any of the following happened to you?

	Yes	No
Separated/divorced	☐	☐
Married/remarried/new partner	☐	☐
Death of household member	☐	☐
Addition to your household (not including spouse/partner)	☐	☐
Person leaving your household (not including spouse/partner)	☐	☐
Disability or serious illness of a household member	☐	☐
Disaster affecting a property you own	☐	☐
Disaster affecting your (or your spouse/partner's) work	☐	☐
Move within the area (less than 50 miles)	☐	☐
Moved to a new area (more than 50 miles)	☐	☐

86. In the last couple of years, have any of the following happened to you (or your spouse/partner)?

	Yes	No
Layoff, unemployment or reduced hours	☐	☐
Retirement	☐	☐
Promotion	☐	☐
Started a new job	☐	☐
Started a second job	☐	☐
Business failure	☐	☐
A personal financial crisis	☐	☐
Borrowed money from family or friend	☐	☐
Borrowed money from bank, credit union or other financial institution	☐	☐
Significant decrease in the value of your home	☐	☐
A large number of foreclosures or short sales in your neighborhood	☐	☐

87. In the last couple of years, how have the following changed for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

88. In the next couple of years, how do you expect the following to change for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

89. How likely is it in the next couple of years you (or your spouse/partner) will face…

	Very	Somewhat	Not At All
Retirement	☐	☐	☐
Difficulty making your mortgage payments	☐	☐	☐
A layoff, unemployment, or forced reduction in hours	☐	☐	☐
Some other personal financial crisis	☐	☐	☐

90. If your household faced an unexpected personal financial crisis in the next couple of years, how likely is it you could…

	Very	Somewhat	Not At All
Pay your bills for the next 3 months without borrowing	☐	☐	☐
Get significant financial help from family or friends	☐	☐	☐
Borrow enough money from a bank or credit union	☐	☐	☐
Significantly increase your income	☐	☐	☐

[FR Doc. 2016–06590 Filed 3–23–16; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activites; New Information Collection Request

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the new information collection described in this notice. The public is invited to comment on the proposed information

collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted at the addresses below on or before April 25, 2016.

ADDRESSES: Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Chandana Achanta, Desk Officer for Federal Maritime Commission, 725 17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV*, Fax (202) 395–6974 and to: Vern W. Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of the submission may be obtained by contacting Donna Lee on 202–523–5800 or email: *omd@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Requests for Comments

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Commission invites the general public and other Federal agencies to comment on proposed information collections. On September 3, 2015, the Commission published a notice and request for comments in the **Federal Register** (80 FR 53310) regarding the agency's request for an approval from OMB for a new information collection as required by the Paperwork Reduction Act of 1995. The Commission received no comments on the request for OMB clearance. The Commission has submitted the described information collection to OMB for approval. The FMC solicits written comments from all interested persons about the proposed new collection of information. The Commission specifically solicits information relevant to the following topics: (1) Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility; (2) whether the estimated burden of the proposed collection of information is accurate; (3) whether the quality, utility, and clarity of the information to be collected could be enhanced; and (4) whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other forms of information technology.

Information Collection Open for Comment

Title: Request for Dispute Resolution Service.

OMB Control Number: New.

Type of Review: New Generic Information Collection.

Frequency of Response: On occasion.

Respondents/Affected Public: Companies or individuals seeking ombuds or mediation assistance from the Federal Maritime Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS).

Estimated Total Number of Potential Annual Responses: 1,000.

Estimated Total Number of Responses for each Respondent: 1.

Estimated Total Annual Burden Hours per Response: 20 minutes.

Total Estimated Number of Annual Burden Hours: 333.

Abstract: As requested by the shipping public and the regulated industry, the FMC, through CADRS, provides ombuds and mediation services to assist parties in resolving international ocean cargo shipping or passenger vessel (cruise) disputes without resorting to litigation or administrative adjudication. These functions focus on addressing issues that members of the regulated industry and the shipping public may encounter at any stage of a commercial or customer dispute. In order to provide its ombuds and mediation services, CADRS needs certain identifying information about the involved parties, shipments, and nature of the dispute. In response to requests for assistance from the public, CADRS requests this information from parties seeking its assistance. The collection and use of this information on a cargo or cruise dispute is integral to CADRS staff's ability to efficiently review the matter and provide assistance. Aggregated information may be used for statistical purposes. Currently, this information is collected in a non-uniform manner in response to requests for CADRS assistance. *http://www.fmc.gov/resources/requesting_cadrs_assistance.aspx.*

As required by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 571–574, the information contained in these forms is treated as confidential and subject to the same confidentiality provisions as administrative dispute resolutions pursuant to 5 U.S.C. 574. Except as specifically set forth in 5 U.S.C. 574, neither CADRS staff nor the parties to a dispute resolution shall disclose any informal dispute resolution communication.

This information collection is subject to the PRA. The FMC may not conduct or sponsor a collection of information, and the public is 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 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.

Authority: 46 U.S.C. 40101 *et seq.*

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2016–06578 Filed 3–23–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreement 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 agreement 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.: 012395.

Title: MSC/ACL Trans-Atlantic Space Charter Agreement.

Parties: Atlantic Container Line A.B. and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW., Washington, DC 20036.

Synopsis: The Agreement authorizes MSC to charter space to ACL in the trade between North Europe and New York/New Jersey.

Agreement No.: 012396.

Title: CMA CGM/ELJSA Slot Exchange Agreement Asia—U.S. West Coast.

Parties: CMA CGM S.A. and Evergreen Line Joint Service Agreement.

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 exchange slots in the trade between the U.S. West Coast on the one hand, and Taiwan and China on the other hand.

By Order of the Federal Maritime Commission.

Dated: March 18, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–06577 Filed 3–23–16; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 2016.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Univest Corporation of Pennsylvania,* Souderton, Pennsylvania; to merge with Fox Chase Bancorp, Inc., and thereby indirectly acquire Fox Chase Bank, both in Hatboro, Pennsylvania.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Columbia Bancshares, Inc.,* Clarence, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Clarence State Bank, Clarence, Missouri.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Elkcorp, Inc.,* Clyde, Kansas; to merge with Baileyville Banchares, and thereby indirectly acquire Baileyville State Bank, both of Seneca, Kansas.

D. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *First ULB Corp.,* Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of United Business Bank, Oakland, California.

2. *Sierra Bancorp,* Porterville, California; to acquire Coast Bancorp, and thereby indirectly acquire Coast National Bank, both in San Luis Obispo, California.

Board of Governors of the Federal Reserve System, March 21, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–06643 Filed 3–23–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1511]

Privacy Act of 1974; Notice of Amended System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Amended System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Board of Governors of the Federal Reserve System (Board) is modifying BGFRS–39 (General File of the Community Advisory Council), to correct the legal authority cited for maintenance of the system and to clarify the types of records that are maintained about a member's service on the Community Advisory Council (CAC).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments on or before April 25, 2016. The amended system of records will become effective May 3, 2016, without further notice, unless comments dictate otherwise.

ADDRESSES: The public, OMB, and Congress are invited to submit comments, identified by the docket number above, by any of the following methods:

- *Agency Web site*: *http://www.federalreserve.gov.* Follow the instructions for submitting comments. *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email*: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax*: 202/452–3819 or 202/452–3102.
- *Mail*: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Alye S. Foster, Senior Special Counsel, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or (202) 452–5289, or *alye.s.foster@frb.gov.* Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Board proposes to modify BGFRS–39 (General File of the Community Advisory Council) to correct the legal authority cited for maintenance of the system and to clarify the types of records that are maintained about the member's service on the Community Advisory Council (CAC). The CAC meets semi-annually with the Board to offer diverse perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income populations. The

Board's system of records, BGFRS–39, maintains records relating to the appointment and selection of individuals to the CAC and, for selectees, records relating to the individual's membership on the CAC. In accordance with 5 U.S.C. 552a(r), a report of this system of records is being filed with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated: March 21, 2016.

Robert deV. Frierson,

Secretary of the Board.

SYSTEM OF RECORDS

BGFRS–39

SYSTEM NAME:

FRB—General File of the Community Advisory Council

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on individuals considered for membership on the CAC and individuals selected to serve on the CAC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include identifying information about candidates and members of the CAC relating to the selection and appointment to the CAC and records relating to service on the CAC. Individual information in the system includes, but is not limited to, name, work address, telephone number, email address, organization, and title. The system stores additional information including, but not limited to, the candidate's or CAC member's education, work experience, qualifications, and service on the CAC (such as travel and contact information).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 225a and 244.

PURPOSE(S):

The system of records aids the Board in its operation and management of the CAC, including the selection, appointment, and service of members of the CAC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDNIG CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, I apply to this system. Records are routinely used in the Board's operation and management of the CAC, including in the selection, appointment, and service of members of the CAC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records in this system are stored securely in paper and stored on a secure server as electronic records.

Retrievability: Records may be retrieved by any one or a combination of choices by authorized users to include name, zip code, and state.

Access Controls: Access to records is limited to those whose official duties require it. Paper records are secured by lock and key and access to electronic records is password controlled. The electronic storage system has the ability to track individual actions within the application. The audit and accountability controls are based on Board standards which, in turn, are based on applicable laws and regulations. The controls assist in detecting security violations and performance or other issues within the electronic storage system.

Access is restricted to authorized employees who require access for official business purposes. Board users are classified into different roles and common access and usage rights are established for each role. User roles are used to delineate between the different types of access requirements such that users are restricted to data that is required in the performance of their duties. Periodic audits and reviews are conducted to determine whether authenticated users still require access and whether there have been any unauthorized changes in any information maintained.

Retention and Disposal: The retention for these records is currently under review. Until review is completed, these records will not be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th St. and Constitution Ave. NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

An individual desiring to learn of the existence of, or to gain access to, his or her record in this system of records shall submit a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. The request should contain: (1) A statement that the request is made pursuant to the Privacy Act of 1974, (2) the name of the system of records (*i.e.,* BGFRS–39, General File of the Community Advisory Council), (3) information necessary to verify the identity of the requester (*e.g.,* two forms of identification, including one photo identification, or a notarized statement attesting to the requester's identity), and (4) any other information that may assist in the identification of the record for which access is being requested.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure,'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedures,'' above except that the envelope should be clearly marked ''Privacy Act Amendment Request.'' The request for amendment of a record should: (1) Identify the system of records containing the record for which amendment is requested, (2) specify the portion of that record requested to be amended, and (3) describe the nature of and reasons for each requested amendment.

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–06655 Filed 3–23–16; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2016–01; Docket No. 2016–0002; Sequence No. 5]

Federal Management Regulation; Best Practices in Warehouse Asset Management

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA's Office of Government-wide Policy is announcing the availability of a warehouse best practices resource page that is publicly available on *http://www.gsa.gov.* This page features several effective and efficient practices in warehouse asset management. The purpose of this resource page is to provide strategic guidance, best practices and information about successful initiatives. Through the

warehouse best practices resource page on *www.gsa.gov,* GSA will assist federal agencies with their warehouse challenges.

GSA will continually supplement this site with current warehouse management efficiency studies, articles and practical information on warehouse space utilization.

DATES: Effective: March 24, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Aluanda Drain, Office of Government-wide Policy (MAC), Office of Asset and Transportation Management, General Services Administration, at 202–501–1624, or by email at *aluanda.drain@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Government Accountability Office (GAO), in its report *GAO–15–41: Strategic Focus Needed to Help Manage Vast and Diverse Warehouse Portfolio* (November 12, 2014), found that the Federal Real Property Profile database contains inconsistent warehouse data and agencies face a wide range of challenges in acquiring, managing and disposing of warehouse space. GSA developed a corrective action plan committing to research best practices in warehouse and inventory management and publish lessons learned through a notice in the **Federal Register**.

Dated: March 17, 2016.

Troy Cribb,

Associate Administrator.

[FR Doc. 2016–06473 Filed 3–23–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0639; Docket No. CDC–2016–0033]

Proposed Data Collection Submitted for Public Comment and Recommendations

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

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an extension of the information collection request entitled ''Energy Employees Occupational Illness Compensation Program Act (EEOICPA) Special Exposure Cohort Petitions''. Energy Employees Occupational Illness Compensation authorizes the Department of Health and Human Services (HHS) to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees Program Act.

DATES: Written comments must be received on or before May 23, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0033 by any of the following methods:

Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

EEOICPA Special Exposure Cohort Petitions (OMB Control No. 0920–0639 exp. 7/31/2016)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384–7385 [1994, supp. 2001] was enacted. The Act established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees.

This program has been mandated to be in effect until Congress ends the funding.

Among other duties, the Department of Health and Human Services (HHS) was directed to establish and implement procedures for considering petitions by classes of nuclear weapons workers to be added to the ''Special Exposure Cohort'' (the ''Cohort''). In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, and if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the ''Board'') in establishing such findings. On May 28, 2004, HHS issued a rule that established procedures for adding such classes to the Cohort (42 CFR part 83). The rule was amended on July 10, 2007.

The HHS rule authorizes a variety of respondents to submit petitions. Petitioners are required to provide the information specified in the rule to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two forms to assist the petitioners in providing this required information efficiently and completely. Form A is a one-page form to be used by EEOICPA claimants for whom NIOSH has attempted to conduct dose reconstructions and has determined that available information is not sufficient to complete the dose reconstruction. Form B, accompanied by separate instructions, is intended for all other petitioners. Forms A and B can be submitted electronically as well as in hard copy.

Respondent/petitioners should be aware that HHS is not requiring respondents to use the forms. Respondents can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements stated in the rule. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually use the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class.

Finally, under the rule, petitioners may contest the proposed decision of the Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the time to prepare and submit such a challenge is 45 minutes. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission will typically be in the form of a letter to the Secretary.

There are no costs to respondents unless a respondent/petitioner chooses to purchase the services of an expert in dose reconstruction, an option provided for under the rule.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Petitioners	Form A 42 CFR 83.9	2	1	3/60	1
	Form B 42 CFR 83.9	5	1	5	25
Petitioners using a submission format other than Form B (as permitted by rule).	42 CFR 83.9	1	1	6	6
Petitioners Appealing final HHS decision (no specific form is required).	42 CFR 83.18	2	1	45/60	2
Claimant authorizing a party to submit petition on his/her behalf.	Authorization Form 42 CFR 83.7	3	1	3/60	1
Total					35

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. 2016–06708 Filed 3–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16UW; Docket No. CDC–16–0031]

Proposed Data Collection Submitted for Public Comment and Recommendations

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

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection request entitled ''Case Investigation of Cervical Cancer (CICC) Study,'' which is designed to identify self-reported barriers and facilitators to cervical cancer screening and follow-up among women diagnosed with invasive cervical cancer. Medical charts will also be reviewed to further evaluate verify screening and follow-up of abnormal tests results prior to diagnosis.

DATES: Written comments must be received on or before May 23, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0031 by any of the following methods:

- *Federal eRulemaking Portal:* Regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Case Investigation of Cervical Cancer (CICC) Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Invasive cervical cancer occurs when cervical cancer spreads from the surface of the cervix to deeper cervical tissue or to other parts of the body. In the United States, invasive cervical cancer is largely preventable due to the availability of (1) screening tests, which allow for early detection and treatment of cervical precancers, and (2) a vaccine that prevents infection with types of human papillomavirus (HPV) which are associated with over 80% of cervical cancers. However, one previous study showed that half of the women who developed cervical cancer had not been adequately screened, and a more recent study showed that there were still approximately 8 million women in the U.S. who had not been screened for cervical cancer in the previous five years.

CDC plans to conduct the Case Investigation of Cervical Cancer (CICC) study to improve understanding of the facilitators and barriers to cervical cancer screening and timely follow-up to abnormal test results. The study is designed to address the following research questions: (1) Did women get a cervical cancer screening test during the five years prior to cervical cancer diagnosis? (2) What were facilitators or barriers to getting a screening test? (3) Did women get recommended follow-up of an abnormal test in a timely manner? (4) What were the facilitators or barriers to getting follow-up for an abnormal test? (5) What were the women's patterns when seeking medical care (*i.e.,* routine medical care or symptoms)?

To answer these questions, CDC will collect and analyze information from three sources, in collaboration with central cancer registries (CCR) in three states and a contract research organization.

First, CCR will use existing information to recruit participants who are eligible for the study, *i.e.,* women who were diagnosed with invasive cervical cancer between January 1, 2014 and December 31, 2016. Information about tumor characteristics, date of diagnosis, and cancer stage is already maintained by CCR and reported to CDC (National Program of Cancer Registries: Cancer Surveillance System, OMB Control No. 0920–0469).

Second, women who agree to participate in the CICC study will be asked to complete a survey assessing facilitators and barriers to screening and follow-up health care. The estimated

burden per response for completing the mail-in questionnaire is 15 minutes. In addition, respondents will be asked to provide contact information for all health care providers they have seen in the five years prior to their diagnosis with cervical cancer, and to complete a Health Insurance Portability and Accountability Act (HIPAA) Release form that allows study staff to access the medical records maintained by these providers. For each CICC participant, the estimated burden per response for the health care provider list and HIPAA Release form is five minutes.

Third, medical chart abstractors will collect information from the health care providers who provided relevant services to study participants in the five years prior to their diagnosis with invasive cervical cancer. The medical record abstraction process does not entail burden to study participants, or to the medical chart abstractors who will review the medical charts on a fee-for-service basis. The medical record abstraction process does entail additional recordkeeping burden to office assistants for health care providers, who are required to maintain records of disclosures of medical information, *e.g.,* the HIPAA Release Form for the CICC study. The estimated burden for support activities associated with each medical record abstraction is five minutes.

CDC has identified three states as potential study sites. Based on preliminary data from their state cancer registries, a total of approximately 1,670 eligible cervical cancer survivors are eligible for participation. CDC estimates a survey response rate of 50% of across the entire sample (N = 835) followed by an 80% acceptance of medical chart verification (N = 668). These estimates yield approximately 668 women with complete data for both surveys and chart verification. For each CICC participant, the medical chart abstraction process is expected to require follow-up with 1–5 (average of 3) health care providers (N = 2004).

Findings from this study will be used to inform interventions targeted to reach women who are never or rarely screened for cervical cancer. Study findings will be disseminated through reports, presentations, and publications. Results will also be used by participating sites, CDC, and other federal agencies to improve services provided to women at risk of invasive cervical cancer.

OMB approval is requested for two years. All personal identifier information will be maintained by the cancer registries where it is stored as part of the standard registry data repository. No identifiable information will be collected by CDC or CDC's main contractor. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Invasive cervical cancer survivors	Case Investigation of Cervical Cancer Study Survey.	418	1	15/60	105
	HIPAA Release and Listing of medical providers in last 5 years.	314	1	5/60	28
Health care office assistant	Support for medical record abstraction.	1,002	1	5/60	84
Total	.....	.....	.....	.....	217

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. 2016–06706 Filed 3–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16VB; Docket No. CDC–2016–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

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

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection request entitled ''HIV Knowledge, Beliefs, Attitudes, and Practices of Providers in the Southeast (K–BAP Study)''. CDC is requesting a three-year approval for new data collection to identify areas of HIV prevention knowledge and practice strengths and deficits among primary care providers, in order to target limited HIV prevention resources to achieve the greatest reduction in new HIV infections and optimize HIV clinical care in clinical settings. The target population will be primary care providers practicing in high-prevalence metropolitan statistical geographic areas with large at-risk African American populations.

DATES: Written comments must be received on or before May 23, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0032 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

HIV Knowledge, Beliefs, Attitudes, and Practices of Providers in the Southeast (K–BAP Study)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Persons at high risk of HIV infection have often had one or more contacts with a health care provider within a year of their diagnoses. These health care encounters represent missed opportunities to: (1) Review and discuss sexual health and risk reduction, (2) screen for HIV infection and other STDs, (3) recognize and diagnose acute HIV infection and offer immediate antiretroviral therapy (ART) if indicated, (4) discuss the prevention benefit of treatment (with subsequent referral or prescription) and re-engagement in care, as appropriate, and (5) provide PrEP and nPEP if not infected and at high risk, consistent with current HIV prevention guidelines and recommendations.

Health care providers in high-prevalence geographic areas could substantially reduce new HIV infections among the patient populations they serve, as well as their communities. Health care providers are a trusted source of reliable information. They also have the capacity to perform STD/HIV testing and to prescribe medication with appropriate clinical follow-up.

Review of the literature published between January 2000 and June 2014 indicates we know little about providers' knowledge, beliefs, attitudes, and practices (K–BAP) in at-risk jurisdictions about HIV risk, HIV diagnosis and antiretroviral drug interventions in these domains, especially primary care providers serving high-risk patients in high-prevalence communities. K–BAP Study is an effort to assess providers' K–BAP using a cross sectional survey in the five priority HIV prevention domains noted above.

This K–BAP Study aligns with multiple goals and objectives of the National HIV/AIDS Strategy (NHAS) and CDC's ''winnable battles.''

The project's specific objectives are to (1) Characterize knowledge, beliefs, attitudes, and practices of providers in five key HIV prevention domains in high-HIV prevalence communities with disproportionate numbers of blacks/African Americans, and (2) Educate providers about prevention interventions related to these domains based on survey-identified knowledge, beliefs, attitudes, and practices of providers' deficits.

The respondent population of medical providers will be pulled from the Healthcare Data Solutions (HDS) ProviderPRO and MidLevelPRO databases. Respondents will be recruited to participate in the survey through a combination of emails and phone calls. This strategy will consist of four emails spaced one week apart followed by phone calls to non-responders. The emails will explain the purpose of the survey, the availability of continuing education (CE) credits, and the $20 cash token of appreciation.

A large two-part internet-based survey will be conducted among a representative random sample of providers in the selected six (6) metropolitan statistical areas (MSAs) with the highest HIV burden among the African American population. Part one of survey will be administered to participants at the beginning of project. The part-one survey findings will used to identify providers' knowledge, beliefs, attitudes, and practices of providers that might require additional educational reinforcement. Based on survey responses, providers will be linked to continuing education (CE) credit-eligible educational modules to improve their educational deficits. The educational modules are all web-based using either video or case-based methods of learning. The length of the course range from 1–3 hours accounting for 0.25—1.0 credit hours. Part two of survey will be administered six months later comprising of only the core questions in part one of survey to assess impact of CE modules on providers' practices regarding HIV prevention and treatment.

There are no costs to respondents other than their time. The total annual burden hours are 1,172.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in Hours)	Total burden (in hours)
Providers	K–BAP Provider Baseline Screener and Survey.	1,827	1	29/60	883
Providers	K–BAP Provider Follow-Up Screener and Survey.	914	1	19/60	289
Total					1,172

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. 2016–06707 Filed 3–23–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3662]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 25, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0584. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR Part 866 OMB Control Number 0910–0584—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the FD&C Act, because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary deems necessary'' (section 513(a)(1)(B) of the FD&C Act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on March 22, 2006 (71 FR 14377), establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification was codified in 21 CFR 866.3332, a regulation that describes the new classification for reagents for detection of specific novel influenza A viruses and sets forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation refers to the special controls guidance document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents. The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g) to determine if any design changes may be necessary.

FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year; each response is estimated to take 15 hours. This results in a total data collection burden of 300 hours.

The guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR

part 820 have been approved under OMB control number 0910–0073.

In the **Federal Register** of October 19, 2015 (80 FR 63230), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

FD&C Act section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
513(g)	10	2	20	15	300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06710 Filed 3–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–P–0159]

Medical Devices; Exemption From Premarket Notification: Method, Metallic Reduction, Glucose (Urinary, Non-Quantitative) Test System in a Reagent Tablet Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting exemption from the premarket notification requirements for a method, metallic reduction, glucose (urinary, non-quantitative) test system in a reagent tablet format that is intended to measure glucosuria (glucose in urine). Method, metallic reduction, glucose (urinary, non-quantitative) test systems in a reagent tablet format are used in the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, hypoglycemia, and hyperglycemia. FDA is publishing this notice to obtain comments in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit either electronic or written comments by April 25, 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–P–0159 for ''Medical Devices; Exemption From Premarket Notification: Method, Metallic Reduction, Glucose (Urinary, Non-Quantitative) Test System in a Reagent Tablet Format.'' 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: Ana Loloei Marsal, Center for Devices and Radiological Health (CDRH), Food and

Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4552, Silver Spring, MD 20993–0002, 301–796–8774, *anahita.loloeimarsal@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94–295), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the FD&C Act are sufficient to assure safety and effectiveness; into class II (special controls) if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval) if there is insufficient information to support classifying a device into class I or class II and the device is a life sustaining or life supporting device, or is for a use which is of substantial importance in preventing impairment of human health or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the FD&C Act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Section 510(k) of the FD&C Act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section, 510(m), to the FD&C Act. Section 510(m)(1) of the FD&C Act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the FD&C Act provides that 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the Agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff'' (Ref. 1).

III. Proposed Class II Device Exemptions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Evelyn Mirza, Biorex Labs, LLC, 194 E. Wallings Rd., Suite 201, Broadview Heights, OH 44147 for its method, metallic reduction, glucose (urinary, non-quantitative) test system in a reagent tablet format classified under 21 CFR 862.1340.

IV. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff,'' February 1998, available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf.*

Dated: March 17, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06709 Filed 3–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0961]

Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Comment Request; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by April 25, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0322. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Environmental Impact Considerations—21 CFR Part 25

OMB Control Number 0910–0322—Extension

FDA is requesting OMB approval for the reporting requirements contained in the FDA collection of information ''Environmental Impact Considerations.'' The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement (EIS) for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are in part 25 (21 CFR part 25). All applications or petitions requesting Agency action require the submission of a claim for categorical exclusion or an environmental assessment (EA). A categorical exclusion applies to certain classes of FDA-regulated actions that usually have little or no potential to cause significant environmental effects and are excluded from the requirements to prepare an EA or EIS. Section 25.15(a) and (d) specifies the procedures for submitting to FDA a claim for a categorical exclusion. Extraordinary circumstances (§ 25.21), which may result in significant environmental impacts, may exist for some actions that are usually categorically excluded. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) specifies the content requirements for EAs for non-excluded actions.

This collection of information is used by FDA to assess the environmental impact of Agency actions and to ensure that the public is informed of environmental analyses. Firms wishing to manufacture and market substances regulated under statues for which FDA is responsible must, in most instances, submit applications requesting approval. Environmental information must be included in such applications for the purpose of determining whether the proposed action may have a significant impact on the environment. Where significant adverse events cannot be avoided, the Agency uses the submitted information as the basis for preparing and circulating to the public an EIS, made available through a **Federal Register** document also filed for comment at the Environmental Protection Agency. The final EIS, including the comments received, is reviewed by the Agency to weigh environmental costs and benefits in determining whether to pursue the proposed action or some alternative that would reduce expected environmental impact.

Any final EIS would contain additional information gathered by the Agency after the publication of the draft EIS, a copy or a summary of the comments received on the draft EIS, and the Agency's responses to the comments, including any revisions resulting from the comments or other information. When the Agency finds that no significant environmental effects are expected, the Agency prepares a finding of no significant impact.

In the **Federal Register** of September 8, 2015 (80 FR 53807), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden for Human Drugs (Including Biologics in the Center for Drug Evaluation and Research)

Under §§ 312.23(a)(7)(iv)(c), 314.50(d)(1)(iii), and 314.94(a)(9)(i) (21 CFR 312.23(a)(7)(iv)(c), 314.50(d)(1)(iii), and 314.94(a)(9)(i), each investigational new drug application (IND), new drug application (NDA), and abbreviated new drug application (ANDA) must contain a claim for categorical exclusion under § 25.30 or § 25.31, or an EA under § 25.40. Annually, FDA receives approximately 3,677 INDs from 2,501 sponsors; 120 NDAs from 87 applicants; 2,718 supplements to NDAs from 399 applicants; 9 biologic license applications (BLAs) from 8 applicants; 317 supplements to BLAs from 43 applicants; 1,475 ANDAs from 300 applicants; and 5,448 supplements to ANDAs from 318 applicants. FDA estimates that it receives approximately 13,663 claims for categorical exclusions as required under § 25.15(a) and (d), and 11 EAs as required under § 25.40(a) and (c). Based on information provided by the pharmaceutical industry, FDA estimates that it takes sponsors or applicants approximately 8 hours to prepare a claim for a categorical exclusion and approximately 3,400 hours to prepare an EA.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	3,416	4	13,664	8	109,312
25.40(a) and (c)	11	1	11	3,400	37,400
Total					146,712

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Human Foods

Under 21 CFR 71.1, 171.1, 170.39, and 170.100, food additive petitions, color additive petitions, requests from exemption from regulation as a food additive, and submission of a food contact notification for a food contact substance must contain either a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. Annually, FDA receives approximately 97 industry submissions. FDA received an annual average of 42 claims of categorical exclusions as required under § 25.15(a) and (d) and 33 EAs as required under § 25.40(a) and (c). FDA estimates that approximately 42 respondents will submit an average of 1 application for categorical exclusion and 33 respondents will submit an average of 1 EA. FDA estimates that, on average, it takes petitioners, notifiers, or

requestors approximately 8 hours to prepare a claim of categorical exclusion and approximately 210 hours to prepare an EA.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN FOODS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	42	1	42	8	336
25.40(a) and (c)	33	1	33	210	6,930
Total					7,266

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Medical Devices

Under § 814.20(b)(11) (21 CFR 814.20(b)(11)), premarket approvals (PMAs) (original PMAs and supplements) must contain a claim for categorical exclusion under § 25.30 or § 25.34 or an EA under § 25.40. In 2012 to 2014, FDA received an average of 39 claims (original PMAs and supplements) for categorical exclusions as required under § 25.15(a) and (d), and 0 EAs as required under § 25.40(a) and (c). FDA estimates that approximately 39 respondents will submit an average of 1 application for categorical exclusion annually. Based on information provided by sponsors, FDA estimates that it takes approximately 6 hours to prepare a claim for a categorical exclusion.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR MEDICAL DEVICES [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	39	1	39	6	234

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Biological Products, Drugs, and Medical Devices in the Center for Biologics Evaluation and Research

Under 21 CFR 601.2(a), BLAs as well as INDs (§ 312.23), NDAs (§ 314.50), ANDAs (§ 314.94), and PMAs (§ 814.20) must contain either a claim of categorical exclusion under § 25.30 or § 25.32 or an EA under § 25.40. Annually, FDA receives approximately 34 BLAs from 18 applicants, 801 BLA supplements to license applications from 156 applicants, 345 INDs from 256 sponsors, 1 NDA from 1 applicant, 26 supplements to NDAs from 8 applicants, 1 ANDA from 1 applicant, 1 supplement to ANDAs from 1 applicant, 8 PMAs from 3 applicants, and 33 PMA supplements from 16 applicants. FDA estimates that approximately 10 percent of these supplements would be submitted with a claim for categorical exclusion or an EA.

FDA has received approximately 481 claims for categorical exclusion as required under § 25.15(a) and (d) annually and 2 EAs as required under § 25.40(a) and (c) annually. Therefore, FDA estimates that approximately 247 respondents will submit an average of 2 applications for categorical exclusion and 2 respondents will submit an average of 1 EA. Based on information provided by industry, FDA estimates that it takes sponsors and applicants approximately 8 hours to prepare a claim of categorical exclusion and approximately 3,400 hours to prepare an EA for a biological product.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICAL PRODUCTS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	247	2	494	8	3,952
25.40(a) and (c)	2	1	2	3,400	6,800
Total					10,752

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Animal Drugs

Under 21 CFR 514.1(b)(14), new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs); 21 CFR 514.8(a)(1) supplemental NADAs and ANADAs; 21 CFR 511.1(b)(10) investigational new animal drug applications (INADs), and 21 CFR 571.1(c) food additive petitions must contain a claim for categorical exclusion under § 25.30 or § 25.33 or an EA under § 25.40. Annually, FDA's Center for Veterinary Medicine has received approximately 698 claims for categorical exclusion as required under § 25.15(a) and (d), and 10 EAs as required under § 25.40(a) and (c). FDA estimates that approximately 70 respondents will submit an average of 10 applications for categorical exclusion and 10 respondents will submit an average of 1 EA. FDA estimates that it takes sponsors/applicants approximately 3 hours to prepare a claim of categorical

exclusion and an average of 2,160 hours to prepare an EA.

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN FOR ANIMAL DRUGS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.15(a) and (d)	70	10	700	3	2,100
25.40(a) and (c)	10	1	10	2,160	21,600
Total					23,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimated Annual Reporting Burden for Tobacco Products

Under sections 905, 910, and 911 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387e, 387j, and 387k), product applications and supplements (PMTAs), SEs, Exemption from SEs, and modified risk tobacco products must contain a claim for categorical exclusion or an EA. In 2015, FDA estimated it will receive approximately 5 premarket reviews of new tobacco PMTAs from 5 respondents, 509 reports intended to demonstrate the substantial equivalence of a new tobacco product (SEs) from 509 respondents, 15 exemptions from substantial equivalence requirements applications (SE Exemptions) from 15 respondents, and 3 modified risk tobacco product applications (MRTPAs) from 3 respondents. FDA is not accepting claims for categorical exclusions at this time, and estimates that there will be 532 EAs from 532 respondents as required under §§ 25.40(a) and (c). Therefore, over the next 3 years, FDA estimates that approximately 532 respondents will submit an average of 1 application for environmental assessment. Part of the information in the EA will be developed while writing other parts of a PMTA, SE, Exemption from SE, or MRTPA. Based on FDA's experience, previous information provided by potential sponsors and knowledge that part of the EA information has already been produced in one of the tobacco product applications, FDA estimates that it takes approximately 80 hours to prepare an EA.

TABLE 6—ESTIMATED ANNUAL REPORTING BURDEN FOR TOBACCO PRODUCTS [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
25.40(a) and (c)	532	1	532	80	42,560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06711 Filed 3–23–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0406 30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0406, scheduled to expire on April 30, 2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before April 25, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0406 for reference.

Information Collection Request Title: Evaluation of the National Partnership for Action to End Health Disparities

Abstract: Office of Minority Health (OMH) in the Office of the Assistant Secretary for Health (OASH), Office of the Secretary (OS) is requesting approval for an extension from the Office of Management and Budget (OMB) for a previously approved data collection activity for the Evaluation of the National Partnership for Action to End Health Disparities (NPA). The NPA was officially launched in April 2011 to mobilize a nationwide, comprehensive, community-driven, and sustained approach to combating health disparities and to move the nation toward achieving health equity. Using an approach that vests those at the front line with the responsibility of identifying and helping to shape core actions, new approaches and new partnerships are being established to help close the health gap in the United States.

OMH proposes to continue to conduct the evaluation of the NPA. The evaluation's goal is to determine the extent to which the NPA has contributed to the elimination of health disparities and attainment of health

equity in our nation. The evaluation will accomplish this goal by addressing the following questions: (1) To what extent has a multi-level structure been established to support actions that will contribute to the elimination of health disparities? (2) How are leaders in the public, private, nonprofit, and community sectors engaged in collaborative, efficient, and equitable working partnerships to eliminate health disparities? (3) How many and what types of identifiable actions are being implemented at the community, state, tribal, regional, and national levels that relate directly to the five goals and 20 strategies in the *National Stakeholder Strategy (NSS);* (4) How much is the work to end health disparities integrated into stakeholder strategies and mainstream systems (*e.g.,* health care quality improvement, public and community health improvement, economic and community planning and development) in and beyond the health sector? (5) What are the promising practices for implementing actions that contribute to ending health disparities?

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total burden hours
RHEC co-chairs	RHEC co-chairs interview	20	1	85	28
RHEC Subcommittee chairs	RHEC Subcommittee chairs group interviews.	50	1	90	75
RHEC members	Survey of all RHEC members	350	1	20	117
Key NPA partner organizations	Survey of Key NPA partner organizations.	15	1	25	6
State Minority Health Office Directors or Coordinators and State Department of Health Representatives.	Survey of State Minority Health Office Directors or Coordinators and officials from State Departments of Health.	110	1	20	37
Total		545			263

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–06592 Filed 3–23–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cardiovascular Sciences.

Date: April 6, 2016.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: *March 18, 2016.*

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06618 Filed 3–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Basic Research in HIV-Related Heart, Lung, and Blood Diseases (R01) .

Date: April 19, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Basic Research in HIV-Related Heart, Lung, and Blood Diseases (R21).

Date: April 19, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of

Scientific Review/DERA National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06619 Filed 3–23–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–16]

30-Day Notice of Proposed Information Collection: Request for Acceptance of Changes in Approved Drawings and Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: April 25, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 9, 2015.

A. Overview of Information Collection

Title of Information Collection: Request for Acceptance of Changes in Approved Drawings and Specifications.

OMB Approval Number: 2502–0117.

Type of Request: Revision of currently approved collection.

Form Number: HUD–92577.

Description of the need for the information and proposed use: Contractors request approval for changes to accepted drawings and specifications of rehabilitation properties as required by homebuyers, or determined by the contractor to address previously unknown health and safety issues. Contractors submit the forms to lenders, who review them and submit them to HUD for approval.

Respondents (*i.e.* affected public): Business.

Estimated Number of Respondents: 7500.

Estimated Number of Responses: 7500.

Frequency of Response: On Occasion.

Average Hours per Response: 0.50.

Total Estimated Burdens: 3750.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 16, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–06702 Filed 3–23–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–17]

30-Day Notice of Proposed Information Collection: Public Housing Operating Subsidy—Appeals

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 25, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 06, 2016.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Subsidy—Appeals

OMB Approval Number: 2577–0246.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Under the operating fund rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the rule. There are four grounds of appeal in 24 CFR 990.245 under which PHAs may appeal the amount of their subsidy: (1) A streamlined appeal; (2) an appeal for specific local conditions; (3) an appeal for changing market conditions; (4) and an appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of these permitted bases of appeal, PHAs submit a written appeal request to HUD.

Respondents (*i.e.* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 105.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2049.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 16, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–06703 Filed 3–23–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N038]; [FXES11120400000–167–FF04EC1000]

Endangered and Threatened Wildlife and Plants; Availability of Proposed Low-Effect Habitat Conservation Plan, Palmas Home Owners Association, Palmas Del Mar, Humacao, Puerto Rico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (Act). Palmas del Mar Home Owners Association requests a 10-year ITP. We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by April 25, 2016.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

- *Email: marelisa_rivera@fws.gov.* Use ''Attn: Permit number TE85455B–0'' as the subject line of your email.
- *Fax:* Deputy Field Supervisor, (787) 851–7440, Attn: Permit number TE85455B–0.
- *Phone:* 787–851–7297, x 206.
- *U.S. mail:* Field Supervisor, Caribbean Ecological Services Field Office; Attn: Permit Number TE85455B–0; U.S. Fish and Wildlife Service; P.O. Box 491; Boquerón, PR 00622.
- *In-person drop-off:* You may drop off information or comments during regular business hours at the following office address: Caribbean Ecological Services Field Office; Road 301; Km. 5.1; Boquerón, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera,via telephone at (787) 851–7297, x 206, or via email at *marelisa_rivera@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The Palmas Home Owners Association is proposing to renew and amend its existing HCP. They will be adding the following five new residential development areas to the HCP: Marbella Club, Solera, the Beach Club, Palmas Dorada, and Plaza del Mar. For the past 10 years, Palmas del Mar has had an ongoing sea turtle monitoring and conservation program, implemented sea turtle–friendly lighting in the existing developments, planted vegetation screens, and implemented avoidance and minimization measures during beach cleaning activities. These activities will continue and will be extended to the five new areas.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). We base our preliminary determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) This

is a renewal of an existing project, and implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the project, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue ITP # TE85455B–0. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Edwin E. Muñiz,

Field Supervisor, Caribbean Ecological Services Field Office, Southeast Region.

[FR Doc. 2016–06652 Filed 3–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N034; FXES11130600000–167–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct activities intended to enhance the survival of endangered or threatened species.

DATES: To ensure consideration, please send your written comments by April 25, 2016.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-Off, Viewing, or Pickup:* Call (719) 628–2670 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. Along with our implementing regulations at 50 CFR 17, the Act provides for permits and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE047381

Applicant: Bureau of Indian Affairs, Southern Ute, Ignacio, CO.

The applicant requests a permit to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) in Colorado for the purpose of enhancing the species' survival.

Permit Application Number TE13024B

Applicant: Bureau of Land Management, Lakewood, CO.

The applicant requests an amendment to an existing permit to continue presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) in Colorado for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2016–06591 Filed 3–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N042; FXES11120100000–167–FF01E00000]

Proposed Template Candidate Conservation Agreement With Assurances for the Fisher in Oregon and a Draft Environmental Action Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has developed a proposed template Candidate Conservation Agreement with Assurances (CCAA) for the West Coast Distinct Population Segment (DPS) of the fisher in Oregon, and proposes to issue enhancement of survival (EOS) permits under the CCAA, pursuant to the Endangered Species Act of 1973, as amended (ESA). The permits would authorize incidental take with assurances to eligible landowners who are willing to enroll in the template CCAA and carry out conservation measures that would benefit the West Coast DPS of the fisher. We request comments from the public on the proposed template CCAA, the issuance of EOS permits, and on the Service's draft Environmental Action Statement (EAS) for our preliminary determination that the CCAA and issuance of EOS permits qualify for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA).

DATES: To ensure consideration, written comments must be received from interested parties no later than April 25, 2016.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the ''Template Fisher CCAA.''

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/.*
- *Email: ORfisherCCAAcomments@fws.gov.* Include ''Template Fisher CCAA'' in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE. 98th Avenue, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Template Fisher CCAA.
- *In-Person Drop-off, Viewing or Pickup:* Comments and materials received will be available for public inspection, by appointment (necessary for viewing or picking up documents only), during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE. 98th Avenue, Suite 100; Portland, OR 97266; telephone 503–231–6179. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Jody Caicco, U.S. Fish and Wildlife Service (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

A CCAA is a voluntary agreement whereby landowners agree to manage their lands to remove or reduce threats to species that may become listed under the ESA (64 FR 32726; June 17, 1999). CCAAs are intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future by giving non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the ESA. In return for managing their lands to the benefit of the covered species, enrolled landowners receive assurances that additional regulatory requirements pertaining to the covered species will not be required if the covered species becomes listed as threatened or endangered under the ESA so long as the CCAA remains in place and is being fully implemented.

A CCAA serves as the basis for the Service to issue EOS permits to non-Federal participants pursuant section 10(a)(1)(A) of the ESA. EOS permits are issued to applicants in association with an approved CCAA to authorize incidental take of the covered species from covered activities, should the species become listed. Through a CCAA and its associated EOS permit, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided certain conditions are met. Because enrollment in a CCAA is voluntary, participating landowners may subsequently choose to discontinue their participation and their ESA section 10(a)1(A) permit coverage would then lapse.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs that was published in the **Federal Register** by the Service and the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999). Each prospective CCAA participant will need to complete and submit to the Service an ESA section 10(a)1(A) EOS permit application form.

On April 8, 2004, the Service published a 12-month status review (69 FR 18769) finding that listing the West Coast Distinct Population Segment (DPS) of the fisher (*Pekania pennanti*) as threatened or endangered under the ESA (16 U.S.C. 1538) was warranted, but precluded by higher priority actions. On October 7, 2014, the Service published a proposed rule (79 FR 60419) to list the West Coast DPS of the fisher as threatened under the ESA. In that proposed rule, the Service identified habitat loss from wildfire and vegetation management, toxicants (rodenticides), and the cumulative impact of these and other stressors in small populations as threats to the continued existence of the West Coast DPS of the fisher. On April 14, 2015, the Service issued a 6-month extension to

the final determination based on substantial disagreement regarding available information (80 FR 19953). The Service will issue a final regulation implementing the proposed rule or a notice that the proposed regulation is being withdrawn by April 7, 2016. The Service's Oregon Fish and Wildlife Office developed the proposed template CCAA on behalf of non-Federal landowners in western Oregon to address some of the threats to the fisher that were identified in the 2014 proposed listing rule.

Proposed Action

The Service proposes to issue EOS permits pursuant to section 10(a)(1)(A) of the ESA under a proposed template CCAA for the West Coast DPS of the fisher within Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Deschutes, Douglas, Hood, Jackson, Jefferson, Josephine, Klamath, Lane, Linn, Lincoln, Polk, Tillamook, Yamhill, Wasco, and Washington counties, Oregon. The geographic area covered by the proposed CCAA and EOS permits includes the known and potential range of the fisher in those portions of the above listed Oregon counties that contain suitable forested habitat. The term of the proposed CCAA and EOS permits is 30 years.

The proposed template CCAA is between the Service and prospective non-Federal landowners and managers (participants) who would voluntarily commit to conservation measures, that when taken together with a sufficient number of other properties, may preclude or remove the need to list the West Coast DPS of the fisher as threatened or endangered. The CCAA is a template in that it establishes general guidelines and identifies minimum conservation measures for participants in the CCAA. Interested participants would enroll their property under the CCAA through individual ''site plans.'' Once the CCAA is signed, the documentation needs and approval process to enroll participants with their individual site plans will be significantly streamlined as they will be able to reference and rely upon the information and completed administrative procedures associated with finalizing the template CCAA and finalizing the EAS for purposes of compliance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA).

To qualify for take coverage, all enrollees must agree to implement the following conservation measures on enrolled lands:

- Allow the Service or its agents to access enrolled lands to evaluate fisher presence for the 30-year term of the CCAA and to determine if one or more female fisher are occupying dens and raising kits;
- Protect confirmed denning female fisher and their young by limiting or preventing access and disturbance near occupied sites, including preventing the destruction of the denning structure itself;
- Prohibit trapping and nuisance animal control activities on enrolled lands within 2.5 miles of known fisher occupied dens;
- Report to the Service within 48 hours upon finding any potentially fisher occupied den sites or any dead, sick, or incidentally trapped and released fishers on enrolled lands; cover all man-made structures on enrolled lands that pose an entrapment risk to fishers; and,
- Where suitable habitat exists and where agreed upon by the participant and the Service, allow for the reintroduction of fishers.

Details regarding the actual reintroduction of fishers, including when the reintroduction might occur, the sources and numbers of fishers, the duration of the reintroduction effort, and the parties responsible for the capture and movement of fisher are unknown at this time. We anticipate that any required environmental or regulatory analysis for fisher reintroduction will be done by the Service or other responsible parties when a reintroduction plan is developed under the laws and policies in effect at that time.

Covered activities include those activities that may be carried out by participating landowners or their authorized representatives on enrolled lands that may result in the incidental take of the fisher consistent with the provisions of the CCAA and their EOS permit. Covered activities under the proposed CCAA include the following land-management related activities commonly practiced on forest lands: Timber harvest and reforestation, road maintenance and construction, transport of timber and rock, collection of minor forest products, and recreational activities.

National Environmental Policy Act Compliance

The proposed issuance of an ESA section 10(a)(1)(A) permit with its associated CCAA is a Federal action that triggers the need for compliance with NEPA. We have made a preliminary determination that the proposed CCAA and the proposed issuance of EOS permits under the CCAA are eligible for categorical exclusion under NEPA. The basis for our preliminary determination is contained in an EAS, which is available for public review (see **ADDRESSES**).

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action.

Public Availability of Comments

All comments and materials 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 comments, 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. 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. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After considering public comments, the Service will make a decision regarding the proposed CCAA, the draft EAS, and our preliminary determination that the proposed permit action is eligible for categorical exclusion under NEPA, provided they meet the requirements of section 10(a)(1)(A) of the ESA and the requirements of NEPA. We will not make a final decision on NEPA and the template CCAA until after the end of the 30-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period. If we determine that all the requirements are met, we will sign the CCAA and be able to accept EOS permit applications submitted under the requirements of the CCAA and section 10(a)(1)(A) of the ESA. The Service will

then be able to issue EOS permits to interested, eligible landowners for the potential take of the West Coast DPS of the fisher incidental to otherwise lawful activities in accordance with the terms of the CCAA, the site plans, and appropriate EOS permit conditions.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 17.32, and 40 CFR 1506.6, respectively).

Rollie White,

Acting State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–06627 Filed 3–23–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16NM00FU5010]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of revision of a currently approved information collection, (1028–0094).

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on 3/31/2016.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before April 25, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–0094 Energy Cooperatives to Support the National Coal Resources Data System (NCRDS). Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–0094: Energy Cooperatives to Support the National Coal Resources Data System (NCRDS) in all correspondence.

FOR FURTHER INFORMATION CONTACT: Joseph East, Eastern Energy Resources Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 956, Reston, VA 20192 (mail); 703–648–6450 (phone); or *jeast@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary objective of the National Coal Resources Data System (NCRDS) is to advance the understanding of the energy endowment of the United States (U.S.) by gathering and organizing digital geologic information related to coal, coal bed gas, shale gas, conventional and unconventional oil and gas, geothermal, and other energy resources and related information regarding these resources, along with environmental impacts from using these resources. These data are needed to support regional or national assessments concerning energy resources. Requesting external cooperation is a way for NCRDS to collect energy data and perform research and analyses on the characterization of geologic material, and obtain other information (including geophysical or seismic data, sample collection for generation of thermal maturity data) that can be used in energy resource assessments and related studies.

The USGS will issue a call for proposals to support researchers from State Geological Surveys and associated accredited state universities that can provide geologic data to support NCRDS and other energy assessment projects being conducted by the USGS.

Data submitted to NCRDS by external cooperators constitute more than two-thirds of the USGS point-source stratigraphic database (USTRAT) on coal occurrence. In 2015, NCRDS supported 21 projects in 19 States. This program is conducted under various authorities, including 30 U.S.C. 208–1, 42 U.S.C. 15801, and 43 U.S.C. 31 *et seq.* This collection will consist of applications, proposals and reports (annual and final).

II. Data

OMB Control Number: 1028–0094.

Form Number: None.

Title: Energy Cooperatives to Support the National Coal Resources Data System (NCRDS).

Type of Request: Revision of a currently approved information collection.

Respondent Obligation: Required to obtain or retain benefits.

Frequency of Collection: One time every 5 years for applications and final reports; annually for progress reports.

Description of Respondents: State, local and tribal governments; State Geological Surveys, State universities.

Estimated Total Number of Annual Responses: 21.

Estimated Time per Response: We estimate that it will take 20 hours to complete an application and 4.6 hours to prepare annual reports.

Estimated Annual Burden Hours: 181.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On 11/23/2015, we published a **Federal Register** notice (80 FR 72985) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on 1/22/2016. We received No comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in

your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Douglas Duncan,

Associate Energy Resources Program Coordinator.

[FR Doc. 2016–06668 Filed 3–23–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X; LLIDB00100.LF1000000.HT0000. LXSS024D0000.241A00.4500091464]

Meeting of the Tri-State Fuel Break Joint Subcommittee of the Boise and Southeast Oregon Resource Advisory Councils to the Boise and Vale Districts

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Tri-State Fuel Break Project Joint Subcommittee of the Boise District and Southeast Oregon Resource Advisory Councils (RACs) will hold meetings as indicated below.

DATES: The meetings will be held on the following dates and at the following locations:

- April 20, 2016—Vale District Office located at 100 Oregon St., Vale, OR 97918
- May 4, 2016—Boise District Office located at 3948 S. Development Avenue, Boise, ID 83705
- May 18, 2016—Vale District Office located at 100 Oregon St., Vale, OR 97918
- June 1, 2016—Boise District Office located at 3948 S. Development Avenue, Boise, ID 83705

Meetings will begin at 9:00 a.m. and adjourn by 3:00 p.m. Members of the public are invited to attend. A public comment period will be held.

FOR FURTHER INFORMATION CONTACT: Krista Berumen, Bureau of Land Management Public Affairs Specialist, 1387 South Vinnell Way Boise, Idaho 83709, (208)–373–3826.

SUPPLEMENTARY INFORMATION: The Tri-State Fuel Break Joint Subcommittee advises the Boise District and Southeast Oregon Resource Advisory Councils (RACs) on potential areas to locate fuel breaks for the proposed Tri-State Fuel Break Project and Environmental Impact Statement (EIS). The RACs advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho and Oregon. The joint subcommittee will be discussing potential fuel break locations within the proposed project area during the meetings. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the joint subcommittee. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. 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. Additional information about the RACs is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html.*

Dated: March 17, 2016.

Lara Douglas,

Boise District Manager.

[FR Doc. 2016–06651 Filed 3–23–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–20605; PPWODIREP0;PPMPSPD1Y.YM0000]

Notice of June 2–3, 2016, Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and Parts 62 and 65 of title 36 of the Code of Federal Regulations, and in furtherance of the National Trails System Act, 16 U.S.C. Section 1244(b)(3), that the National Park System Advisory Board will meet June 2–3, 2016, in Anchorage, Alaska. The agenda will include the review of proposed actions regarding the National Historic Landmarks Program and the National Natural Landmarks Program. The Board also will consider a proposed extension to the Lewis and Clark National Historic Trail, and may consider proposed additions to the Oregon, California, Mormon Pioneer and Pony Express National Historic Trails. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the board meeting and upon request may address the Board concerning an area's national significance.

DATES: (a) Written comments regarding any proposed National Historic Landmarks matter or National Natural Landmarks matter listed in this notice will be accepted by the National Park Service until May 23, 2016. (b) The Board will meet on June 2–3, 2016.

ADDRESSES: The meeting will be held in the Boyd Evison Conference Room 309 of the National Park Service Alaska Regional Office, 240 West 5th Avenue, Anchorage, Alaska 99501, telephone (907) 644–3510.

Agenda: On the morning of June 2, the Board will convene its business meeting at 9:00 a.m., Alaska Daylight Time, and adjourn for the day at 4:30 p.m. On June 3, the Board will reconvene at 9:00 a.m., and adjourn at 2:30 p.m. During the course of the two days, the Board may be addressed by National Park Service Director Jonathan Jarvis and briefed by other National Park Service officials regarding education, philanthropy, NPS urban initiatives, science, and the National Park Service Centennial; deliberate and make recommendations concerning National Historic Landmarks Program, National Natural Landmarks Program, and National Historic Trails Program proposals; and receive status briefings on matters pending before committees of the Board.

FOR FURTHER INFORMATION CONTACT: (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears, Office of Policy, National Park Service, MC 0004–Policy, 1849 C Street NW., Washington, DC 20240, telephone (202) 354–3955, email *Shirley_Sears@nps.gov.* (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street NW. (2280), Washington, DC 20240, email

Paul_Loether@nps.gov. (c) To submit a written statement specific to, or request information about the proposed extension to the Lewis and Clark National Historic Trail listed below, or for information about the National Historic Trails Program or the National Trails System, contact Tokey Boswell, Acting Chief of Planning, Midwest Regional Office, National Park Service, 601 Riverfront Drive, Omaha, NE 68102, telephone (402) 661–1534, email *Tokey_Boswell@nps.gov*. (d) To submit a written statement specific to, or request information about the proposed additions to the Oregon, California, Mormon Pioneer and Pony Express National Historic Trails listed below, or for information about the National Historic Trails Program or the National Trails System, contact Aaron Mahr Yáñez, Superintendent, National Trails Intermountain Region, National Park Service, P.O. Box 728, Santa Fe, NM 87504, telephone (505) 988–6736, email *Aaron_Mahr@nps.gov*. (e) to submit a written statement specific to, or request information about, any National Natural Landmarks matter listed below, or for information about the National Natural Landmarks Program or National Natural Landmarks designation process and the effects of designation, contact Heather Eggleston, Acting Program Manager, National Natural Landmarks Program, National Park Service, 12795 W. Alameda Parkway, Lakewood, Colorado 80228, email *Heather_Eggleston@nps.gov*.

SUPPLEMENTARY INFORMATION: Matters concerning the National Historic Landmarks Program, National Historic Trails Program, and National Natural Landmarks Program will be considered by the Board as follows:

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered at the morning session of the business meeting on June 2, during which the Board may consider the following:

Nominations for New NHL Designations

Connecticut
- James Merrill House, Stonington, CT
- The Steward's House, Foreign Mission School, Cornwall, CT

Florida
- Norman Film Manufacturing Company, Jacksonville, FL

Indiana
- Athenaeum (Das Deutsche Haus), Indianapolis, IN

Michigan
- Gaukler Pointe (Edsel and Eleanor Ford House), Macomb County, MI

Mississippi
- Mississippi State Capitol, Jackson, MS

New York
- St. Bartholomew's Church and Community House, New York, NY

Ohio
- Zoar Historic District, Zoar, OH

Wisconsin
- Man Mound, Sauk County, WI

Wyoming
- Ames Monument, Albany County, WY

Proposed Amendments to Existing Designations

Ohio
- James A. Garfield Home, Mentor, OH (updated documentation)
- William Howard Taft Home, Cincinnati, OH (updated documentation and name change)

B. National Historic Trails (NHT) Program

NHT Program matters will be considered at the morning session of the business meeting on June 2, during which the Board may consider the following:

Proposed National Historic Trail Additions

- Proposed Lewis and Clark National Historic Trail Extension (National Historic Significance Recommendation)
- Proposed additions to the Oregon, California, Mormon Pioneer and Pony Express National Historic Trails, CA, CO, ID, IA, KS, MO, NE, NV, OK, OR, UT, WA, and WY (National Historic Significance Recommendation)

C. National Natural Landmarks (NNL) Program

NNL Program matters will be considered at the afternoon session of the business meeting on June 2, during which the Board may consider the following:

Nominations for New NNL Designations

Arizona
- Silver Bell Mountains Desert Complex, Pima County, AZ

Colorado
- West Bijou Site, Arapahoe and Elbert Counties, CO

The board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 7th floor conference room at 1201 I Street NW., Washington, DC.

Dated: March 18, 2016.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–06631 Filed 3–23–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01115000, 16XR0680A1, RX.R0336900.0019100]

Yakima River Basin Conservation Advisory Group Charter Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Following consultation with the General Services Administration, the Secretary of the Interior (Secretary) is renewing the charter for the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the CAG is to provide recommendations to the Secretary and the State of Washington on the structure and implementation of the Yakima River Basin Water Conservation Program.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy McCoy, Manager, Yakima River Basin Water Enhancement Project, telephone (509) 575–5848, extension 209.

SUPPLEMENTARY INFORMATION: The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima

River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–06646 Filed 3–23–16; 8:45 am]

BILLING CODE 4330–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–929]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Commission's Final Determination Finding No Violation of Section 337 by Solofill LLC or DongGuan Hai Rui Precision Mould Co., Ltd.; Issuance of a Limited Exclusion Order and Cease and Desist Orders to Defaulted Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (''section 337'') by Solofill LLC and DongGuan Hai Rui Precision Mould Co., Ltd., and has issued a limited exclusion order and cease desist orders to the defaulted respondents Eko Brands, LLC, Evermuch Technology Co., Ltd., and Ever Much Company, Ltd. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 9, 2014, based on a complaint filed by Adrian Rivera of Whittier, California, and Adrian Rivera Maynez Enterprises, Inc., of Santa Fe Springs, California (together, ''ARM''). 79 FR 53445–46. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same that infringe claims 5–8 and 18–20 of U.S. Patent No. 8,720,320 (''the '320 patent''). *Id.* at 53445. The Commission's notice of investigation named as respondents Solofill LLC of Houston, Texas (''Solofill''); DongGuan Hai Rui Precision Mould Co., Ltd. of Dong Guan City, China (''DongGuan''); Eko Brands, LLC (''Eko Brands''), of Woodinville, Washington; Evermuch Technology Co., Ltd. (''Evermuch Technology''), of Hong Kong, China; Ever Much Company Ltd. (''Evermuch Company'') of Shenzhen, China; Melitta USA, Inc. (''Melitta''), of North Clearwater, Florida; LBP Mfg., Inc. of Cicero, Illinois and LBP Packaging (Shenzhen) Co. Ltd. of Shenzhen, China (together, ''LBP''); Spark Innovators Corp. (''Spark''), of Fairfield, New Jersey; B. Marlboros International Ltd. (HK) (''B. Marlboros'') of Hong Kong, China; and Amazon.com, Inc. (''Amazon'') of Seattle, Washington. The Office of Unfair Import Investigations was also named as a party to the investigation. *Id.*

The Commission terminated the investigation with respect to Melitta, Spark, LBP, and B. Marlboros based on the entry of consent orders and terminated the investigation with respect to Amazon based on a settlement agreement. Notice (Dec. 18, 2014); Notice (Jan. 13, 2015); Notice (Mar. 27, 2015); Notice (Apr. 10, 2015). The Commission also found Eko Brands, Evermuch Technology, and Evermuch Company in default for failing to respond to the complaint and notice of investigation. Notice (May 18, 2015). Accordingly, Solofill and DongGuan (together, ''Respondents'') are the only respondents actively participating in the investigation.

On September 4, 2015, the ALJ issued his final initial determination (''ID'') finding no violation of section 337. The ID found that ARM had established every element for finding a violation of section 337 except for infringement. The ID found that Respondents were not liable for direct infringement because direct infringement required the combination of Respondents' products with a third-party single serve beverage brewer, and that Respondents were not liable for induced or contributory infringement because they did not have pre-suit knowledge of the '320 patent. The ID did find that Respondents' products directly infringed claims 5–7, 18, and 20 of the '320 patent (''the asserted claims'') when combined with a third-party single serve coffee brewer, that the asserted claims were not shown invalid by clear and convincing evidence, and that ARM satisfied both the technical and economic prongs of the domestic industry requirement. The ALJ also issued his recommendation on remedy and bonding along with his ID.

On September 21, 2015, ARM petitioned for review of the ID's findings that Respondents were not liable for induced and contributory infringement because of a lack of pre-suit knowledge, and Respondents petitioned for review of several of the ID's findings. On September 29, 2015, the parties opposed each other's petitions, and the Commission Investigative Attorney (''IA'') opposed both petitions.

On November 9, 2015, the Commission determined to review the final ID in part. Specifically the Commission determined to review the following: (1) The ID's findings on the construction, infringement, and technical prong of the domestic industry requirement for the limitation ''a needle-like structure, disposed below the base''; (2) the ID's findings on induced and contributory infringement; (3) the ID's findings that the asserted claims are not invalid for a lack of written description, as anticipated by Beaulieu and the APA, or as obvious; and (4) the ID's findings on the economic prong of the domestic industry requirement. The Commission determined not to review the remaining findings in the ID. The Commission also requested briefing from the parties on the issue of pre-suit knowledge, and briefing from the parties and the public on the issues of remedy, the public interest, and bonding. The Commission

received initial written submissions from ARM, Respondents, and the IA on November 20, 2015, and responsive written submissions from ARM, Respondents, and the IA on December 1, 2015. No submissions were received from the public.

Having examined the record of this investigation, including the ALJ's final ID, the petitions, responses, and other submissions from the parties, the Commission has determined that ARM has not proven a violation of section 337 by Solofill and DongGuan. Specifically, the Commission has determined to modify the ID's construction of ''a needle-like structure, disposed below the base,'' and, under the modified construction, affirms under modified reasoning the ID's findings on infringement and the technical prong of the domestic industry requirement. The Commission has also determined to reverse the ID's finding that Respondents are not liable for contributory and induced infringement. The Commission has further determined that that claims 5 and 6 of the '320 patent are invalid as anticipated by Beaulieu and that claims 5–7, 18, and 20 of the '320 patent are invalid for a lack of written description (Commissioner Kieff dissenting on written description). Additionally, the Commission has determined that Respondents have not shown that claims 7, 18, and 20 are invalid as anticipated or that claims 5–7, 18, and 20 are invalid as obvious. Finally, the Commission has determined to affirm the ID's findings on the economic prong. All other findings in the ID that are consistent with the Commission's determinations are affirmed.

The Commission also previously found the statutory requirements of section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(a)(1) (19 CFR 210.16(a)(1)) met with respect to Eko Brands, Evermuch Technology, and Evermuch Company, and found these respondents in default. *See* ALJ Order No. 19, *unreviewed* Notice (May 18, 2015).

The Commission has determined that the appropriate form of relief in this investigation is: (1) A limited exclusion order prohibiting the unlicensed entry of beverage brewing capsules, components thereof, and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of, Eko Brands, Evermuch Technology, or Evermuch Company, that infringe one or more of claims 8 and 19 of the '320 patent; (2) cease and desist orders prohibiting Eko Brands, Evermuch Technology, and Evermuch Company from importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of beverage brewing capsules, components thereof, and products containing same that infringe one or more of claims 8 and 19 of the '320 patent. The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude the issuance of the remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of Eko Brands, Evermuch Technology, and Evermuch Company. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance. A Commission Opinion concerning the Commission's finding of no violation by Solofill or DongGuan will issue shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 17, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–06654 Filed 3–23–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Height-Adjustable Desk Platforms and Components Thereof DN 3127;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Varidesk LLC on March 18, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof. The complaint names as respondents Nortek, Inc. of Providence, RI; and Ergotron, Inc. of St. Paul, MN. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3127'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[4]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 18, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–06639 Filed 3–23–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Carbon Spine Board, Cervical Collar and Various Medical Training Manikin Devices, and Accompanying Product Catalogues, Product Inserts, Literature and Components Thereof DN 3128;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Laerdal Medical Corp. and Laerdal Medical AS on March 21, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carbon spine board, cervical collar and various medical training manikin devices, and accompanying product catalogues, product inserts, literature and components thereof. The complaint names as respondents Shanghai Evenk International Trading Co., Ltd. of China; Shanghai Honglian Medical Instrument Development Co., Ltd. of China; Shanghai Jolly Medical Education Co., Ltd. of China; Zhangjiagang Xiehe Medical Apparatus & Instruments Co., Ltd. of China; Zhangjiagang New Fellow Med. Co., Ltd. of China; Jiangsu Yongxin Medical Equipment Co., Ltd. of China; Jiangsu Yongxin Medical-Use Facilities Making Co., Ltd. of China; Jiangyin Everise Medical Devices Co., Ltd. of China; Medsource International Co., Ltd. and Medsource Factory, Inc. of China; and Basic Medical Supply, LLC of Richmond, TX. The complainant requests that the Commission issue a general exclusion order, or in the alternative issue a limited exclusion order, and issue a cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov*

United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3128'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–06713 Filed 3–23–16; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for the Senior Community Service Employment Program (SCSEP) National Grants for Program Year (PY) 2016

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–16–04

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL, or the Department, or we), announces the availability of approximately $338,520,000 in grant funds authorized by Title V of the Older Americans Act (OAA) as amended in 2006, Public Law 109–365 for the Community Service Employment for Older Americans program commonly referred to as the Senior Community Service Employment Program (SCSEP), for National Grants for Program Year (PY) 2016.

SCSEP is the only Federally-sponsored employment and training program targeted specifically to low-income older individuals who are able to enter or reenter the workforce. Program participants receive paid work experience at local public or non-profit agencies and are paid the higher of the Federal, State, or local minimum wage, or the prevailing wage for similar employment, for approximately 20 hours per week while in community service and other job training (OAA Amendments § 502(b)(1)(J); 20 CFR 641.565(a)). The dual goals of the program are to promote useful opportunities in community service job training and to move SCSEP participants into unsubsidized employment.

We anticipate awarding approximately 10–22 grants ranging from $2 million to $50 million each under this FOA. This is a four-year grant, renewable annually for each of those four years based on annual Departmental application requirements and subject to the availability of funds. The grant may be extended for a fifth year at the Department's discretion, contingent upon the grantee meeting or exceeding the minimum negotiated performance measures as required by section 514(a) of the OAA Amendments and 20 CFR 641.700.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *https://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is April 29, 2016. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Jeannette Flowers, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3322.

Jimmie Curtis is the Grant Officer for the Funding Opportunity Announcement.

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2016–06611 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued

during the period of *February 8, 2016 through February 26, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,190	DNP Electronics America LLC (Deal), Aerotek Staffing Agency	Chula Vista, CA	March 31, 2013.
85,348	Center Partners, Inc., Qualfon, Kantar	Idaho Falls, ID	May 29, 2013.
85,989	Milliken and Company, Judson Plant, Select One Staffing of SC, LLC Mau Workforce, etc.	Greenville, SC	May 5, 2014.
86,027	Pittsburgh Corning Corporation, Glass Block Division, PPG Industries, Inc., and Corning, Inc.	Port Allegany, PA	May 31, 2015.
86,139	Wheatland Tube Company, John Maneely Company	Sharon, PA	November 6, 2014.
90,106	Grede Wisconsin Subsidiaries, LLC, Grede Holdings, LLC, OfficeTeam.	Berlin, WI	January 1, 2014.
90,135	McCarthy OTR Retreading, Inc	Somerset, PA	January 1, 2014.
90,184	Century Aluminum of Kentucky, GP	Hawesville, KY	January 1, 2014.

TA–W No.	Subject firm	Location	Impact date
90,184A	Century Aluminum of West Virginia, Inc	Ravenswood, WV	January 1, 2014.
90,191	Sun Mountain Sports, Inc., Golf Assembly Department, Labor Ready.	Missoula, MT	January 1, 2014.
91,013	Freeport-McMoRan Tyrone Mining, LLC, Freeport-McMoRan, Inc., James Hamilton Construction, Allstaff Services.	Tyrone, NM	October 1, 2014.
91,014	Alfa Laval Inc., Alfa Laval AB, ALFA Lavel U.S. Holding Inc., American Staffcorp (ASC).	Broken Arrow, OK	October 1, 2014.
91,132	Century Aluminum of South Carolina, Inc	Goose Creek, SC	November 11, 2014.
91,159	Century Aluminum Sebree, LLC	Robards, KY	November 18, 2014.
91,232	Alcoa Inc., Massena Operations, Global Primary Products Division, Alcoa, Inc., Icon and Headway.	Massena, NY	December 15, 2014.
91,367	Freeport-McMoRan Sierrita, Inc., Freeport-McMoRan, Inc	Green Valley, AZ	January 20, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,025	Philips Electronics North America Corporation, Finance perations (FinOps) North America Div., etc.	Bothell, WA	January 22, 2013.
85,025A	Philips Electronics North America Corporation, Finance Operations (FinOps) North America Div., etc.	Andover, MA	January 22, 2013.
85,025B	Philips Electronics North America Corporation, Finance Operations (FinOps) North America Div., etc.	Pittsburgh, PA	January 22, 2013.
85,038	Tate and Kirlin Associates, Inc	Philadelphia, PA	January 28, 2013.
85,167	Dell Marketing L.P. and Dell USA LP, Denali, Inc., Services Infrastructure Delivery and Cloud, etc.	Plano, TX	March 20, 2013.
85,206	OVUS Technologies LLC, Texas Instruments	Dallas, TX	April 2, 2013.
85,239	Robert Bosch Tool Corporation, Inc., Power Tool Division, Robert Bosch Gmgh, Advanced Resources, etc.	Mount Prospect, IL	April 15, 2013.
85,250	Dell Marketing L.P. and Dell USA LP, Denali, Inc., Dell Finance Services, AGS Staffing.	Round Rock, TX	April 16, 2013.
85,337	Dell Marketing L.P. And Dell USA LP, Denali, Inc., Transaction Applications Group, Inc., CHPW Account Claims.	Plano, TX	May 27, 2013.
85,530	Shure Incorporated, Warehouse Facility	El Paso, TX	September 10, 2013.
85,793	Pacific Data Images, Inc. (PDI), Dream Works Animation SKG, Inc., Premier Staffing.	Redwood City, CA	January 27, 2014.
85,831	CareFusion Resources LLC, Accounts Payable/Finance Operations, Carefusion Corporation, etc.	Albuquerque, NM	February 13, 2014.
85,835	S4Carlisle Publishing Services	Dubuque, IA	April 17, 2015.
85,880	Stewart Title Guaranty Company, Information Technology Department.	Houston, TX	March 13, 2014.
85,994	Superior Industries International, Inc	Van Nuys, CA	May 6, 2014.
86,033	Dex Media, Bethlehem Pennsylvania Division	Bethlehem, PA	May 22, 2014.
86,064	Texas Instruments Incorporated, Test Technology and Product Engineering Group, Houston Test Floor, Volt.	Stafford, TX	June 2, 2014.
86,107	Dex Media, Customer Care	Greenwood Village, CO	June 17, 2014.
86,130	Vera Bradley Designs, Inc., Vera Bradley Sales, LLC, Manpower	New Haven, IN	June 24, 2014.
90,026	Abbott Medical Optics, AMO/Headquarters, Abbott, Tapein	Santa Ana, CA	January 1, 2014.
90,113	Precision-Paragon, Hubbell Lighting, Inc., Staffmark and Thor Staffing Services.	Yorba Linda, CA	January 1, 2014.
90,129	Newark Corporation, Echannel Department	Richfield, OH	January 1, 2014.
90,150	Barnes Aerospace, Windsor Division, Barnes Group Inc., Monroe Group, Kforce Finance, etc.	Windsor, CT	January 1, 2014.
90,196	Quintiles, Inc., Clinical Development and Information Technology Departments, Quintiles, etc.	Overland Park, KS	January 1, 2014.
91,070	LPL Financial LLC, Business Technology Services	San Diego, CA	October 22, 2014.
91,070A	LPL Financial LLC, Business Technology Services	Charlotte, NC	October 22, 2014.
91,070B	LPL Financial LLC, Business Technology Services	Boston, MA	October 22, 2014.
91,175	Ambassador Steel Corporation, Harris Steel, Inc	Auburn, IN	November 15, 2014.
91,192	Xerox Commercial Solutions, LLC, Customer Care—Industrial, Retail & Hospitality Division, Xerox, etc.	Tigard, OR	December 2, 2014.
91,200	Phoenix Products, Inc., Valterra Products, LLC, The Reserves Network, NESCO and Area Temps.	Avon Lake, OH	December 8, 2014.
91,211	D+H USA Corporation, DH Corporation, Alexander Connections, LLC and Volt.	Portland, OR	December 10, 2014.
91,211A	D+H USA Corporation, DH Corporation, Volt	Bothell, WA	December 10, 2014.
91,235	Chart Energy and Chemicals, Inc., Brazed Aluminum Heat Exchangers (BAHX), Chart Industries, Inc.	La Crosse, WI	December 14, 2014.
91,242	HCL America Inc., ERS (Engineering R&D Services) Division, HLC Technologies Ltd., etc.	Naperville, IL	December 17, 2014.

TA–W No.	Subject firm	Location	Impact date
91,258	International Business Machines (IBM), Global Technology Services Delivery Division, Collabera, etc.	Denver, CO	December 22, 2014.
91,259	Seagate Technology LLC	Shrewsbury, MA	December 22, 2014.
91,280	Cengage Learning, Inc., Global Product Technology (GPT) Division, Cengage Learning, etc.	Mason, OH	January 4, 2015.
91,280A	Cengage Learning, Inc., Global Product Technology (GPT) Division, Cengage Learning, etc.	Independence, KY	January 4, 2015.
91,280B	Cengage Learning, Inc., Global Product Technology (GPT) Division, Cengage Learning, etc.	Boston, MA	January 4, 2015.
91,280C	Cengage Learning, Inc., Global Product Technology (GPT) Division, Cengage Learning, etc.	San Francisco, CA	January 4, 2015.
91,280D	Cengage Learning, Inc., Global Product Technology (GPT) Division, Cengage Learning, etc.	Farmington Hills, MI	January 4, 2015.
91,312	Evraz Stratcor Inc	Hot Springs, AR	January 7, 2015.
91,317	United Healthcare Services, Inc., Optum Technology Software Engineering Services Division, etc.	Hartford, CT	January 8, 2015.
91,346	Commercial Vehicle Group, Inc., Global Construction, Agriculture and Military (GCAM), Manpower.	Edgewood, IA	January 14, 2015.
91,376	Sypris Technologies, Tube Turns Division	Louisville, KY	January 21, 2015.
91,400	Schawk, Schawk USA, Inc., and Schawk Holdings, Inc	Minneapolis, MN	January 27, 2015.
91,412	Caterpillar Precision Seals, Wear Components & Aftermarket Distribution Division, etc.	Toccoa, GA	January 29, 2015.
91,421	Lenovo (United States) Inc., USFC MFG, CTG	Whitsett, NC	January 28, 2015.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,029	Oldcastle BuildingEnvelope, Terra Staffing Group and Express Employment Professionals.	Everett, WA	January 21, 2013.
90,203	Fritz Enterprises Inc	Fairfield, AL	January 1, 2014.
90,255	Lufkin Industries LLC, Power Transmission Division, Operating Business of GE Oil & Gas, etc.	Lufkin, TX	January 1, 2014.
91,157	Warren Steel Holdings, LLC, Accountemps and Alliance Solutions	Warren, OH	November 18, 2014.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
85,012	SANYO Solar (USA) LLC, SANYO North America Corporation	Carson, CA.	
85,672	Twin Rivers Paper LLC, Accounts Payable Department	Madawaska, ME.	
85,923	Oerlikon Fairfield, OC Oerlikon Corporation AG	Lafayette, IN.	
85,945	International Business Machines (IBM), Global Procurement System Strategy, Manpower, Collabera, Inc.	Hopewell Junction, NY.	
90,206	Transcedar Limited, Inc., D/B/A Motorad of America, Fishman Thermal Technologies.	Niagara Falls, NY.	
91,015	Sysco Kansas City, Inc., Sysco Corporation	Olathe, KS.	
91,330	Primary Sensors, Inc	Hibbing, MN.	
91,349	International Business Machines (IBM) GTS–IOT, GTS Division, International Business Machines (IBM).	Las Vegas, NV.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,086A	Bayer CropScience LP (BCS LP), Thiodicarb Unit, Adecco, Belcan, CDI Engineering Solutions, etc.	Institute, WV.	
90,297	Westerman, Inc., Worthington Industries, Skiatook Oklahoma Division.	Skiatook, OK.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,101	HelioVolt Corporation, Evins Personnel Consultants	Austin, TX.	
85,159	Seagate Technologies PLC, Shakopee Design Center, Randstad North America, LP.	Shakopee, MN.	
85,159A	Seagate Technologies PLC, Recording Head Group (RHG), Randstad North America, LP.	Bloomington, MN.	
85,163	Creative Apparel Associates LLC	Fort Kent, ME.	
85,241	Institute Career Development	Merrillville, IN.	
85,280	ClearEdge Power LLC, ClearEdge Power, Inc	South Windsor, CT.	
85,288	Automated Solutions, Inc	Knoxville, AR.	
85,321	JP Morgan Chase and Company, Mortgage Banking Division, Legacy Services Litigation Support.	Florence, SC.	
85,333	IQE North Carolina, IQE PLC, Wireless Division	Greensboro, NC.	
85,334	Cubix Software Ltd., Inc	Longview, TX.	
85,342	North Cascade Mechanical, LLC, Command Center, Inc	Blaine, WA.	
85,352	Pioneer Hi-Bred, International—Mt. Pleasant, E.I. du Pont de Nemours and Company, Integrated Operations Division.	Mount Pleasant, IA.	
85,388	JPMorgan Chase & Co., Military Processing Department	Florence, SC.	
85,436	PST, Inc. D/B/A Business Performance Services, McKesson Corporation.	Cypress, CA.	
85,446	JPMorgan Chase & Co., Central Support Group	Florence, SC.	
85,494	Fluor—B&W Portsmouth LLC, Aecom, Alliant, APX, BGS, Brady, CDM, CSG, CRC, Davis Pickering, etc.	Piketon, OH.	
85,508	Electrodynamics, Inc., L–3 Communications	Rolling Meadows, IL.	
85,571	VLOC, Inc., II–VI, Inc	Trinity, FL.	
85,630	General Dynamics OTS (Pennsylvania), Inc., General Dynamics Ordnance and Tactical Systems, Inc.	Scranton, PA.	
85,632	Intuit, Inc., Customer Care Group, Icon	Mountain View, CA.	
85,633	Microsoft Corporation, Design Laboratory, Formerly Employed by Nokia, Inc.	Calabasas, CA.	
85,659	IDEV Technologies, Inc., Abbott Vascular, Meador Staffing, Tapfin/Manpower.	Webster, TX.	
85,676	Syncreon US	Trotwood, OH.	
85,700	Sport Mart Inc	Charleston, WV.	
85,765	Vencore Services and Solutions, Inc. (VSS)	San Diego, CA.	
85,824	HFW Ventures, LLC, D/B/A New Beginning Fitness Center	Kenai, AK.	
85,832	BPRex Healthcare Brookville, Inc., RCT (Rigid Closed Top) Division, Berry Plastics.	Brookville, PA.	
85,870	Maidenform, Hanesbrands, Inc	Fayetteville, NC.	
85,887	Unit Drilling Company, Unit Corporation	Oklahoma City, OK.	
85,895	UNY LLC DBA General Super Plating, MJ Enterprises, Contemporary Personnel Services.	East Syracuse, NY.	
85,898	Siemens Energy Inc., PG DG PMF Division, Formerly Rolls-Royce, Belcan Engineering.	Mount Vernon, OH.	
85,908	PEMCO Mutual Insurance Company, Data Center and Technical Service Group.	Seattle, WA.	
86,015	Bandai America, Inc., Bandai Namco Holdings USA, Inc., Innovative Career Resources, etc.	Cypress, CA.	
90,104	C.P. Medical Corporation, Theragenics Corporation, Aerotek, Express Employment Professionals, etc.	Portland, OR.	
90,143	Haggen, Inc., Haggen Operations Holdings, LLC, Haggen Acquisition, LLC.	Tualatin, OR.	
90,143A	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Klamath Falls, OR.	
90,143B	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Klamath Falls, OR.	
90,143C	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Grants Pass, OR.	
90,143D	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Keizer, OR.	
90,143E	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Clackamas, OR.	
90,143F	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	West Lynn, OR.	
90,143G	Haggen, OPCO North, LLC, Haggen Operations Holdings, LLC	Eugene, OR.	
91,121	REC Silicon LLC, Renewable Energy Corporation SAS, Rec Solar Grade Silicon LLC, etc.	Moses Lake, WA.	
91,121A	REC Silicon ASA, Rec Solar Grade Silicon LLC, Rec Advanced Silicon Materials, etc.	Silver Bow, MT.	
91,276	Trimble Navigation, Ltd., North American Sales Team, Geospatial Division.	Westminster, CO.	
91,322	Gardner Denver Nash, LLC., R&D Engineering Department, The Marine Group, and Gardner Denver Inc.	Trumbull, CT.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
90,236	Gamma North	Alden, NY.	
91,342	Hewlett Packard	East Pontiac, MI.	
91,379	Climax Portable Machine Tools Inc	Newberg, OR.	
91,387	Cameron International Corp.	Millbury, MA.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
91,405	Fairmont Supply Oil & Gas	Warren, PA.	
91,425	Universal Lighting Technologies	Los Indios, TX.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
85,090	Pixel Playground, Inc.	Woodland Hills, CA.	
85,556	Leased Workers from Optiscan, Inc., Honeywell International, Inc., Aerospace Order Management Division.	Tempe, AZ.	
86,044	Interfor Corporation NW Region—Tacomas, f/k/a Simpson Lumber Company, Almond and Associates and Optistaff, etc.	Tacoma, WA.	
90,100	Century Aluminum of West Virginia, Inc	Ravenswood, WV.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,190	D+H USA Corporation, DH Corporation, Volt	Bothell, WA.	
91,293	RMI International	Ashland, KY.	
91,364	Atlas Medical Software	Calabasas, CA.	
91,391	Halliburton	Homer City, PA.	

I hereby certify that the aforementioned determinations were issued during the period of *February 8, 2016 through February 26, 2016*. These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 7th day of March, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–06620 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than April 4, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 4, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of March 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

81 TAA Petitions Instituted Between 2/8/16 and 2/26/16

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91442	Sulzer Pumps (US) Inc. (Company)	Brookshire, TX	02/08/16	02/05/16
91443	Select Energy Services, Cambridge, Ohio Truck Yard (Workers).	Gainesville, TX	02/08/16	02/05/16
91444	Johnson Matthey Process Technologies, Inc. (Workers)	Savannah, GA	02/08/16	02/08/16
91445	Fenner Dunlop, Inc. (Union)	Port Clinton, OH	02/09/16	01/19/16
91446	Hologic (Company)	Bedford, MA	02/09/16	02/08/16
91447	National OilWell Varco-Hydra Rig (Workers)	Duncan, OK	02/09/16	02/08/16
91448	Allegheny Technologies Incorporated (Union)	Louisville, OH	02/10/16	02/09/16
91449	Digital Intelligence Systems (State/One-Stop)	Pittsfield, ME	02/10/16	02/09/16
91450	Supervalu Inc. (Workers)	Boise, ID	02/10/16	02/09/16
91451	Metro Paper Industries (State/One-Stop)	Carthage, NY	02/10/16	02/09/16
91452	EOG Resources Inc. (State/One-Stop)	Oklahoma City, OK	02/10/16	02/10/16
91453	Rexnord LLC (State/One-Stop)	Clinton, TN	02/11/16	02/10/16
91454	Allegheny Technologies Incorporated (Union)	Latrobe, PA	02/11/16	02/09/16
91455	Nitro Lift Tech Inc. (State/One-Stop)	Mill Creek, OK	02/11/16	02/10/16
91456	Eaton Corporation (Company)	Shenandoah, IA	02/11/16	02/10/16
91457	Allegheny Technologies Incorporated (Union)	Houston, PA	02/12/16	02/10/16
91458	Siemens Energy Inc. (Company)	Mount Vernon, OH	02/12/16	02/08/16
91459	The Doe Run Resources Corporation (State/One-Stop)	St. Louis, MO	02/12/16	02/10/16
91460	Cascade Steel Rolling Mills (Union)	McMinnville, OR	02/12/16	02/11/16
91461	Sprint Wireless Call Center (State/One-Stop)	Temple, TX	02/12/16	02/12/16
91462	Sprint, Headset Retrieval Team (Workers)	Rio Rancho, NM	02/16/16	02/12/16
91463	Volvo Trucks (Union)	Dublin, VA	02/16/16	02/12/16
91464	Rodgers Instruments Corporation (State/One-Stop)	Hillsboro, OR	02/16/16	02/12/16
91465	Traeger Wood Fired Grills (State/One-Stop)	Portland, OR	02/16/16	02/12/16
91466	Allegheny Technologies Incorporated (Union)	New Bedford, MA	02/16/16	02/12/16
91467	Allegheny Technologies Incorporated (Union)	Natrona Heights, PA	02/16/16	02/15/16
91468	Allegheny Technologies Incorporated (Union)	Vandergrift, PA	02/16/16	02/15/16
91469	Hermitage Wood Products, Inc. (Company)	Pompano Beach, FL	02/16/16	02/12/16
91470	Titan Tire Corporation (Union)	Freeport, IL	02/17/16	02/12/16
91471	Flowserve (Union)	Dayton, OH	02/17/16	02/16/16
91472	Freeport-McMoRan Miami, Inc. (Company)	Claypool, AZ	02/17/16	02/16/16
91473	Kraft Foods Group Global, Inc. (State/One-Stop)	Woburn, MA	02/17/16	02/16/16
91474	Lee Aerospace (State/One-Stop)	Wichita, KS	02/17/16	02/16/16
91475	Sprint (Workers)	Blountville, TN	02/17/16	02/16/16
91476	Pall Corporation (State/One-Stop)	Port Washington, NY	02/17/16	02/16/16
91477	X6D USA/X6D Ltd./XPAND (State/One-Stop)	Beaverton, OR	02/18/16	02/17/16
91478	Climax Molybdenum Company (Henderson Mill and Mine) (Company).	Empire, CO	02/18/16	02/17/16
91479	Clover Technologies Group (Company)	Erie, PA	02/18/16	02/17/16
91480	Wells Fargo Home Mortgage (State/One-Stop)	Portland, OR	02/19/16	02/17/16
91481	Banks Lumber Company (State/One-Stop)	Banks, OR	02/19/16	02/17/16
91482	Panasonic Eco Solutions Solar America, LLC (State/One-Stop).	Salem, OR	02/19/16	02/18/16
91483	Sprint (State/One-Stop)	Hampton, VA	02/19/16	02/19/16
91484	Vitron Acquisition LLC (Company)	Phoenix, AZ	02/19/16	02/18/16
91485	Sensata Technologies (formerly known as Schrader Electronics (Company).	Springfield, TN	02/19/16	02/18/16
91486	Damper Design (Workers)	Bethlehem, PA	02/19/16	02/18/16
91487	Rex Energy Corp (Company)	Bridgeport, IL	02/19/16	02/18/16
91488	Montgomery County Developmental Center (State/One-Stop).	Huber Heights, OH	02/19/16	02/18/16
91489	Teletech (State/One-Stop)	Springfield, MO	02/19/16	02/18/16
91490	Sprint (Workers)	Blountville, TN	02/19/16	02/18/16
91491	Alcoa Inc. (Union)	Newburgh, IN	02/22/16	02/05/16

81 TAA PETITIONS INSTITUTED BETWEEN 2/8/16 AND 2/26/16—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91492	mGage LLC-previously Mobile Americas, Network Operations Center (State/One-Stop).	Los Angeles, CA	02/22/16	02/19/16
91493	Matric Limited (Company)	Seneca, PA	02/22/16	02/19/16
91494	Thorco Industries (State/One-Stop)	Lamar, MO	02/22/16	02/19/16
91495	Molycorp (Workers)	Mountain Pass, CA	02/22/16	02/19/16
91496	Rough & Ready Lumber LLC (Company)	Cave Junction, OR	02/22/16	02/19/16
91497	Caldwell Manufacturing Company (Workers)	Alderson, WV	02/22/16	02/18/16
91498	Columbia Pacific Bio-Refinery (State/One-Stop)	Clatskanie, OR	02/22/16	02/19/16
91499	Saginaw Machine Systems (Company)	Saginaw, MI	02/23/16	02/22/16
91500	Orica USA (Workers)	Georgetown, KY	02/23/16	02/22/16
91501	Lumina Datamatics (Company)	Harrisburg, PA	02/23/16	02/22/16
91502	Eaton Corporation (Company)	Berea, OH	02/23/16	02/22/16
91503	Heil Trailer International, Co. (Company)	Rhome, TX	02/23/16	02/22/16
91504	Atwood Oceanics Management (State/One-Stop)	Houston, TX	02/23/16	02/23/16
91505	Walgreens Co (Workers)	Lincolnshire, IL	02/24/16	02/01/16
91506	Evergreen Manufacturing Group, LLC (Company)	Madawaska, ME	02/24/16	02/24/16
91507	Seneca Foods Corporation (Company)	Buhl, ID	02/24/16	02/09/16
91508	Dematic Corporation (Union)	Grand Rapids, MI	02/24/16	02/16/16
91509	Rodney Hunt—Fontaine Inc. (State/One-Stop)	Orange, MA	02/24/16	02/24/16
91510	ArcelorMittal—Conshohocken (Union)	Conshohocken, PA	02/25/16	02/04/16
91511	Technicolor Home Entertainment Services, Inc. (State/One-Stop).	Olyphant, PA	02/25/16	02/24/16
91512	Jay A Apparel Group LLC (State/One-Stop)	Vernon, CA	02/25/16	02/24/16
91513	Ball Corporation (Union)	Bristo, VA	02/25/16	02/24/16
91514	Royal Bank of Scotland eChannels & Delivery Team within Global Transaction (State/One-Stop).	Chicago, IL	02/25/16	02/24/16
91515	Sprint, Finance-Commissions/Shared Services (State/One-Stop).	Overland Park, KS	02/25/16	02/24/16
91516	International Business Machines (IBM) (State/One-Stop)	Poughkeepsie, NY	02/26/16	02/25/16
91517	Encore Repair Services, LLC (Workers)	Simi Valley, CA	02/26/16	02/03/16
91518	SABIC (Company)	Thorndale, PA	02/26/16	02/25/16
91519	National Oilwell Varco (State/One-Stop)	Houma, LA	02/26/16	02/25/16
91520	Flex formerly Flextronics (Company)	Charlotte, NC	02/26/16	02/25/16
91521	Digital Intelligence Systems LLC (Workers)	McLean, VA	02/26/16	02/23/16
91522	Primemetals Technologies USA LLC (State/One-Stop)	Worchester, MA	02/26/16	02/10/16

[FR Doc. 2016–06615 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for Reentry Demonstration Projects for Young Adults Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–16–06

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (the Department), announces the availability of approximately $30,250,000 in grant funds authorized by the Workforce Innovation and Opportunity Act (WIOA). The Department intends to award these grants to a combination of rural- and urban-serving organizations.

This Announcement solicits applications for Reentry Demonstration Projects for Young Adults. The purpose of these grants is to utilize evidence-based and informed interventions or new interventions that theory or research suggests are promising to improve employment outcomes of young adults between the ages of 18 to 24 who have been involved in the juvenile or adult justice system and who reside in high-poverty, high-crime communities.

The Department plans to award approximately seven grants of up to $4,500,000 each to eligible applicants. All applicants must have the capacity to implement multi-site projects and may only submit one application in response to this FOA. These awards will have a 36-month period of performance which includes a planning period, period of operation, and follow-up period; the period of operation must be at least 24 months of the total period of performance. The anticipated start date is July 1, 2016.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *https://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov*. The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is April 19, 2016. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ariam Ferro, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3968.

Eric Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2016–06613 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,900A]

Honeywell International, Inc., Aerospace Order Management Division, and Customer Service Division, Including On-Site Leased Workers From Tapfin-Manpower Group Solutions and Optiscan, Inc., Tempe, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 1, 2013, applicable to workers of Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A). Furthermore, the Department of Labor amended its Certification of Eligibility to include the Customer Service Division on August 22, 2014.

At the request of a worker from OptiScan, Inc. the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of order management services and customer services. The investigation confirmed that the subject worker group includes on-site leased workers from OptiScan, Inc.

The amended notice applicable to TA–W–82,900A is hereby issued as follows:

All workers of Honeywell International, Inc., Aerospace Order Management Division, Customer Service Division, including on-site leased workers from Tapfin-Manpower Group Solutions and OptiScan, Inc., Tempe, Arizona, (TA–W–82,900A) who became totally or partially separated from employment on or after July 11, 2012 through November 1, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through November 1, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 21st day of February 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–06617 Filed 3–23–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,192]

Walter Kidde Portable Equipment, Inc., Edwards Division; a Subsidiary of UTC Building and Industrial Systems, Including On-Site Leased Workers From Adecco, PDI, Digital Intelligence Systems (DISYS) and Randstad Engineering; Pittsfield, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 18, 2014, applicable to workers of Walter Walter Kidde Portable Equipment, Inc., Edwards Division, including on-site leased workers from Adecco and PDI, Pittsfield, Maine. The Department's Notice of determination was published in the **Federal Register** on March 31, 2013 (79 FR 25893).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of fire alarm and detection systems.

The company reports that workers leased from Digital Intelligence Systems (DISYS) and Randstad Engineering were employed on-site at the Pittsfield, Maine, location of Walter Kidde Portable Equipment, Inc., Edwards Division.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Digital Intelligence Systems (DISYS) and Randstad Engineering working on-site at the Pittsfield, Maine location of Walter Kidde Portable Equipment, Inc., Edwards Division.

The amended Notice applicable to TA–W–85,192 is hereby issued as follows:

''All workers of Walter Kidde Portable Equipment, Inc., Edwards Division, a subsidiary of UTC Building and Industrial Systems, including on-site leased workers from Adecco, PDI, Digital Intelligence Systems (DISYS) and Randstad Engineering, Pittsfield, Maine, who became totally or partially separated from employment on or after March 31, 2013, through April 18, 2016, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 24th day of February, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–06614 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for the National Farmworker Jobs Program (NFJP) Employment and Training Grants and Housing Assistance Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–16–02.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL, or the Department, or we), announces the availability of approximately $81,402,000 in grant funds authorized by the Workforce Innovation and Opportunity Act (WIOA) Section 167 for National Farmworker Jobs Program (NFJP) Employment and Training Grants and Housing Assistance Grants.

This Announcement solicits applications for the National Farmworker Jobs Program (NFJP) Employment and Training Grants and Housing Assistance Grants. The purpose of this program is to assist eligible Migrant and Seasonal Farmworkers (MSFWs) and their dependents, including youth MSFWs, receive career services, training services, housing assistance services, youth services, and other related assistance services that help retain and stabilize their current agriculture jobs as well as acquire new skills they need to start careers that provide higher wages and stable, year-round employment. To support better economic outcomes for farmworkers, NFJP also works to meet a critical need for quality housing.

Of the approximately $81,402,000 available, the Department intends to award approximately $75,885,000 for Employment and Training Grants and $5,517,000 for Housing Assistance Grants. These awards will have a 4-year period of performance and will fund

program years (PY) 2016–2019, that is, July 1, 2016 to June 30, 2020.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *https://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is May 3, 2016. Applications must be received no later than 4:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Amanda Denogean, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–2838.

Jimmie Curtis is the Grant Officer for the Funding Opportunity Announcement.

Signed: March 16, 2016 in Washington, DC.

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2016–06612 Filed 3–23–16; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Notice of Funds Availability for Calendar Year 2017 Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people.

LSC hereby announces the availability of funds for calendar year 2017 and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient, and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms, and conditions of their availability for calendar year 2017 have not been determined.

DATES: See **SUPPLEMENTARY INFORMATION** section for grant application dates.

ADDRESSES: Legal Services Corporation—Notice of Funds Availability, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: The Office of Program Performance by email at *lscgrants@lsc.gov,* or visit the LSC Web site at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas.*

SUPPLEMENTARY INFORMATION: Applicants must file a Notice of Intent to Compete (NIC) to participate in the LSC grants process. Applicants must file the NIC by May 6, 2016, 5:00 p.m. E.D.T. The Request for Proposals (RFP), which contains the NIC and grant application guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available the week of April 11, 2016. The RFP may be accessed at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant.* Other key application and filing dates, including the dates for filing grant applications, are published at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/basic-field-grant-key-dates.*

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions are available at *http://www.grants.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas.* LSC will post all updates and/or changes to this notice at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant.* Interested parties are asked to visit *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant* regularly for updates on the LSC grants process.

State or territory	Service area(s)
Arkansas	AR–6, AR–7
Arizona	AZ–3, AZ–5, MAZ, NAZ–6
American Samoa	AS–1
California	CA–1, CA–27, CA–28, NCA–1
District of Columbia	DC–1
Guam	GU–1
Illinois	IL–3, IL–7
Kentucky	KY–10, KY–2, KY–9
Louisiana	LA–11, LA–13
Massachusetts	MA–10, MA–11, MA–4
Michigan	MI–12, MI–15, MI–9, MMI, NMI–1
Minnesota	MN–1, MN–4, MN–5, MN–6, MMN
Mississippi	MS–9, MS–10, NMS–1
Missouri	MO–4, MO–5, MO–7
North Dakota	ND–3, MND, NND–3
New Hampshire	NH–1
New Jersey	NJ–8
New Mexico	NM–5, MNM, NNM–4
New York	NY–9
Ohio	OH–18, OH–20, OH–21, OH–23, MOH
Oklahoma	NOK–1
Pennsylvania	PA–11, PA–24
Puerto Rico	PR–2
South Dakota	SD–2, SD–4, NSD–1
Tennessee	TN–10, TN–4, TN–7, TN–9
Texas	TX–13, TX–14, TX–15, MSX–2, NTX–1
Virginia	VA–17, VA–19, VA–20
Wisconsin	WI–5, MWI
West Virginia	WV–5
Wyoming	WY–4, NWY–1

Dated: March 21, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–06712 Filed 3–23–16; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Central Liquidity Facilities, 12 CFR Part 725

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before May 23, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8595; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0061.

Title: Central Liquidity Facility, 12 CFR part 725.

Form Number: NCUA Forms 7000, 7001, 7002, 7003, 7004, and CLF Forms 8702, and 8703.

Abstract: Part 725 contains the regulations implementing the National Credit Union Central Liquidity Facility Act, subchapter III of the Federal Credit Union Act. The NCUA Central Liquidity Facility is a mixed-ownership Government corporation within NCUA. It is managed by the NCUA Board and is owned by its member credit unions. The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy. The Central Liquidity Facility achieves this purpose through operation of a Central Liquidity Fund (CLF)

Credit unions must join the CLF to gain access to CLF services. NCUA Rules and Regulations § 725.3(a)(1) and 725.4(a)(1) state a credit union may become a member of the CLF by making application on a form approved the CLF and furnishing applicable supporting documentation. The information requested on the form and the supporting documentation is necessary to establish the relationship between the CLF and the credit union and to determine the amount of the applicant's stock subscription as required by 12 U.S.C. 1795c.

NCUA Rules and Regulations § 725.20, requires member of the Central Liquidity Fund (CLF), to sign the repayment, security and credit reporting agreement in order to receive loans from the CLF. This form (CLF–8703) is the contract required to document loans made by the CLF to have an enforceable legal right to repayment of said loan, create a security interest in the specified asset in case of non-repayment, and establish reporting requirements for monitoring the credit union's financial condition when it has a CLF loan.

A Central Liquidity Facility (CLF) member may apply for extensions of credit for short-term adjustment, seasonal and protracted adjustment credit to meet liquidity needs. The forms are necessary for the CLF to determine credit worthiness, as required by 12 U.S.C 1795e(2).

Type of Review: Reinstatement with change of a previously approved collection.

Affected Public: Any credit union wishing to join the CLF or apply for an extension of credit for the fund.

Estimated No. of Respondents: 60.

Frequency of Response: Upon occurrence of triggering action.

Estimated Burden Hours per Response: For Repayment, Security and Credit Report Agreement, one hour; to copy and submit financial reports, one hour; to complete CLF application forms, 1.5 hours; to submit membership application, one hour.

Estimated Total Annual Burden Hours: 175.

Reason for Change: These forms were previously approved under separate OMB control numbers. This action combines them under a single number without making any substantive change to any of the forms themselves.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on March 21, 2016.

Dated: March 21, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–06667 Filed 3–23–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0042]

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Homeland Security/Federal Emergency Management Agency

AGENCY: Nuclear Regulatory Commission.

ACTION: Memorandum of understanding; issuance.

SUMMARY: On December 7, 2015, the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) entered into a Memorandum of Understanding (MOU) that establishes a framework of cooperation between them in radiological emergency response planning and preparedness matters. The MOU ensures that the agencies' mutual efforts will be directed toward more effective preparedness plans, and related response measures at and in the vicinity of utilization facilities.

DATES: The MOU was effective December 7, 2015.

ADDRESSES: Please refer to Docket ID NRC–2016–0042 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0042. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The MOU is available in ADAMS under Accession No. ML15344A371.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Kinard, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–3768, email: *Richard.Kinard@nrc.gov.*

SUPPLEMENTARY INFORMATION: As part of the FEMA initiative to amend parts 350–354 of title 44 of the *Code of*

Federal Regulations (CFR), the FEMA/NRC Steering Committee for Emergency Planning determined that the three existing MOUs between the two agencies on radiological emergency preparedness and response should be consolidated into one MOU, resulting in a streamlined, updated agreement reflecting the current process used by the agencies to coordinate their activities. The original MOUs were as follows: (1) ''Memorandum of Understanding Between the Federal Emergency Management Agency and the Nuclear Regulatory Commission for Incident Response'' (45 FR 82715; December 16, 1980); (2) Memorandum of Understanding for Assistance and Support Between the Federal Emergency Management Agency and the Nuclear Regulatory Commission—relating to Executive Order 12657 (December 1, 1991) (ADAMS Accession No. ML16077A212); and (3) Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness (located at Appendix A to 44 CFR part 353) (58 FR 47997; September 14, 1993).

Consolidating the MOUs results in the following revisions: establishes a concise listing of legal authorities; enhances the description of the disaster-initiated review process; eliminates superfluous language on emergency response by referring to existing documentation such as the National Preparedness System and the Nuclear/Radiological Incident Annex; confirms that nothing in the MOU is intended to conflict with current law or regulations or the directives of DHS/FEMA or the NRC, or restrict the authority of either party to act as provided by statute or regulation; includes the interface process between the NRC and FEMA concerning decommissioning plants and the NRC-approved effective date when FEMA Radiological Emergency Preparedness Program services will no longer be needed; and, for consistency with new wording, FEMA intends to include in 44 CFR part 350 the current term ''deficiency'' with ''Level 1 Finding.''

Dated at Rockville, Maryland, this 17th day of March, 2016.

For the Nuclear Regulatory Commission.

Stephanie M. Coffin,

Acting Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2016–06669 Filed 3–23–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–100 and CP2016–128; Order No. 3169]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 199 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 199 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–100 and CP2016–128 to consider the Request pertaining to the proposed Priority Mail Contract 199 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 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 serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–100 and CP2016–128 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06679 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–107 and CP2016–135; Order No. 3168]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 35 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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.

[1] Request of the United States Postal Service to Add Priority Mail Contract 199 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 35 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–107 and CP2016–135 to consider the Request pertaining to the proposed Priority Mail Express Contract 35 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–107 and CP2016–135 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06678 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 35 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–103 and CP2016–131; Order No. 3167]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 46 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 46 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–103 and CP2016–131 to consider the Request pertaining to the proposed First-Class Package Service Contract 46 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–103 and CP2016–131 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06677 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 46 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–106 and CP2016–134; Order No. 3170]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express & Priority Mail Contract 28 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express & Priority Mail Contract 28 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–106 and CP2016–134 to consider the Request pertaining to the proposed Priority Mail Express & Priority Mail Contract 28 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–106 and CP2016–134 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06680 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 28 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–101 and CP2016–129; Order No. 3164]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 200 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 200 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–101 and CP2016–129 to consider the Request pertaining to the proposed Priority Mail Contract 200 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–101 and CP2016–129 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

[1] Request of the United States Postal Service to Add Priority Mail Contract 200 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06674 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–104 and CP2016–132; Order No. 3165]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 47 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 47 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–104 and CP2016–132 to consider the Request pertaining to the proposed First-Class Package Service Contract 47 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–104 and CP2016–132 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06675 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–102 and CP2016–130; Order No. 3166]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 14 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 28, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 14 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–102 and CP2016–130 to consider the Request pertaining to the proposed Parcel Select Contract 14 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than March 28, 2016. The public portions of these filings can be

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 47 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

[1] Request of the United States Postal Service to Add Parcel Select Contract 14 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2016 (Request).

accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–102 and CP2016–130 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 28, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06676 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2016–1; Order No. 3162]

Market Test of Experimental Product-Customized Delivery

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service proposal to conduct a market test of an experimental product called Global eCommerce Marketplace (GeM) Merchant. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 11, 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

In accordance with 39 U.S.C. 3641 and 39 CFR 3035.3, the Postal Service filed notice of its intent to conduct a market test of an experimental product called Global eCommerce Marketplace (GeM) Merchant.[1] GeM Merchant would allow domestic online merchants to offer their international customers the ability, at the time of purchase, to prepay the estimated duties and taxes that the foreign country's customs agency will assess upon the shipment's arrival in the foreign destination. Notice at 2.

II. Background

According to the Postal Service, GeM Merchant constitutes a novel eCommerce service for domestic online merchants and their international customers. *Id.* The Postal Service explains that at the time of purchase, GeM Merchant would allow international customers of domestic online merchants to prepay estimated duties and taxes. *Id.* The Postal Service describes that the domestic merchant will receive the order and will prepare the item for domestic shipment to the GeM processing facility. *Id.* After the item arrives at the GeM processing facility, the Postal Service indicates that it or its supplier will inspect the item for verification and security, as well as prepare and arrange for the item's international shipment and delivery to the overseas address. *Id.*

A. Nature and Scope of the Proposed GeM Merchant Market Test

The Postal Service intends to offer GeM Merchant to a limited number of domestic online merchants through negotiated service agreements (NSAs) that would include, but not be limited to, localization, export compliance, delivery speed, and targeted marketing features. *Id.* Through the market test, the Postal Service plans to assess GeM Merchant's revenue potential, competitive price points, and potential for expansion. *Id.*

The Postal Service asserts that the proposed GeM Merchant market test would likely benefit the public by meeting the demands of domestic online merchants and their international customers. *Id.* at 7. The Postal Service anticipates that the GeM Merchant product would contribute to the Postal Service's financial stability by generating more outbound international package delivery opportunities. *Id.* at 7–8.

1. Duration

The Postal Service plans to begin the market test on or shortly after April 30, 2016, to run for 2 calendar years. *Id.* at 6. After determining the actual start date, the Postal Service intends to file a notice with the Commission providing the definite start date. *Id.* at 6 n.4. During the 2-year market test period, the Postal Service intends to offer NSAs with standard 1-year terms to domestic online merchants. *Id.* at 6. The Postal Service requests that the Notice serve as an application for extension under 39 U.S.C. 3641(d) for any NSAs that have terms that extend beyond the 2-year period of the market test. *Id.* The Postal Service represents the extension would be limited to satisfying existing contractual obligations and that it would not initiate any new agreements with merchants after the 2-year period of the market test. *Id.* at 6–7. If the market test is successful, the Postal Service states that it would seek permanent product status for GeM Merchant. *Id.* at 7.

2. Geographic Markets

According to the Postal Service, because GeM Merchant is an international product offered to select domestic merchants through NSAs rather than a retail service offered to the American public, the geographical scope analysis under 39 CFR 3035.3(a)(2)(iv) is not germane to this market test. *Id.* The Postal Service represents that it intends to offer GeM Merchant using two processing locations and to execute contracts with few merchants, *i.e.,* less than 1 percent of the overall domestic merchant target segment. *Id.*

3. Revenues

The Postal Service does not request a waiver of the $10 million, as adjusted for inflation, annual revenue limitation at this time. *Id.; see* 39 U.S.C. 3641(e). If market test revenues approach the cap, the Postal Service states that it will submit an application for exemption from the $10 million limitation under 39 U.S.C. 3641(e)(2) and 39 CFR 3035.16. Notice at 7.

4. Data Collection Plan

The Postal Service proposes to report the costs, revenues, and volumes associated with each agreement on a

[1] Notice of the United States Postal Service of Market Test of Experimental Product—Global eCommerce Marketplace (GeM) Merchant Solution and Notice of Filing GeM Merchant Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, March 16, 2016 (Notice).

quarterly basis. *Id.* at 8; *see* 39 CFR 3035.20.

5. Statutory Authority

The Postal Service asserts that the proposed GeM Merchant market test satisfies the conditions on market tests of experimental products. Notice at 3; *see* 39 U.S.C. 3641(b). The Postal Service submits that GeM Merchant is significantly different from all products offered within the past 2 years. Notice at 3; *see* 39 U.S.C. 3641(b)(1). The Postal Service states that GeM Merchant would offer a new feature: the ability for a consumer to prepay estimated foreign duties and taxes at the time of purchase. Notice at 4.

The Postal Service does not expect GeM Merchant to create an ''unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, with regard to any other party (including small businesses).'' *Id.* at 5 (quoting 39 U.S.C. 3641(b)(2)); *see* 39 U.S.C. 3641(b)(2). The Postal Service states that at least four companies presently offer similar services, including one small business, which the Postal Service has contracted with. Notice at 5. Furthermore, the Postal Service represents that the proposed GeM Merchant market test would not directly compete with small businesses offering niche regional and freight-forwarding services because those small businesses serve a different market than the end-to-end GeM Merchant product. *Id.*

The Postal Service classifies GeM Merchant as a competitive product, asserting that GeM Merchant is designed for international packages and are unlikely to contain any letters, and thus, do not fall under the Private Express Statutes. *Id.* at 6; *see* 39 U.S.C. 3641(b)(3). The Postal Service asserts that it faces significant competition in the outbound international package delivery marketplace, including major competitors with products for facilitating outbound international shipments with duties and taxes paid at the time of purchase. Notice at 6.

III. Contents of Filing

To support its Notice, the Postal Service filed its proposed changes to the Mail Classification Schedule, as well as redacted versions of the GeM Merchant model contract, GeM Merchant price ranges summary, and supporting financial workpapers. The Postal Service also submitted an application for non-public treatment of materials requesting that unredacted versions of the GeM Merchant model contract, GeM Merchant price ranges summary, and related financial information remain under seal. *Id.* Attachment 1.

IV. Notice of Commission Action

The Commission establishes Docket No. MT2016–1 to consider matters raised by the Notice. The Commission invites comments on whether the Postal Service's filing is consistent with the requirements of 39 U.S.C. 3641 and 39 CFR part 3035. Comments are due no later than April 11, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James Waclawski to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MT2016–1 to consider the matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, James Waclawski is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 11, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06616 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Market Test of Experimental Product: Global eCommerce Marketplace (GeM) Merchant Solution

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: March 24, 2016.

FOR FURTHER INFORMATION CONTACT: Kyle Coppin, 202–268–2368.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its Global eCommerce Marketplace (GeM) Merchant Solution experimental product on or after April 30, 2016. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *www.prc.gov,* Docket No. MT2016–1.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2016–06623 Filed 3–23–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77402; File No. SR–Phlx–2016–21]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rebates and Fees for Adding and Removing Liquidity in SPY

DATE: March 18, 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 March 10, 2016, NASDAQ PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Phlx Pricing Schedule at Section I, entitled ''Rebates and Fees for Adding and Removing Liquidity in SPY,'' specifically related to PIXL[3] executions in options overlying SPY.[4]

The text of the proposed rule change is available on the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PIXL[SM] is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order''), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[4] Options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'') are based on the SPDR exchange-traded fund, which is designed to track the performance of the S&P 500 Index.

at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend language in the Pricing Schedule at Section I, entitled ''Rebates and Fees for Adding and Removing Liquidity in SPY,'' related to PIXL executions in SPY.

Background

SR–Phlx–2013–61

Effective June 3, 2013, the Exchange filed a rule change [5] to adopt new pricing specific to options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'').[6] The Exchange adopted ''Make/Take'' pricing for SPY in both Simple and Complex Orders. The Exchange adopted SPY PIXL Pricing at that time. The Exchange adopted the following rule text concerning PIXL Orders:

'When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of $0.38 per contract. All other contra parties to the PIXL Order, other than the Initiating Order, will be assessed a Fee for Removing Liquidity of $0.38 per contract or will receive the Rebate for Adding Liquidity.'

In that rule change, the Exchange noted that it was adopting PIXL Pricing to ''. . . assess Initiating Orders in SPY options $0.05 per contract for all market participants. In addition, when the PIXL Order is contra to the Initiating Order, a Customer PIXL Order will be assessed $0.00 per contact and all non-Customer market participants will be assessed a $0.38 per contract fee when contra to the Initiating Order. Also, when a PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of $0.38 per contract. *All other contra parties to the PIXL Order, other than the Initiating Order, will be assessed a reduced Fee for Removing Liquidity of $0.38 per contract or will receive the Rebate to Add Liquidity.*'' The Exchange added a footnote in that filing, footnote 21, to further describe the phrase ''other than an Initiating Order,'' as, for example, a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction. In that proposal, the Exchange reasoned, ''The Exchange believes it is reasonable that all other contra parties to the PIXL Order, other than the Initiating Order, will be equally assessed a reduced Fee for Removing Liquidity of $0.38 per contract when removing or they will receive the Rebate for Adding Liquidity if adding because the Exchange desires to equally provide all market participants the same incentivizes to encourage them to transact a greater number of SPY PIXL Orders.''

The Exchange also reasoned that ''[a]lso, the Exchange proposes to uniformly assess all market participants a fee when a Customer rebate would be paid to enable the Exchange to offer the rebate. The Exchange believes that widening the differential as between the Initiating Order Fee and the contra party to the PIXL Order ($0.05 vs. $0.38) as compared to the cost to transact a PIXL Order today ($0.05 or $0.07 per contract vs. $0.30) does not misalign the cost of these transactions depending on the market participant because the Exchange would now not assess a fee in the case that PIXL Order is contra to other than the Initiating Order, which is not a Customer, and would pay the Customer a rebate in the case where the contra party is a Customer.''

The Exchange assessed all contra-parties to the SPY PIXL Order, other than the Initiating Order, a fee of $0.38 per contract as a result of this rule change.

SR–Phlx–2015–25

On March 11, 2015, the Exchange filed a rule change to amend the SPY PIXL pricing established by SR-Phlx-2013–61.[7] In that filing, the Exchange proposed to amend the following rule text, ''All other contra parties to the PIXL Order, other than the Initiating Order, will be assessed a Fee for Removing Liquidity of $0.38 per contract or will receive the Rebate for Adding Liquidity'' [8] to add the term ''Non-Customer'' to the sentence and increase the Fee for Removing Liquidity from $0.38 to $0.42 per contract. The term Non-Customer was being introduced in this rule change into the Pricing Schedule.[9] The Exchange at that time stated in the purpose section to SR–Phlx–2015–25,

'The Exchange also proposes to amend PIXL fees in SPY in Section I of the Pricing Schedule. Today, when a PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed $0.00 per contract, unless the order is a Customer, in which case the Customer will receive a rebate of $0.38 per contract. All other contra parties to the PIXL Order, other than the Initiating Order, will be assessed a Fee for Removing Liquidity of $0.38 per contract or will receive the Rebate for Adding Liquidity. The Exchange is proposing to increase the amount that all other contra parties to the PIXL Order, other than the Initiating Order, will be assessed to remove liquidity from $0.38 to $0.42 per contract. These contra parties will continue to be entitled to receive the Rebate for Adding Liquidity, as is the case today. Despite, the increase [the Exchange] believes that its current SPY PIXL fees remain competitive.'

Footnote 13 in that rule change indicated that a member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

As a result of the amendments to SR–Phlx–2015–25, the Exchange's current rule text does not address the amount a Customer would be assessed if the

[5] *See* Securities Exchange Act Release No. 69768 (June 14, 2013), 78 FR 37250 (June 20, 2013) (SR–Phlx–2013–61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Sections of the Exchange's Pricing Schedule).

[6] SPY options are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index.

[7] *See* Securities Exchange Act Release No. 74531 (March 19, 2015), 80 FR 15850 (March 25, 2015) (SR–Phlx–2015–25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Pricing Schedule's Preface and Sections I, II and IV).

[8] The quoted text is the original text which was amended by SR–Phlx–2015–25.

[9] The term ''Non-Customer'' applies to transactions for the accounts of Specialists, Market Makers, Firms, Professionals, Broker-Dealers and JBOs.

Customer was a contra-party responder to a SPY PIXL Order, other than the Initiating Order. Today, no fee is assessed to the Customer contra party to a SPY PIXL Order.

Proposal

The Exchange proposes to assess a Customer contra party to a PIXL Order a Fee for Removing Liquidity of $0.42 per contract, similar to all other contra parties to a SPY PIXL Order. The Exchange's proposal would increase the Customer Fee for Removing Liquidity, when the Customer is a contra party to the PIXL Order, other than the Initiating Order, from $0.00 to $0.42 per contract.

The Exchange proposes to (i) add the word ''PIXL'' in the first sentence to clarify the type of order being discussed; and (ii) remove the reference to ''other Non-Customer'' in the second sentence, to assess the $0.42 per contract Fee for Removing to Liquidity to all participants, including a Customer and make the second sentence its own paragraph. The proposed rule text would be as follows, ''When the PIXL Order is contra to other than the Initiating Order, the PIXL Order will be assessed $0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer will receive a rebate of $0.38 per contract.'' Separately, in another paragraph, the proposed rule text would be as follows, ''All contra parties to the PIXL Order that are not the Initiating Order will be assessed a Fee for Removing Liquidity of $0.42 per contract or will receive the Rebate for Adding Liquidity.'' The Exchange is also adding some clarifying language in this sentence to make clear that the contra parties are note [sic] the Initiating Order.

To further explain this amendment and the role of the contra party, during a PIXL Auction, a paired order may be entered into the auction consisting of a PIXL Order and an Initiating Order. If during the auction, non-Initiating Order interest [10] executes against the PIXL Order, the Exchange would assess a Fee for Removing Liquidity of $0.42 per contract or will receive the Rebate for Adding Liquidity, regardless of the capacity of the contra party. The contra party in this example may be a Customer order.[11]

The Exchange proposes to correct a typographical error in this section to capitalize ''non-Customer'' to state ''Non-Customer'' to properly refer to the defined term. The Exchange also proposes to remove extraneous parentheticals from Section I in the Simple Order Rebate for Adding Liquidity in the Specialist and Market Maker pricing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [13] 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 any facility or system 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, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [15] (''NetCoalition'') the DC 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.[16] 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.'' [17]

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'. . . .'' [18] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to increase the amount that Customer contra parties to a PIXL Order that were not the Initiating Order will be assessed to remove liquidity from $0.00 to $0.42 per contract is reasonable because despite the increase in the fee, the Exchange believes this pricing will continue to incentivize market participants to transact a greater number of SPY options. Customers will continue to receive a rebate of $0.38 per contract when the PIXL Order is a Customer order and is contra to other than the Initiating Order. The Exchange's proposal to increase the Fee for Removing Liquidity for Customer contra-parties to the PIXL Order in SPY that are not the Initiating Order from $0.00 to $0.42 per contract remains lower than the $0.43 per contract Simple Order Fee for Removing Liquidity that is assessed for Simple Orders in SPY.[19] Today, all other market participants that are not the Initiating Order, other than a Customer, who execute against the PIXL Order, are assessed a Fee for Removing Liquidity of $0.42 per contract. The Exchange believes that it should assess the Customer a fee similar to other market participants. The Exchange notes that today, a Customer is assessed a $0.43 per contract Simple Order Fee for Removing Liquidity in SPY. The proposed $0.42 per contract Customer Fee for Removing Liquidity for Customer contra-parties to the PIXL Order which are not the Initiating Order in SPY would continue to be lower than the Simple Order Fee for Removing Liquidity.

SPY options are currently the most actively traded options class and therefore the Exchange believes that incentivizing Customers to remove liquidity in SPY options by continuing to offer a lower rate as compared to Simple Order Fees for Removing Liquidity in SPY will benefit all market participants by providing incentives for price improvement, such as this reduction in the Fee for Removing Liquidity. Despite the increase, the Exchange believes the Fee for Removing

[10] Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

[11] This contra party Customer order would be different than the original Customer PIXL Order.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[15] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[16] *See NetCoalition,* at 534.

[17] *Id.* at 537.

[18] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

[19] *See* Section I of the Pricing Schedule. Customers are assessed a $0.43 per contract Simple Order Fee for Removing Liquidity in SPY while Non-Customers are assessed a $0.47 per contract Simple Order Fee for Removing Liquidity in SPY.

Liquidity will continue to encourage a greater number of market participants to remove Customer liquidity in SPY on Phlx because the proposed rate of $0.42 per contract is lower the $0.43 per contract Simple Order Fee for Removing Liquidity that is assessed for Simple Orders in SPY. Customer orders bring valuable liquidity to the market which liquidity benefits other market participants.

The Exchange's proposal to increase the amount that Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed to remove liquidity from $0.00 to $0.42 per contract is equitable and not unfairly discriminatory because the Exchange will be assessing the same Fees for Removing Liquidity for SPY PIXL options to all market participants that are contra parties to the PIXL Order in SPY, other than the Initiating Order. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. A higher percentage of SPY Orders in PIXL leads to increased auctions and better opportunities for price improvement.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to correct the typographical error to properly refer to a defined term, remove extraneous parentheticals from Section I and make other clarifying language. These rule changes are non-substantive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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 rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees 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 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.

The proposed increase to the amount that Customer contra parties to the PIXL Order that are not the Initiating Order will be assessed to remove liquidity does not impose a burden on inter-market competition, because the Exchange is competing with other options markets which offer price improvement mechanisms. A higher percentage of SPY Orders in PIXL leads to increased auctions and better opportunities for price improvement for all market participants. In sum, if the changes proposed herein are 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 changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange's proposal to amend the Fee for Removing Liquidity applicable to Customers that are contra to a SPY PIXL Order, other than the Initiating Order, does not impose any undue burden on intra-market competition as all market participants will be assessed the same fee of $0.42 per contract to remove liquidity as other contra party market participants. Customer orders bring valuable liquidity to the market, which liquidity benefits all market participants. This proposal also corrects a discrepancy in the rule text which does not currently address fees for Customer responders.

The Exchange's proposal to correct a typographical error to properly refer to a defined term, remove extraneous parentheticals from Section I and make other clarifying language does not impose any undue burden on intra-market competition as these rule changes are non-substantive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–21 and should

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

be submitted on or before April 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06604 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77406; File No. 10–222]

Investors' Exchange LLC; Notice of Filing of Amendment Nos. 2, 3, and 4 to, and Order Instituting Proceedings To Determine Whether To Grant or Deny, and Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Grant or Deny, an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto

March 18, 2016.

I. Introduction

On August 21, 2015, Investors' Exchange LLC (''IEX'' or ''IEX Exchange'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application (''Form 1''), seeking registration as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (''Act'').[1] IEX amended its Form 1 four times, including its most recent amendment on March 7, 2016. The Commission is required to review the exchange registration application, as amended, together with all comments received, and make a determination whether to grant the registration.[2]

On September 9, 2015, IEX submitted Amendment No. 1 to its Form 1.[3] Notice of the application, as amended, was published for comment in the **Federal Register** on September 22, 2015.[4] IEX submitted several responses to comments.[5] On December 18, 2015, IEX consented to an extension of time to March 21, 2016 for Commission consideration of its Form 1.[6] IEX submitted a second amendment to its Form 1 on February 29, 2016 that proposes to make functional changes to its outbound router, which had been the subject of extensive public comment as originally proposed.[7] IEX submitted a third amendment to its Form 1 on March 4, 2016.[8] IEX submitted a fourth amendment to its Form 1 on March 7, 2016.[9]

Section 19(a)(1) of the Act[10] requires the Commission, within ninety days of the date of publication of notice of an application for registration as a national securities exchange, or such longer period as to which the applicant consents,[11] to, by order, grant such registration[12] or institute proceedings to determine whether such registration should be denied.[13] This order is providing public notice of the significant changes in Amendment Nos. 2, 3, and 4 to IEX's Form 1 and soliciting comment on the Form 1 as amended, while simultaneously instituting proceedings under Section 19(a)(1)(B) of the Act[14] to determine whether to grant or deny IEX's exchange registration application, as amended.

Section 19(a)(1)(B) of the Act[15] further provides that such proceedings shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the registration application. Under Section 19(a)(1)(B), the Commission may, however, extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding. As discussed below, the Commission believes that there is good cause for a ninety-day extension of these proceedings, and is therefore designating June 18, 2016 as the date by which the Commission shall determine whether to grant or deny IEX's Form 1 for registration as a national securities exchange.

The Commission received over 430 comment letters on IEX's Form 1, many focused on IEX's proposed trading rules and system.[16] Many commenters supported IEX's application.[17] Other commenters either opposed IEX's application or questioned whether certain proposed elements of IEX's trading system would be consistent with the requirements of the Act applicable to a registered national securities exchange.[18]

Among the commenters who supported IEX's exchange registration, several argued that IEX would offer a market solution to address certain market inefficiencies and conflicts of interest in a manner that may protect

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78f.

[2] *See* 15 U.S.C. 78f and 15 U.S.C. 78s.

[3] In Amendment No. 1, IEX submitted updated portions of its Form 1, including revised exhibits, a revised version of the proposed IEX Rule Book, and revised Addenda C–2, C–3, C–4, D–1, D–2, F–1, F–2, F–3, F–4, F–5, F–6, F–7, F–8, F–9, F–10, F–11, F–12, and F–13.

[4] *See* Securities Exchange Act Release No. 75925 (September 15, 2015), 80 FR 57261 (''Notice'').

[5] *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated November 13, 2015 (''IEX First Response''); Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated November 23, 2015 (''IEX Second Response''); Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 9, 2016 (''IEX Third Response''); Letter from Donald Bollerman, Head of Markets and Sales, IEX Group, Inc., to File No. 10–222, dated February 16, 2016 (''IEX Fourth Response''); and Letter from IEX Group, Inc., to File No. 10–222, dated February 19, 2016 (''IEX Fifth Response'').

[6] *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated December 18, 2015.

[7] In Amendment No. 2, IEX proposed changes to its Form 1 to, among other things, redesign its outbound routing functionality to direct routable orders first to the IEX routing logic instead of directly to the IEX matching engine. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 1. In this manner, the IEX router would ''interact with the IEX matching system over a 350 microsecond speed-bump in the same way an independent third party broker would be subject to a speed bump.'' *Id.*

[8] In Amendment No. 3, IEX proposed changes to its Form 1 to clarify and correct revisions to its rulebook that it made in Amendment No. 2. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 4, 2016.

[9] In Amendment No. 4, IEX proposed changes to its Form 1 to update Exhibit E to reflect changes it proposed in Amendment No. 2. *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated March 7, 2016.

[10] 15 U.S.C. 78s(a)(1).

[11] *See supra* note 6 and accompanying text (noting that IEX provided the Commission with an extension of time until March 21, 2016).

[12] 15 U.S.C. 78s(a)(1)(A).

[13] 15 U.S.C. 78s(a)(1)(B).

[14] 15 U.S.C. 78s(a)(1)(B).

[15] 15 U.S.C. 78s(a)(1)(B).

[16] The public comment file for IEX's Form 1 (File No. 10–222) is available on the Commission's Web site at: *http://www.sec.gov/comments/10-222/10-222.shtml.*

[17] *See, e.g.,* Verret Letter; Shatto Letters 1, 2, and 3; Simonelis Letter; Leuchtkafer First Letter; Leuchtkafer Second Letter; Capital Group Letter; Southeastern Letter; Navari First Letter; Navari Second Letter; DV Advisors Letter; Cowen Letter; Themis First Letter; Themis Second Letter; Oppenheimer Funds Letter; Murphy Letter; Birch Bay Letter; Healthy Markets Letter; Keblish Letter; Bowcott Letter; Secrist Letter; Stevens Letter; Oltean Letter; Park Letter; Crespo Letter; Hovanec Letter; Meskill Letter; Brian S. Letter; Glennon Letter; Shaw Letter; Upson Letter; Goldman Sachs Letter; Robeson Letter; Lynch Letter; Budish Letter; Chen & Foley Letter; Liquidnet Letter; T. Rowe Price Letter.

[18] *See, e.g.,* BATS First Letter; BATS Second Letter; NYSE First Letter; NASDAQ First Letter; NASDAQ Second Letter; Citadel First Letter; Citadel Second Letter; Citadel Third Letter; Citadel Fourth Letter; FIA First Letter; Hudson River Trading First Letter; Hudson River Trading Second Letter; Anonymous First Letter; Hunsacker Letter; Modern Markets Initiative Letter; Tabb Letter; Weldon Letter; Markit First Letter; Markit Second Letter; Direct Match Letter; Duffy Letter; Scott Letter.

the interests of buy-side investors.[19] In particular, some commenters noted IEX's decision not to pursue ''maker-taker'' pricing and instead offer flat transaction fees.[20] Some commenters praised IEX for offering fewer order types.[21] Several commenters highlighted IEX's ''coil'' delay (frequently referred to as IEX's ''speed bump''), discussed in detail below, and asserted that it may help counter latency arbitrage.[22] Some commenters questioned the motive of certain commenters who opposed the proposal.[23] In addition, one commenter argued that the coil delay should not be grounds for denying IEX's exchange application, and suggested that IEX be phased into the national market system under a pilot program so that the effect of IEX's access delay on the wider market could be better assessed.[24]

Among the commenters who were critical of aspects of IEX's proposal, most focused on issues surrounding IEX's coil delay, IEX's affiliated outbound router and what they viewed as an unfair advantage to bypass the outbound coil delay, and IEX's proposed order types.[25] Other commenters did not express a view on whether the Commission should grant or deny IEX's application.[26]

II. Description of IEX's Trading System

IEX, which currently operates a trading platform as an alternative trading system (''ATS''), is seeking to register as a national securities exchange. Below is a brief description of the proposed IEX exchange trading platform, including the new aspects of the system concerning the router functionality where noted.[27]

Order Execution. Non-marketable orders submitted to IEX would be displayed or non-displayed, depending on the instructions indicated by the IEX member submitting the order.[28] IEX would direct an order (or any portion thereof) that it could not execute on IEX to away markets for execution through IEX Services LLC (''IEXS''), IEX's wholly owned single-purpose outbound router, unless the terms of the order direct IEX not to route such order away.[29]

IEX proposed several pegged order types—primary peg, midpoint peg, and discretionary peg—all of which would be non-displayed with prices that are automatically adjusted by the IEX system in response to changes in the national best bid and offer (''NBBO'') (subject to a limit price, if any).[30] As noted below, it is these types of dark pegged orders—and not standard market or limit orders, or displayed quotes or orders—that would be affected by the proposed coil delay.

Access and the Coil Delay. Only broker-dealer members of IEX and entities that enter into market access arrangements with members (collectively, ''Users'') would have access to the IEX system.[31] Users would connect to IEX through a single Point-of-Presence (''POP'') located in Secaucus, New Jersey.[32] After entering through the POP, a User's electronic message sent to the IEX trading system would traverse the IEX ''coil,'' which is a box of compactly coiled optical fiber cable equivalent to a prescribed physical distance of 61,625 meters (approximately 38 miles).[33] After exiting the coil, the User's message would travel an additional physical distance to the IEX trading system, located in Weehawken, New Jersey.[34] According to IEX, the coil, when combined with the physical distance between the POP and the IEX trading system (hereinafter the ''POP/coil''), provides IEX Users sending non-routable orders to IEX with 350 *micro*seconds [35] of one-way latency (hereinafter the ''POP/coil delay'').[36]

Several commenters expressed concern that IEX's previously-published Form 1 lacked specific detail about how the POP/coil structure would work, including what messages and activity would—and would not—be subject to the delay.[37] IEX responded by supplementing the record through its

[19] *See, e.g.,* Capital Group Letter at 1 (noting the ''technologies and practices to discourage predatory behavior'' including the ''350 microsecond buffer,'' the lack of maker-taker pricing, and ''simple order types''); Southeastern Letter (submitted on behalf of a group of undersigned asset managers) (complimenting IEX's proposed benefits to investors in ''reducing structural inefficiencies in the market, and offering a more balanced and simplified market design''); Navari First Letter at 1 (noting certain features that ''have great promise for the [r]etail [i]nvestor''); DV Advisors Letter; Cowen Letter; Themis First Letter (noting that IEX's ''unconflicted investor-friendly alternative'' will ''employ technology designed to even playing fields, rather than exploit information asymmetry,'' that IEX will be ''a stark alternative to other stock exchange models that seem to be more focused on selling speed and data,'' and that as an alternative trading system, IEX allowed it and its customers ''to achieve best execution''); Oppenheimer Funds Letter; Murphy Letter (arguing that IEX's design should ''help to limit and even eliminate the electronic front running that is central to the problems in the market today''); Keblish Letter; Secrist Letter; Stevens Letter; Oltean Letter; Meskill Letter; fi360 Letter; TRS Letter; Lynch Letter; Jefferies Letter; T. Rowe Price Letter; Liquidnet Letter.

[20] *See, e.g.,* Capital Group Letter; Southeastern Letter; Navari First Letter; Navari Second Letter; Themis Letter 1; Oppenheimer Funds Letter; Healthy Markets Letter; Abel/Noser Letter; Goldman Sachs Letter; Liquidnet Letter; Franklin Templeton Investments Letter; TRS Letter. The Commission notes, however, that fees are not actually part of IEX's Form 1. Rather, if IEX were to be approved as an exchange, it would need to submit separate filings under Section 19(b) of the Act to establish fees that it would charge to members and others using its facilities. Nevertheless, in its Second Response Letter, IEX noted that, as an exchange, it would intend to charge a flat transaction fee. *See* IEX Second Response at 9.

[21] *See, e.g.,* Capital Group Letter; Southeastern Letter; Shatto First Letter; Navari First Letter; Oppenheimer Funds Letter; Healthy Markets Letter; Norges Bank Letter; Burgess Letter; fi360 Letter; TRS Letter. *But see* NYSE First Letter at 9 (arguing that IEX's proposed menu of order types is not necessarily ''simple'' and the potential different combinations of instructions for limit orders is in the hundreds).

[22] *See, e.g.,* T. Rowe Price Letter at 1–2; Navari Second Letter; Healthy Markets Letter at 2–4; Jefferies Letter at 3; Chen & Foley Letter at 2–3; Leuchtkafer Second Letter at 9; Budish Letter at 4. *See also* Burgess Letter; Capital Group Letter; Franklin Templeton Investments Letter; Michael Schroeder Letter; Leeson Letter; Lupinski Letter; Oorjitham Letter; Eric K Letter; Grey Letter; Spear Letter; Baggins Letter; Nixon Letter; Campbell Letter; Moses Letter; Huff Letter; Kaye Letter; Jean Letter; Gloy Letter; Givehchi Letter; Kara Letter; Hiester Letter; Benites Letter; Eustace Letter; Ramirez Letter; Luce Letter; Arnold Letter; Tidwell Letter; Doyle Letter; Long Letter; Kim Letter; Mannheim Letter; Oppenheimer Funds Letter.

[23] *See, e.g.,* Verret Letter at 2 (arguing that ''incumbent firms have long sought to utilize regulatory barriers to entry to minimize competition, and it would appear a number of firms are presently using the regulatory comment process regarding IEX's application as a venue to replicate that strategy here''); Crespo Letter; Brian S. Letter.

[24] *See* Angel Letter at 3–5. The pilot program suggested by this commenter would be to measure the effect on the market of protecting IEX's quotation notwithstanding the ''speed bump.'' *See id.* at 4–5. According to the commenter, if the pilot caused material harm, it could be halted, in which case IEX could still operate as an exchange but without having its quotes protected under Regulation NMS. *See id.* at 5. *See also* Wolfe Letter at 3 (agreeing with the pilot approach suggested in the Angel Letter).

[25] *See, e.g.,* NYSE First Letter; NASDAQ First Letter; BATS First Letter; Citadel First Letter; Citadel Second Letter; Citadel Third Letter; Hudson River Trading First Letter; Hudson River Trading Second Letter; FIA First Letter.

[26] *See, e.g.,* Virtu Letter; Healthy Markets Letter; Tabb Letter; Aesthetic Integration Letter.

[27] For more detail on IEX's proposed trading system, *see* IEX's Form 1 and Exhibits, as amended (in particular Exhibits B (the proposed rulebook) and E (a narrative description of the proposed operation of IEX as an exchange)), which are available on the Commission's Web site at *http://www.sec.gov/rules/other/otherarchive/other2015.shtml.*

[28] *See* Proposed IEX Rule 11.220(a)(1).

[29] *See* Proposed IEX Rule 11.230(b). *See also* Amendment Nos. 2 and 3.

[30] *See* Proposed IEX Rule 11.190(a)–(b).

[31] To obtain authorized access to the IEX System, each User must enter into a User Agreement with IEX. *See* Proposed IEX Rule 11.130(a).

[32] *See* IEX Second Response at 2.

[33] *See* IEX First Response at 3.

[34] *See* Exhibit E to IEX's Form 1 submission, at 12. *See also* IEX First Response at 3.

[35] A microsecond is one millionth of a second.

[36] *See* IEX First Response at 3. *See also* Amendment Nos. 2 and 3.

[37] *See, e.g.,* NYSE First Letter and Nasdaq First Letter.

first two response letters.[38] Most recently, IEX proposed a new approach to outbound routing, which is discussed further below.

According to IEX, all *incoming* messages (*e.g.,* orders to buy or sell and any modification to a previously sent open order) from any User would traverse the POP/coil to initially reach IEX. In addition, all *outbound* messages from IEX back to a User (*e.g.,* confirmations of an execution that occurred on IEX) would pass through the same route in reverse.[39] IEX's direct proprietary market data feed, which is an optional data feed that IEX would make available to subscribers, also would traverse the POP/coil.[40]

As originally proposed, one type of inbound message and two types of outbound messages would *not* traverse the POP/coil, specifically:

1. Inbound market data from other trading centers to the IEX system would *not* traverse the POP/coil;

2. Orders routed outbound from IEX through IEXS to away trading centers for execution (as well as reports back to IEX from those away trading centers) would *not* traverse the POP/coil (though execution and transaction reports sent from IEX back to Users *would* traverse the POP/coil and thus would be delayed) (as discussed below, IEX recently proposed a materially different approach to outbound routing that it intends will eliminate any exclusive advantages provided to its routing functionality); and

3. Outbound transaction and quote messages sent from IEX to the applicable securities information processor (''SIP'') would *not* pass through the POP/coil, but instead would be sent directly from the IEX system to the SIP processor.[41]

Finally, updates to resting pegged orders on IEX would be processed within the IEX trading system and would not require that separate messages be transmitted from outside the trading system, which would otherwise traverse the POP/coil, for each update.[42]

According to IEX, its POP/coil delay, including its application to some but not all of the message traffic into and out of its trading system, was originally designed to achieve two main purposes: (1) To allow IEX time to update the prices of resting dark pegged orders on its book (whose permissible execution prices are not static, but rather are tied to the NBBO as IEX sees it through the proprietary data feeds it purchases from each exchange) in response to changes in market prices before other market participants can access IEX's resting pegged orders at potentially ''stale'' prices (*i.e.,* pegged order prices that had not been updated by IEX when the new incoming order arrived at IEX);[43] and (2) to delay the trade acknowledgements IEX sends to Users, as well as to delay its proprietary outbound data feed that reflects the occurrence of an execution on IEX, both of which originally provided IEX's affiliated outbound router with a ''head start'' as it routes out to access trading interest posted on other exchanges before other market participants learn about a trade on IEX and can trade with or re-price that away interest in reaction to the execution that occurred on IEX.[44]

Outbound Routing. In the three recent amendments to its Form 1, IEX, among other things, proposed a significantly different approach to outbound routing.[45] Rather than initially directing the entirety of a User's order to the IEX matching engine and then routing away any excess shares via IEXS directly (and without having to first pass through the POP/coil delay as it routes shares outbound), IEX proposed to eliminate this aspect and instead create a new structure intended to place its outbound routing function on parity with competing broker-dealers. IEX's latest amendments, which constitute a significant change from its initial Form 1, are discussed further below.

III. Proceedings To Determine Whether To Grant or Deny the Application and Grounds for Potential Denial Under Consideration

The Commission is hereby instituting proceedings pursuant to Section 19(a)(1)(B) of the Act[46] to determine whether IEX's Form 1, as amended, should be granted or denied. Institution of such proceedings is appropriate at this time in view of the issues raised by the application, the significant changes proposed in IEX's recent amendments, and the need for the Commission to provide the public with an opportunity to comment and allow the Commission to consider comments received on the recently filed features of the IEX market. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. In fact, the Commission is providing the public with an opportunity to comment to inform its consideration and decision making regarding the Form 1, as IEX recently amended it. The Commission encourages interested persons to provide specific comment on the Form 1 focused on Amendment Nos. 2, 3, and 4.[47]

As required by Section 19(a)(1)(B) of the Act,[48] the Commission is hereby providing notice of the grounds for potential denial under consideration. Under Sections 6(b) and 19(a)(1) of the Act,[49] the Commission shall grant an application for registration as a national securities exchange if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied; the Commission shall deny such application for registration if it does not make such a finding. In particular, Section 6(b)(5) of the Act[50] provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the

[38] *See* IEX First Response and IEX Second Response.

[39] *See* IEX First Response at 3.

[40] *See id.*

[41] *See id.* at 3–4.

[42] *See id.*

[43] *See id.* at 4 (explaining that the POP/coil is designed ''to ensure that no market participants can take action on IEX in reaction to changes in market prices before IEX is aware of the same price changes on behalf of all IEX members''). *See also* Hudson River Trading First Letter at 3 (discussing the purposes of the POP/coil delay). One commenter noted that the POP/coil delay ''has no impact'' on regular displayed orders, and ''simply slows down the trade execution process but does not alter the outcome'' for non-pegged orders. *Id.* at 2–3 (''Similar to a 100-meter sprint, if you simply add 350 microseconds to each participant's time, neither the order in which they finish nor their time differentials will change.''). Rather, the commenter argued that ''IEX delays all transparent displayed orders that are critical to price discovery without altering the outcomes of those orders . . . for the benefit of hidden, pegged orders that free-ride on price discovery.'' *See* Hudson River Trading Second Letter at 4.

[44] *See* IEX Second Response at 14 (''. . . the purpose of requiring outbound execution messages to go through the POP (350 microseconds) is to prevent 'information leakage' or 'liquidity fade' when IEXS routes to other markets'').

[45] The proposed revisions to accommodate the new routing process are primarily addressed in proposed IEX Rule 11.510 (Connectivity), as well as in proposed IEX Rules 2.220 (IEX Services LLC as Outbound Router), 11.130 (Access), 11.230(b)–(c) (Order Execution), 11.240 (Trade Execution, Reporting, and Dissemination of Quotations), 11.330 (Data Products), and 11.410 (Use of Market Data Feeds and Calculations of Necessary Price Reference Points). IEX also proposed other changes in Amendment Nos. 2 and 3, including changes to proposed Rule 2.160 (Restrictions on Membership) to reflect the Series 57 exam; proposed new Rule 2.250 (Mandatory Participation in Testing of Backup Systems); proposed new Rule 9.217 (Expedited Client Suspension Proceeding); proposed new Rule 10.270 (Disruptive Quoting and Trading Activity Prohibited); changes to proposed Rule 11.190(a)(3) (Pegged Orders), (b)(8)–(10) (concerning pegged orders), and (g) (concerning quote stability for Discretionary Peg Orders); and changes to proposed Rule 11.260 (LIMITATION OF LIABILITY).

[46] 15 U.S.C. 78s(a)(1)(B).

[47] *See infra* Section IV (Extension of Time for Proceedings). Separately, the Commission is evaluating whether to revisit its interpretation of automated quotation under Regulation NMS in light of comments received on IEX's Form 1 concerning the consistency of the POP/coil delay with Regulation NMS.

[48] 15 U.S.C. 78s(a)(1)(B).

[49] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a)(1), respectively.

[50] 15 U.S.C. 78f(b)(5).

exchange are designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, Section 6(b)(8) of the Act[51] provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.

The Commission is particularly interested in commenters' views as to whether the changes set forth in IEX's Form 1, as amended, are consistent with the Act, in light of commenters' concerns that IEX's routing functionality and IEXS would have an advantage over other routing broker-dealers that would be unfairly discriminatory and an inappropriate burden on competition.[52] IEX has represented to the Commission that, under its revised outbound routing structure, IEX's routing functionality would interface with the IEX matching engine on the same terms as other Users, including routing broker-dealer members of IEX.[53]

The proposed new outbound routing structure, which IEX filed with the Commission over a period ending in early March, represents a material departure from the original design that IEX proposed in its original Form 1 and therefore warrants further review and consideration by the Commission, as informed by further public comment.[54] IEX has proposed a number of changes to its rulebook to effectuate this new design. The Commission believes that the protection of investors and the public interest are best served by affording the public the opportunity to review and comment on this modified proposal from IEX, particularly in light of the large number of comments the Commission received that raised questions about whether IEX's proposed rules were consistent with the requirements of the Act. By publishing notice of, and soliciting comment on, IEX's Form 1, as most recently amended by Amendment Nos. 2, 3, and 4, and simultaneously instituting proceedings, the Commission seeks public input on whether IEX's proposed new outbound routing structure, as reflected in its new proposed amended rules, is consistent with the Act, and accordingly, whether IEX should be registered as a national securities exchange.

The Commission previously has stated that an exchange-affiliated outbound router, as a ''facility'' of the exchange, will be subject to the exchange's and the Commission's regulatory oversight, and that the exchange will be responsible for ensuring that the affiliated outbound routing function is operated consistent with Section 6 of the Act and the exchange's rules.[55] For example, in approving an exchange with an affiliated outbound routing broker, the Commission previously noted that ''[a] conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members.'' [56] The Commission further explained that ''advantages, such as greater access to information, improved speed of execution, or enhanced operational capabilities in dealing with the exchange, might constitute unfair discrimination under the Act.'' [57]

As specified in IEX's initial Form 1, unexecuted shares of routable orders sent to IEXS would not have traversed the POP/coil. As revised by Amendment Nos. 2, 3, and 4, IEX now proposes a significantly different structure that it says is intended to place its router and routing logic in an identical position to non-affiliated routing broker-dealers.[58]

IEX's recent amendments include new rules to bifurcate its handling of non-routable and routable orders.[59] For routable orders, IEX explains that it would insert an additional POP/coil delay within the IEX system to delay routable orders' access to the IEX book by an additional 350 microseconds after they have already passed through the initial POP/coil delay on their way into the IEX system (for a total delay of 700 microseconds before any portion of the routable order reaches the IEX book).[60] IEX represents that this new delay is intended to place IEX in the same position as a third-party routing broker in reaching IEX's book through a POP/coil delay, such that IEX's ability to submit a routable order to its own order book would be identical to any other routing broker-dealer's ability to submit a routable order to the IEX order book despite the fact that the orders would traverse different paths in the system.[61] Likewise, IEX notes that messages from the IEX order book back to IEX's routing logic also would be subject to this POP/coil delay to effect a latency identical to that experienced by IEX's non-affiliated members when receiving messages back from the IEX order book.[62] As such, IEX

[51] 15 U.S.C. 78f(b)(8).

[52] Several commenters criticized the fact that IEXS would have received routing information from the IEX system outside of, and not subject to, the POP/coil delay while other IEX members' receipt of transaction and quotation information from the IEX system would have been subject to the POP/coil delay. *See, e.g.,* BATS First Letter at 4–5; BATS Second Letter at 3–6; BATS Third Letter at 3; NYSE First Letter at 3–5; NYSE Second Letter at 3; Citadel First Letter at 6–7; Citadel Second Letter at 5–6; Citadel Third Letter at 1–2; FIA First Letter at 4–5; Tabb Letter at 2–3; Hudson River Trading First Letter at 3–7; Hudson River Trading Second Letter at 2–5; Markit First Letter at 1–3; Markit Second Letter at 3–4 and 6; Hunsacker Letter; Weldon Letter. In other words, the concern expressed was that IEXS would have been able to route to away markets the unexecuted portion of any marketable order not fully executed at IEX 350 microseconds before other routing broker-dealers learned that an execution occurred on IEX. Some commenters argued that this arrangement would provide an unfair competitive advantage to IEX and the routing broker that it owns in that IEXS would have faster access to information from the IEX trading system than other members of IEX, including those who offer routing services that compete with IEXS, and thus IEXS would have the unique ability over other routing brokers to most quickly and efficiently route to away markets. *See, e.g.,* BATS First Letter at 4–5; BATS Second Letter at 3–6; BATS Third Letter at 3; NYSE First Letter at 3–5; NYSE Second Letter at 3; Citadel First Letter at 6–7; Citadel Second Letter at 5–6; Citadel Third Letter at 1–2; FIA First Letter at 4–5; Tabb Letter at 2–3; Hudson River Trading First Letter at 3–7; Hudson River Trading Second Letter at 4–5; Markit First Letter at 1–3; Markit Second Letter at 3–4 and 6; Weldon Letter. Other commenters opined that the advantage provided to IEXS would effectively force brokers to use IEXS because other third party routing brokers would be competitively disadvantaged by their inability to similarly bypass the POP/coil delay. *See, e.g.,* Tabb Letter at 2; Citadel Third Letter at 3.

[53] *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016.

[54] In particular, the recently-filed amendments to IEX's Form 1 introduce the concept of a new POP/coil delay between IEX's routing logic (which is located within IEX's system) and IEX's book.

[55] *See, e.g.,* Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (August 19, 2010) (granting BATS Y Exchange's request to register as a national securities exchange).

[56] Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55233 (November 1, 2001) (PCX–00–25) (order approving Archipelago Exchange (''ArcaEx'') as the equities trading facility of PCX Equities, Inc.) (''ArcaEx Order''). In the 2001 PCX filing, two commenters expressed concerns regarding ArcaEx's affiliation with the Wave broker-dealer, which operated as the outbound routing broker-dealer for ArcaEx. Specifically, these commenters were concerned that the affiliation between ArcaEx and Wave would be anti-competitive and could create a conflict of interest. *See also supra* note 55, at 51304 (citing to the BATS Y order).

[57] ArcaEx Order, *supra* note 56, at 55233.

[58] *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 1.

[59] *See id.*

[60] *See id.* at 1–2 (''Please note that because of the speed bump introduced between the IEX Router and the IEX matching engine, IEX routing members independently choosing to use the IEX Router will experience an additional 350 microseconds of latency as compared to members sending non-routable orders to the IEX matching engine.'').

[61] *See id.* at 1 (''In particular, this redesign eliminates any alleged advantage claimed by the commenters that the Router has over a third party broker routing to IEX.'').

[62] *See id.* at 1–2 (noting that ''the IEX Router would receive fill information from the IEX matching engine by way of the speed bump, which would place the IEX Router's ability to receive information from the IEX matching engine on equal terms to an independent broker router'').

represents that its routing functionality would have no information advantage (*i.e.*, no special view of IEX's book, including displayed or non-displayed interest) and IEX represents that the proposal places its outbound routing functionality in an identical position to third-party routing broker-dealers when sending orders into the IEX matching engine and when receiving transaction information from the IEX matching engine.[63]

Given this additional POP/coil delay, Users submitting *routable* orders to IEX and Users submitting *non-routable* orders to IEX would not be subject to the same *cumulative* POP/coil delay. Non-routable orders would remain subject to the 350 microsecond delay into and out of the IEX matching engine via the initial POP/coil. Routable orders, however, would be sent to IEX's system routing logic first, and, if routed to IEX, would traverse a *new* POP/coil delay (with an additional 350 microsecond delay) when interacting with the IEX matching engine.[64]

The Commission is evaluating whether IEX's revised proposal for handling routable orders sufficiently addresses concerns that its proposed rules may not be consistent with the Act, for example whether they constitute unfair discrimination, or impose an unnecessary or inappropriate burden on competition.

Accordingly, the Commission believes that it is appropriate at this time to institute proceedings to determine whether to grant or deny IEX's Form 1, as modified by IEX's recent amendments. For the reasons set forth above, the Commission believes that questions remain as to whether IEX's proposed trading system is consistent with the requirements of: (1) Section 6(b)(5) of the Act,[65] which provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers; and (2) Section 6(b)(8) of the Act,[66] which provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.[67]

The Commission invites comment on all aspects of IEX's Form 1, as amended, particularly with regard to the proposed outbound routing functionality as presented in its recent amendments. In particular, do commenters have a view on whether IEX's revised proposal places other routing brokers who are members of IEX on the same footing as IEX in a manner that would address the concerns under the Act and the rules thereunder? Are there material aspects of IEX's proposed revised routing functionality that are not clearly presented in IEX's revised rules[68] and addressed by IEX's Form 1, as amended? Do commenters have a view on whether the different delays in accessing the IEX matching engine experienced by routable orders versus non-routable orders present any concerns under the Act?

IV. Extension of Time for Proceedings

As noted above, IEX previously consented to an extension of time for its Form 1 to March 21, 2016.[69] Most recently, on February 29, March 4, and March 7, IEX filed amendments to its Form 1.[70] As discussed above, these amendments contained, among other unrelated changes, several new and amended rules to effect a significantly different approach to outbound routing. IEX stated its belief that its new routing proposal addresses concerns raised by commenters about its outbound routing functionality and whether that original proposal was consistent with the Act.[71] For the reasons discussed above, the Commission believes it is necessary to provide a notice and comment period so that market participants can evaluate the new proposal and amended rule text.

IEX filed these amendments to its Form 1 approximately two weeks prior to the March 21 deadline. The Commission does not have sufficient time before that March 21 deadline to publish notice of IEX's amendments in the **Federal Register**, afford market participants a 21-day comment period, and then evaluate any comments received before making a final determination on IEX's Form 1, as amended. Therefore, to provide time for public notice and comment and for Commission consideration of this significant new proposal from IEX, the Commission believes that there is good cause for a ninety-day extension of these proceedings. Accordingly, the Commission hereby designates June 18, 2016 as the date by which the Commission shall determine whether to grant or deny IEX's Form 1, as amended, for registration as a national securities exchange.

V. Request for Written Comments

The Commission requests that interested persons provide written views and data with respect to IEX's Form 1, as amended, and the questions included above or other relevant issues. 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 10–222 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 10–222. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to IEX's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that

[63] *See id.* at 2 (noting that ''the IEX Router would receive IEX quote information (the IEX TOPS feed) over the speed bump, which would place the IEX Router's ability to receive IEX quote information on equal terms to an independent broker router'').

[64] *See id.* IEX believes that this additional delay should not be to the detriment of a User submitting a routable order, and notes that Users may avoid this additional delay by submitting non-routable orders. *See id.* In addition, the trade confirmation report from the IEX matching engine back to the User that submitted the routable order would be subject to a 700 microsecond delay, whereas IEX's proprietary data feed would only be subject to a 350 microsecond delay. *See id.* at 1–2.

[65] 15 U.S.C. 78f(b)(5).

[66] 15 U.S.C. 78f(b)(8).

[67] Commenters also raised concerns about whether IEX's quotation, in light of the POP/coil delay, could be categorized as ''automated,'' and therefore be ''protected,'' under Rule 611 of Regulation NMS given prior Commission guidance on those definitions when it adopted Regulation NMS. *See, e.g.,* FIA First Letter; NYSE First Letter; Citadel First Letter. The Commission is separately evaluating the definition of automated quotation under Regulation NMS in light of comments received on IEX's Form 1 concerning the consistency of the POP/coil delay with Regulation NMS.

[68] *See supra* note 45 (citing to the proposed amended IEX rules that would accommodate the new routing process, including proposed IEX Rule 11.510).

[69] *See supra* note 6.

[70] *See supra* notes 7–9.

[71] *See* Letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated February 29, 2016, at 2.

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. 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. All submissions should refer to File Number 10–222 and should be submitted on or before April 14, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–06632 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77404; File No. SR–FINRA–2016–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Dissemination Protocols for TRACE-Eligible Securities

March 18, 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 March 9, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to modify the dissemination protocols for TRACE-Eligible Securities to disseminate a new alternative trading system (''ATS'') contra-party type and ATS indicator. There are no changes to the text of a FINRA rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2015, FINRA Rule 6720(c) (Alternative Trading Systems) went into effect to require TRACE participants that operate an alternative trading system (''ATS'') to use a separate Market Participant Identifier (''MPID'') to report all transactions that are executed within the ATS to TRACE. Where a member operates multiple ATSs, a unique, separate MPID must be used for reporting transactions within each respective ATS. Where a member operates a single ATS, but also engages in transactions otherwise than on the ATS (*e.g.,* conducts both an ATS business and a ''voice'' business), the member must use the ATS MPID only for reporting transactions within the ATS.[3]

In light of the implementation of the separate MPID requirement for ATS reporting, FINRA now can conclusively identify transactions that occur within an ATS (as opposed to other areas of a member's business). As discussed in the filing proposing the separate MPID requirement, FINRA believes that separate MPIDs will enhance FINRA's ability to surveil for compliance with the requirements of Regulation ATS as well as other SEC rules, the federal securities laws, and FINRA rules.[4] FINRA also believes that dissemination of an ATS contra-party type would provide useful, additional information regarding the market for TRACE-Eligible Securities and, therefore, improve transparency for such securities.[5]

At present, disseminated TRACE transactions indicate whether the reporting party or contra-party is a dealer (''D''), non-member affiliate of a member (''A'') or customer (''C''). FINRA is now proposing another new identifier for purposes of dissemination to indicate when the reporting party or contra-party is an ATS. Specifically, where a reporting party or contra-party is identified with a unique ATS MPID, or where an ATS is exempt from TRACE reporting pursuant to FINRA Rule 6732 and a member that is a party to the exempt transaction on the ATS enters the ATS's unique MPID pursuant to FINRA Rule 6730(c)(13),[6] FINRA will disseminate the ATS indicator.

The proposal will not necessitate that members change their TRACE trade reporting practices. As noted above, FINRA will use information already required to be reported to TRACE to identify transactions involving an ATS and append the ATS indicator for dissemination, as appropriate. Importantly, FINRA will not disclose any identifying information regarding the particular ATS involved in the transaction. All ATSs will be generically identified by FINRA using the same new contra-party type and the ATS indicator also will be generic. However, FINRA will not identify ATSs for transactions in ''to be announced'' or ''TBA''[7] transactions in Agency Pass-Through Mortgage-Backed Securities[8] and SBA-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In all cases, members must have policies and procedures in place to ensure that trades reported using the separate ATS MPID obtained in compliance with Rule 6720(c) are restricted to trades executed within the ATS. FINRA Rule 6720(c).

[4] *See* Securities Exchange Act Release No. 70676 (October 11, 2013), 78 FR 62862 (October 22, 2013) (Notice of Filing of File No. SR–FINRA–2013–042).

[5] Rule 6710 generally defines a ''TRACE-Eligible Security'' as: (1) A debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer (and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A); or (2) a debt security that is U.S. dollar-denominated and issued or guaranteed by an ''Agency'' as defined in Rule 6710(k) or a ''Government-Sponsored Enterprise'' as defined in Rule 6710(n).

[6] *See* Securities Exchange Act Release No. 76677 (December 17, 2015), 80 FR 79966 (December 23, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–055).

[7] ''To Be Announced'' means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v) or an SBA-Backed ABS as defined in Rule 6710(bb) where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions ''for good delivery'' (''GD'') and TBA transactions ''not for good delivery'' (''NGD''). *See* Rule 6710(u).

[8] ''Agency Pass-Through Mortgage-Backed Security'' means a type of Securitized Product issued in conformity with a program of an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise (''GSE'') as defined in paragraph (n), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to ''pass

Backed ABSs,[9] which, today, trade primarily on a single ATS. Thus, to preserve any anonymity that exists regarding the identity of the particular ATS on which a transaction in these types of TRACE-Eligible Securities occurred, FINRA will continue to identify all dealers, whether or not an ATS, as a ''dealer,'' for TBA transactions (for dissemination purposes).[10]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be July 18, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As discussed above, in light of the implementation of the separate MPID requirement, FINRA now is able to conclusively identify transactions that occur within an ATS, and believe that this additional piece of information would be useful to the market. ATSs will be identified generically using a single new reporting and contra-party type and ATS indicator, except that transactions in TBAs, which, today, are concentrated on a particular ATS, will continue to be identified as ''dealer'' transactions and will not carry the ATS indicator to help preserve anonymity with respect to that ATS.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA will use information currently reported to TRACE for the new reporting and contra-party types as well as the ATS indicator; therefore, the proposed rule change does not require changes in trade reporting practices by members. The proposed rule also does not identify particular ATSs—all ATSs will be identified generically using the same ATS reporting party and contra-party type and ATS indicator. Thus, there will be no impact relating to disclosure that may result directly or indirectly in an impact on competition.

In the case of TRACE-Eligible Securities that are traded TBA, due to the high concentration of TBA transactions on a single ATS, transactions in these types of TRACE-Eligible Securities will not be subject to the new reporting and contra-party type and ATS indicator, and will continue to be identified as a transaction by a ''dealer,'' even reported by or against an ATS. FINRA believes that excepting transactions in TBAs from the ATS contra-party type will ensure that the proposed rule change will not have a disparate impact on competition for members that engage in transactions in such securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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[12] and Rule 19b–4(f)(6) thereunder.[13]

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–FINRA–2016–011 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–FINRA–2016–011. 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 FINRA. All comments received

through'' the principal and interest payments to the holders of the security on a pro rata basis. *See* Rule 6710(v).

[9] ''SBA-Backed ABS'' means a Securitized Product issued in conformity with a program of the Small Business Administration (''SBA''), for which the timely payment of principal and interest is guaranteed by the SBA, representing ownership interest in a pool (or pools) of loans or debentures and structured to ''pass through'' the principal and interest payments made by the borrowers in such loans or debentures to the holders of the security on a pro rata basis. *See* Rule 6710(bb).

[10] FINRA also analyzed a sample of corporate and agency bond trades that occurred between February 2, 2015 and February 5, 2016, to investigate whether the dissemination of the ATS indicator may potentially cause anonymity concerns for those securities. Of the 50,579 CUSIPs in the sample, only 17,896 had trades reported by an ATS. None of the 17,896 CUSIPs are traded solely on ATSs. A single ATS may represent between 0.04% and 66.67% of total trades in a given CUSIP. The average of the top market share on ATSs across CUSIPs is 4.7%. Therefore, the dissemination of the ATS indicator is not likely to pose anonymity concerns for corporates and agencies.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–011, and should be submitted on or before April 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06605 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77403; File No. SR–BOX–2016–12]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Comply With the Requirements of the Amended and Restated Limited Liability Company Agreement of BOX Holdings, and To Permit Certain Ownership Changes Pursuant Thereto

March 18, 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 March 11, 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 comply with the requirements of the Amended and Restated Limited Liability Company Agreement of BOX Holdings, and to permit certain ownership changes pursuant thereto. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

BOX Holdings is a limited liability company, organized under the laws of the State of Delaware on August 26, 2010. BOX Holdings is the sole owner of BOX Market LLC, a facility of the Exchange (''BOX Market''). IB Exchange Corp (''IB'') became a Member of Holdings on May 10, 2012 with an ownership percentage of 20.1%, comprised of 2,125 Class A Units and 265 Class B Units. The purpose of this filing is to provide notice that IB's economic interest in BOX Holdings will surpass a 5% aggregate ownership threshold. IB's voting power with respect to BOX Holdings remains unchanged and is limited to 20%.

In January 2015, BOX Holdings launched a program available to all Participants (the ''VPR Program'') pursuant to which Participants on BOX Market that subscribe to the VPR Program (''Subscribers'') receive additional equity units of BOX Holdings (''Class C Units'') by providing order flow to BOX Market.[3] Under the VPR Program, a Subscribers' ownership of Class C Units may increase or decrease on a quarterly basis.

Section 7.4(f) of the Holdings LLC Agreement provides that a rule filing pursuant to Section 19 of the Exchange Act is required with respect to certain transactions that result in the acquisition and holding by a person of an aggregate ownership interest in BOX Holdings which meets or crosses the threshold level of 20% or any successive 5% level.[4] As of December 31, 2015, as a Subscriber to the VPR Program, IB earned the right to receive additional 25.5 Class C Units which, combined with IB's already held Class A, B and C Units, will result in IB's aggregate ownership interest increasing from 24.97% to 25.08 and thereby crossing a threshold level of 25%. These additional 25.5 Class C Units, to which IB is entitled under the VPR Program, are being held in escrow pending the effectiveness of this rule filing.

The change in IB's ownership percentage will not alter the voting power of IB in BOX Holdings. Pursuant to Section 7.4(h) of the Holdings LLC Agreement,[5] IB was, and will continue to be, limited to 20% voting power with respect to BOX Holdings because it is a Participant on BOX Market. IB will receive the economic benefit intended by the VPR Program but no additional power or control of BOX Holdings will accrue to IB as a result.

Additionally, the effectiveness of this rule filing will not affect the ownership or control of the Exchange, including its capitalization, board of directors, voting or control over BOX Market. All ownership limits relating to the Exchange will continue to be strictly respected.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(1),[7] in particular, in that it

[14] 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 Nos. 74171 (January 29, 2015), 80 FR 6153 (February 4, 2015) (SR–BOX–2015–05);75766 (August 27, 2015), 80 FR 40100 (July 13, 2015) (SR–BOX–2015–22)(Order Approving the VPR Program); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR–BOX–2015–03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR–BOX–2015–16).

[4] Section 7.4(f) of the Holdings LLC Agreement provides that, ''the parties agree that the following Transfers are subject to the rule filing process pursuant to Section 19 of the Exchange Act: any Transfer that results in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (*i.e.,* 25%, 30%, etc.).''

[5] Section 7.4(h) of the Holdings LLC Agreement provides that, ''In the event that a Member, or any Related Person of such Member, is approved by the Exchange as a BOX Options Participant pursuant to the Exchange Rules, and such Member owns more than 20% of the Units, alone or together with any Related Person of such Member (Units owned in excess of 20% being referred to as ''Excess Units''), the Member and its designated Directors shall have no voting rights whatsoever with respect to any action relating to BOX Holdings nor shall the Member or its designated Directors, if any, be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Units held by such Member; provided, however, that whether or not such Member or its designated Directors, if any, otherwise participates in a meeting in person or by proxy, such Member's Excess Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Units held by the other Members are voted (including any abstentions from voting).''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposal is consistent with, and is required to comply with, the requirements of the Holdings LLC Agreement and the VPR Program. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[8] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

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[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange noted that the transfer is intended to be completed in less than 30 days. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the transfer of Units to which IB is entitled under the VPR Program to take place without further delay. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[13]

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–2016–12 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–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for 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–2016–12, and should be submitted on or before April 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06636 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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 Commission deems this requirement to have been met.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77405; File No. SR–NYSEArca–2016–08)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt NYSE Arca Equities Rule 8.900 To Permit Listing and Trading of Managed Portfolio Shares and To Permit Listing and Trading of Shares of Fifteen Issues of the Precidian ETFs Trust

March 18, 2016.

On January 27, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Adopt NYSE Arca Equities Rule 8.900 to permit the listing and trading of Managed Portfolio Shares; (2) amend NYSE Arca Equities Rule 7.34 to reference securities described in proposed NYSE Arca Equities Rule 8.900 in Rule 7.34(a)(3)(A) relating to securities traded in the Core Trading Session; and (3) list and trade shares of 15 funds of the Precidian ETFs Trust (''Trust'') pursuant to proposed NYSE Arca Equities Rule 8.900.[3] The proposed rule change was published for comment in the **Federal Register** on February 18, 2016.[4] On March 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission has received one comment letter on the proposal.[6]

Section 19(b)(2) of the Act[7] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 3, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates May 18, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2016–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06606 Filed 3–23–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to list and trade shares of the following funds: (1) Precidian U.S. Managed Volatility Fund; (2) Precidian Strategic Value; (3) Precidian Large Cap Value; (4) Precidian Focused Dividend Strategy; (5) Precidian U.S. Large Cap Growth; (6) Precidian U.S. Core Equity; (7) Precidian U.S. Mid Cap Growth; (8) Precidian Total Return; (9) Precidian High Dividend Yield; (10) Precidian Small Cap Dividend Value; (11) Precidian Multi-factor Small Cap Core; (12) Precidian Multi-factor Small Cap Growth; (13) Precidian Large Cap Core Plus 130/30; (14) Precidian Mid Cap Core Plus 130/30; and (15) Precidian Small Cap Core Plus 130/30.

[4] *See* Securities Exchange Act Release No. 77117 (Feb. 11, 2016), 81 FR 8269.

[5] In Amendment No. 1 to the proposed rule change, the Exchange corrected the citations to the Trust's Form N–1A and Exemptive Application, which were misstated in the proposal. Because Amendment No. 1 is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-1.pdf.*

[6] *See* Letter from Gary L. Gastineau, President, ETF Consultants.com, inc., to Brent J. Fields, Secretary, Commission, dated March 10, 2016. This comment letter is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-2.pdf.*

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(31).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0007]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions, and an extension, of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, *Fax:* 202–395–6974, *Email address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–966–2830, *Email address: OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0007].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 23, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Representative Payee Evaluation Report—20 CFR 404.2065 & 416.665—0960–0069. Sections 205(j) and 1631(a)(2) of the Social Security Act (Act) state SSA may appoint a representative payee to receive Title II benefits or Title XVI payments on behalf of individuals unable to manage or direct the management of those funds themselves. SSA requires appointed representative payees to report once each year on how they used or conserved those funds. When a representative payee fails to adequately report to SSA as required, SSA conducts a face-to-face interview with the payee and completes Form SSA–624, Representative Payee Evaluation Report, to determine the continued suitability of the representative payee to serve as a payee. The respondents are individuals or organizations serving as representative payees for individuals receiving Title II benefits or Title XVI payments and who fail to comply with SSA's statutory annual reporting requirement.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–624	267,000	1	30	133,500

2. Beneficiary Recontact Form—20 CFR 404.703, 404.705—0960–0502. SSA investigates recipients of disability payments to determine their continuing eligibility for payments. Research indicates recipients may fail to report circumstances that affect their eligibility. Two such cases are: (1) When parents receiving disability benefits for their child marry; and (2) the removal of an entitled child from parents' care. SSA uses Form SSA–1588–OCR–SM to ask mothers or fathers about both their marital status and children under their care, to detect overpayments and avoid continuing payment to those are no longer entitled. Respondents are recipients of mothers' or fathers' Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1588–OCR–SM	94,293	1	5	7,858

3. Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities—20 CFR 416.708(k)—0960–0758. Section 1611(e)(1)(A) of the Act states residents of public institutions are ineligible for Supplemental Security Income (SSI). However, Sections 1611(e)(1)(B) and (G) list certain exceptions to this provision making it necessary for SSA to collect information about SSI recipients who enter or leave a medical treatment facility or other public or private institution. SSA's regulation 20 CFR 416.708(k) establishes the reporting guidelines that implement this legislative requirement. SSA collects the information to determine eligibility for SSI and the payment amount. The respondents are SSI recipients who enter or leave an institution.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Technical Updates Statement	34,200	1	7	3,990

4. Waiver of Supplemental Security Income Payment Continuation—20 CFR 416.1400–416.1422—0960–0783. SSI recipients who wish to discontinue their SSI payments while awaiting a determination on their appeal complete Form SSA–263–U2, Waiver of Supplemental Security Income Payment Continuation, to inform SSA of this decision. SSA collects the information to determine whether the SSI recipient meets the provisions of the Act regarding waiver of payment continuation and as proof respondents no longer want their payments to continue. Respondents are recipients of SSI payments who wish to discontinue receipt of payment while awaiting a determination on their appeal.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–263–U2	3,000	1	5	250

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 25, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. When a beneficiary or claimant reports farm work from outside the United States, SSA documents this work on Form

SSA–7163A–F4. Specifically, SSA uses the form to determine if we should apply foreign work deductions to the recipient's Title II benefits. We collect the information either annually or every other year, depending on the respondent's country of residence. Respondents are Social Security recipients engaged in farming activities outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7163A–F4	1,000	1	60	1,000

2. Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472. When SSA records show a wage earner is deceased and we receive wage reports from an employer for the wage earner for a year subsequent to the year of death, SSA mails the employer Form SSA–L4112 (Employer Verification of Earnings After Death). SSA uses the information Form SSA–L4112 provides to verify wage information previously received from the employer is correct for the employee and the year in question. The respondents are employers who report wages for employees who have died.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L4112	50,000	1	10	8,333

3. Certificate of Incapacity—5 CFR 890.302(d)—0960–0739. Rules governing the Federal Employee Health Benefits (FEHB) plan require a physician to verify the disability of Federal employees' children ages 26 and over for these children to retain health benefits under their employed parents' plans. The physician must verify the adult child's disability: (1) Pre-dates the child's 26th birthday; (2) is very serious; and (3) will continue for at least one year. Physicians use Form SSA–604, the Certificate of Incapacity, to document and certify this information, and SSA uses the information provided to determine the eligibility for these children, ages 26 and over, for coverage under a parent's FEHB plan. The respondents are physicians of SSA employees' children ages 26 or over who are seeking to retain health benefits under their parent's FEHB coverage.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–604	50	1	45	38

Dated: *March 18, 2016.*

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–06642 Filed 3–23–16; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0055]

Social Security Ruling 16–3p; Titles II and XVI: Evaluation of Symptoms in Disability Claims

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling; correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of March 16, 2016, in FR Doc. 2016–05916, on page 14172, in the second column; correct the ''Effective Date'' caption to read:

Effective Date: This SSR is effective on March 28, 2016.

Helen J. Droddy

Lead Regulations Writer, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2016–06598 Filed 3–23–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9494]

In the Matter of the Designation of Santoso Also Known as Abu Wardah as-Syarqi Also Known as Abu Warda Also Known as Abu Yahya as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Santoso, also known as Abu Wardah as-Syarqi, also known as Abu Warda, also known as Abu Yahra, committed, or poses a significant risk of

committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 7, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–06557 Filed 3–23–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9497]

Notice of Availability of the Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for the NuStar Dos Laredos Pipeline Presidential Permit Application Review

AGENCY: Department of State.

ACTION: Notice of availability, solicitation of comments.

SUMMARY: The U.S. Department of State (Department) announces availability of the ''*Draft Supplemental Environmental Assessment*'' (Draft SEA) and ''*Draft Finding of No Significant Impact for the NuStar Dos Laredos Pipeline Presidential Permit Application Review*'' (Draft FONSI) for public review and comment. These documents analyze the potential environmental effects of issuing a Presidential Permit to NuStar Logistics, L.P. (NuStar) to amend the 2003 Presidential Permit issued to Valero Logistics Operations, L.P. to construct, connect, operate, and maintain transboundary pipeline facilities (Dos Laredos Pipeline). The Dos Laredos Pipeline Draft SEA and Draft FONSI were prepared consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508), and the Department's implementing regulations (22 CFR part 161). They evaluate the potential environmental impacts of a change in operations of the existing 10.6 miles of 8 and 5/8 inch outer diameter pipeline and associated facilities (*e.g.*, mainline valves) near Laredo, TX.

DATES: The Department invites the public, governmental agencies, tribal governments, and all other interested parties to provide comments on the Draft SEA and Draft FONSI during the 30-day public comment period. The public comment period starts on March 24, 2016, with the publication of this **Federal Register** Notice and will end April 25, 2016.

All comments received during the review period may be made public, no matter how initially submitted. Comments are not private and will not be edited to remove identifying or contact information. Commenters are cautioned against including any information that they would not want publicly disclosed. Any party soliciting or aggregating comments from other persons is further requested to direct those persons not to include any identifying or contact information, or information they would not want publicly disclosed, in their comments.

ADDRESSES: Comments on the Draft SEA and Draft FONSI may be submitted at *www.regulations.gov* by entering the title of this Notice into the search field and following the prompts. Comments may also be submitted by mail, addressed to: Dos Laredos Project Manager, Office of Environmental Quality and Transboundary Issues (OES/EQT): Room 2726, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. All comments from agencies or organizations should indicate a contact person for the agency or organization.

FOR FURTHER INFORMATION CONTACT: Project details for the Dos Laredos Pipeline and the Presidential Permit Application, as well as information on the Presidential Permit process are available on the following Web site: *http://www.state.gov/e/enr/applicant/applicants/c61192.htm.* Please refer to this Web site or contact the Department at the address listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION: The Department evaluates Presidential permit applications under Executive Order (E.O.) 13337 and E.O. 14432. E.O. 13337 delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels (except for natural gas), at the borders of the United States, and to issue or deny such Presidential Permits upon a national interest determination.

NuStar applied for a Presidential Permit on December 4, 2013 to amend the 2003 Presidential Permit issued to Valero Logistics Operations, L.P. to construct, connect, operate, and maintain transboundary pipeline facilities between the United States and Mexico approximately six miles northwest of downtown Laredo, Texas at a location on the Rio Grande River knows as ''La Bota.'' NuStar requests a new Presidential Permit that: (1) Reflects NuStar's name change from Valero Logistics Operations, L.P. to NuStar Logistics, L.P., as the owner and operator of the Dos Laredos Pipeline crossing the international boundary; and (2) permits the transportation in either direction across the international border of a broader range of products. The 2003 Presidential Permit only allows shipment of liquefied petroleum gas (LPG). NuStar is now also seeking to transport other specifically defined petroleum products, including diesel.

Availability of the Draft Sea and FONSI: Copies of the Draft SEA and Draft FONSI have been distributed to state and governmental agencies, tribal governments and other interested parties. Printed copies of the document may be obtained by visiting the Laredo Public Library or by contacting the Dos Laredos Project Manager at the above address. The Draft SEA and Draft FONSI are available on the project Web site at *http://www.state.gov/e/enr/applicant/applicants/c61192.htm.*

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary, Issues, Department of State.

[FR Doc. 2016–06694 Filed 3–23–16; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: February 1–29, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Church & Dwight Co., Inc., Davies Facility, ABR–20090301.1, Jackson Township, York County, Pa.; Consumptive Use of Up to 0.9999 mgd; Approval Date: February 23, 2016.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. EQT Production Company, Pad ID: Gobbler, ABR–201107039.R1, Huston Township, Clearfield County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: February 1, 2016.

2. Anadarko E&P Onshore LLC, Pad ID: COP Tr 728 D, ABR–201104001.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 8, 2016.

3. Anadarko E&P Onshore LLC, Pad ID: COP Tr 728 C, ABR–201104004.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 8, 2016.

4. Range Resources—Appalachia, LLC, Pad ID: Red Bend Hunting & Fishing Club Unit #3H–#5H Drilling Pad, ABR–201011067.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

5. Range Resources—Appalachia, LLC, Pad ID: Ogontz Fishing Club #18H–#23H Drilling Pad, ABR–201011073.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

6. Range Resources—Appalachia, LLC, Pad ID: Paulhamus, Frederick Unit #5H & #6H Drilling Pad, ABR–201011074.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

7. Range Resources—Appalachia, LLC, Pad ID: Ogontz Fishing Club #24H–#29H Drilling Pad, ABR–201011077.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

8. Range Resources—Appalachia, LLC, Pad ID: Fuller, Eugene Unit #1H–#3H Drilling Pad, ABR–201012004.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

9. Range Resources—Appalachia, LLC, Pad ID: Ogontz Fishing Club #30H–#35H, ABR–201012043.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

10. Range Resources—Appalachia, LLC, Pad ID: Winner Unit #2H–#5H Drilling Pad, ABR–201012050.R1, Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

11. Range Resources—Appalachia, LLC, Pad ID: Goodwill Hunting Club Unit #4H–#9H Drilling Pad, ABR–201011054.R1, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 8, 2016.

12. SWEPI LP, Pad ID: Knowlton 303, ABR–201101007.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 8, 2016.

13. SWEPI LP, Pad ID: Stratton 885, ABR–201101008.R1, Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 8, 2016.

14. SWEPI LP, Pad ID: Bielski 628, ABR–201101009.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 8, 2016.

15. SWN Production Company, LLC, Pad ID: TI–24 Long Run Timber B Pad, ABR–201602001, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: February 8, 2016.

16. SWEPI LP, Pad ID: Baker 1105, ABR–201101011.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 9, 2016.

17. Chesapeake Appalachia, LLC, Pad ID: J & J, ABR–201106015.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 10, 2016.

18. Chesapeake Appalachia, LLC, Pad ID: Nichols, ABR–201106024.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 10, 2016.

19. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad F, ABR–201105001.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: February 10, 2016.

20. Seneca Resources Corporation, Pad ID: DCNR 595 PAD C, ABR–201103047.R1, Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 10, 2016.

21. SWEPI LP, Pad ID: Violet Bieser Revocable Living Trust 833, ABR–201101010.R1, Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 10, 2016.

22. Talisman Energy USA Inc., Pad ID: 05 081 Uhouse D, ABR–201102008.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 10, 2016.

23. Chesapeake Appalachia, LLC, Pad ID: Oilcan, ABR–201107037.R1, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 12, 2016.

24. Chesapeake Appalachia, LLC, Pad ID: Burns, ABR–201107038.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 12, 2016.

25. Chesapeake Appalachia, LLC, Pad ID: Paul, ABR–201107048.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 12, 2016.

26. SWEPI LP, Pad ID: Kalke 819, ABR–201009042.R1, Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 17, 2016.

27. WPX Energy Appalachia LLC, Pad ID: Resource Recovery Well Pad 1, ABR–201010059.R1, Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 17, 2016.

28. WPX Energy Appalachia LLC, Pad ID: Resource Recovery Well Pad 2, ABR–201011012.R1, Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 17, 2016.

29. WPX Energy Appalachia LLC, Pad ID: Resource Recovery Well Pad 3, ABR–201010060.R1, Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 17, 2016.

30. Chesapeake Appalachia, LLC, Pad ID: Sophia, ABR–201106005.R1, Smithfield and Springfield Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

31. Chesapeake Appalachia, LLC, Pad ID: GB, ABR–201106007.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

32. Chesapeake Appalachia, LLC, Pad ID: Neal, ABR–201106010.R1, Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

33. Chesapeake Appalachia, LLC, Pad ID: Mel, ABR–201106012.R1, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

34. Chesapeake Appalachia, LLC, Pad ID: Knickerbocker, ABR–201106013.R1, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

35. Chesapeake Appalachia, LLC, Pad ID: IH, ABR–201106014.R1, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

36. Chesapeake Appalachia, LLC, Pad ID: Wootten, ABR–201106016.R1, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

37. Chesapeake Appalachia, LLC, Pad ID: Lambs Farm, ABR–201106023.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 22, 2016.

38. SWEPI LP, Pad ID: Parent 749, ABR–201012054.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 22, 2016.

39. Talisman Energy USA Inc., Pad ID: 05 178 Peck Hill Farm, ABR–201101019.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: February 22, 2016.

40. XTO Energy Incorporated, Pad ID: Buck Unit A, ABR–201107041.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 22, 2016.

41. XTO Energy Incorporated, Pad ID: TLT Unit A, ABR–201107017.R1, Jordan Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 22, 2016.

42. Chesapeake Appalachia, LLC, Pad ID: Quail, ABR–201106018.R1, Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: February 23, 2016.

43. Warren Marcellus LLC, Pad ID: Johnston 1 Pad, ABR–201106009.R1, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: February 26, 2016.

44. SWN Production Company, LLC, Pad ID: Longacre Pad, ABR–201101029.R1, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 29, 2016.

45. SWN Production Company, LLC, Pad ID: Gerfin Pad, ABR–201102022.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 29, 2016.

46. SWN Production Company, LLC, Pad ID: Herman Well Pad, ABR–201102035.R1, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: February 29, 2016.

47. SWN Production Company, LLC, Pad ID: Demento Pad, ABR–201102036.R1, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 29, 2016.

48. SWN Production Company, LLC, Pad ID: Ransom Pad, ABR–201103007.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: February 29, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: March 18, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–06594 Filed 3–23–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Second Meeting: RTCA Special Committee (225) Rechargeable Lithium Batter and Battery Systems

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

ACTION: Notice of Twenty-Second RTCA Special Committee 225 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twenty-Second RTCA Special Committee 225 meeting.

DATES: The meeting will be held April 12–14, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 225. The agenda will include the following:

Tuesday, April 12, 2016

1. Introductions and administrative items (including DFO & RTCA Statement) (5 min)
2. Review agenda (5 min)
3. Review and approve summary from the last Plenary (5 min)
4. Consider using DO–235 Thermal Runaway definition (30 min)
5. Discuss need for matrix that correlates DO–347 to DO–311A (30 min)
6. Additional business
7. Adjourn to working group
   a. Tasks to accomplish
   i. Continue updating draft DO–311A
8. Review Plenary action items (5 min)

Wednesday, April 13, 2016

1. Review agenda, other actions (5 min)
2. Adjourn to working group
3. Review Plenary action items (5 min)

Thursday, April 14, 2016

1. Review agenda, other actions (5 min)
2. Establish Agenda for next Plenary (5 min)
3. Adjourn to working group
4. Working Group Report (5 min)
5. Review Plenary action items (5 min)
6. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 18, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–06691 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, April 27, 2016, from 8:00 a.m. to 5:00 p.m., and Thursday, April 28, 2016 from 8:00 a.m. to 5:00 p.m. at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594. This will be the 63rd meeting of the COMSTAC.

The proposed schedule for the COMSTAC working group meetings on April 27 is below:

—International Space Policy (8:00 a.m.–10:00 a.m.)
—Business/Legal (10:00 a.m.–2:00 p.m.)
—Standards (1:00 p.m.–3:00 p.m.)
—Operations (3:00 p.m.–5:00 p.m.)

The full Committee will meet on April 28, from 8:00 a.m. to 5:00 p.m. The proposed agenda for that meeting features speakers relevant to the commercial space transportation industry; and reports and recommendations from the working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Michael Beavin, COMSTAC Executive Director, (the Contact Person listed below) and Designated Federal Officer in writing

(mail or email) by April 18, 2016, so that the information can be made available to COMSTAC members for their review and consideration before the April 27–28, 2016 meeting. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email.

An agenda will be posted on the FAA Web site at *www.faa.gov/go/ast.* For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Persons listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Beavin, telephone (202) 267–9051; email *Michael.beavin@faa.gov,* FAA Office of Commercial Space Transportation, 800 Independence Avenue SW., Room 331, Washington, DC 20591.

Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, March 18, 2016.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2016–06690 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Orders Limiting Operations at John F. Kennedy International Airport, LaGuardia Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of limited waiver of the slot usage requirement.

SUMMARY: This action announces a limited waiver of the requirement to use Operating Authorizations (slots) at John F. Kennedy International Airport, LaGuardia Airport, and Newark Liberty International Airport due to significant impacts of winter weather in January 2016. This policy is effective from January 22, 2016, through January 26, 2016. Carriers who seek to obtain a waiver must submit information on flight cancellations and the slots for which relief is requested.

DATES: *Effective Date:* Effective upon publication.

FOR FURTHER INFORMATION CONTACT: For questions concerning this Notice contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–6462; email *susan.pfingstler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the FAA's Orders limiting operations at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Newark Liberty International Airport (EWR), slots must be used at least 80 percent of the time.[1] This usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Slots not meeting the minimum usage rules will be withdrawn or not receive historic precedence for the following scheduling season, depending on the airport. The FAA may grant a waiver from the minimum usage requirement in highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for five or more consecutive days at JFK, LGA, and EWR.

Recent weather on the East Coast severely disrupted aviation and other modes of transportation. A winter storm from January 22 to January 24, 2016, impacting the mid-Atlantic and Northeast regions, resulted in record snowfall levels in several locations, including the New York City area. The storm impacted a widespread area in the eastern U.S., including airports with regularly scheduled flights to or from the New York City area. The storm resulted in reduced airport capacity due to snow accumulation on runways and taxiways. Further, this storm covered a wide geographical area and impacted capacity and operations at outlying airports with service to EWR, JFK, and LGA.

Carriers responded to the forecasted storm by proactively cancelling flights to avoid stranding passengers, to minimize the number of aircraft on the ground at airports affected by the storm, and to position aircraft and crews to implement network recovery plans and resume normal operations as soon as possible. Cumulative effects from the storm impacted operations for some carriers until January 26, 2016.

FAA operational data (OPSNET) on the number of actual air carrier and air taxi operations at EWR, JFK, and LGA indicate flight cancellations began on January 22 and the impacts were most significant on Saturday, January 23 and Sunday, January 24. On January 22, about 20 percent of EWR and LGA flights were cancelled compared to other Fridays in January while about ten percent of JFK flights were cancelled. On January 23, EWR had 18 air carrier and air taxi operations, JFK had 58 and LGA had three. On January 24, EWR had 67 air carrier and air taxi operations, JFK had 447, and LGA had 107. On January 25 and 26, EWR had less than 60 percent of typical January traffic levels while snow removal efforts continued. All three airports were at typical operation levels by Wednesday, January 27. Consequently, some carriers have advised the FAA of plans to request a waiver of the minimum slot usage requirements due to the number of flight cancellations and the extent and duration of disruptions.

Statement of Policy

The FAA has determined that the facts described above meet the criteria for a limited waiver of the minimum slot usage requirement. The winter storm caused cumulative effects with operational disruptions that impacted carriers at the New York City area slot controlled airports lasting five consecutive days. The FAA believes the impact of this storm on air travel constitutes unusual and unpredictable circumstances.

The FAA has determined that adopting a policy setting forth conditions for a waiver of the usage policy during the January 22–26, 2016, period is warranted in these circumstances. However, this waiver will apply only to flights that were scheduled to operate on one or more of the impacted days. A carrier seeking to obtain the relief consistent with this Notice is required to submit detailed information regarding scheduled flights, cancellations, and the associated slots at each airport for each day relief is requested, as discussed further in this Notice.

As the FAA has stated previously, waivers to the usage requirements will not be granted routinely. Slot rules allow for up to 20 percent nonuse, including planned and unplanned cancellations. This is expected to accommodate weather and other cancellations or planned non-use of

[1] Operating Limitations at John F. Kennedy International Airport, 79 FR 16855 (March 26, 2014). Operating Limitations at New York LaGuardia Airport, 79 FR 17223 (March 26, 2014). Operating Limitation at Newark Liberty International Airport, 79 FR 16.859 (March 26, 2014).

slots under all but the most unusual circumstances. Carriers should plan schedules in order to meet the minimum usage requirement.

Consistent with this Notice, the FAA will treat as used, any slot allocated to a carrier on January 22 through 26, 2016, for which there was a planned flight that was subsequently cancelled. A waiver will not apply to slots without a corresponding scheduled flight as the carrier should have already factored nonuse on those days into their usage plans. In order to obtain a waiver under this policy, a carrier must provide a list of the cancelled flights at each slot-controlled airport, including the reported slot identification number, operating carrier, flight number, date, scheduled time of operation, scheduled origin or destination airport, and the diversion airport, if applicable.

Carriers must submit the detailed slot and flight information to the FAA Slot Administration Office by email to *7-awa-slotadmin@faa.gov*. Carriers at LGA, which reported usage in mid-March, will have until April 8, 2016, to submit additional information to request a waiver under the terms of this Notice. At JFK and EWR, usage reports for the winter 2015–2016 scheduling season are due by April 25, 2016. Carriers at JFK and EWR must request a waiver request under this Notice by the due date of the reports. The FAA will review the submission to determine if it meets the terms of this limited waiver. Based on the submitted information, the FAA will respond to individual carriers via email confirming the slots that will be treated as used under this policy.

Issued in Washington, DC, on March 21, 2016.

Lorelei Peter,

Assistant Chief Counsel for Regulations.

[FR Doc. 2016–06692 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2016–0002–N–8]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking an extension of the following currently approved information collection activities. On February 19, 2016, FRA published in the **Federal Register** its request for Emergency Clearance for new Form FRA F 6180.167, Bridge Inspection Report Public Version Request Form. *See* 81 FR 8588. The information collection activities associated with Form FRA F 6180.167 received a six-month emergency approval from OMB on February 25, 2016. FRA seeks a regular clearance (extension of the current approval for three years) to continue this effort to provide a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 23, 2016.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0586.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection request that FRA will submit for clearance by OMB as required under the PRA:

Title: Bridge Safety Standards.

OMB Control Number: 2130–0586.

Abstract: On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94). Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to FRA.

FRA has revised its currently approved information collection to account for the additional burden that will be incurred by States and political subdivisions of States requesting a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. FRA developed a new form titled ''Bridge Inspection Report Public Version Request Form'' (see below) to facilitate such requests by States and their political subdivisions. Additionally, FRA has revised its currently approved information collection to account for the additional burden that will be incurred by railroads to provide the public version of a bridge inspection report upon agency request to FRA.

As background, on July 15, 2010, FRA published its Bridge Safety Standards Final Rule. *See* 75 FR 41281. The final rule on bridge safety standards normalized and established federal requirements for railroad bridges. The final rule established minimum requirements to assure the structural integrity of railroad bridges and to protect the safe operation of trains over those bridges. The final rule required railroads/track owners to implement bridge management programs to prevent the deterioration of railroad bridges and to reduce the risk of human casualties, environmental damage, and disruption to the Nation's transportation system that would result from a catastrophic bridge failure. Bridge management programs were required to include annual inspection of bridges as well as special inspections, which must be conducted if natural or accidental events cause conditions that warrant such inspections. Lastly, the final rule required railroads/track owners to audit bridge management programs and bridge inspections and to keep records mandated under 49 CFR part 237. This final rule culminated FRA's efforts to develop and promulgate bridge safety regulations and fulfilled the Railroad Safety Improvement Act of 2008 (Pub. L. 110–432, Division A) mandate.

The information collected is used by FRA to ensure that railroads/track owners meet Federal standards for bridge safety and comply with all the requirements of this regulation. In particular, the collection of information is used by FRA to confirm that railroads/track owners adopt and implement bridge management programs to properly inspect, maintain, modify, and repair all bridges that carry trains over them for which they are responsible. Railroads/track owners must conduct annual inspections of railroad bridges. Further, railroads/track owners must incorporate provisions for internal audit into their bridge management program and must conduct internal audits of bridge inspection reports. The internal audit information is used by railroads/track owners to verify that the inspection provisions of the bridge management program are being followed and to continually evaluate the effectiveness of their bridge management program and bridge inspection activities. FRA uses this information to ensure that railroads/track owners implement a safe and effective bridge management program and bridge inspection regime.

Form Number(s): FRA F 6180.167.

Affected Public: States/Political Subdivisions of States and Businesses.

Respondent Universe: 50 States/State Political Subdivisions and 693 Railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
NEW FAST ACT REQUIREMENTS	50 States/State Political Subdivision.	75 forms	5 minutes	6
—Form FRA F 6180.167				
—Railroad Submission to FRA of Bridge Inspection Report—Public Version.	693 Railroads	75 reports	60 minutes	75
—237.3—Notifications to FRA of Assignment of Bridge Responsibility.	693 Railroads	15 notifications	90 minutes	22.5
—Signed Statement by Assignee Concerning Bridge Responsibility.	693 Railroads	15 signed statements.	30 minutes	7.5
237.9—Waivers—Petitions	693 Railroads	6 petitions	4 hours	24
23731/33—Development/Adoption of Bridge Management Program	693 Railroads	5 plans	24 hours	120
237.57—Designation of Qualified Individuals	693 Railroads	1,000 designations.	30 minutes	400
237.71—Determination of Bridge Load Capacities	693 Railroads	2,000 determinations.	8 hours	16,000
237.73—Issuance of Instructions to Railroad Personnel by Track Owner.	693 Railroads	2,000 instructions	2 hours	4,000
237.105—Special Bridge Inspections and Reports/Records	693 Railroads	7,500 insp. and reports/records.	12.50 hours	93,750
—Special Underwater Inspections	693 Railroads	50 insp. and Reports/rcds..	40 hours	2,000
237.107 and 237.109—Nationwide Annual Bridge Inspections—Reports.	693 Railroads	15,450 insp. & reports.	4 hours	61,800
—Records	693 Railroads	15,450 records	1 hour	15,450
—Report of Deficient Condition on a Bridge	693 Railroads	50 reports	30 minutes	25
237.111—Review of Bridge Inspection Reports by RR Bridge Engineers.	693 Railroads	2,000 insp. rpt. reviews.	30 minutes	1,000
—Prescription of Bridge Insp. Procedure Modifications After Review.	693 Railroads	200 insp. proc. modifications.	30 minutes	100
237.131—Design of Bridge Modifications or Bridge Repairs	693 Railroads	1,250 designs	16 hours	20,000

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Bridge Modification Repair Reviews/Supervisory Efforts	693 Railroads	1,250 br. mod. repair reviews.	1.50 hours	1,875
—Common Standard Designed by Railroad Bridge Engineer	693 Railroads	50 standards	24 hours	1,200
237.153—Audits of Inspections	693 Railroads	725 insp. audits	80 hours/24 hours/6 hours.	5,534
237.155—Documents and Records	693 Railroads	5 systems	80 hours	400
—Establishment of RR Monitoring and Info. Technology Security Systems for Electronic Recordkeeping.				
—Employees Trained in System	693 Railroads	100 employees	8 hours	800

Total Estimated Responses for New FAST Act Requirements: 150.

Total Estimated Responses for Entire Information Collection: 49,271.

Total Estimated Total Annual Burden for New FAST Act Requirements: 81 hours.

Total Estimated Total Annual Burden Entire Information Collection: 224,689 hours.

Type of Request: Extension without change of a currently approved information collection under regular clearance procedures.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 18, 2016.

Amit Bose,

Chief Counsel.

Federal Railroad Administration
Bridge Inspection Report Public Version Request Form

OMB Control No. 2130-0586

Public reporting burden for this information collection is estimated to average 5 minutes per response, including the time for searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 2130-0586. All responses to this collection of information are voluntary. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave S.E., Washington D.C. 20590.

Requester's Name:

Requester's Title:

Requester's Address:

Requester's Email:

Telephone Number:

Bridge Identification:
(Street name, waterway, other identifiable land feature, etc.)

Railroad Owning Bridge:
(if known)

Requester's State or political subdivision:

I hereby certify that I am a duly elected or appointed representative of the State or the political subdivision of a State indicated above, this request is being made in my official capacity, and the bridge is located within my jurisdiction. (check one)

☐ Yes
☐ No

Submit

Clicking the submit button will open your default email application allowing you to send the filled form to: FRABridgeReportRequest@dot.gov

FRA F 6180.167 (02-2016) OMB Control No. 2130-0586 Approval Expires 08/31/2016

FAST Act Bridge Inspection Report Requests

The Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94) (Dec. 4, 2015), Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to the Federal Railroad Administration (FRA). *See* 49 CFR 1.89. The text of Section 11405 of the FAST Act is provided in attachment 1.

Frequently Asked Questions

Q. Who can make a request for a bridge inspection report under Section 11405 of the FAST Act?

A. Section 11405 of the FAST Act permits a State or a political subdivision of a State to file a request for a public version of a bridge inspection report for a bridge located in that State or political subdivision's jurisdiction. Thus, any duly elected or appointed official of a State or political subdivision of a State, acting in his or her official capacity, may file a request. This includes officials of a State, city, county, town, municipality or other political subdivision of a State.

Q. What information do I need to provide in my request?

A. Go to FRA's Web site (*www.fra.dot.gov*) and click on the

Bridge Inspection Report link and fill out the ''Bridge Inspection Report Public Version Request Form'' (FRA F 6180.167) in its entirety (a link to the form is provided at the end of these questions). Please provide the following information:

- Your name and title;
- Official address;
- Email address;
- Telephone number;
- Identification of the individual bridge(s) for which you are requesting a public version of a bridge inspection report(s). Bridge identification information could include a street name, a nearby intersecting street, a waterway or a recognizable land feature where appropriate;
- Name of the railroad that owns and/or operates over the requested bridge(s) (if known); and
- An indication that the request is being made in your official capacity as a representative of a State or a political subdivision of a State. The bridge(s) for which the inspection report(s) is sought must be within the jurisdiction of the political subdivision of the State you represent.

Q. How do I file my request?

A. You can file a request by going to FRA's Web site (*www.fra.dot.gov*) and clicking on the Bridge Inspection Report link. There you will find the ''*Bridge Inspection Report Public Version Request Form*'' (FRA F 6180.167). Please complete this pdf fillable form by providing all of the information listed in the question above and click on the ''submit'' box when completed. This will automatically create an email that will send the completed form directly to FRA. A link to the form has also been provided at the end of these questions below.

If you are unable to submit the form to FRA directly, please fill out the ''*Bridge Inspection Report Public Version Request Form''* (FRA F 6180.167) and attach it in an email to *FRABridgeInspectionReportRequest@dot.gov.* Requests will only be accepted through this email address with the proper form completely filled out and attached.

Q. How will FRA handle a request?

A. FRA will evaluate the request and, if found to be compliant with law, FRA will promptly request that the railroad responsible for the bridge provide a public version of the most recent inspection report(s) to FRA. Once FRA has received the report(s), FRA will review the report(s) to ensure that at least the minimum information required by law has been provided. Once determined to be satisfactory, the report(s) will be sent to the requester electronically by reply to the request unless the requester provides an alternate email address to send the report to.

Q. What information must a railroad include in the public version of the bridge inspection report provided to FRA?

A. The FAST Act requires the following information to be included in a public version of a bridge inspection report:

1. The date of the last inspection;
2. Length of bridge;
3. Location of bridge;
4. Type of bridge (superstructure);
5. Type of structure (substructure);
6. Features crossed by the bridge;
7. Railroad contact information; and
8. A general statement on the condition of the bridge.

Q. How much time does a railroad have to provide the public version of a bridge inspection report to FRA?

A. FRA interprets the statute to require a railroad to provide a requested report containing at least the minimum specified information within a reasonable amount of time. FRA believes that a reasonable time for a railroad to provide a requested report is within 30 days of receipt of FRA's request.

Q. How long will it take FRA to produce a public version of a bridge inspection report to a requester?

A. FRA will handle these requests as expeditiously as possible and generally expects to respond to most requests by providing the requester with a public version of a bridge inspection report within 45 days of receipt of the request.

(*Link to Form will be located here*)

Attachment 1 to Frequently Asked Questions

FAST Act—Section 11405—Bridge Inspection Reports

Section 417(d) of the Rail Safety Improvement Act of 2008 (49 U.S.C. 20103 note) is amended—(1) by striking ''The Secretary'' and inserting the following: ''(1) IN GENERAL.—The Secretary''; and (2) by adding at the end the following: ''(2) AVAILABILITY OF BRIDGE CONDITION.—

''(A) IN GENERAL.—A State or political subdivision of a State may file a request with the Secretary for a public version of a bridge inspection report generated under subsection (b)(5) for a bridge located in such State or political subdivision's jurisdiction.

''(B) PUBLIC VERSION OF REPORT.—If the Secretary determines that the request is reasonable, the Secretary shall require a railroad to submit a public version of the most recent bridge inspection report, such as a summary form, for a bridge subject to a request under subparagraph (A). The public version of a bridge inspection report shall include the date of last inspection, length of bridge, location of bridge, type of bridge, type of structure, feature crossed by bridge, and railroad contact information, along with a general statement on the condition of the bridge.

''(C) PROVISION OF REPORT.—The Secretary shall provide to a State or political subdivision of a State a public version of a bridge inspection report submitted under subparagraph (B).

''(D) TECHNICAL ASSISTANCE.—The Secretary, upon the reasonable request of State or political subdivision of a State, shall provide technical assistance to such State or political subdivision of a State to facilitate the understanding of a bridge inspection report.''

[FR Doc. 2016–06583 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0027 (Notice No. 2016–2)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before May 23, 2016.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2016–0027) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New

Jersey Avenue SE., Washington, DC 20590.

• Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests, and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the HMR. It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use, and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,770.

Total Annual Responses: 86,100.

Total Annual Burden Hours: 66,390.

Frequency of collection: On occasion.

Title: Hazardous Materials Shipping Papers and Emergency Response Information.

OMB Control Number: 2137–0034

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are considered to be a basic communication tool relative to the transportation of hazardous materials. The definition of a shipping paper in 49 CFR 171.8 includes a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation. Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains; prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information also serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

It should be noted that PHMSA recently completed a collection of information under the Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments (HM–ACCESS) pilot program. This program has concluded and the burden hours posted in this notice no longer reflect the collection of information related to the HM–ACCESS pilot program.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 260,000.

Total Annual Responses: 185,000,000.

Total Annual Burden Hours: 4,625,846.

Frequency of Collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of certain DOT specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating

procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector.

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,958.

Total Annual Responses: 920,538.

Total Annual Burden Hours: 200,914.

Frequency of collection: On occasion.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden results from the requirements pertaining to the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded involving bulk packagings, such as cargo tanks and portable tanks. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with §§ 180.415(b) and 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 50.

Total Annual Responses: 250.

Total Annual Burden Hours: 175.

Frequency of collection: On occasion.

Signed in Washington, DC, on March 18, 2016.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–06603 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0023]

Extension of a Previously Approved Collection: Public Charters

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on Public Charters, 14 CFR part 380. The pre-existing information collection request was previously approved by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted by May 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202–366–1865) and Mr. Brett Kruger (202–366–8025), Office of the Secretary, Office of International Aviation, Special Authorities Division-X46, 1200 New Jersey Ave. SE., Washington, DC 20590.

ADDRESSES: You may submit comments [identified by DOT–DMS Docket No. DOT–OST–2016–0023] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Extension of a Previously Approved Collection: The current OMB inventory has not changed.

Abstract: 14 CFR part 380 establishes regulations embodying the Department's terms and conditions for Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is often less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534, 4535, and supporting financial documents) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

As an additional matter, the Department's Office of Aviation Enforcement and Proceedings has the authority to pursue or not to pursue enforcement action against airlines or other sellers of air transportation with respect to air travel consumer

protection. As a matter of enforcement policy, the Office of Aviation Enforcement and Proceedings will not take action against Public Charter applicants (including public charter operators, direct air carriers and securers) that do not submit an original and two copies of a charter prospectus so long as (1) the Public Charter applicant submits fully completed and signed electronic copies of the original documents of OST Forms 4532, 4533, 4534, and, if applicable, 4535 (including signatures); and (2) the Public Charter applicant continues to submit original financial documents such as Letters of Credit, Surety Trust Agreements, and Surety Bonds.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector filer. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. If an operator chooses to make changes to a previously approved charter operation, then the operator is required by regulations to file revisions to its original prospectus.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.).

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Frequency of Responses

245 (respondents) × 4 = 980

401 (amendments *from the same respondents*) × 2 = 802

Total estimated responses: 980 + 802 = 1,782

The frequency of response is dependent upon whether the operator is requesting a new program or amending an existing prospectus. Variations occur due to the respondents' criteria. On average four responses (forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891 hours.

Approximately 1,782 (responses) × 0.50 (per form) = 891

Public Comments Invited: (a) 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; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 18, 2016.

Jeffrey B. Gaynes,

Assistant Director for Regulatory Affairs.

[FR Doc. 2016–06661 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2015–0271]

Agency Request for Renewal of a Previously Approved Information Collection: Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information required in an application to request Special Priorities Assistance. The information to be collected is necessary to facilitate the supply of civil transportation resources to promote the national defense. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on January 26, 2016 (81 FR 4364). No comments were received.

DATES: Written comments should be submitted by April 25, 2016.

ADDRESSES: Your comments should be identified by Docket No. DOT–OST–2015–0271 and may be submitted through one of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.*
- *email: oira_submission@omb.eop.gov.*
- *Fax: (202) 395–5806. Attention: DOT/OST Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Deborah Hinz, 202–366–6945, Office of Intelligence, Security and Emergency Response, Office of the Secretary of Transportation, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0567.

Title: Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act.

Form Numbers: OST F 1254.

Type of Review: Renewal of a previously approved information collection.

Background: The Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, September 30, 2009) requires each Federal agency with delegated authority under section101 of the Defense Production Act of 1950, as amended (50 U.S.C. App. § 2061 *et seq.*) to issue final rules establishing standards and procedures by which the priorities and allocations authority is used to promote the national defense. The Secretary of Transportation has the delegated authority for all forms of civil transportation. DOT's final rule, Transportation Priorities and Allocations System (TPAS), published October 2012, requires this information collection. Form OST F 1254, Request for Special Priorities Assistance, would be filled out by private sector applicants, such as transportation companies or organizations. The private sector applicant must submit company information, the services or items for which the assistance is requested, and specific information about those services or items.

Respondents: Private sector applicants, such as transportation companies or organizations.

Number of Respondents: We estimate 6 respondents.

Total Annual Burden: We estimate an average burden of 30 minutes per respondent for an estimated total annual burden of 3 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c)

ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on March 18, 2016.

Habib Azarsina,

OST Privacy and PRA Officer.

[FR Doc. 2016–06663 Filed 3–23–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Proposed Information Collection—Claim for One Sum Payment Government Life Insurance (VA Form 29–4125) and Claim for Monthly Payments Government Life Insurance (29–4125a); 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 revisions of these currently approved collections, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process the beneficiaries claim for payment of Life Insurance Policy insurance proceeds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 23, 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 Administrations (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. 2900–0060'' in any correspondence. During the comment period, comments may be viewed online through 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: Claim for One Sum Payment Government Life Insurance (29–4125); Claim for Monthly Payments Government Life Insurance (29–4125a).

OMB Control Number: 2900–0060.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by beneficiaries applying for proceeds of Government Life Insurance policies. The information requested on the forms is required by law, 38 U.S.C. Sections 1917 and 1952.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,000 hours (VA Form 29–4125) and 10 hours (VA Form 29–4125a).

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120,000 (VA Form 29–4125) and 100 (VA Form 29–4125a).

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. 2016–06645 Filed 3–23–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Thursday,
No. 57 March 24, 2016

Part II

Federal Communications Commission

47 CFR Part 11
Rules Regarding the Emergency Alert System and Wireless Emergency Alerts; Proposed Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket No. 15–94, PS Docket No. 15–91; FCC 16–5

Rules Regarding the Emergency Alert System and Wireless Emergency Alerts

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes taking the next step towards strengthening the nation's public alert and warning systems, the Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA), as community-driven public safety tools capable of ensuring that the public is able to receive and properly respond to alerts issued by alerting authorities in emergency situations. This document seeks comment on proposed rule changes in four areas: Improving alerting organization at the state and local levels; building effective community-based public safety exercises; ensuring that alerting mechanisms are able to leverage advancements in technology, including IP-based technologies; and securing the EAS against accidental misuse and malicious intrusion. By this action, the Commission affords interested parties an opportunity to submit comments on these proposed rule changes. Through this action, the Commission hopes to empower state and local alert originators to participate more fully in WEA, and to enhance the utility of EAS and WEA as an alerting tool.

DATES: Comments are due on or before May 9, 2016 and reply comments are due on or before June 7, 2016. Written Paperwork Reduction Act (PRA) comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 23, 2016.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–94 and PS Docket No. 15–91, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Lisa.Fowlkes@fcc.gov.* For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket Nos. 15–94 and 15–91, FCC 16–5, released on January 29, 2015. The documents are available for download at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/FCC-16-5A1.pdf.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments on the PRA proposed information collection requirements are due May 23, 2016. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS), NPRM, FCC 16–5.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents and Responses: 63,080 respondents; 3,597,086 responses.

Estimated Time per Response: 51 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Obligatory for all entities required to participate in EAS. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 116,933 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission seeks comment on whether any aspects of State EAS Plans submitted via the State EAS Plan Filing Interface (SEPFI) should be made confidential and, further, whether it would be sufficient to provide such data with the same level of confidentiality as test data submitted to the Commission via the Electronic Test Reporting System (ETRS). The Commission has stated that it will allow such data to be shared on a confidential basis with other Federal agencies and state government emergency management agencies that have confidentiality protection at least equal to that provided by the Freedom of Information Act (FOIA, 5 U.S.C. 552 (2006), amended by OPEN Government Act of 2007, Pub. L. 110–175, 121 Stat. 2524). The Commission also seeks comment on the degree of confidentiality that should be provided for the security certifications and false alert and lockout notifications submitted to the Commission via ETRS. Specifically, the Commission seeks comment on its tentative conclusion that the act of filing an annual certification and the responses on the face of such certification forms should not be treated as presumptively confidential but that the act of filing addenda to the certification describing alternative approaches or corrective action with respect to performance of required security measures, as well as the contents of such addenda, should be treated as presumptively confidential. The Commission also seeks comment on its tentative conclusion that the mere fact of filing or not filing a false alert report or lockout notification should not be treated as presumptively confidential, while the information submitted in the report should be treated as presumptively confidential.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section III of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

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

2. With this NPRM, the Commission takes another step towards strengthening the Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA) as community-driven public safety tools by proposing revisions to the EAS and WEA rules to ensure the public is able to receive and properly respond to alerts issued by alerting authorities in emergency situations. The Commission's proposals fall into four categories, improving alerting organization at the state and local levels, building effective community-based public safety exercises, ensuring that alerting mechanisms are able to leverage advancements in technology (including IP-based technologies), and securing the EAS against accidental misuse and malicious intrusion. With respect to improving alerting organization at the state and local levels, the Commission proposes to adopt EAS designations that more accurately reflect the current roles and responsibilities of key EAS Participants; streamline and update the State EAS Plan filing process by requiring State Emergency Communications Committees (SECCs) to file their plans electronically in an online State EAS Plan filing system; and adopt a standard online template for State EAS Plan content to allow the SECCs to file plans that fully detail their strategy for delivering Presidential and other life-saving alerts in an evolving technological landscape. With respect to building effective community-based alerting exercise programs, the Commission proposes to expand the EAS testing regime to include ''live'' code tests as community public safety exercises and to allow the use of EAS header codes and emergency alerting Attention Signal in Public Service Announcements (PSAs) by entities aiming to raise public awareness of, and alert initiator proficiency with EAS. The Commission seeks comment on how to best ensure that community based exercises address the needs of individuals with limited English proficiency and individuals with disabilities. The Commission seeks comment on several issues that reflect the extent to which evolving technologies are changing the alerting landscape. Specifically, the Commission seeks comment on whether to retain the current forced tuning and selective override provisions in light of stakeholder feedback and advances in technology. Further, the Commission seeks comment on whether an EAS Participant cable or Internet Protocol Television (IPTV) provider should be required to deliver EAS alerts and tests over any channel, whether ''programmed'' or not, if it is controlled by the EAS Participant and viewable by the consumer. Finally, the Commission seeks comment on potential technological advancements to improve alert accessibility.

3. This NPRM represents another step towards achieving one of the Commission's highest priorities—''to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies.'' This NPRM also is consistent with the Commission's obligation under Executive Order 13407 to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system,'' and the Commission's mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communication. The Commission takes these steps as part of an overarching strategy to advance the nation's alerting capability, which includes both WEA and EAS, to keep pace with evolving technologies and to empower communities to initiate life-saving alerts.

B. Legal Basis

4. Authority for the actions proposed in the NPRM may be found in 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(b), (g) and (r), 303(v), 307, 309, 335, 403, 544(g), 606, 613, 615 and 1302; Sections 602(a), (b), (c), (d), (f), 603, 604, and 606 of the Warning, Alert and Response Network (WARN) Act, Title VI of the Security and Accountability For Every Port Act of 2006, Public Law 109–347, 120 Stat. 1884 (2006); Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260 and Public Law 111–265.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business

concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, the Commission describes and estimates the number of small entity licensees that may be affected by the proposed rules.

6. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

7. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has $38.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of $38.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission's estimate of small businesses may therefore be over-inclusive.

8. *Low-Power FM Stations.* The same SBA definition that applies to radio broadcast licensees would apply to low-power FM (''LPFM'') stations. The SBA defines a radio broadcast station as a small business if such station has no more than $38.5 million in annual receipts. Currently, there are approximately 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

9. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $38.5 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in the station's own studio, from an affiliated network, or from an external source.

10. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of $38.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (''NCE'') stations to be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low-power television (''LPTV'') stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

11. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

12. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

13. *Wired Telecommunications Carriers.* This industry comprises establishments ''primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.'' Transmission facilities ''may be based on a single technology or a combination of technologies.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, ''establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these, 3,144 had fewer than 1,000 employees. On this basis, the Commission estimates that a substantial majority of the providers of

wired telecommunications carriers are small.

14. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small any company in this category which receives annual receipts of $38.5 million or less. U.S. Census data for 2007 show that 396 firms operated for the entire year. Of these, 349 operated with annual receipts of less than $25 million a year. Based on this data, the Commission estimates that the majority of firms operating in this industry is small.

15. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's Rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard, the Commission estimates that most cable systems are small.

16. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

17. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' This category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by the Commission's action.

18. *Other Telecommunications.* This category includes ''establishments primarily engaged in . . . providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' The SBA definition of Other Telecommunications entities comprises those that have $32.5 million or less in average annual receipts. For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of *Other Telecommunications* firms are small entities that might be affected by the Commission's action.

19. *The Educational Broadcasting Services.* In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the Commission estimates that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2014, there are 2,207 active EBS licenses. The Commission estimates that of these 2,207 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

20. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' This category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they

own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these, 3,144 had fewer than 1,000 employees. Based on that data, the Commission concludes that the majority of wireline firms are small under the applicable standard. However, based on more recent data developed internally by the Commission, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV and DISH Network. Accordingly, the Commission must conclude that internally developed Commission data are persuasive that in general DBS service is provided only by large firms.

21. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules for the category Wireless Telecommunications Carriers (except satellite) is that a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of fewer than 1000 employees. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.

22. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

23. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

24. *Narrowband Personal Communications Service.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

25. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

26. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

27. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

28. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

29. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

30. *Advanced Wireless Services. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, the Commission notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

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

32. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

33. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40

million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

34. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2010, there were a total of 810 establishments in this category that operated for the entire year. Of this total, 787 had employment of fewer than 500, and an additional 23 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

35. *Software Publishers.* Since 2007 these services have been defined within the broad economic census category of Custom Computer Programming Services; that category is defined as establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer. The SBA has developed a small business size standard for this category, which is annual gross receipts of $25 million or less. According to data from the 2007 U.S. Census, there were 41,571 establishments engaged in this business in 2007. Of these, 40,149 had annual gross receipts of less than $10,000,000. Another 1,422 establishments had gross receipts of $10,000,000 or more. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

36. *NCE and Public Broadcast Stations.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $38.5 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

37. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

38. The Commission has estimated the number of licensed NCE television stations to be 380. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

39. This Notice of Proposed Rulemaking proposes to expand the scope of State EAS Plans to include additional information necessary to reflect advances in technology, and to ensure the successful transmission of a Presidential Alert, such as uniform EAS designations, a description of SECC governance structure, expanded descriptions of emergency alerting procedures, a more accurate statement of monitoring requirements, a statement of the extent to which states leverage one-to-many/many-to-one communications, expanded testing procedures and security elements. It proposes that such Plans be submitted via an online State EAS Plan Filing Interface (SEPFI) designed to minimize filing burdens attendant to the Commission's State EAS Plan requirements, and to offset any additional burden that the Commission's expanded requirements may impose.

40. This Notice of Proposed Rulemaking also proposes adding an annual certification to the existing Form 1 of the mandatory electronic reporting system, Electronic Test Reporting System (ETRS), that EAS Participants have done the following: (1) Kept their systems updated with the latest firmware and software patches, (2) put a program in place to control access to EAS devices that includes changing default passwords, requiring password complexity, and removing or disabling expired accounts, (3) ensured that all EAS devices are not directly accessible from the Internet, and that, if required, any remote access is properly secured and logged, and (4) configured EAS devices to validate digital signatures on CAP messages if the source of the CAP message requires this feature. Depending on whether the employee checking for performance of required security measures is also the certifying official, including a certification on Form 1 could take between five minutes and an hour for the many EAS Participants that already have performed all required security measures. The Commission estimates that additional time, and legal and managerial resources may be needed for some EAS Participants to complete this certification in the first instance only. For those who are not using best

practices, the Commission estimates it should take no more than four hours per device to perform the necessary changes. Given the importance of maintaining basic security hygiene, the Commission proposes that the impact on small entities of this annual certification would not impose an undue burden.

41. The Commission also proposes extending ETRS to include a false alert and lockout reporting requirement. An initial report including only the EAS header codes and time discovered of the false message may be required within fifteen to thirty minutes of identification of a false EAS message transmission, and a final report may be required within seventy-two hours including the root cause of the improper transmission. Because EAS security incidents have occurred at a rate of one or two per year and EAS Participants must already investigate unauthorized EAS alert matters as they occur, a reporting requirement for false alerts and lockouts would likely have a very minimal impact on small entities.

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

42. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its conclusions, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' 5 U.S.C. 603(c)(1)–(c)(4).

43. With respect to the State EAS Plan filing process, converting the paper-based filing process into an online process is intended to reduce reporting costs and associated burdens for SECCs. With respect to State EAS Plan contents, the Commission seeks comment on whether the same EAS designations and plan components can be applied universally to all states, and have taken steps to allow states flexibility to stipulate EAS Plans that fit their individual needs. With respect to live code tests, the Commission seeks comment on whether removing the need for SECCs to request a waiver of the Commission's rules to conduct live code tests will reduce costs and remove regulatory burdens. With respect to forced tuning and selective override provisions, the Commission seeks comment on whether small entities should be subject to different requirements than their larger counterparts.

44. With respect to security, smaller entities often face particular challenges in maintaining awareness of current security measures, due to limited human, financial or technical resources; however, the Commission is merely proposing performance of required security measures to which many EAS Participants, including smaller entities, already adhere. Because proper patching and updating and basic account management are common best practices accepted across the sector, the assumption is that there would be no additional impact on small entities to keep EAS systems current. An annual certification allows small entities to comply even if they choose to update patches semi-annually rather than quarterly, and small entities may alternatively explain why they are unable to certify. Digital signature authentication has more of an impact on states, which must modify EAS plans, and smaller entities often have the advantage of simpler setups than those of large entities.

45. The Commission seeks comment on whether the Presidential Alert warrants additional/heightened security measures whose costs may exceed the benefits when applied to alerts that are issued more commonly, and that have a less immediate impact on national security. The Commission seeks comment on whether to except EAS Participants currently designated as PN stations from some or all of the security requirements the Commission proposes. The Commission also seeks comment on whether and how it should consider excepting EAS Participants that qualify as ''small businesses'' under the Small Business Association (SBA) standard their respective industries from some or all of the security requirements it proposes. Finally, the Commission proposes implementation timeframes for each of its rules that are intended to allow EAS Participants to come into compliance with its rules in a manner that balances the need for improving EAS organization and effectiveness as soon as possible, with any potential burdens that may be imposed by adoption of its proposals.

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

46. None.

Synopsis of the Notice of Proposed Rulemaking

47. Technological advancements continue to change the landscape of alerting for emergency managers. Alerting tools such as EAS and WEA that had previously occupied fundamentally different infrastructures now share common platforms and a common language. Social media such as Google and Twitter provide emergency managers with entirely new ways of informing the public of dangers to life and property, and new ways of assessing the public's response. The interactivity enabled by IP-based systems may provide emergency managers with the opportunity to receive rapid feedback from the public on the effectiveness of alerts and warnings.

48. The Commission is obligated to ensure that the President can reach the public in times of national emergency. In light of continuous technological advancements, the Commission has taken significant steps to ensure that the nation's public alert and warning systems perform this function in an effective and accessible manner. At the same time, the Commission must continue to review its rules to ensure that the EAS and WEA perform this important function in a manner that minimizes burdens for stakeholders and safeguards these alerting systems against inherent vulnerabilities and attacks. Accordingly, this NPRM proposes rules and seeks comment on alerting issues in an evolving technological climate in order to continue to provide emergency managers with effective tools to assess and coordinate available alerting systems to securely deliver an alert from the President during a national crisis, and to improve the ability of emergency managers to alert and train those communities to take protective action in response to national, regional and local emergencies.

49. As discussed in greater detail below, the Commission estimates that the cost of the proposed changes would be more than offset by the public benefit of lives saved, together with the reduction in human suffering and property loss. One measure against which the Commission can balance costs associated with complying with its proposed rules is the Department of Transportation (DOT) model, which estimates the value of risk reduction, measured in terms of an expected life saved, to be $9.1 million. Using the Value of a Statistical Life (VSL) as a benchmark, even one life saved could more than offset the one-time costs potentially imposed by the

Commission's proposals. The Commission anticipates that its proposed rules represent an incremental improvement to the nation's alerting capability that could readily save multiple lives per year in the foreseeable future. The Commission seeks comment on this analysis, and on whether the DOT statistic is the most appropriate yardstick to measure the benefits our proposals. The Commission seeks comment on whether there is a better measure for quantifying the benefits of establishing a new alerting paradigm. If so, commenters should specify what specific measure should be used. The Commission encourages commenters to include with their comments any data relevant to its analysis of the costs and timing involved with the implementation of today's proposals.

II. Notice of Proposed Rulemaking

A. Improving Alert Organization at the State and Local Levels

1. EAS Designations

50. The Commission created EAS designations to ''use succinct terminology to more clearly define EAS functions.'' The current EAS designations are:

- Primary Entry Point (PEP) System. Defined in Section 11.2, 47 CFR 11.2, as ''a nationwide network of broadcast stations and other entities connected with government activation points . . . used to distribute EAS messages . . . formatted in the EAS Protocol . . . , including the [Emergency Action Notification (EAN)] and EAS national test messages'' that includes ''some of the nation's largest radio broadcast stations,'' as approved by FEMA, and is ''designated to receive the Presidential alert from FEMA and distribute it to local stations.''
- National Primary (NP) stations. Defined in Section 11.2 as ''the primary entry point for Presidential messages delivered by FEMA . . . responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range,'' and by Section 11.18 simply as ''a source of EAS Presidential messages.''
- State Primary (SP) stations. Defined in Section 11.2 as ''the entry point for State messages, which can originate from the Governor or a designated representative.'' Section 11.18 defines SP stations as ''a source of EAS State messages'' and adds that such messages originate from the ''State Emergency Operating Center (EOC) or State Capital,'' and that such messages ''are sent via the State Relay Network.''
- State Relay Network. Defined in Section 11.20 as a network composed of ''State Relay (SR) sources, leased common carrier communications facilities or any other available communication facilities. The network distributes State EAS messages originated by the Governor or designated official.''
- State Relay (SR). Defined in Section 11.18 as ''a source of EAS State messages'' that is ''part of the State Relay Network and relays National and State common emergency messages into Local Areas.''
- Local Primary (LP) stations. Defined in Section 11.2 as radio or TV stations that act as key EAS monitoring sources, stating that each LP station ''must monitor its regional PEP station and a back-up source for Presidential messages.'' LPs are further defined in Section 11.18 as ''a source of EAS Local Area messages . . . responsible for coordinating the carriage of common emergency messages from sources such as the National Weather Service or local emergency management offices as specified in its EAS Local Area Plan.'' According to Section 11.18, if an LP ''is unable to carry out this function, other LP sources in the Local Area may be assigned the responsibility as indicated in State and Local Area Plans'' and ''LP sources are assigned numbers (LP–1, 2, 3, *etc.*) in the sequence they are to be monitored by other broadcast stations in the Local Area.''
- Participating National (PN) sources. Defined in Section 11.18 as sources that ''transmit EAS National, State or Local Area messages . . . for direct public reception,'' as defined in Section 11.18.
- NP, SP, LP and SR stations are defined collectively in Section 11.21 as ''key EAS sources.''

51. Since the Commission defined these EAS designations, SECCs have taken disparate approaches to their implementation, leading to the inconsistent use of these terms among State EAS Plans. For example, not all State EAS Plans contain an NP-designated station, and it is unclear whether, in some states, the designations PEP and NP are used interchangeably. Further, while some State EAS Plans refer to primary sources of state and local alerts as SPs, others identify primary sources as SRs. A number of State EAS Plans term the system of transmitting state alerts from SR to LP stations and from LP stations to PN stations and the public as the State Relay Network, but many State EAS Plans do not include SR or State Relay Network designations at all. As the *Nationwide EAS Test Report* indicated, such disparate use of what should be common terminology makes it difficult for Commission staff to determine how the distribution systems described in various state plans can be aggregated into a single comprehensive nationwide alerting architecture.

52. In order to ensure that the Commission can meaningfully review and confirm states' preparedness to deliver Presidential Alerts the Commission proposes to revise its EAS designation scheme to more accurately and consistently describes key EAS sources. Specifically, the Commission proposes to continue to designate the primary entry point for a Presidential Alert as a PEP, as that is a designation determined by FEMA. For each State EAS Plan, however, the Commission proposes that the entity tasked with primary responsibility for delivering the Presidential Alert to that state's EAS Participants will be designated as the National Primary (NP). Thus, for a state that has a FEMA-designated PEP, that station would also be designated as that state's NP. For a state that does not have a PEP, another station would have to be identified to act as the state's NP. The Commission further proposes that an entity tasked with initiating the delivery of a state EAS alert will be designated as a State Primary (SP). An SP may be a broadcaster, a state emergency management office, or other authorized entity capable of initiating a state-based EAS alert. The Commission proposes that the same entity may be designated as an SP and as an NP. In that case, each designation for that station would have to be separately listed in the State EAS Plan. The Commission would retain the current definition of Participating National (PN) and Local Primary (LP). In cases where geography or other reasons necessitate another layer of monitoring and retransmission between the LP and PN levels, the Commission proposes that such stations be designated in State EAS Plans as ''Relay Stations.'' The Commission anticipates that this proposed terminology scheme would more clearly define key EAS functions in a manner that could be used consistently across all State EAS Plans. As discussed in further detail below, the standard SEPFI template provides an opportunity to ensure that, going forward, these terms are used pursuant to a common understanding of their meaning.

53. The Commission seeks comment on the designations it has identified, based on its analysis of State EAS Plans, as necessary for the successful distribution of Presidential, state and local EAS alerts. The Commission also seeks comment on whether additional EAS designations may be needed, for

example to encompass new roles EAS Participants may play in an evolving technological environment, non-traditional monitoring sources, CAP-formatted alerts, and a more accurate way to account for the significant number of viewers served by cable service providers. The Commission seeks comment on whether its proposed designations could be used as a uniform vernacular to clarify the roles of EAS Participants, including key EAS sources, in each state and territory.

54. *Roles and Designations.* Do the current EAS designations limit SECCs ability to adequately assign roles and responsibilities to EAS Participants in their respective states? Or, on the other hand, does the Commission currently maintain more EAS designations than are necessary for this task? The Commission seeks comment on how SECCs currently distinguish between PEPs and NP stations. Can one station have both designations? Do the meanings of these terms overlap, as they are used in State EAS Plans? If not every state contains a PEP station, do states designate as NP the station or stations in their state responsible for monitoring the nearest PEP? If so, how does this designation differ from that of an SP station? Are some SPs also denominated as NPs where they act as the primary entry point for both the presidential and some or all state and local alerts? If the definitions of the terms PEP, NP, and SP significantly overlap, is it appropriate that the Commission simplifies its EAS denominations by eliminating extraneous terms?

55. Do all state and local alerts originate at the same source? If not, should the Commission provide SECCs with terms that allow them to distinguish among the primary initiation points for the various types of state and local alerts that are initiated in their respective states? What would be an appropriate title for such designations? For example, would it be appropriate to designate the source responsible for originating an AMBER Alert as a State AMBER Alert Primary? Conversely, are some state or local alerts likely to initiate from more than one source, frustrating the use of a single designation? Is it appropriate that the Commission continues to use LP as the denomination for those stations that are monitored by PN stations? Is it appropriate that the Commission continues to use the term PN for stations that are not monitored, in light of the fact that the Non-Participating National (NN) designation was deleted from the rules when the Commission required all EAS Participants to carry the Presidential Alert? If not, what designation would be preferable?

56. *Uniform Vernacular.* Can the designations the Commission proposes be used as a uniform vernacular for referring to the roles of EAS Participants in State EAS Plans? CSRIC IV notes that there is ''no one-size-fits-all framework'' that can be applied to every SECC because SECCs have limited resources to write State EAS Plans. Although each SECC must create a State EAS Plan that addresses the needs of their respective states, fundamental components of EAS are uniformly implemented nationwide. In the Commission's analysis, these commonalities are sufficient to support successful implementation of a uniform set of EAS designations, and the uniform designations that the Commission proposes to adopt are sufficient to describe states' varied approaches to EAS. The Commission seeks comment on this analysis, and on any idiosyncrasies in states' approaches to EAS that may merit special consideration. The Commission also seeks comment on whether the same EAS designations can be used both for EAS Participants' role in transmitting the Presidential Alert, as well as for state and local EAS alerts. Finally, the Commission also seeks comment on CSRIC IV's conclusion that limitations on state resources frustrate the use of uniform designations. What additional resources, if any, would be necessary to utilize the EAS designations that the Commission proposes to adopt?

57. *Additional Designations.* Are additional EAS designations necessary to reflect changes in the alerting landscape? Should EAS designations reflect the service provided by the designated entity in light of the fact that EAS Participants are no longer only broadcasters, and that many EAS Participants monitor non-broadcast sources, such as satellite? For example, would it be appropriate for State EAS Plans to designate a ''satellite NP?'' Are EAS designations useful for CAP monitoring, or does the fact that most EAS Participants receive an EAS alert by monitoring a CAP feed preclude the need for designations? Further, the Commission seeks comment on whether any EAS Participants other than broadcasters (*e.g.,* analog and digital cable systems, wireline video systems, wireless cable systems and direct broadcast satellite) are currently designated as key EAS sources. Should they be? The Commission notes, for example, that an individual cable headend can be responsible for delivering an EAS alert to as many as 803,000 subscribers. In light of these facts, the Commission believes that the ability of cable providers, DBS providers and wireline video providers to effectively transmit an EAS alert would be crucial to the American public's ability to receive a Presidential Alert. Should the Commission update EAS designations to add a category for cable and other Multichannel Video Programming Distributors (MVPDs) that monitor LPs but serve a significant number of people? What about any other EAS Participant that serves a significant portion of the public? Should the EAS Participants with the most extensive coverage or subscribership in a state be given a specific EAS designation? Should they be considered key EAS sources, notwithstanding the fact that they are not monitored by other EAS Participants? Should entities other than broadcasters be monitored by EAS Participants? The Commission also seeks comment on the extent to which non-broadcaster EAS Participants are members of or otherwise involved in the operations of their SECCs. What steps can the Commission take to facilitate increased participation by representatives of these entities in the SECC and State EAS Plan process?

2. State EAS Plan Filing Interface (SEPFI)

58. The Commission adopted rules requiring states to file State EAS Plans that ''contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS.'' These rules maintain the role of state and local committees in strategically organizing state and local EAS Participants into a network capable of ensuring the proper dissemination of, *inter alia,* the Presidential Alert. State EAS Plans are required to be submitted for review and approval by the Chief, Public Safety and Homeland Security Bureau (Bureau) prior to their implementation ''to ensure that they are consistent with national plans, FCC regulations, and EAS operation.'' This requirement was adopted in light of commenters' assertions that the Commission must adopt safeguards to ensure that EAS is not abused, and that alerts are used only for genuine emergencies.

59. Following the first nationwide EAS test in 2011, the Bureau recommended that the Commission ''consider whether to make the State EAS Plan filing process into an online, rather than a paper-based process'' in light of inconsistencies identified in the structure of State EAS Plans. Subsequently, in the *Sixth Report and Order,* the Commission adopted the Electronic Test Reporting System

(ETRS), which provides a standardized, online reporting mechanism for the submission and analysis of monitoring assignment data that can be cross-referenced with the EAS Participant designations and monitoring assignments contained in the State EAS Plans. Further, the Commission tasked CSRIC IV with recommending actions to improve the State EAS Plan filing process, and received a recommendation that State EAS Plans should be filed online. CSRIC IV also adopted recommendations regarding access to the recommended online platform, State EAS Plan template design, and identification mechanisms for facilities and geographic areas contained within State EAS Plans. The Commission seeks comment on these recommendations below.

60. The Commission proposes to convert the paper-based filing process for State EAS Plans into a secure, online process using a State EAS Plan Filing Interface (SEPFI) that would be designed to interoperate with the ETRS. The data collected in SEPFI would complement the monitoring assignment data already collected by ETRS. The data collected via ETRS and SEPFI would provide an end-to-end picture of the EAS distribution architecture for each state that could be used to populate an EAS Mapbook. The Commission proposes that the entry format for State EAS Plan data into SEPFI would be a pre-configured online template to be designed by the Bureau in collaboration with SECCs and other stakeholders, using a similar to process to the one the Commission directed the Bureau to use when designing the templates for ETRS. CSRIC IV observes that State EAS Plans are inconsistent in both structure and content, and that ''[t]his lack of consistency makes it difficult for the FCC to determine if a proper distribution network exists for . . . distribution [of the Presidential Alert] in each state.'' The Commission seeks comment on this proposed online filing process below.

61. *Costs.* The Commission seeks comment on the cost savings likely to result from adopting SEPFI. The EAS collection approved by the Office of Management and Budget (OMB) estimates that each State EAS Plan takes twenty hours to complete, and that the average hourly wage of an individual who completes a State EAS Plan is $25 per/hour. Accordingly, OMB approves of the Commission's estimate that the production of State EAS Plans, nationwide, costs $25,000. How much reporting time and cost would be saved by bringing this process online if certain aspects of State EAS Plans could be automatically updated and populated by cross-referencing data already collected by the FCC, as recommended by CSRIC IV? For example, could SEPFI be pre-populated with data contained in the Consolidated Database System (CDBS), Licensing and Management System (LMS), or other relevant databases? The Commission seeks comment on CSRIC IV's recommendation. Would additional time and cost be saved by offering users drop-down menus for each EAS designation that could include every licensed EAS Participant in the state? The Commission also seeks cost on any legal fees that SECCs may incur in order to ensure compliance with its proposed State EAS Plan requirements. In light of these potential improvements, the Commission seeks comment on whether any cost associated with requiring SECCs to reenter State EAS Plan data online would be significantly lower than those required to draft a new paper-based plan, and would be outweighed over time by the efficiency and/or other benefits (such as standardization of the information offered by the State EAS Plans, as described below) of an online, template-based process.

62. With respect to the potential administrative cost savings, the Commission anticipates that the proposed use of a template will facilitate the agency's review of the Plans. Because the State Plans currently are submitted in differing formats, with different levels of detail and using inconsistent terminology, it can be time-consuming and difficult to conduct a review that ensures that each Plan contains the elements required by the rules, or that the Plans, in concert, will function efficiently and effectively as a nationwide daisy chain that can pass along alerts in a seamless manner. The Commission believes that with the use of an on-line template, the Commission's ability to review the Plans for compliance with the required elements and to identify potential problems that might hinder achieving the basic goals of the EAS will be improved by enabling us to conduct such reviews in a quicker and more accurate fashion. Facilitating the review process in this manner may not only improve the effectiveness of the EAS, but it could yield significant administrative cost savings to the extent that FCC review and approval of the Plans could be automated, at least in part. The Commission seeks comment on the likelihood and weight of such potential benefits.

63. *Standardization.* Would adopting a standardized online template dramatically increase the consistency and thoroughness of State EAS Plans? According to CSRIC IV, ''SECCs need the resource of a federal government database to assure EAN dissemination.'' The Commission seeks comment on CSRIC IV's conclusion. On the other hand, CSRIC IV notes that there is ''no one-size-fits-all framework'' that can be applied to every SECC, because SECCs have limited resources to write State EAS Plans. The Commission seeks comment on the extent to which a standardized template for State EAS Plans would contribute to improving the efficacy and standardization of EAS, as well as streamline the development of State EAS Plans by identifying the appropriate informational parameters for State EAS Plans. What resource limitations do SECCs encounter that potentially challenge their ability to produce standardized State EAS Plans, and what measures could the Commission take to help address these constraints?

64. *Structure.* What is the optimal structure for the SEPFI template? CSRIC IV recommends that the Commission should follow the matrix-based model exemplified by the Washington State EAS Plan to quickly, clearly, and efficiently identify the dissemination path of the Presidential Alert through each state. The Commission seeks comment on whether the SEPFI template should be based on the matrix used by the Washington State EAS Plan. Could this matrix be adapted to also illustrate the dissemination path for alerts formatted in CAP, including state and local alerts? The Commission seeks comment on how the SEPFI template should identify EAS Participants. CSRIC IV recommends that EAS Participants be identified by FCC Facility ID as well as by a station's call letters in order ''to reduce the need for frequent changes and updates to the database, and state plans due only to changes in call letters.'' The Commission seeks comment on CSRIC IV's recommendation, as well as on the optimal implementation of other structural elements of SEPFI.

65. *Security.* The Commission seeks comment on whether access to State EAS Plan data should be limited and secured, as CSRIC IV recommends, and on the steps the Commission should take to safeguard against unauthorized access to SEPFI. Specifically, CSRIC IV recommends that the Commission should follow the Disaster Information Reporting System (DIRS) access model. The Commission observes that DIRS utilizes a two-layer access model and provides a secure methodology for multiple company employees to access the DIRS database, causing the

Commission to believe that the model could be easily adaptable to the State EAS Plan context. The Commission seeks comment on whether access to SEPFI should be based on access provisions for DIRS. Similar to DIRS, should SEPFI utilize a two-layer security system, requiring both a SECC ID and an individual User ID to prevent any unauthorized person from establishing a fraudulent User ID under the company's name? The Commission seeks comment on the identifying information that SECCs should be required to provide for the individuals authorized to access the SEPFI. Should such information include a contact name, affiliated company name, office and cell phone numbers, and an email address? Should additional information be required?

66. What is the most cost-effective way to protect potentially sensitive data contained in State EAS Plans? The Commission seeks comment on specific aspects of State EAS Plan data that may implicate national security or that otherwise could present security concerns when aggregated into a single database. Are there any particular aspects of State EAS Plans that should be made confidential in light of this sensitivity? Would it be sufficient to provide such data with the same level of confidentiality as test data submitted to the Commission via ETRS? If not, how should sensitive SEPFI data be protected? Even if data contained in an individual State EAS Plan may not be sensitive or present national security concerns, would State EAS Plan data become more sensitive when aggregated via SEPFI? If so, what additional protections should be afforded to aggregated data versus individual state data, and how could this be implemented? What costs, if any, would those additional protections impose on reporting entities?

67. *National Advisory Committee (NAC).* The NAC succeeded the Emergency Broadcast System Advisory Committee (EBSAC) as the Federal Advisory Committee responsible for assisting the Commission with administration of the EAS. CSRIC IV recommends that the Commission should reestablish a NAC to facilitate communication with SECCs. The Commission seeks comment on CSRIC IV's recommendation. Is there a need for additional and routine communication with another organization that is not already taking place today between the Commission and the SECCs? Could a reestablished NAC be charged with initial approval of State EAS Plans? Could they be charged with performing outreach to SECCs to answer any questions about the Commission's new State EAS Plan filing process, and encouraging the timely completion of up-to-date State EAS Plans? With what other responsibilities should the NAC be charged? Should membership in the NAC continue to consist of SECCs Chairs, and representatives from the National Association of Broadcasters (NAB), the Society of Broadcast Engineers (SBE) and the NWS? If not, then how should the membership of the NAC be modified?

3. State EAS Plan Contents

68. The Commission's EAS rules currently state that State EAS Plans must contain the following elements:

(1) A list of the EAS header codes and messages that will be transmitted by key EAS sources;

(2) Procedures for state emergency management and other state officials, NWS, and EAS Participant personnel to transmit emergency information to the public during an emergency using EAS;

(3) A data table, in computer-readable form, clearly showing monitoring assignments and the specific primary and backup path for the EAN formatted in the EAS Protocol from the PEP to each station in the plan;

(4) A description of how CAP-formatted messages will be aggregated and distributed to EAS Participants within the state, including the monitoring requirements associated with distributing such messages;

(5) A statement of any unique methods of EAS message distribution;

(6) Instructions for state and local activations of EAS, including a list of all authorized entities participating in State or Local Area EAS; and

(7) Procedures for conducting special EAS tests.

The EAS rules require that EAS operations must be conducted as specified in State EAS Plans in order to ensure that the Presidential Alert can be effectively delivered. The Commission adopted these requirements in the *EAS Deployment Order,* communicating expectations for the structure and administration of State EAS Plans and for the SECCs that create them. SECCs and State EAS Plans have fallen short of these expectations in some respects, including a lack of active cable service provider participation in SECCs, and the failure of some states to file State EAS Plans.

69. In 2013, the Commission evaluated the state of SECCs and State EAS Plans in the *EAS Nationwide Test Report,* summarizing the successes of the first nationwide EAS test, but observing specific shortcomings in EAS operations, including a lack of clarity in State EAS Plans. Specifically, the *EAS Nationwide Test Report* observed that the Commission's rules do not require SECCs Participants to provide monitoring assignment data below the LP level. The *EAS Nationwide Test Report* further observed that many State EAS Plans did not identify the alternative monitoring sources that EAS Participants relied upon to receive the EAN during the first nationwide EAS test, or define SECCs' administration and governance practices. Accordingly, the Bureau recommended that the Commission ''consider reviewing its State EAS Plan rules.'' CSRIC IV further recommends that the role of the SECC should be strengthened, and that ''SECCs must be free to design and maintain their respective state's own robust and redundant EAS relay networks in the best and most practical ways possible.'' The Commission seeks to address the substantive shortcomings in State EAS Plans identified by CSRIC IV and the *EAS Nationwide Test Report.*

70. Since the adoption of State EAS Plan rules in 1994, the alerting landscape has dramatically changed. Local alerts now originate from a wider array of sources, such as Public Safety Answering Points (PSAPs) and nuclear power plants. Local weather alerts continue to increase in frequency, and new alerting platforms such as WEA, SMS- and social media-based alerts are being rapidly added to the toolbox available to each community's alerting authority. For many alert initiators, WEA acts in concert with the EAS and other systems to transmit alerts to the public. Further, alert initiators may offer both EAS and WEA through IPAWS–OPEN, which serves as an interconnected CAP alert aggregator for previously siloed alerting platforms. In the *EAS Nationwide Test Report,* the Commission observed that many EAS Participants utilized the satellite-based National Public Radio (NPR) News Advisory Channel (Squawk Channel) to receive the Presidential Alert, as opposed to their regular monitoring assignment in the daisy chain. Even for state and local alerts, many EAS Participants use satellite-based distribution systems to supplement or replace the traditional alert distribution architecture. The Commission seeks comment on the extent to which these developments, as discussed in greater detail below, need to be included in State EAS Plans to provide the FCC with the information necessary for it to ensure that the EAS can allow the President to reach the entire American public in time of national emergency.

71. The Commission proposes to amend Section 11.21 to integrate State EAS Plan requirements contained in other portions of Part 11, and to include new elements designed to enhance the value of State EAS Plans as community alerting tools, as well as to inform the Commission that the EAS remains an efficient and effective method to deliver a Presidential Alerts in an evolving technological landscape. The Commission proposes that State EAS Plans should include organizational, operational, testing/outreach, and security elements, as set forth below, and seeks comment on these proposals. While the Commission proposes to afford states considerable flexibility within these categories, to provide information they deem relevant to designing and maintaining their respective states' own robust and redundant EAS relay networks, the Commission believes these general categories will help establish a baseline level of information across states nationwide.

a. Organizational Elements

72. State EAS Plans and the SECCs that create them are designed to organize EAS Participants representing a variety of industries and regions into a cohesive whole capable of efficiently and reliably distributing emergency information to the public, including the Presidential Alert. In order to fulfill this purpose, SECCs and EAS Participants must be well organized. Accordingly, the Commission proposes that State EAS Plans filed with the Commission via SEPFI template include uniform designations for the roles of EAS Participants, a list of entities authorized to activate EAS, a description of SECC governance structure, and a clear role for Local Area EAS Plans, should they continue to be necessary.

73. *Uniform Designations.* The Commission proposes that SECCs input State EAS Plan monitoring assignment data into an online template using the uniform designations for key EAS sources that it proposes above. The Commission notes that in Section III(A)(1) it seeks comment on whether additional roles within the alert distribution hierarchy should be defined and given designations in order to reflect their importance to the success of EAS. The Commission also seeks comment on whether any of these additional designations should be included in State EAS Plans.

74. *A List of Entities Authorized to Activate EAS.* The Commission proposes that State EAS Plans should contain a list of all entities authorized to activate EAS for state and local emergency messages (*e.g.,* Public Safety Answering Points (PSAPs)) whose transmissions might be interrupted by a Presidential Alert. The Commission seeks comment on this proposal. The Commission notes that the Presidential Alert is required to take priority over all other alerts, and as such, might interrupt alerts initiated by any state-based entities. The Commission seeks comment on whether state and local alert originators would have reason to activate the EAS during a national crisis concurrent with a Presidential Alert. If so, is it reasonable to require that all entities authorized to activate the EAS should be included in State EAS Plans? Would such an inclusion ensure that SECCs are able to conduct outreach to these entities in order to organize and coordinate emergency managers' alert messaging should a Presidential Alert become likely, and to mitigate the potentially chaotic alerting situation that could result from a national crisis?

75. *A Description of SECC Governance Structure.* The Commission proposes that State EAS Plans should specify the SECC governance structure used to organize state and local resources to ensure the efficient and effective delivery of a Presidential Alert, including the duties of SECCs, the membership selection process utilized by the SECC, and the administrative structure of the SECCs. The Commission seeks comment on this proposal in light of the expectations expressed by the Commission in the *EAS Deployment Order* for the administration and governance of SECCs, and subsequent observations by the Bureau, CSRIC IV and EAS stakeholders that the Commission should provide further guidance on the issue. The Commission seeks comment on whether by soliciting information on SECC administration in State EAS Plans, both in the form of comments in this docket and via the SEPFI, the Commission can develop a basis for analysis of SECC administration that it may leverage to produce best practices for SECC governance or otherwise offer guidance to these volunteer committees, as requested by CSRIC IV. Is there a need for a consistent, uniform governance structure for SECCs nationwide to ensure effective functioning of EAS? If so, what specific elements should such structure contain? Should the Bureau coordinate with SECCs to determine an optimal, uniform governance structure? The Commission acknowledges that CSRIC IV did not find that a ''one size fits all'' approach would work for SECC governance. Given the disparity of size and resources from state to state, is there guidance the Commission can issue that could clarify the roles and responsibilities of SECCs in a manner that would be useful in each state?

76. *LECCs and Local Area EAS Plans.* Finally, the Commission seeks comment on the role that LECCs continue to perform, and whether they serve a vital role in the delivery of EAS messages to local areas. The Commission seeks comment on whether LECCs perform a function that requires a separate Local Area EAS Plan to be filed with the Commission, or whether Local Area EAS Plans could be subsumed within State EAS Plans. CSRIC IV observes that ''[a]ll federal emergency alert systems, of which EAS is an essential component, depend on local distribution'' and recommends that policies be developed ''that will encourage local communications distribution systems to participate in the emergency warning process.'' Consistent with that observation, the Commission seeks comment on whether SECCs currently have the expertise to describe and plan local alerting responsibilities. Do LECCs and Local Area EAS Plans provide an additional value not captured by SECCs and State EAS Plans? Does the size of some large states or the lack of SECC resources present challenges for comprehensive local planning? With SEPFI, information relevant to state and local plans will be filed in a single system. Will there be a continued need for local plans, assuming the Commission moves forward with implementing SEPFI?

b. Operational Elements

77. The primary purpose of EAS is to transmit a message from the President to the public during an emergency of national significance. In order to achieve that purpose, SECCs must maintain a detailed understanding of how multiple alerting platforms operate in concert with one another to create a seamless information distribution system within their respective states. Accordingly, the Commission proposes that State EAS Plans should include emergency alerting procedures for EAS alerts transmitted via all available alert distribution mechanisms that the state utilizes (*e.g.,* EAS and WEA, as well as any alternative mechanisms the state may use, such as the NPR Squawk Channel, highway signs, and social media), up-to-date monitoring assignments for each key EAS source that reflect how those entities actually receive alerts, and a description of whether and to what extent these elements work in concert to create a cycle of information sharing through a

''many-to-one/one-to-many'' alerting dynamic.

78. *Expanded Emergency Alerting Procedures.* The Commission proposes that State EAS Plans should contain a comprehensive listing of procedures by which state emergency management officials, local NWS forecasting stations, and EAS Participant personnel transmit emergency information to the public during an emergency using regulated alerting tools (*e.g.,* EAS and WEA) as well as any alternative alerting mechanisms (*e.g.,* the NPR Squawk Channel, highway signs, and social media). The Commission proposes that this revised language would subsume the Section 11.21 language that State EAS Plans include a ''statement of any unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS).'' The Commission seeks comment on this proposal. Would this proposed rule change allow SECCs to adequately capture the different alerting methods that EAS Participants may leverage? Would it accurately reflect how emergency managers utilize the suite of alerting tools available to them?

79. In light of the monitoring assignments that EAS Participants used successfully during the first nationwide EAS test, and for the reasons provided below, the Commission proposes to encourage SECCs to specify a satellite-based source, such as the NPR Squawk Channel, in State EAS Plans as an alternate monitoring assignment for the Presidential Alert where it presents a reliable source of EAS messages. The Commission seeks comment on this approach. In the *Second Report and Order,* the Commission observed that ''the vast coverage area of satellite signal footprints would allow immediate alerting of substantial portions of the country with appropriate equipment'' and that satellite systems are ''generally immune from natural disasters and therefore may provide critical redundancy in the event that terrestrial wireline or wireless infrastructure is compromised.'' CSRIC IV notes that many EAS Participants are currently unable to meet their requirement to monitor two sources for the Presidential Alert without recourse to such satellite-based communications technologies because of incomplete PEP coverage. NPR states that in instances where EAS Participants monitored both the Squawk Channel and their regular monitoring assignment, the Squawk Channel actually triggered EAS equipment ahead of the terrestrial relay network by 10–20 seconds in most cases. Does the NPR Squawk Channel provide a faster and equally reliable alternative to the daisy chain process? Do other satellite-based monitoring sources, such as EMnet? Are such technologies sufficiently reliable to serve as a primary or secondary EAS monitoring assignment for the Presidential Alert? If so, how should use of the Squawk Channel and other satellite-based communications resources approved by FEMA be codified in the Commission's EAS rules?

80. The Commission also seeks comment on whether and how alert originators use alternative alert distribution platforms, such as social media and highway signs, to supplement their traditional alerting channels. What is the extent to which emergency managers at the federal, state, and local levels currently leverage targeted feedback during emergency situations to disseminate and gather information? The Commission seeks comment on the extent to which social media has served as a reliable and effective source of crowdsourced data about developing situations. To what extent have alert originators begun taking advantage of social media's crowdsourced communications functionality in order to establish a real-time conversation with individuals and communities in crisis? Is the information generated by social media platforms reliable enough to be trusted by emergency managers, and if not, what challenges are involved? The Commission seeks comment on the steps that emergency managers currently take to confirm the accuracy of crowdsourced reports of emergency situations in order to act on, correct or clarify, or otherwise respond to such reports. Are the platforms secure enough to be used in emergency situations? To what extent has the use of social media platforms supplemented alert accessibility, either by providing translations of alerts in languages other than English or by providing alerts in multiple formats? To what extent has the personalization of alerts facilitated and encouraged public engagement and participation with alerting platforms, and, in turn, instigated more rapid protective action taking? The Commission seeks comment on whether state and local use of social media alerting tools should be included in State EAS Plans. Further, the Commission seeks comment on the extent to which highway signs are used to retransmit EAS alerts formatted in CAP. If IPAWS–OPEN is capable of distributing CAP-formatted alerts to highway signs, do any barriers currently exist to such use? The Commission seeks comment on what, if any, other alternative alerting systems alert originators are relying upon to supplement their use of EAS and WEA, and seeks comment on its proposal that this information be specified in State EAS Plans.

81. Are there examples of best practices from the Commission's federal, state and local government partners for using crowdsourced information in an emergency situation? The Commission observes that the Peta Jakarta initiative in Indonesia may provide an example of how a government alert initiator can leverage crowdsourced data to increase the overall effectiveness of alerts. The Peta Jakarta project piloted a program that monitored Twitter for posts mentioning the word for ''flood'' during flooding season. The system would automatically respond to such messages, asking whether the user saw flooding, at which point the user could confirm their report either by turning geo-location on in their device settings, or by responding, in turn, with the word for ''flood.'' Peta Jakarta then incorporated the results of this information-gathering process into a live, public crisis map that depicted in real time areas in the city that were affected by flooding. To what extent would it be possible to leverage this model as a best practice for automated crowdsourcing of reliable emergency response data, using regulated alerting platforms in the United States? To what extent is a similar model to the one utilized by Peta Jakarta feasible using EAS and/or WEA, in order to provide an authoritative source of information? The Commission observes that emergency managers used Twitter in a 2013 flood in Boulder, Colorado to prioritize deployment of satellite- and drone-based imaging platforms to the most severely impacted areas. To what extent could community feedback via EAS or WEA be similarly used to prioritize emergency managers' information gathering efforts?

82. *Monitoring Assignments.* In this section, the Commission proposes rules and seeks comment on issues designed to optimize monitoring assignments in State EAS Plans. First, the Commission seeks comment on methods of improving and clarifying monitoring assignments as currently implemented in State EAS Plans. Specifically, the Commission seeks comment on how to define operational areas, on whether to include CAP-based monitoring assignments in State EAS Plans, and on how to remove single points of failure from EAS monitoring assignments. Next, the Commission proposes to expand the monitoring assignments section of State EAS Plans to reflect

more accurately the various methods that EAS Participants use to monitor sources for EAS. Specifically, the Commission proposes that State EAS Plans should include the extent to which monitoring assignments for state and local alerts differ from monitoring assignments for the Presidential Alert. Finally, the Commission proposes to clarify that EAS operations must be implemented in a manner consistent with guidelines established in a State EAS Plan submitted to the Commission.

83. The Commission proposes that State EAS Plans should continue to divide their respective states into geographically-based operational areas, specifying primary and backup monitoring assignments for EAS Participants to receive the Presidential Alert in each operational area. The Commission seeks comment on this proposal. The Commission seeks comment on whether dividing states into operational areas facilitates EAS administration by more clearly defining responsibilities for EAS alert distribution by geographic area for key EAS sources. CSRIC IV notes a lack of uniformity among State EAS Plan definitions of ''operational areas,'' and recommends that such service areas should be uniformly identified. The Commission seeks comment on CSRIC IV's conclusion. Is it possible to standardize the definition of an operational area nationwide? If so, how should SEPFI define operational areas? Could the definition of an operational area have implications for President's ability to transmit a regional Presidential Alert?

84. The Commission proposes to remove the current restriction that State EAS Plans include monitoring assignments for Presidential Alerts formatted in the EAS Protocol only. The Commission seeks comment on this proposed change. As technologies evolve, the Presidential Alert may not necessarily be issued using the EAS Protocol, and the Commission seeks to remain technologically neutral so that its rules may evolve correspondingly. The Commission seeks comment on the extent to which EAS Participants are prepared to receive a Presidential Alert formatted in CAP. The Commission observes that new alerting protocols may be developed in the future, and the Commission seeks comment on whether removing this technology-specific limitation from its rules better prepares the nation for receiving the Presidential Alert.

85. CSRIC IV observes that, as currently written, State EAS Plans reflect the requirement in the EAS rules that each EAS Participant monitor at least two sources for the Presidential Alert by including two monitoring assignments for the Presidential Alert, but also observes that merely listing two monitoring sources may not serve to remove single points of failure from EAS alert distribution where, for example, both monitored EAS sources, in turn, monitor the same source. The Commission agrees with CSRIC IV's observation and seeks comment on whether it should require that the two sources that EAS Participants are required to monitor for the Presidential Alert as specified in their State EAS Plan, cannot, in turn, monitor the same key EAS source. Are there further steps that the Commission can take to remove single points of failure within the EAS Protocol-based alert distribution architecture, and from EAS in general, and if so, what are they?

86. The Commission further proposes that State EAS Plans should include the extent to which monitoring assignments for state and local alerts differ from monitoring assignments for the Presidential Alert. To what extent do states' Presidential and local alerting strategies differ? The Commission seeks comment on whether the importance of transmitting state and local alerts to communities has had any impact on the ability of the community to deliver a Presidential Alert. Has the use of alternative alerting structures led to innovations that augment the ability of EAS Participants to efficiently and effectively receive and retransmit a Presidential Alert during a national crisis? Alternatively, has the use of such alternatives resulted in lack of use of the EAS and lack of proficiency in its use by local emergency managers and EAS Participants? In either case, would including in State EAS Plans a description of the extent to which a state's alerting strategy for the Presidential Alert differs from their state and local alerting strategy serve to facilitate dialogue at the state and local level about the extent to which new and emerging technologies could be used to improve the ability of EAS Participants to receive and retransmit the Presidential Alert?

87. In order to address all State EAS Plan monitoring requirements in the same Section of Part 11, the Commission proposes to relocate State EAS Plan requirements currently contained in Sections 11.52 and 11.55 to Section 11.21. The Commission proposes to merge those requirements into one Section by amending Section 11.21 to state that EAS Participant monitoring assignments and EAS operations must be implemented in a manner consistent with guidelines established in a State EAS Plan submitted to the Commission, and by removing that language from Sections 11.52 and 11.55. The Commission seeks comment on whether this proposal is consistent with CSRIC IV's recommendation that the Commission amend Section 11.21 to state that ''[s]tates that want to use the EAS shall submit a State EAS Plan.'' The Commission seeks comment on whether the data submitted in State EAS Plans must accurately reflect actual monitoring assignments for the EAS Mapbook to be a useful tool to analyze and address issues with EAS functionality. Would State EAS Plans be more up-to-date, inclusive, and effective given the improvements the Commission proposes in this NPRM? If so, does this militate for the use of State EAS Plan provisions other than monitoring assignments (*e.g.,* expanded emergency alerting and testing procedures) as mandatory instructions for participation in EAS? The Commission seeks comment on whether, contrarily, failing to require EAS Participant monitoring assignments to be implemented pursuant to State EAS Plans would risk making the state EAS planning process a hollow exercise without bearing on the actual organization of EAS.

88. *A Description of ''One-to-Many, Many-to-One'' Alerting Implementation.* The Commission proposes that State EAS Plans should describe the extent to which alert originators coordinate alerts with community feedback mechanisms, such as 9–1–1, to make full use of public safety resources. The Commission seeks comment whether 9–1–1 call takers are well positioned as a nexus of communications between first responders and communities in crisis. The Commission seeks further comment on whether, notwithstanding that this has been true in the context of state and local emergencies, it would also be the case during a national crisis giving rise to a Presidential Alert. The Commission seeks comment on the extent to which alert originators are prepared to gather, analyze and act upon community feedback in crafting and initiating alert content. Relatedly, the Commission seeks comment on the extent to which first responder entities, such as PSAPs, are currently authorized as alert originators, and, if desirable, on the steps that the Commission can take to facilitate increased participation. Can PSAPs play an important role in ensuring that alerts are accessible or available in languages other than English if the 9–1–1 call(s) giving rise to the alert suggest that such measures

could facilitate alert interpretation and impact? Finally, the Commission seeks comment on the impact that any potential next generation television capabilities may have on the ability to support two-way communications.

c. Testing/Outreach Elements

89. In order to properly utilize EAS to fulfill its purpose to transmit a Presidential Alert, emergency managers must be assured that the alerting platforms available to them will function as intended when needed, and the public must be assured that those alerts will be made accessible to them, irrespective of disability or language preference. To this end, the Commission proposes that State EAS Plans include testing procedures and security elements.

90. *Testing Procedures.* The Commission proposes that State EAS Plans should continue to contain procedures for special EAS tests, as required by Section 11.61, including the new ''live code'' tests that the Commission proposes to include as part of its Part 11 testing regime below. The Commission also proposes that State EAS Plans should be required to include procedures for Required Monthly Tests (RMTs), Required Weekly Tests (RWTs) and national tests designed to ensure that the system will function as designed when needed for a Presidential Alert. The Commission seeks comment on this proposal. The Commission seeks comment on whether specifying the schedule, origination source, and script are necessary components of the successful operation of RMTs, RWTs, and national tests, and on whether SECCs already communicate this information to EAS Participants in their state even where it is not included in State EAS Plans. Further, the Commission proposes that this section of State EAS Plans should include a description of the extent to which State/Local WEA Tests are utilized by alert originators as a complement to the Presidential Alert distribution system to verify that WEA is both capable of disseminating a Presidential Alert, and informing the public that a Presidential Alert is presently being delivered over EAS. The Commission seeks comment on these proposals.

91. The Commission seeks comment on whether State EAS Plans should include a listing of the manners in which a state or community conducts such live code tests. Should the Plan include the language of the notification to be provided during the test (*e.g.,* audio voiceovers, video crawls) to make sure the public understands that the test is not, in fact, a warning about an actual emergency? The Commission also seeks comment on whether the notification requirement should incorporate the new accessibility component of Section 11.51 of the Commission's EAS rules, which establishes requirements for the visual message portion of an alert. Should the Plan contain pre-test outreach procedures to coordinate with EAS Participants, state and local emergency authorities, and first responder organizations and the public?

92. The Commission seeks comment on whether each of these testing procedures continues to play an important role in ensuring system readiness for a Presidential Alert. In particular, with respect to State/Local WEA Testing, the Commission seeks comment on whether the ubiquity of smartphone technology makes it likely that, in the event of a Presidential Alert, members of the public would likely have their smartphone closer at hand than any traditional EAS source. If so, the Commission seeks comment on whether it is likely that the first medium through which members of the public would receive notice that a Presidential Alert is occurring is through their smartphone, notwithstanding the fact that the actual alert may be aired over EAS. The Commission seeks comment on whether this makes State/Local WEA Testing procedures a necessary component of state-level preparedness to receive a Presidential Alert. If so, should the manner in which a state or community uses smartphone technology, through WEA or otherwise, to augment an EAS alert be included in State EAS Plans?

d. Security Elements

93. Security and reliability are critical components of an alerting system, especially one that may be used by the President. A public safety communications system that is vulnerable to mistaken use or malicious intrusion poses as much of a threat to public safety as an efficient, secure system offers a benefit. A compromised alerting system could be used to misdirect public safety resources, or lead members of the public into harm's way. Accordingly, the Commission proposes to require certification of performance of required security measures, as discussed in greater detail below. Should State EAS Plans also describe the measures EAS Participants have taken to comply with the Commission's proposed security requirements? Should State EAS Plans include any additional information regarding their approach to cyber risk management, including if and how they use tools like the National Institute for Standards and Technology (NIST) Cybersecurity Framework (NSF), or other risk management construct, and how this has been extended to their emergency alerting system? In the alternative, do the certifications proposed below provide adequate disclosures regarding EAS Participants' security efforts, obviating the need for the separate inclusion of such information in State EAS Plans?

B. Building Effective Community-Based Alerting Exercise Programs

1. Live Code Tests

94. Section 11.45 of the Commission's EAS rules provides in pertinent part that ''[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.'' The Commission adopted this restriction because it found that a specific prohibition against the misuse of the EAS audio Attention Signal and codes was necessary in light of the ''enormous detriment to the system'' that might result from improper use. As a general matter, the EAS audio Attention Signal is used exclusively to alert the public that an emergency message is about to be distributed. Section 11.31(e) lists the ''live'' event header codes that are used for alerts in specific emergency situations, *e.g.,* tornadoes, tsunamis, and other natural and weather-related emergencies, as well as the specific test codes that are to be used for national periodic, required monthly and required weekly tests, as well as for practice/demonstration warnings. In the *Live Code Testing Public Notice,* the Bureau noted that EAS Participants have expressed a desire to use live EAS header codes and the EAS audio Attention Signal to conduct local public awareness and proficiency training EAS exercises, and stated that engaging in such activity would require a waiver of Section 11.31(c) of the Commission's EAS rules. The Bureau also provided the following guidance to SECCs on the recommended contents of their waiver requests:

(1) A description of the test and test participants, including when the test is scheduled to occur, when it will conclude, and what notification is being provided during the test (*e.g.,* audio voiceovers, video crawls) to make sure the public understands that the test is not, in fact, warning about an actual emergency, plus a statement whether the proposed test is designed to substitute for a ''RWT'' (required weekly

test) or a ''RMT'' (required monthly test) or would constitute a ''special test,'' pursuant to 47 CFR 11.61;

(2) An explanation why the EAS Participant or the state authority conducting such tests has concluded that use of live codes is necessary; *e.g.,* what live code testing is expected to achieve that could not be achieved by using standard test codes;

(3) A statement about how the test has been coordinated among EAS Participants and with state and local emergency authorities, as well as first responder organizations such as police and fire agencies; and

(4) A description of those public information steps that have been taken before the test occurs to notify the public about the test (specifically, that live event codes will be used, but that no emergency is in fact occurring). This should include a statement about all media that have participated in the public awareness/information campaign (*e.g.,* broadcasters, cable, print media, *etc.*).

Live code tests are currently performed as ''special'' tests under Section 11.61. A ''special'' test may fulfill an EAS Participant's weekly testing obligation provided that the test includes transmission of the EAS header codes and End of Message (EOM) codes, and may fulfill an EAS Participant's monthly testing obligation provided that the test also includes the emergency alerting Attention Signal and emergency message. In either case, the test message must meet a minimum standard of accessibility, as discussed in further detail below.

95. The Commission proposes to amend its EAS rules to authorize EAS Participants to conduct periodic EAS exercises using live event header codes, provided that they are used in a non-misleading manner, and that steps are taken to prevent public confusion prior to and during the test. Specifically, the Commission proposes to amend Section 11.61 to include ''Live Code Tests'' as a separate category of alerting exercise that may be undertaken periodically provided that:

(1) The state or local entity provides accessible notification during the test (*e.g.,* audio voiceovers, video crawls) to make sure the public understands that the test is not, in fact, warning about an actual emergency;

(2) Coordinates the test among EAS Participants and with state and local emergency authorities, as well as first responder organizations such as Public Safety Answering Points (PSAPs), police and fire agencies; and

(3) Notifies the public before the test (specifically, that live event codes will be used, but that no emergency is in fact occurring).

The Commission further proposes to amend Section 11.45 to exempt state-designed EAS live code exercises from the Commission's prohibition against false or misleading use of the EAS Attention Signal. The Commission seeks comment on these proposals.

96. *Benefits.* Would expanding the Commission's Part 11 rules to permit live code testing facilitate opportunities for system verification, proficiency building, and raising public awareness about EAS? The Commission seeks comment on whether, as certain SECCs claim, using a live code enables more realistic system verification because use of a live code is the only way to determine how EAS equipment will react to certain live event header codes that are not activated by default in EAS equipment. Further, the Commission seeks comment on whether live code testing promotes alert originator proficiency by providing an opportunity for alert originators to practice selecting an appropriate event code for simulated emergency events, and practice crafting a message that informs the public of the occurrence of that specific event that would effectively motivate the public to take protective action. The Commission also seeks comment on whether live code testing facilitates opportunities for EAS stakeholders to raise public awareness about EAS. Some SECCs requesting a live code waiver state that their live code testing will coincide with ''Severe Weather Preparedness Week'' scheduled in their state, and the live code presents a visual crawl that is distinct from the visual crawl associated with test messages that better facilitates schools' businesses' and homeowners' own emergency preparedness drills. The Commission seeks comment on this claim. Finally, the Commission seeks comment on the extent to which live code testing offers superior public awareness and proficiency training opportunities than RMT and RWTs because they present testing conditions that more accurately reflect actual emergency conditions.

97. *Notification and Outreach.* The Commission seeks comment regarding the steps that EAS stakeholders could take to minimize any public confusion that may result from live code testing. The Commission seeks comment on the methods used by EAS Participants to inform the public that the Attention Signal they hear does not indicate an actual emergency. Is it necessary to codify specific notification procedures, or are available best practices sufficient? The Commission seeks comment on the extent to which outreach to first responder agencies has mitigated public confusion about the use of live codes. How can first responder organizations, such as PSAPs, be utilized as an integral part of an alerting exercise in a manner that harnesses their potential as a nexus for emergency information? The Commission seeks comment on whether the Commission's proposed rule adequately circumscribes the use of the emergency alerting attention signal in a manner that maximizes its utility while minimizing over-alerting and public confusion.

98. *Frequency of Live Code Testing.* How often should live code testing occur? The Commission observes that some EAS stakeholders have requested a waiver of the Commission's EAS rules to conduct live code tests as often as annually. The Commission seeks comment on whether the removal of this regulatory burden would lead EAS stakeholders to engage in more frequent live code testing. If so, the Commission seeks comment on whether it should limit how often live code tests may occur in a particular geographic area, and, if so, on what that limit should be. The Commission observes that its EAS rules currently allow special tests to be conducted as often as daily. Are there steps that the Commission should take to prevent over-alerting and alert fatigue? On the other hand, should SECCs be required to conduct live code EAS tests at certain predetermined intervals in order to ensure that emergency managers in each state have opportunities for system verification, proficiency training, and public awareness outreach?

99. *Cost Savings.* Would this action remove regulatory burdens for EAS stakeholders and reduce costs? The Commission seeks comment on the anticipated extent of these cost savings. The Commission also seeks comment on any operational concerns that EAS stakeholders believe to be implicated by this proposal.

2. EAS PSAs

100. EAS Participants may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public to increase awareness of the EAS. The Commission's rules state that ''[s]uch announcements and programs may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.'' Since that time, the Commission has granted requests for waiver to use the emergency alerting Attention Signal in PSAs to entities other than EAS Participants in order to raise public awareness about EAS. The

Commission has also granted similar requests from FEMA to use the emergency alerting Attention Signal in WEA PSAs provided that the PSA presents the tones in a non-misleading manner. In light of the value of the success of these PSAs, in the *WEA Fourth NPRM,* the Commission proposed to allow the use of the WEA Attention Signal in WEA PSAs, subject to the same limitation.

101. Consistent with the Commission's approach to the use of the emergency alerting attention signal in PSAs in the *WEA Fourth NPRM,* the Commission proposes to amend Section 11.46, which currently prohibits the use of the EAS alert tones or codes in otherwise permitted PSAs, to allow federal, state and local government entities to issue PSAs that use the EAS header codes and Attention Signal, provided that they are presented in a non-misleading and technically harmless manner. In so doing, the Commission allows entities other than EAS Participants to conduct EAS PSAs, and allow such PSAs to be used in connection with testing exercises that may include use of live event codes and the emergency alerting Attention Signal. The Commission seeks comment on these proposals. The Commission seeks comment on whether limiting the use of PSAs to EAS Participants and federal, state, and local government entities offer an optimal balance between ensuring that the emergency alerting Attention Signal is not over-used, on the one hand, and ensuring that the public is familiar with the EAS and understands its public benefits on the other hand? The Commission seeks comment on whether this is the appropriate subset of entities who should be able to use the emergency alerting Attention Signal in PSAs.

102. How can the Commission ensure that PSAs designed to raise public awareness about EAS do not have the unintended consequence of causing public confusion about whether the use of the EAS header codes and Attention Signal signify that an actual emergency is occurring? The Commission seeks comment on whether it should require entities that wish to use PSAs to coordinate with other EAS Participants and state and local authorities and the public to minimize any confusion. As with the use of the EAS header codes and Attention Signal for live code EAS tests, should entities seeking to use the EAS header codes and Attention Signal for EAS PSAs provide notification during the PSA to make sure the public understands that the use of the EAS header codes and Attention Signal does not, in fact, signify the occurrence of an actual emergency? Should entities seeking to use the EAS header codes and Attention Signal for use in EAS PSAs be required to coordinate the test among EAS Participants and with state and local emergency authorities, as well as first responder organizations such as PSAPs, police and fire agencies?

103. The Commission seeks comment on whether there is a negative public perception of EAS that deserves to be redressed, and on whether the public has a clear understanding of what EAS is. In its requests for waiver, FEMA stated that ''many people are startled or annoyed when hearing the WEA Attention Signal for the first time.'' The Commission notes that the WEA Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the distinctive and familiar Attention Signal used by the EAS. The Commission seeks comment on whether alerts become more annoying when multiple alerts are received at the same time on a variety of platforms. The Commission also notes that it has received a number of complaints from individuals stating that the EAS Attention Signal is intrusive, and annoying. Accordingly, the Commission seeks comment on the public perception of EAS, and the EAS Attention Signal. To this point, the Commission also seeks comment on whether PSAs would be a useful tool for changing public perceptions about EAS for the better by, for example, providing them with information on how EAS saves lives and helps people to protect their property. As a testament to the success of the WEA PSA in this regard, FEMA offers that it has earned over $30 million in free media, and that the WEA PSA is currently the most played FEMA PSA. The Commission seeks comment on the success of any EAS PSAs that EAS Participants have issued pursuant to Section 11.46. Further, the Commission seeks comment on additional steps that EAS stakeholders could take to improve the efficacy of EAS PSAs at raising public awareness about, and shifting public perceptions of EAS. What effect on public perception would likely result were EAS PSAs allowed to be conducted in connection with EAS tests, including live code tests?

3. Accessible Alerting Exercise

104. Accessibility is a crucial aspect of alerting exercises because members of communities with disabilities or with limited English proficiency are particularly vulnerable to being excluded from community preparedness initiatives. Accordingly, in order to substitute for an RMT, a live code test must ''comply with the visual message requirements in Section 11.51,'' and in order to substitute for an RWT, it must comply with both the aural and visual requirements contained therein. Recently, the Bureau granted a request from Emergency and Community Health Outreach (ECHO), in partnership with Twin Cities Public Television (tpt) and FEMA, for a waiver of the Commission's rules to allow use of the WEA and EAS attention signal, as well as an audible portion of the EAS tones in PSAs, in conjunction with providing EAS PSAs in languages other than English, including Spanish, Hmong and Somali. The Bureau reasoned that including the EAS Attention Signal in educational media materials is essential to ensure that members of the public, including individuals with limited English proficiency, are familiar with EAS as an alert and warning methods.

105. The Commission seeks comment on how to best ensure that community-based alerting exercises address the accessibility needs of individuals with limited English proficiency and individuals with disabilities. Specifically, the Commission seeks comment on the extent to which live code testing may be used by local emergency managers to target the particular needs of communities with accessibility needs, such as individuals with sensory disabilities and individuals with limited English proficiency, and on how to better prepare such communities for emergencies through PSAs.

106. *Accessible Live Code Testing.* Is an accessible video crawl or full-screen replacement slide sufficient to overcome the public's preconception of the meaning of the Attention Signal? Are there additional steps that the Commission should take to ensure that the public is not misled or confused by state use of live codes for testing purposes? For example, might persons with cognitive or intellectual disabilities benefit from color-coding a border around different categories of warning, such as weather, terrorism, or earthquake? What technical and operational issues might be implicated by such an approach? The Commission observes that many entities requesting waiver of the Commission's Part 11 rules in order to conduct a live code test do so because of their concern that a ''test'' code might not be relayed through law enforcement communication, thus weakening the designation of a ''statewide exercise.'' In this way, does live code testing facilitate the transmission of EAS tests over a larger variety of media, and therefore improve their accessibility?

107. Further, the Commission observes that live code testing often does not occur in a vacuum, and is requested to supplement larger efforts to raise public awareness of emergency response resources, such as during a ''Severe Weather Preparedness Week.'' Does live code testing promote and facilitate such community engagement? Do such events provide opportunities for those that might not normally be able to access the emergency alerting attention signal to create community response mechanisms that ensure that some community members, such as those who do not speak English or those with disabilities, are not left behind during an emergency? What role should community stakeholders, including those who deliver alerts as well as those who benefit from the receipt of alerts, play in the design, execution, and subsequent evaluation of live code tests and subsequent alerts? How can the Commission work with public safety officials, SECCs, EAS Participants and other stakeholders to facilitate the inclusion of the entire community, including non-English speakers and those with disabilities, in such planning, execution and evaluation? Would the Commission's proposed testing rules provide transparency and allow collection of best practices results that would enhance this facilitation role? How should broadcasters and other EAS Participants, as well as PSAPs and emergency managers that coordinate live code tests, be equipped with the tools necessary to serve multilingual communities and communities of individuals with disabilities? Could tests be designed to allow broadcasters and other EAS Participants to share resources during an emergency, such as non-English speaking personnel and air time, to ensure that non-English speakers maintain access to EAS and emergency information?

108. How, if at all, should the Commission conduct outreach and gather feedback on the ability of public safety officials, SECCs, EAS Participants and other stakeholders to plan and execute community tests and exercises to reach populations with limited English proficiency and individuals with disabilities? How should the Commission evaluate the results? What steps, if any, should the Commission take in response to any such information it may collect? For example, should the Bureau conduct outreach to EAS Participants and other stakeholders in particular regions that have non-English speaking communities to gather information about best practices for ensuring alerts reach non-English speaking communities? What accountability measures should be instituted or encouraged if the tests fail to reach citizens due to their lack of English proficiency or disability?

109. *Accessible PSAs.* The Commission seeks comment on whether EAS PSAs in languages other than English are particularly effective at informing individuals who would otherwise not be able to understand the contents of an English-language EAS message about how to respond should they hear the common alerting Attention Signal. The Commission notes that notwithstanding the ubiquity of the EAS and its familiar audible signal, the tpt/ECHO waiver request indicates that at least one population, *i.e.,* recently arrived individuals with limited English proficiency, was not familiar with the EAS Attention Signal, and needed the PSAs to become familiar with these sounds and their meaning. Are there other groups or individuals for which EAS PSAs would provide this value? Would it be helpful if EAS PSAs were made available in American Sign Language (ASL) in order to better meet the needs of certain individuals with hearing loss? To what extent can PSAs transmitted over the Internet, including via OTT services, offer enhanced utility and accessibility to the public, as well as to individuals with disabilities?

C. Leveraging Technological Advancements in Alerting

110. In this section, the Commission seeks comment on the extent to which the communications infrastructure underlying the nation's alerting capability should be—and already is—taking steps to leverage technological advancements to improve the content, accessibility and security of emergency alerts. In addressing these issues, the Commission intends to initiate a dialogue about creating a voluntary industry roadmap for further enhancing the capability of the nation's alerting infrastructure to carry a Presidential Alert in a manner consistent with consumer expectations of IP-based communications technologies.

1. Cable Force Tuning and Selective Override

111. The EAS ''force tuning'' provisions allow wireless and digital cable service providers and wireline video service providers to satisfy the general requirement that they transmit EAS audio and visual information over all channels by automatically tuning the subscribers' set top boxes (STB) to a designated channel (usually an otherwise empty control channel) that carries the required audio and video EAS message. The Commission's ''selective override'' provisions allow cable service providers to elect not to deliver EAS audio and visual information over channels that are carrying news or weather related emergency information with state and local EAS message. Such elections are made pursuant to a written agreement between the cable service provider and broadcaster. Use of selective override by the cable service provider is voluntary.

112. The Commission has received requests that it reexamine the selective override policy. Most recently, for example, the NAB requested that the Commission ''permit local television stations to opt out of cable system-wide overrides, provided such stations participate in the EAS system.'' NAB contends that cable overrides ''disrupt viewers' access to the critical, often life-saving emergency information provided by local television broadcasters, including shelter-in-place or evacuation directions, storm pathways, and the status of power outages . . . [and] frequently cause confusion and distress among viewers.'' NAB proposes that cable operators be required to ''implement 'selective override,' so that certain [broadcast] channels can be selectively omitted during a cable system's EAS interruption,'' thus providing local broadcast television stations with the ability to opt out of the cable system's universal forced-tuning of all cable channels, enabling the station to offer uninterrupted emergency information.

113. The Commission is also aware of reported instances where force tuning STBs has caused the subscriber's picture and audio to freeze, sometimes requiring a reboot of the STBs to restore normal access to channels. Viewers have claimed that during the period when the force tuned alert was active, they were unable to change channels and were stuck on the force-tuned EAS channel for extended periods of time. For example, on March 30, 2015, an in-house test conducted by a cable service provider was inadvertently distributed beyond the cable provider's test environment equipment to cable subscribers across several states, force-tuning most, if not all of them to a control channel where they were denied access to programming for approximately ten minutes. Commission staff has learned that over two million STBs likely were affected in that one example alone.

114. The Commission seeks comment on the propriety of its selective override and forced tuning rules in an evolving alerting landscape. Specifically, the

Commission seeks comment on whether its existing cable force tuning and selective override provisions continue to serve the public interest, and whether technological advancements should impact that analysis. The Commission seeks comment on the extent to which alerting functions incorporate (or are being modified to incorporate) advanced technology, in order to improve functionality and better support the conveyance of emergency information. Finally, the Commission seeks comment on technical issues that may suggest that forced tuning has an unacceptably negative impact on consumers viewing force tuned broadcast and cable channels.

115. *Impact of Technological Advancements.* In light of technological advancements or other factors that may impact cable operators' capacity to implement selective override, should selective override remain an acceptable voluntary EAS alternative for cable systems, or should all cable system providers refrain from interrupting local broadcast programming where the broadcast provider is participating in the EAS system and thus transmitting state and local EAS alerts? Alternatively, are there reasons why smaller cable systems (*e.g.,* those serving fewer than 5,000 subscribers), would need the selective override option, in contrast to the larger systems, and would a regime that maintained the option for smaller cable systems only—while larger systems uniformly delivered broadcast-originated state and local EAS alerts, news or weather-related emergency information—make sense? If smaller cable providers need this exception, should it be permanent? If not, for how much time should smaller cable systems fit into an excepted category?

116. Have technological advancements enabled cable operators' ability to selectively override broadcast signals? For example, cable services now benefit from the introduction of digital technologies, including ''smart'' STBs. How do these and related technologies affect the use of selective override? Have STB and headend technologies advanced to the point where selective override on a channel-by-channel basis can be readily programmed into cable equipment, without imposing undue burdens on cable providers? Is it reasonable to assume that all content delivered by STB shall be interruptible, such that EAS warnings could be delivered in banner form or otherwise for all content (without directing the subscriber to another channel through force tuning or by other means)? Have technological advances in EAS equipment made it easier and more affordable to engage in selective override? The Commission notes in this regard that some parties maintain that force tuning via the STB is not the only way that MVPD EAS Participants can display EAS information.

117. Does the widespread and growing availability of programming distributed by IP-based networks, including STBs and ''smart'' TVs capable of ''on-screen'' graphical user interface (GUI) user input, suggest that greater user control with respect to EAS acknowledgement and/or feedback should be supported or encouraged? Do the Commission's current cable force tuning and selective override requirements affect emergency operators' ability to leverage these technological advancements to rapidly and efficiently obtain feedback from consumers, in response to EAS messages? What regulatory obstacles exist that might unnecessarily impede greater consumer interaction with received alerting messages? Would facilitating this interaction introduce the capability for crowdsourced citizen feedback during emergencies and disasters that would improve community, state and national response? What possible consequences or potential for abuse, if any, would need to be addressed in harnessing this capability?

118. *Delivery of EAS Messages through Different Platforms.* Looking only at the content of the EAS messages transmitted through the EAS system, are there or can there be any differences between the EAS messages that consumers see when viewing the alert on their local broadcast channel as compared to the EAS alert transmitted by a cable system provider? Are those EAS messages always identical in a given geographic area regardless of whether it is transmitted over the air or through a cable provider's system? Should they be identical? Specifically, has the implementation of Common Alert Protocol (CAP)-based alerting made it more likely that cable providers can relay more detailed EAS alert information (*e.g.,* based upon the enhanced text in a CAP message) than what has been possible in the past or via the traditional broadcast-based EAS architecture? If so, have cable providers been originating EAS messages that have a greater emergency response value when using the force tuning option? Is there a significant difference in the accessibility of alerts offered by broadcasters and cable providers? To what extent, if at all, do cable franchise agreement provisions govern whether cable operators may participate in selective override where local broadcast providers are delivering state and local EAS alerts, news or weather-related emergency information? How should any differences in the actual EAS messages impact the Commission's analysis of the force tuning and selective override issues? Does the variation stemming from selective override complicate response from community emergency managers?

119. *Technical Issues.* Can STB technology advancements significantly reduce the risk that force tuning will cause the picture and/or audio to freeze, or lock out consumers from changing back to the channels they were watching? Are there any changes to the manner in which force tuning is implemented that could ensure that subscribers are not locked on the designated EAS channel? More broadly, are there steps or precautions cable service providers could take to prevent such events in the future? In light of technological advancements, does any public interest benefit remain by allowing cable service providers to satisfy their requirements to transmit EAS audio and visual information by force tuning? If not, would the immediate (''flash cut'') elimination of the force tuning option create any avoidable or unnecessary hardships, and, if so, would a sunset period for force tuning provide any relief?

2. EAS on Programmed Channels

120. As discussed above, the Part 11 EAS rules allow wireless and digital cable provider EAS Participants to comply with their obligations to deliver EAS messages by force tuning viewers to a channel that carries the alert or test. The rules limit the obligation of a cable EAS Participant to deliver EAS to ''programmed channels,'' which, under the current rules do not include ''channels used for the transmission of data such as interactive games,'' ''channels used for the transmission of data services such as Internet,'' or ''channels used for the transmission of data services such as Internet access.''

121. The Commission initially seeks comment on what basis exists today, when technical advances have expanded the scope of programming and other services delivered by cable and other MVPD EAS Participants, to distinguish channels as ''programmed channels'' for purposes of receiving EAS messages. Is there a technical basis to continuing the distinction among channels? If so, is there some other basis that would be more suitable for making this distinction? For example, should the distinction be based on channels

that are made available for consumer use versus channels not for consumer use and/or not part of the services that EAS Participants offer their customers? Channels not for consumer use would include diagnostic channels used to monitor the health and quality of the system, those used to transfer and manipulate metadata necessary to create the user interface (*e.g.,* the program guide), or those used to deliver broadband access. Would it serve the public interest to require EAS Participants to support EAS alerts on all channels over which they offer services to the consumer? Is there a reason to exempt any such channels from the Commission's EAS rules?

122. The Commission also seeks comment on the public safety benefits that could be derived from requiring that EAS Participants support EAS alerts over all channels that are part of the service package offered to the consumer. To what extent would requiring support for EAS alerts on all such channels increase the likelihood that the public will receive potentially life-saving alerts? To what extent might such channels offer opportunities to improve alert quality or accessibility? Further, what additional costs, if any, would EAS Participants expect to result from requiring EAS alerts to be supported on all channels that are part of the service package offered to the consumer by the EAS Participant? Would this approach fully address National Security and community alerting needs in the evolved technology landscape for typical residential consumers? Would this approach require hardware and/or software replacement? What standards, if any, would be affected by these proposed changes? How long should the Commission expect that it would take industry to comply with this alternative approach?

3. EAS Alerting and Emerging Video Technology

123. The Commission has consistently striven to ensure that, as technologies evolve, EAS continues to meet consumer expectations for basic emergency communications. For example, in preparation for the transition to digital television, Commission staff held a series of *ex parte* meetings with affected industry segments to ensure that the EAS would continue uninterrupted throughout the HD transition. As a result, when the Commission ultimately adopted the rules that included wireline video providers among EAS Participants, the record reflected almost unanimous support for the new rules. Now, emerging technologies are changing the EAS landscape again. A wealth of video content is now available to consumers online. For instance, Multichannel Video Programming Distributors (MVPDs) are beginning to offer IP-based versions of their programming, including providing consumers with apps to view content. Broadcast television is exploring IP-based offerings as well. A number of other entities are also entering the video space. Accordingly, in this section the Commission seeks to initiate a conversation regarding how the EAS may remain durable as the ways in which consumers view content evolves.

124. In order to implement the Commission's statutory obligations in a manner consistent with the public interest, the Commission seeks to understand whether and how the way in which consumers view content has changed consumer expectations for how they will receive EAS messages. In this regard, the Commission seeks to ensure that EAS alerts endure and remain reliable as technology advances. The Commission seeks comment on the extent to which entities offering content outside of traditional broadcast or pay TV modes of architecture are making EAS alerts available to consumers. From a technical perspective, what hardware, software, and standards updates would need to be addressed before alerts could be delivered via alternative means, such as via IP-based platforms? Are the potential issues with offering alerts outside traditional broadcast or pay TV delivery mechanisms? What kind of strategies could be employed to standardize the availability of alerts across technologies, applications, and platforms? To what extent are these efforts already underway?

125. The Commission further seeks comment on whether consumers have an expectation that alerts will be durable across different technology platforms. Do consumers expect that the alerts provided with programming offered via traditional technologies would still be provided when programming is offered through some other means, such as through an online offering? To the extent that commenters believe the Commission should take action to address consumer expectations with respect to receiving EAS alerts through new technologies, on what statutory basis would the Commission take such action? Commenters should also address any possible unintended consequences of Commission action.

126. The Commission seeks comment on whether EAS alerts offered through different technologies may have a greater potential to meet the emergency information needs of the public than do alerts offered via traditional media. What, if any, potential do these services have to improve EAS geo-targeting, for example, by using a devices' geolocation technology when the consumer is viewing content over the Internet? The Commission seeks comment on this assertion. Could alerts via non-traditional platforms offer consumers greater personalization options? For example, could consumers elect to receive alerts for geographic areas other than the location in which their device is located, in order to remain vigilant of prospective threats to loved ones living in other parts of the country? Further, the Commission seeks comment on how new technologies could facilitate consumer feedback on, and interaction with alert content. Could the text crawl of such alerts potentially contain clickable URLs and phone numbers directing the recipient to additional resources and information about developing emergency situations? The Commission seeks comment on the extent to which the advancements in technology may allow for customer feedback on alerts, such as confirming that an individual is threatened by a certain emergency condition, or enabling that individual to request specific emergency assistance by interacting with an alert. The Commission seeks comment on whether these technologies could give rise to a cycle of information sharing consistent with a ''many-to-one/one-to-many'' alerting dynamic.

4. WEA Alerts to Tablets

127. Section 10.10 of the Commission's WEA rules defines a ''mobile device'' as ''the subscriber equipment generally offered by CMS providers that supports the distribution of WEA Alert Messages.'' Pursuant to Section 10.500, support for the distribution of WEA Alert messages entails ''(a) Authentication of interactions with CMS Provider infrastructure; (b) Monitoring for Alert Messages; (c) Maintaining subscriber alert opt-out selections, if any; (d) Maintaining subscriber alert language preferences, if any; (e) Extraction of alert content in English or the subscriber's preferred language, if applicable; (f) Presentation of alert content to the device, consistent with subscriber opt-out selections . . . ; and (g) Detection and suppression of presentation of duplicate alerts.'' Electing to participate in WEA entails a commitment by the Participating CMS Provider ''to support the development and deployment of technology for . . . mobile devices with WEA functionality.'' Pursuant to the

Commission's CMS Provider election procedures, Participating CMS Providers must support WEA on at least one device. The Department of Homeland Security's (DHS) report on WEA penetration strategy states that ''[t]he most significant WEA penetration gap over the long term regarding mobile wireless devices is the lack of WEA capability in the tablet computers.'' DHS recommends that the Commission should find a way to encourage Participating CMS Providers and tablet computer manufacturers to add WEA capability to their tablet offerings that have wireless cellular data connectivity.

128. The Commission seeks comment on whether it should consider tablets that consumers use to access mobile services as ''mobile devices'' under the Commission's Part 10 WEA rules. Do 4G LTE-enabled tablets currently support the distribution of WEA messages? If not, the Commission seeks comment on what, if any, standards, software, or hardware modifications would be required to enable 4G–LTE-enabled tablets to support the distribution of WEA messages? Would 4G–LTE tablets be able to receive WEA alerts when they are connected to a Wi-Fi network or other unlicensed spectrum, based on the user's preference (such as when the user is at home and connected to their own Wi-Fi network), but while the tablet still remains within range of the Participating CMS Providers' 4G–LTE network? The Commission seeks comment on any costs commenters believe would likely be attendant to providing WEA alerts to 4G LTE-enabled tablets. The Commission also seeks comments on any benefits likely to result from the delivery of WEA alerts to 4G LTE-enabled tablets. Specifically, the Commission seeks comment on whether modernizing alerting platforms in this manner would increase the likelihood that individuals would receive potentially life-saving alerts by requiring that they be transmitted to the devices and services they use most. Are Participating CMS Providers prepared to develop a voluntary roadmap for providing WEA alerts to 4G LTE-enabled tablets?

5. Technological Potential for Improvements in Accessibility

129. The Commission seeks comment on the potential of new and emerging technologies to improve alert accessibility. In particular, the Commission seeks comment on the state of technology for machine-generated translation (*i.e.,* the use of software to translate text or speech from one language to another), to provide emergency alerts in non-English languages, and whether and how such technology could be leveraged by both the EAS and WEA systems. Are languages such as Spanish, that share a character set with English, more easily machine translatable than languages that use other character sets? How advanced are machine translation technologies for English to ideographic languages, such as Chinese? Could such translators be incorporated into EAS equipment? The Commission also seeks comment on the potential utility of platform-based video relay service capabilities to enhance the understanding of alerts and warnings for individuals with hearing and vision disabilities. The Commission seeks comment on these questions in order to gain a better understanding of achievable alert accessibility technologies.

130. Further, the Commission seeks comment on the ability of OTT alerting to improve EAS alert personalization. Could OTT EAS alerting be leveraged to improve alert accessibility for all Americans, including those with sensory disabilities those with limited English proficiency? For example, could the availability of URLs make it possible for alert content to be presented in languages other than English and in American Sign Language (ASL)? Could consumers personalize alert preferences with respect to text size, crawl speed, and contrast based on their unique needs? Could alerting via OTT services facilitate the use of symbols as accessible replacements or supplements to alert messages? Is it technically feasible and should consumers be given the ability to control the volume of the emergency alerting Attention Signal or audio message, independent of the volume settings in place for other activity on their device, in order to ensure that the alert is audible from anywhere in the home, or at least is appropriate for the user who may be deaf or hard of hearing? Similarly, is it technically feasible and should there be a requirement for any consumer, with or without a disability, to be given the flexibility and capability to control other settings of the alerting signals and audio levels, such as the type and intensity of vibrations and flashing lights, in order to accommodate their individual needs? Alternatively, would it be appropriate to enable users to lower the volume of an EAS alert in certain circumstances?

131. In the *WEA NPRM,* the Commission seeks comment on the feasibility of providing WEA messages in languages other than English and on the extent to which accessibility requirements would improve the presentation of multimedia content in WEA messages. Would extending WEA rules to include tablets and other mobile devices, as defined in the Commission's Part 10 rules, further enhance the accessibility of alerting to the public and to persons with disabilities? To what extent should WEA messages be subject to Commission accessibility requirements? Would the larger screen of tablet computing devices enable them to provide WEA messages that are more accessible to individuals with visual disabilities?

D. Securing the EAS

132. As described below, several high-profile and other less widely-known EAS security breaches in recent years have demonstrated that there are significant vulnerabilities in the nation's EAS infrastructure that must be addressed comprehensively. The Commission is concerned about the severity, frequency and nature of the risks associated with these EAS attacks and the related implications for the readiness of the nation's critical means of alerting and informing citizens of threats to safety of life and property, consistent with the Commission's statutory mission. The Commission starts to address those concerns with the proposals in this NPRM, including those discussed in this section and upon which the Commission seeks comment, which will help to ensure that the nation is better prepared in its ability to alert citizens of such threats, particularly to support the need of the President to communicate with the public during times of emergency and the need to ensure the system is reliable and secure in advance, in order to preserve that capability.

a. Recent EAS Security Incidents

133. *February 11, 2013 Incident.* On February 11, 2013, unidentified hackers accessed EAS equipment at several TV stations to perpetrate a ''zombie attack'' hoax. The false alerts affected television stations KRTV in Great Falls, Montana, WBUP and WNMU in the vicinity of Marquette, Michigan, and other stations in Michigan, Utah, New Mexico and California. The stations were vulnerable to this particular attack because they failed to change manufacturer default passwords on their EAS equipment, install firewalls, or take other appropriate security measures, which left the equipment easily accessible from the Internet.

134. *October 24, 2014 Incident.* On October 24, 2014, station WSIX–FM in Nashville, Tennessee aired a false emergency alert during the broadcast of the nationally-syndicated ''The Bobby

Bones Show.'' Bobby Bones, the show's host, ran an audio clip from a November 9, 2011 nationwide EAS test that contained the live EAN code reserved for Presidential EAS activations. Mr. Bones' apparent intent was to mock a local cable company's airing of a mandatory monthly EAS test during the second game of the 2014 World Series. The ''gag,'' however, had serious consequences: The clip was replayed by other radio stations, as well as cable TV and wireline video television systems in 32 states and the District of Columbia. Indeed, for approximately two hours, more than half a million television subscribers found their set top boxes locked on a false EAS message stating that regular programming had been interrupted by order of the White House. Had an appropriate authentication mechanism or date validation EAS protocol been established and installed on equipment that received the false alert, this incident likely would have been prevented.

135. *Other Incidents.* While the incidents described above are perhaps the most widely known EAS security breaches in the recent past, they are not isolated. Other, less notorious system breaches have occurred that also generate cause for serious concern. One fairly common scenario in this regard involves inadvertent activation/improper test alerts. For example, in December 2010, an unauthorized EAN alert was issued by WBLE, a radio station operating in northwest Mississippi. According to WBLE, a part-time engineer attempting to issue a required monthly EAS test accidentally pressed the wrong button and issued an EAN alert instead. This error, according to AT&T, affected approximately 17,000 U-verse subscribers in their Memphis Video Hub Office (VHO). The impact was similar to that of the Bobby Bones Show Incident in that subscribers' set top boxes were force tuned to the designated EAS alert channel and remained locked on that channel for approximately four-and-a-half hours. Proper originator authentication included in the EAS protocol would have prevented the incident.

136. Additionally, on June 26, 2007, a government contractor installing satellite equipment in Springfield, Illinois triggered an accidental EAN activation when he incorrectly left the receiver connected to a state EAS transmitter before final testing of that delivery path had been completed. The false EAS alert repeatedly interrupted programming for three or four minutes at a time and, in Chicago, triggered channel switchovers to a single area broadcaster, WGN. Proper originator authentication included in the EAS protocol would have prevented the incident.

137. Improper retransmission of dated EAS alerts, similar to the Bobby Bones Show incident, are also somewhat common. On February 12, 2013, for example, WIZM–FM in La Crosse, Wisconsin inadvertently triggered an EAS warning on neighboring station WKBT–DT by playing a recording of the Zombie Attack Hoax incident during its morning show. Another inadvertent retransmission occurred in a September 2010 advertisement for ARCO/BP aired by stations in several states including Oregon and Kansas. The advertisement included the EAS attention signal and header codes from an EAS RWT that triggered EAS devices in multiple stations nationwide. The inclusion of originator authentication or date validation in the EAS protocol would have prevented the incident.

138. Collectively, the incidents described above reveal an unacceptably high risk of unauthorized EAS signal broadcasts and insufficient real-time Commission awareness of, and visibility into the possible negative impacts of unauthorized alerts. In combination, they point to troubling security vulnerabilities associated with the nation's EAS. Unless appropriate actions are taken to enhance the broadcast network security environment through which the nation's EAS operates, these risks, vulnerabilities, and resulting problems are likely to persist, and indeed grow. That potential is likely to be exacerbated by the Nation's ongoing national transition to CAP alerts because of the increasing reach and number of originators capable of transmitting alerts.

b. Earlier Commission-Related Efforts

139. Until now, the Commission has sought to ensure EAS security by encouraging EAS Participants to voluntarily adopt EAS security best practices. These efforts, however, have not always borne the intended fruits of a highly secure, highly reliable and unquestionably credible system. Indeed, the record tends to suggest a certain level of complacency by at least some EAS Participants with respect to system security. A brief discussion of that history illustrates the shortcomings of the voluntary approach and further highlights the need for the new approach the Commission explores below.

140. *Best Practices—CSRIC IV.* On June 18, 2014, CSRIC IV unanimously adopted a set of voluntary best practices to be recommended to the EAS Participant community for the improvement of EAS security. Shortly thereafter, on November 7, 2014, the Bureau sought comment on CSRIC IV's recommendations. Surprisingly, the Commission received no substantive comments from EAS Participants, which raises questions regarding the extent to which EAS Participants are taking appropriate measures to manage security risk and ensure system performance at the levels necessary to achieve national public safety goals.

141. Also on November 7, 2014, the Bureau released a Public Notice announcing an inquiry into the impact of false EAS alerts on the security, reliability and integrity of EAS. As part of this inquiry, the Bureau held meetings with EAS Participants, FEMA, equipment manufacturers and other EAS stakeholders. The record developed through these activities suggests that the EAS' present authentication methodology warrants further examination in terms of its adequacy, systemic security, and reliability.

142. *Bobby Bones Show Incident and Other Assessments.* As discussed above, Commission staff studied the Bobby Bones Show Incident, a separate ''zombie attack'' hoax and other similar incidents to identify causes and issues associated with EAS security. All of these incidents involved a lack of built-in EAS user authentication and validation procedures, as well as weak implementation of other readily employable security best practices that would have prevented such unauthorized actors from entering and misusing the system.

2. Improving EAS Network Security

143. Unauthorized EAS alerts generate a host of ills, from consumer inconvenience and frustration over TV lockouts, to broad public fear and confusion about the existence and nature of threats. False alerts divert public safety and other government resources from other important activities, impose costs on licensees that have to deal with many of the consequences of false alerts and, ultimately, desensitize the public to legitimate alerts. The Commission, consistent with its fundamental public safety mandate, must ensure that the public has complete confidence in the EAS as one of the nation's essential public safety communications tools. Thus, if EAS Participants cannot effectively secure the system through voluntary mechanisms, the Commission must explore regulatory solutions to achieve EAS security. Accordingly, the Commission now proposes rules designed to safeguard the EAS and

maintain continued public trust in the system.

144. In this section, the Commission seeks comment on proposals intended to decrease the likelihood of false or malicious EAS broadcasts, and to codify best practices consistent with CSRIC IV's recommendations. The Commission also proposes rules requiring the reporting of false alerts, *i.e.,* alerts issued in situations other than a bona fide emergency, test, or public awareness campaign, and lockouts, and new rule changes for alert authentication and validation. The Commission also believes that these proposed rules—backed by an annual certification of specific actions from EAS Participants demonstrating adherence to the security best practices recommended by CSRIC IV—will fundamentally enhance the security of the EAS and help provide a baseline of actions from which to initiate risk management processes to protect the EAS. Additionally, the proposed reporting requirements would provide a minimum set of actions to assist in the communication of incident detection and response. These proposals are intended to complement, rather than replace, the Commission's current support for voluntary implementation of best practices developed through cooperation with industry and advisory bodies. Each proposal is intended to be flexible, so commenters should describe in detail how they propose to implement any preferred approach they may have, and how those choices advance the goals of this NPRM. The Commission encourages EAS Participants to examine all of their approaches to managing security risk, including planning and recovery, to inform their recommendations for improvements.

145. Also, the Commission invites alternative proposals from commenters on how best to promote EAS security. Commenters should support such proposals with sufficient information and analysis to provide a basis for thorough consideration. Given the importance of ensuring the authenticity and security of presidential EAN messages, the Commission also seeks comment on whether its proposed changes are sufficient for all EAS messages, or whether additional measures should be taken to secure particular alerts, such as the EAN. Assuming such additional measures are indicated, commenters should describe them and explain how they would better secure the EAS. Finally, commenters should address relative costs and benefits of the Commission's proposed rules as well as any proffered alternative proposals.

a. Annual Certification

146. In light of the issues raised above, the Commission proposes action to ensure that EAS Participants are following EAS security best practices, which in turn will make the Commission's nation's alerting system more secure and reliable. The Commission proposes that EAS Participants must submit an annual reliability certification form that attests to performance of required security measures with a baseline security posture in four core areas, as described in the following sections. The Commission believes this annual certification would establish minimum expectations for security, and provide the Commission with the necessary assurances that EAS Participants are adhering to industry best practices and therefore taking appropriate measures to secure the EAS. The Commission believes this requirement would be minimally burdensome, and would allow EAS Participants ample flexibility in implementing core security mechanisms based on the individual entity's particular needs. As an initial matter, the Commission seeks comment on whether an annual certification would achieve these objectives, and on the relative costs and benefits of this approach. The Commission expects that the information required to make a determination by the certifying official is readily available as part of the Participant's normal operations, and that the amount of legal and management review is negligible given that the best practices to which they certify are well known and have been carefully assessed by industry in the CSRIC process. The Commission estimates that certification should add an average of fifteen minutes to the annual update of the ''identifying information'' section in ETRS, resulting in an increased cost to industry of approximately $549,360 per year. If additional legal and management review would be required, the Commission assumes it would only be required the first year to ensure appropriate internal processes were in place and would amount to no more than an average of one hour per company for an additional $2,179,440 the first year. For those EAS Participants who are not using best practices, the Commission estimates it should take no more than four hours per device to perform the necessary changes, resulting in an estimated cost of $879,040 to industry. The Commission seeks comment on the accuracy of the estimates of the expected number of Participants that are not using best practices, the accuracy of the assumptions underlying the amount of time required for compliance, and the accuracy of cost estimates. Are there additional costs that are not sufficiently captured by these proposed cost estimates? Administratively, should the ''identifying information'' section of ETRS be used to provide an EAS Participant's certification, or should a different mechanism be used for making and recording the certification? Is it reasonable and efficient to require the certification to be part of the current required annual update of ETRS identifying information? What ways might there exist to further reduce the burden on EAS Participant while achieving the same result? Would the longer term burden be reduced by including a provision to review the certification requirement in five years with the intent to sunset the requirement if it becomes clear that Participants are effectively managing cybersecurity risk through mature implementation of the NIST Cybersecurity Framework or suitable equivalent as demonstrated through the planned cyber risk assurance meetings and Sector Annual Report recommended by CSRIC IV?

147. Further, the Commission seeks comment on each of the four core elements that would be addressed in the annual certification. Particularly, the Commission asks whether these four areas of certification provide sufficient assurance that security best practices are being followed. Are there any additional—or alternative—areas that should be subject to certification to achieve system security assurance aims? Are there measures that the Commission or industry stakeholders can take to ensure performance of the proposed security measures are minimally burdensome for all EAS Participants, from the largest broadcasters and cable systems to the smallest independent operators? For example, could industry organizations at the national and state levels work with their members to conduct outreach to smaller and less resourced EAS Participants to educate them and otherwise help them to successfully certify their compliance with the security guidelines the Commission proposes today? What, if any, should the Commission's role be in such an outreach effort? The Commission notes in this regard that the Bureau has already released a Public Notice reminding EAS Participants of the EAS security best practices recommended by the *CSRIC IV Initial EAS Security Report* and has

participated in a number of industry-related panels discussing cybersecurity as well as a webinar on cybersecurity for broadcasters. Are there other outreach steps in the *CSRIC IV Final EAS Security Report* that the Commission should undertake to raise public awareness regarding EAS security and to help EAS Participants incorporate EAS security best practices?

(i) Patch Management

148. A basic network security hygiene practice for any communications- and computer-based system—EAS included—is ensuring that the system runs up-to-date, secure software and firmware. This practice is included in various best practice documents, surveys and security guidelines, including one of the ''first five'' controls from the SANS Institute Critical Security Controls, control CSC 3–2. For more than a decade, the Commission and a series of communications security authorities and expert bodies have stressed the importance of regular system patching and updating, starting with Network Reliability and Interoperability Council (NRIC) V, and continuing through NRIC 7, CSRIC 2, and CSRIC 3. Despite continued attention to patching as a needed part of basic security hygiene, attackers continue to exploit unpatched systems. According to Verizon's 2015 Data Breach Investigations Report, 99.9 percent of all computer system exploits target vulnerabilities that have persisted for at least a year. Additionally, SANS control CSC 6–1—updating to the most current software and firmware version and patch level—would be the recommended mitigation strategy in 24 percent of all incidents Verizon reviewed.

149. In the Bobby Bones Show incident, for example, vendors with properly updated software and firmware for their EAS equipment resisted the false alert. Others, whose system software/firmware were unpatched, either broadcast the false alert or queued it for later broadcast. Had all equipment been updated to the latest version and in the correct configuration, it is highly likely the alert would not have been rebroadcast.

150. Proactive management of system vulnerabilities tends to reduce or eliminate the potential for exploitation and involve considerably less time and effort than responding after an exploitation has occurred. Accordingly, the Commission proposes, and seeks comment on, requiring EAS Participants to certify annually that they keep their systems updated with the latest firmware and software patches. The Commission observes that three of the thirteen best practice controls recommended by CSRIC IV cover patch management. Specifically, Recommended Control No. 1 states that ''EAS participants should regularly monitor EAS Manufacturer information resources (*e.g.,* Web sites) to obtain vendor patch/security notifications and services to remain current with new vulnerabilities, viruses, and other security flaws relevant to systems deployed on the network''; Recommended Control No. 6 states that EAS Participants should ''regularly seek and install software updates and patches''; and Recommended Control No. 7 states that they should ''expedite general system updates and security patching.''

151. Would effective implementation of best practice Control Nos. 1, 6 and 7 be assured by requiring participants to certify that they have followed a program to identify and install updates and patches to EAS devices and attached systems in a timely manner, verified EAS devices are running the current version and patch level of software and firmware, and verified that systems connected to EAS devices are running the current version and patch level of software and firmware? If so, is that sufficient to demonstrate basic security hygiene in the EAS? What alternatives would be acceptable if a participant does not comply with the above elements? Should the Commission allow participants to instead certify the measures they have taken to provide equivalent security or the explanation of how the above elements do not apply to their network? How extensive should such descriptions or explanations be? What issues could arise from requiring that the certification apply to both EAS equipment and all network equipment on the same network? Are there any reasons to refrain from applying the certification requirement to all network equipment connected to an EAS device? Is an annual performance certification from an EAS Participant sufficient? If not, what is a more appropriate interval for filings attesting to performance of required security measures? Alternatively, should the Commission require EAS Participants to update their systems when a patch or update is released and report that they have done so to the Commission? How much time would EAS Participants need to comply with a requirement to identify, acquire, test, apply and verify such updates? Are any of the specific actions proposed above unnecessary, and, if so, why? Alternatively, what other measures should be included in the certification?

152. The Commission seeks comment on the cost of complying with an annual requirement to certify as part of the required information in ETRS that systems are fully patched and running the most current firmware. Since ensuring proper patching and updating is already a common best practice across the communications sector, the Commission assumes that, for most EAS Participants, there would be no additional cost related impact to keeping EAS related systems current. Is this a reasonable assumption? Are there other factors that should be taken in to account when determining whether complying with this particular best practice would require additional effort? Would the benefits from increased performance of required security measures for EAS Participants who are not currently practicing them outweigh the costs of filing? The Commission requests that commenters be specific about costs and provide support and documentation accordingly.

(ii) Account Management

153. A second basic security hygiene practice is proper control, assignment and management of user and administrative accounts. Poor password practices are directly responsible for the Zombie Attack Hoax that had an impact on multiple stations in the northern and western regions of the nation. Due to stations not changing the manufacturer default passwords on their Internet-accessible equipment, hackers were able to log in, generate and send false EAS alerts. As a result, the Commission issued an urgent notice to change default passwords on EAS devices.

154. Despite the existence of well-known user account management best practices, the security breaches described above show that a number of EAS Participants fail to follow them. Thus, the Commission proposes a rule that would require EAS Participants to certify that they are following specific, common, EAS user account management best practices. Had such a rule been in effect at the time of the Zombie Attack Hoax, the targeted entities would have had certifications on file with the Commission that they had changed the default password for the system, had removed or disabled improper accounts, and routinely enforced complex passwords. The Commission believes such certifications, submitted upon penalty for false statements, would have induced the stations to change their default passwords, thus preventing the Zombie Attack Hoax. The Commission

seeks comment on this belief and on its underlying analysis.

155. Accordingly, the Commission seeks comment on rules requiring EAS Participants to certify annually that they have a control system in place to restrict access to EAS devices, that all EAS devices and connected system passwords have been changed from the default passwords, that password complexity is required, and that default, unnecessary, and expired accounts have been removed or disabled. Would these requirements be sufficient to ensure proper control over EAS device access? If not, what other user account management requirements should be added? What account management alternatives would be acceptable in lieu of these specific elements? In that vein, should participants be required instead to certify as to measures taken to provide equivalent security, or to explain how the account management elements described do not apply to their network? How extensive should such descriptions or explanations be? Should they apply to both EAS equipment and all network equipment on the same network? Should the ETRS identifying information section be used to provide an EAS Participant's certification? Is there a better method of recording certification? Is it reasonable and efficient to require certification as part of the currently required annual update of ETRS identifying information?

156. The Commission also seeks comment on the costs of complying with this particular element of the certification process. Since accepted best practices require basic account management, the Commission assumes that there would be little or no additional effort required to implement those best practices. Is this a reasonable assumption? The Commission requests that commenters be specific about costs and their sources.

(iii) Segmentation

157. In the Zombie Attack Hoax, outside actors used default passwords to gain remote Internet access to EAS devices allowing them to transmit false alerts. Had the impacted stations implemented best practices to prevent unauthorized remote access, it is far less likely that the intruders would have been able to penetrate the systems and log in with the default password. A firewall or other architectural separation would have impeded their ability to discover, access and utilize the EAS devices, and would likely have prevented the intrusion. Further, proper remote access security would have provided indications of the access attempt to system administrators who, in turn, could have acted upon that information to safeguard the system.

158. Accordingly, the Commission proposes requiring EAS Participants to certify annually that they have achieved a minimum level of segmentation of the EAS system. The Commission defines segmentation here for certification purposes as a category of best practice-based actions that logically group and compartmentalize assets and restrict trusted access to those compartments. Specifically the Commission proposes that EAS Participants certify that none of their EAS devices is directly accessible through the Internet, (for example, by configuring a firewall to deny access from the public Internet) and that any other type of remote access is properly secured and logged. The Commission believes this would have prevented the fraudulent remote access experienced in the Zombie Attack Hoax and in other similar attacks. The Commission specifically seeks comment on the effectiveness and desirability of the proposed rule. Would such a requirement adequately ensure proper separation of EAS equipment from Internet-connected network equipment? What other specific actions normally included in best practices to segregate control traffic from public access should be included in the certification? What segmentation alternatives would be acceptable to prevent unauthorized remote access? Should participants be required to certify as to the taking of specified measures or, in lieu of those measures, explain how the elements described do not apply to their network? How extensive should such descriptions or explanations be? The Commission also seeks comment on the definition and use of segmentation as a category of certification items. Should the ETRS identifying information section be used to report EAS Participants' certification, or should a different mechanism be employed?

159. The Commission seeks comment on the cost of complying with an annual certification requirement that EAS devices are not directly accessible from the Internet. The Commission further seeks comment on the cost of complying with a requirement that any means of remote access is properly secured and logged. Since accepted best practices (as well as recommendations in vendor guides and industry publications) specify a firewall or other method of segmenting the EAS device from the Internet, the Commission's assumption is that there would be no additional cost associated with having to institute these best practices. Is this a reasonable assumption? Are there other factors that should be taken in to account when determining whether complying with the best practice would require additional effort?

(iv) Annual Certification of CAP Digital Signature Validation

160. Based on comments received in response to the Commission's inquiry into the Bobby Bones Show Incident, it is apparent that EAS Participants may opt not to filter CAP messages based on the digital signature parameter, or may only filter based on digital signature for selected CAP monitoring sources. This raises the risk that even if State or Local authorities include a digital signature in a CAP-formatted message, EAS Participants may disregard the signature if the message was received from a source other than IPAWS–OPEN. By ensuring, and accordingly certifying, that their equipment is configured to validate CAP digital signatures on all CAP messages that include them, EAS Participants increase the security of the entire system by ensuring that CAP messages are unmodified and have been sent by a party with a valid digital certificate and, thus, are trustworthy messages.

161. The Commission seeks comment on the effectiveness and desirability of rules requiring EAS Participants to certify annually that their EAS devices are configured to validate digital signatures on CAP messages if the source of the CAP message includes this feature. Are there any technological or other barriers to certifying devices that are configured to validate digital signatures? If so, what actions could be taken to mitigate or remove those barriers?

162. The Commission also seeks comment on the cost of complying with an annual requirement to certify, as part of the required information in ETRS, that EAS devices are configured to validate digital signatures on CAP messages for all CAP messages that include a digital signature. The Commission requests that commenters be specific about costs and their sources.

b. False Alert Reporting

163. There currently is no requirement that EAS Participants report to the Commission or FEMA that they have generated a false EAS alert or what circumstances led to the false alert; thus requiring the Commission to rely on reports from the public and the press. This situation has often hampered the Commission's real-time awareness and ability to respond to a crisis or emergency associated with these activities. The Commission's experience over the last decade of collecting and

analyzing communications network outage data through its Network Outage Reporting System (NORS) shows the value of acquiring network reliability data. False EAS alerts, if reported, could similarly provide situational awareness about the health of the EAS to the Commission in real time, and facilitate the Commission's ability to take action to mitigate the effects of the alert.

164. Accordingly, the Commission proposes, and seeks comment on, a rule requiring EAS Participants to report the issuance or retransmission of a false EAS message via ETRS. Should an initial report including only EAS header codes, source, area affected, and time discovered of the false message be required? Is that information sufficient for an initial report? Is it reasonable to require such information or should less be required of the initial report? What other information should be included? The Commission also seeks comment on whether EAS Participants should be required to file their false alert report in ETRS within thirty minutes of identification of a false EAS message transmission. Is there a more appropriate time frame for a required initial report? Should a final report be required 72 hours after the initial report that includes an explanation of the root cause of the improper transmission? What other information should be included? Is that time frame long enough for EAS Participants to provide a final report? Is there a more appropriate time frame for the final report? Should any information in the final report be considered confidential? If so, what information should be covered as such? The Commission seeks comment on the effectiveness and appropriateness of using the ETRS as a reporting tool. Is there a better method of reporting false message transmission?

165. Finally, the Commission requests comments on the costs, burdens and benefits of the proposed mandatory reporting requirement; whether the requirement would promote the reliability, resiliency and security of EAS services; and whether the Commission could more narrowly tailor the requirement or otherwise pursue an alternative that would maximize the potential benefits to society or would accomplish the proceeding's objectives in a less costly, less burdensome, or more effective manner. Based on similarities with the Commission's Part Four outage reporting requirements for the notification and initial reports, the Commission estimates that complying with the reporting requirement will require approximately fifteen minutes for the initial report and forty-five minutes for the final report, for a total of one hour and an estimated cost of $46,400 per year. The Commission seeks comment on the reasonableness and accuracy of this estimate. Commenters should be specific about costs and their sources.

c. Lockout Notifications

166. As described above, the Bobby Bones Show Incident's audio clip did not contain the EOM code to return subscribers to regular programming. This resulted in 667,195 AT&T U-verse customers across the United States being locked out for several hours, unable to change their television to other programming while leaving them wondering what was happening. During this lockout period, the viewers were left confused about the validity of the alert, placing the credibility of the alert messaging system in question. The Commission believes that viewers must be able to rely on the alerting system for timely, accurate alerting information on which they can depend. The Commission believes that EAS reliability would be greatly enhanced by taking necessary steps to prevent the conditions that would result in the inability of devices to resume normal operation after an EAS alert. The Commission believes this would further public safety interests and address credibility issues that currently linger with the current system. Mandatory reporting *via* ETRS of instances when EAS Participant equipment causes, contributes to, or participates in a lockout that adversely affects the public would assist the Commission in identifying and assessing the nature and extent of the lockout issue, as well as the impact of false alerts reported separately.

167. Accordingly, the Commission seeks comment on a proposed rule to require all EAS Participants to report instances when their EAS equipment causes, contributes to, or participates in a lockout that adversely affects the public (*e.g.,* when multiple cable STBs cannot return to normal operation due to the failure to receive an EOM signal or otherwise correctly process an EAS alert). Is this definition of a lockout sufficient to capture all such events where the public's access to cable programming a cable-based alerts are concerned? The Commission seeks comment on whether there are some lockouts below a certain threshold that would be unnecessary to report because of limited effect on consumers. To what extent would excluding some lockouts from reporting requirements reduce the burden on EAS Participants? What threshold would strike an optimal balance between minimizing costs and keeping the Commission informed of significant incidents? Is there a better reporting method or definition for what constitutes a lockout that would provide the Commission with the appropriate amount of information to monitor and address this issue? Given that such false EAS alert-driven lockouts can have a significant impact on potentially millions of viewers, should an initial report should be required within fifteen minutes of identification of such an incident? Is there a more appropriate timeframe for a required initial report? The Commission also seeks comment on the scope of information that should be included with a lockout notification. For example, would the date and time, message source, affected device type(s), and estimate of the number of devices affected be sufficient for an initial report? If not, what other information should be included? Should a final report be required seventy-two hours after the initial report including the root cause of the incident? Is that time frame sufficient to provide a complete and thorough final report? The Commission seeks comment on the effectiveness and appropriateness of using the ETRS as a reporting tool for this type of incident.

168. Finally, the Commission requests comments on the costs, burdens and benefits of the proposed mandatory reporting requirement; whether the requirement would promote the reliability, resiliency and security of EAS services; and whether the Commission could more narrowly tailor the requirement or otherwise pursue an alternative that would maximize the potential benefits to society or would accomplish the proceeding's objectives in a less costly, less burdensome, or more effective manner. The Commission estimates that complying with the reporting requirement will require approximately fifteen minutes for the initial report and forty-five minutes for the final report, for a total of one hour and an estimated cost of $800 per year. The Commission seeks comment on the reasonableness and accuracy of this estimate. The Commission requests that commenters be specific about costs and their sources.

d. Alert Authentication

169. The EAS Protocol does not currently include a method to ensure that an alert received by EAS equipment was originated by an authorized source, *i.e.,* that the message is ''authenticated.'' EAS equipment will respond as designed to any Presidential Alert regardless of the actual originator or broadcaster. There are two approaches, described below, that could effectively address this issue. The first approach

leverages the existing features of digital signatures available on CAP-formatted messages—transmitted *via* IPAWS–OPEN or other IP-based connections, and the second approach explores the possibility of adding analog authentication mechanisms to EAS Protocol messages.

170. CAP allows for the use of a digital signature to be used as one method of message authentication. A message may be authenticated by using a digital signature when a federal, state or local CAP alert originator signs a CAP message using its unique originator key, and that signature is decrypted using a single decryption key provided by FEMA/DHS. An EAS Participant can know that a message was sent from a trusted source if it contains a digital signature that can be decrypted by the FEMA/DHS-provided key. Currently, all IPAWS–OPEN-originated CAP messages require digital certificate authentication, but some state and local CAP systems do not, and EAS Participants may elect not to filter CAP messages on the digital signature parameter for all, or only for selected CAP monitoring sources. As EAS Participants and federal authorities comply with CAP-related requirements in accordance with the *EAS Second Report and Order,* there is a clear and practical opportunity, presumably, to implement digital signature EAS authentication concurrently with those efforts. The Commission believes digital signature authentication for CAP messages adds a significant layer of security to EAS. Thus, the Commission proposes to require that EAS Participants process and validate digital signatures when handling CAP-formatted EAS alerts, and discard as invalid any CAP message where the digital signature does not match an authorized source from FEMA or from a designated source specified in the State EAS Plan.

171. Accordingly, the Commission seeks comment on the desirability and feasibility of discarding CAP formatted EAS alerts where the digital signature is invalid. What barriers to the implementation of such a rule exist? Is a requirement for all EAS Participants to treat as invalid any CAP-formatted message signed with an invalid signature sufficient to achieve the desired goals? The Commission also seeks comment on the desirability and feasibility of digital signature authentication for all CAP messages, not only those originated by IPAWS–OPEN. Should the Commission require all CAP-formatted messages to be digitally signed? Are there any technical barriers to such a requirement? Is the current process for digitally signing CAP messages for IPAWS–OPEN sufficient? Could it be effectively used for all CAP messages? Should the Commission specify a method of ensuring that all EAS Participants can properly authenticate the alert originators they are responsible for monitoring, or should that be specified within the State EAS Plans? Are State EAS Plans the appropriate location for defining the authentication process for State and Local digital signatures? What impact would there be to state and local authorities from requiring all CAP-formatted EAS messages be digitally signed? Is this rule—in conjunction the certification requirement described above—the most effective and efficient means of ensuring performance of required security measures? If not, what other methods of ensuring performance of required security measures should be adopted? Would any of the questions or proposals in this paragraph apply equally to the WEA system? If so, then to what extent? Commenters should include detail concerning such proposals, including costs and benefits of applying these types of security measures to the WEA system.

172. While CAP digital signatures can provide authentication for messages propagated via IPAWS–OPEN or other IP-based systems, they do not address traditional analog EAS messages transmitted over the air using the EAS Protocol. To address this issue previous commenters have suggested two methods of adding analog authentication mechanisms to EAS Protocol messages. Some EAS stakeholders support the use of an analog version of the CAP digital signature to confirm the authenticity of EAS messages originated in the EAS Protocol. To confirm the authenticity, Monroe proposes a solution of adding a unique message ID or authenticator after the existing EAS header codes. As an example, their TDX solution utilizes Audio Frequency Shift Keyed (AFSK) data in the audio portion of the message to provide an analog version of the CAP digital signature to be decoded downstream. Monroe suggests that ''the use of only a few bits of data could suffice as an authenticator value,'' and that ''such a solution would not overly burden the EAS message, lasting only two to four seconds, and would significantly improve message security.'' According to Monroe, such a solution would allow authentication of EAS Protocol messages without reference to an ulterior authentication source. There may be other potential solutions leveraging an analog version of the CAP digital signatures that would prevent retransmission of unauthorized audio alerts. If such an analog version of a digital signature had been in use during the Bobby Bones Show Incident, EAS equipment would have treated the unauthorized EAN alert as inauthentic because it lacked a signature. The same is true in the case of the February 12, 2013 retransmission of the Zombie Attack Hoax, and in the case of the ARCO/BP Advertisement Incident. Additionally, utilizing such an analog signature would have prevented the airing of a number of mistaken test events where an EAN was sent instead of a required test alert, including the December '10 Unauthorized EAN and the Springfield, Illinois Incident.

173. A second solution to EAS alert authentication that could be applied to alerts formatted in the EAS Protocol is a Virtual Red Envelope (VRE) system. While the EAS's predecessor, the Emergency Broadcast System (EBS), used red envelopes to send authentication codes to EAS Participants so that the EAS Participant could confirm the authenticity of subsequent alerts, this proposed virtual solution would use ''IPAWS servers to distribute a short validation code as part of the Required Weekly Test.'' The Broadcast Warning Working Group (BWWG) advises that such a method could maintain fidelity to the EAS Protocol by appending the validation field to the end of the EAS message header. The message would be considered valid only if the validation code provided in the most recent required monthly test (RMT) matched a corresponding code included in the EAN message. Under the VRE model, ''[t]he code match would compel the recipient equipment to automatically and immediately proceed to forward the entire enhanced EAS message in accordance with the Commission's EAS requirements.'' On the other hand, if the code did not match, this would trigger an alarm within the VRE system which would prompt manual authentication of the message. If a VRE system had been in use during the Bobby Bones Show Incident, EAS equipment would have treated the unauthorized Presidential EAS alert as inauthentic because it would have lacked an authentication code. Further, if the alert used for the first Nationwide EAS test in November 2011 had contained an authentication code, that code would not have matched the authentication code specified for alerts received in October 2014, which would have prevented retransmission. If EAS equipment were programmed to respond to such a mismatch by holding such an alert for manual inspection, the

inspection would have revealed that the message was not sent by a trusted source, and it could have been discarded.

174. Accordingly, the Commission seeks comment on the desirability and feasibility of including a unique message ID and/or authenticator ancillary to the EAS Protocol header codes and how to accomplish this in a manner that respects technological neutrality. The Commission seeks comment on the advantages and disadvantages of including a digital signature in CAP- and EAS Protocol-formatted EAS messages. The Commission also seeks comment on the desirability and feasibility of adopting a VRE solution to alert authentication that includes an authentication code within the EAS alert. Is a technical solution currently available that would allow the community to rapidly implement such a capability? What advantages and disadvantages would such a solution have? What would the impact of requiring such a solution be on small and medium businesses? What would the costs of such an implementation be? Should one, two or all of these solutions be required? Should each be considered an independent means of compliance?

e. Alert Validation

175. Alert message ''validation'' refers to a technical check of a message by EAS equipment that allows for confirmation that a message received is in fact a valid EAS message. The sole method currently available to EAS equipment for performing alert message validation makes use of a time stamp, which contains an inherent ambiguity in that no year parameter is specified in the time stamp. EAS equipment, therefore, is not always capable of determining whether an alert is valid. The Broadcast Warning Working Group (BWWG) notes that ''[i]f a fake EAS event is sent or an operator makes a mistake but has the right credentials and timestamp, it will be propagated as programmed, even if it is a recording of a previous alert.''

176. EAS alert validation could be improved by revising Section 11.31 of the Commission's EAS rules to include a year parameter ''YYYY'' in the time stamp (''JJJHHMM''), and requiring devices to ensure the expiration time of the alert is in the future. If a year field had been included in the time stamp during the Bobby Bones Show Incident, EAS equipment would have recognized that it was dated and, thus, could have prevented the unauthorized EAS alert from being processed as valid by downstream equipment. Such date validation also could have prevented the ARCO/BP Advertisement Incident and the Springfield, Illinois Incident since they were also caused by replay of previous outdated alerts.

177. Further, the Station identification (ID) header code (''LLLLLLLL'') could be a useful validation parameter if the station ID parameter is based on a static designation, such as a station's Physical System ID (PSID), and if EAS Participants accurately maintain the station ID parameter of their EAS equipment as well as the station IDs of the facilities they are assigned to monitor. If EAS equipment always verifies that the station indicated by an alert's station ID header code matches the station ID of an EAS Participant's assigned monitoring sources, use of station ID as a validation parameter could increase the security and reliability of the EAS ecosystem by not retransmitting EAS messages that have originated from outside its area.

178. Accordingly, the Commission seeks comment on the desirability and feasibility of amending Part 11.31 to include a year parameter in the time stamp, and to require devices to only transmit valid alerts. What hardware or software changes would be necessitated by adding a year parameter to the time stamp? How could any costs associated with this change be mitigated? Should the Commission define as valid only alerts with an expiration time in the future? Are there other validation criteria the Commission should consider based on the date-time fields? Are there other actions that the Commission should specify EAS Participants must take based on date-time fields? The Commission also seeks comment on the desirability and feasibility of requiring that the station ID header code be anchored to a static identifier, and on amending the Commission's EAS rules to require alert validation based on the station ID header code. Is PSID an appropriate unique station identifier suitable for use as the station ID header code? Are there other existing identifiers that would be more suitable? Is requiring devices to validate that the station ID header code matches one of the monitoring stations listed in the State EAS Plan, alone or in combination with other methods, a reasonable and effective way of ensuring stations do not retransmit alerts from unauthorized sources?

179. There are some indications that checking for interstitial alerts as a means of alert validation might have prevented the Bobby Bones Show Incident. Recent recommendations from CSRIC IV, however, advise against discarding all interstitial alerts, as some such alerts may be damaged or otherwise inappropriate for retransmission, and some such alerts may be valid and appropriate. In light of the CSRIC IV recommendations on this issue, the Commission seeks comment on the desirability and feasibility of revising Part 11 of the rules to require discard of none, some or all interstitial alerts.

180. Finally, the Commission requests comments on the costs, burdens and benefits of the above proposed changes; whether the changes would reduce the incidence of inadvertent or false alerts; and whether the Commission could more narrowly tailor the changes or otherwise pursue an alternative that would maximize the potential benefits to society or otherwise would accomplish the proceeding's objectives in a less costly, less burdensome, and/or more effective manner. In the *Sixth Report and Order,* the Commission estimated the total cost to EAS Participants to modify software and firmware to accommodate the ''six zeroes'' nationwide location code at $2.2 million. Would the changes to include a year parameter and to check validity based on time and the station ID header code entail similar costs and would that estimate be accurate for this purpose?

3. Confidentiality and Information Sharing

181. In this section, the Commission seeks comment on the degree of confidentiality that should be provided for security certifications and reporting-related information submitted to the Commission via ETRS. Under Sections 0.457(d)(1)(vi) and 4.2 of the Commission's rules, the Commission currently treats reports that are filed in its Network Outage Reporting System (NORS) as presumptively confidential, thus allowing such reports to be withheld from routine public inspection. This presumption recognizes both the ''likelihood of substantial competitive harm from disclosure of information'' and the Commission's concern that ''the national defense and public safety goals that we seek to achieve by . . . these . . . reports would be seriously undermined if we were to permit these reports to fall into the hands of terrorists who seek to cripple the nation's communications infrastructure.'' The Commission currently shares NORS reports with the Department of Homeland Security (DHS), which may ''provide information from those reports to such other [federal] governmental authorities as it may deem to be appropriate.''

182. *Treatment of Certification-Related Information.* The Commission seeks comment on whether it should treat certification-related information with the same confidentiality as the Commission treats NORS information. The Commission recognizes that the EAS presents a somewhat different set of circumstances than NORS. EAS is not a revenue-generating apparatus designed by EAS Participants as part of the delivery of services to customers for remuneration. Rather, EAS is a system that exists solely for the generation of critical public safety messages. Further, EAS Participants do not risk competitive disadvantage due to disclosure of the kind of information the Commission now seeks. Against this backdrop, the Commission must weigh the public's presumed benefit in being able to assess, in real time, the security of its EAS, and the Commission tends to generally favor disclosure over confidentiality. In the alternative, should the Commission treat certification-related information as presumptively confidential, as it does in DIRS?

183. The Commission tentatively concludes that the act of filing an annual certification should not be treated as presumptively confidential; however, the Commission recognizes that the data reported on the certification should be treated as presumptively confidential. The Commission recognizes the potential utility in treating as presumptively confidential information submitted in addition to annual certifications that describe alternative measures employed by the EAS Participant to mitigate the risks of nonconformance with certification elements. Accordingly, the Commission proposes the act of filing, and the contents of that addenda to EAS Participants annual certifications describing alternative approaches to performance of required security measures should be treated as presumptively confidential. The Commission believes this approach and rationale are consistent with other similar certification reporting requirements. The Commission seeks comment on these tentative conclusions, and on its analysis.

184. *Treatment of Reporting-Related Information.* Following the same underlying rationale for treatment of certifications above, the Commission tentatively concludes that the mere fact that an EAS Participant has filed a false alert report or lockout notification, as described in this NPRM, should not be treated as presumptively confidential. The Commission seeks comment on this tentative conclusion.

185. The Commission believes that a need exists to presumptively treat as confidential the information submitted by an EAS Participant pursuant to reporting on the issuance or retransmission of a false EAS message via ETRS, or on instances when an EAS Participant's equipment causes, contributes to, or participates in an incident that adversely affects the public and equipment does not return to normal operation after receiving an EAS alert. The Commission recognizes that some of the information in both contexts may contain material that, if disclosed, could potentially cause substantial competitive harm to the EAS Participant or even undermine national defense and public safety. Conversely, the same information may provide valuable insight into EAS vulnerabilities, information detailing specific corrective action(s) taken, the need for specific corrective action(s), or reasons why the EAS may have functioned sub-optimally. Given these competing concerns, the Commission tentatively concludes that treating such information in a presumed confidential manner is justified. The Commission seeks comment on this view. The Commission also seeks comment on whether there are sound reasons why it should treat submissions related to EAS annual certifications, false alert reporting, and lockout notifications differently with respect to their respective presumptive confidential treatment.

186. *Sharing with Other Entities.* In the Commission's effort to strengthen the nation's public alert and warning systems as community-driven public safety tools capable of ensuring that the public can receive and respond to alerts issued by alerting authorities in an effective, timely manner, it will be essential to integrate and enhance timely cooperation and information exchanged among federal, state and local officials. The Commission therefore seeks comment on whether, if it adopts presumptively confidential reporting and certification requirements, as proposed above, the Commission should share the information with other federal agencies, as it deems appropriate and consistent with the requirements of Section 0.442 of its rules? Should the Commission restrict such sharing to only certain named federal agencies? The Commission asks for commenters to share their views not only on the extent and limits of such sharing, but provide underlying rationale to support their views. With which state entities, if any, should the Commission share this information? With which non-governmental entities, if any, should it share this information?

187. The Commission further seeks comment on whether information should be shared under Part 11 with the National Coordinating Center for Communications (NCC), a government-industry initiative led by DHS representing 24 federal agencies and more than 50 private-sector communications and information technology companies. Would access to data collected pursuant to Part 11 contribute to the NCC's mission? Under what terms, if any, should such access be provided? Should the Commission instead leave to the discretion of the EAS Participants what Part 11 information they chose to share with the NCC? Would the Commission's sharing of Part 11 information with NCC discourage Part 11 reporting? Is there a subset of data proposed to be collected under Part 11 that the Commission should share with the NCC while upholding the confidentiality presumption that the Commission proposes be established for information submitted pursuant to Part 11? Would the sharing of Part 11 data in aggregate or generalized form be useful to NCC? Finally, it would appear that such information sharing would not have any appreciable cost impact. The Commission seeks comment on this view.

188. *Conditions on Sharing.* The Commission seeks comment on whether before it should allow data sharing with other entities as it did in the *Sixth Report and Order* that a state be required to first certify that it will keep the data obtained confidential and that it has in place confidentiality protections in place at least equivalent to those set forth in the federal Freedom of Information Act (FOIA). If the Commission allows the sharing of Part 11 information to another entity, what conditions, if any, should be placed on the use of such information? Should use of Part 11 information by shared entities be restricted to activities relating to protecting public safety, health or national security? Should the entities with which the Commission authorizes the sharing of information be limited in terms of access to the ETRS database on a ''read-only'' basis? Balancing EAS Participant interest in confidentiality with the need for timely sharing of information when appropriate, it would seem that Part 11 information sharing should be permitted by the Commission only if stringent measures are in place to protect the data from public disclosure. The Commission seeks comment on this analysis and what measures, if any, should be in place if

the Commission shares Part 11 information with any appropriate entity.

189. Given the national security and critical infrastructure concerns with having access to this data, what additional assurances can the Commission provide to ensure that any Part 11 information shared with appropriate entities will be properly safeguarded? Should personnel charged with obtaining Part 11 information be required to have security training? Should the identity of these individuals be supplied to the Commission? Should states be required to report breaches of confidentiality of information obtained as a result of compliance with the Commission's Part 11 rules? Should an EAS Participant be permitted to audit a state's handling of its information submitted in accordance with Part 11?

190. *Potential Alternative, Incremental Approach.* One way for the Commission to gain experience on the best path forward for the sharing of confidential information under the Commission's proposed Part 11 rules may be to study the issues involved by developing an interim information sharing capability. As appropriate, the Commission may implement a prototype exchange of Part 11 information sharing with interested states and EAS Participants on mutually agreeable terms, as a means of building confidence among stakeholders and informing its development of proposed rules. As another example, the Commission could seek to establish a negotiated, temporary information-sharing program with the NCC for a specified period of time (*e.g.,* eighteen months), after which time the program would be evaluated by the Commission, NCC, its members and other stakeholders for its effectiveness and whether it should continue unchanged, continue with modifications, or be terminated. The Commission seeks comments on this possible incremental approach.

191. In addition to any EAS information that the Commission ultimately may receive through the reporting processes outlined in this NPRM, the Commission may also obtain information through other sources (public and non-public) revealing vulnerabilities in the EAS. While the Commission proposes to treat information contained in certifications as presumptively confidential, as discussed above, it does not presently have an established regime for other information that it may receive that is in addition to information received through the reporting processes. As potential threats increase, and as the Commission receives more information on related threats to EAS and its potential vulnerabilities, should the Commission establish a set of controls within the Commission to limit the distribution of and otherwise safeguard the information that it receives? For example, should such information be treated as presumptively confidential as well? Further, should there be specific methodologies for the handling of information on EAS vulnerabilities, beyond simply the confidential treatment of that information? Should the Commission apply physical and IT security controls to protect information regarding EAS vulnerabilities, and limit access to such information on EAS vulnerabilities to a validated subset of Commission staff? The Commission asks commenters to address whether and what controls should be used in the Commission's handling of such information, and the duration for which such controls should remain in force or effect. The Commission seeks comment on these or other potential approaches to the treatment of information that reveals potential vulnerabilities in the system, and to the designation and handling of such information once received by the Commission. The Commission also asks commenters to address whether the designation, treatment and handling processes proposed ought to concern both the physical EAS architecture as well as IT security controls, or just one of those areas and, if the latter, which and why?

192. The Commission also seeks comment on the extent to which EAS stakeholders, including EAS Participants and EAS equipment vendors, should take measures to ensure that potential architectural or configuration vulnerabilities are safeguarded from inappropriate public disclosure. For example, the Commission observes that EAS equipment manufacturers may provide encoder/decoder information available to users on public Web sites, including default equipment passwords. Despite the Commission's proposal to require participants change default equipment passwords, does such practice create potential vulnerabilities? The Commission asks commenters whether information on the EAS architecture, including equipment instructions, can be subject to safeguards, and if so by what means? For example, should instructions be made available only to validated entities and thus, not made publicly available on Web sites? How could the effectiveness in increasing security of such a restriction be measured compare to the costs of administering such a program and of limiting access to operators, maintainers, and researchers? What other measures should stakeholders take to keep information regarding EAS architecture and configuration secure? To the extent the Commission were to take measures to ensure that information on EAS architectural and IT configuration vulnerabilities is made more secure, what specific legal and regulatory authorities would apply?

4. Reach of Proposed EAS Security Rules

193. As a logical extension of the Commission's discussion above of the costs and operational issues associated with implementing new security measures for EAS, the Commission seeks comment on whether its proposed security rules should apply to all EAS alerts, and to all EAS Participants. Specifically, the Commission seeks comment on whether the Presidential Alert may warrant additional and/or heightened security measures, whose implementation costs may exceed the benefits when applied to local alerts that are issued more commonly, and that have a less immediate impact on national security. In the discussion below, the Commission seeks comment on whether to except EAS Participants currently designated as PN stations from some or all of the security requirements it proposes. The Commission also seeks comment on potentially excusing EAS Participants that qualify as ''small businesses'' under the Small Business Association (SBA) standard for their respective industries from some or all of the security requirements the Commission proposes today.

194. *EAN Only.* Would applying the above-proposed security measures to the EAN only recognize that the Presidential Alert presents heightened security concerns and more complex technical implementation issues than other EAS alerts? On the other hand, would application of enhanced security rules to the EAN risk dividing the Part 11 rules into two separate sets of requirements that may be burdensome or incompatible to implement using a unified EAS protocol, or when implemented in the same EAS equipment. In light of the fact that EAS Participants maintain only one piece of EAS equipment for both the Presidential Alert and all other alerts, notwithstanding their distinct functionalities and purposes, would an EAN-only approach obviate any technical or financial benefit that might result from limiting application of security measures to the Presidential Alert? Does the fact that alert authentication and validation are

automated processes similarly undermine the potential for cost savings that might result from forbearing from applying the proposed heightened security measures on all but the Presidential Alert? If EAS equipment is capable of providing heightened security for one kind of alert, would there be any reason not to provide that functionality for all alerts? Additionally, would improving alert authentication and validation for the EAN require changes to the EAS header codes that would be best applied consistently to all alerts?

195. *Exception for PN Stations.* Are security concerns attendant to participation in EAS less pronounced for PN stations than key EAS sources in light of the fact that they are not monitored by other EAS Participants? Would the severity of an EAS security breach be directly related to the designation of the attacked EAS Participant in the EAS alert distribution hierarchy? If so, does that militate for a graduated application of the security provisions proposed above such that key EAS sources are subject to stricter security requirements than PN stations? Should the application of the Commission's security rules be even more granular, for example, with NP stations being subject to more strict security requirements than Relay stations?

196. *Small Entities.* Would it be preferable to allow the EAN to be delivered only by more sophisticated or secure systems, preserving the flexibility for smaller EAS Participants alert originators at the state and local levels to participate in state and local alerting without the need for certain additional security measures? If the Commission were to except small entities from application of some or all of its security rules, is the SBA size standard the appropriate metric for determining whether a business should be considered ''small,'' or would another standard be appropriate and, if so, on what basis(es)?

5. Software-Defined EAS Networking

197. In this section, the Commission initiates a dialogue about whether the level of administrative upkeep and oversight required to ensure that all security and performance updates required to maintain EAS equipment are uniformly implemented across a heterogeneous EAS system, and the level of coordination and planning needed to satisfactorily address the complex and varied threat vectors that exist for attacking EAS militate in favor of a new approach to EAS design. In particular, the Commission seeks comment on the efficacy of two potential software-defined networking approaches to a new EAS paradigm: (1) Centralized configuration and management of EAS updates and security; and (2) virtualization of EAS equipment. The Commission also seeks comment on whether and how these approaches could be implemented in order to improve EAS security, and increase the consistency of EAS operations.

a. Centralized Configuration and Management

198. Centralization of EAS configuration and management entails logically connecting EAS equipment to a remote, central controller or database. In the *Fifth Report and Order,* the Commission declined to require that EAS equipment contain an Ethernet port, reasoning that the decision of how to fulfill CAP monitoring obligations is best made by EAS equipment manufacturers. That said, Trilithic commented that ''we expect an Ethernet connection to be the input/output of choice for future (and present) EAS Encoder/Decoders.'' Using an Internet connection, either through Ethernet or wireless, the central controller could have visibility to every piece of equipment in the EAS alert distribution network. By performing routine checks, the central controller could be able to distribute and install software patches to close security vulnerabilities in EAS equipment, as required. It could also control the distribution path of EAS alerts nationwide in a manner that precluded single points of failure. Centralization could supplement, rather than replace, traditional alert distribution mechanisms. A high-level depiction of a centralized EAS controller concept is depicted in *Figure 1.*

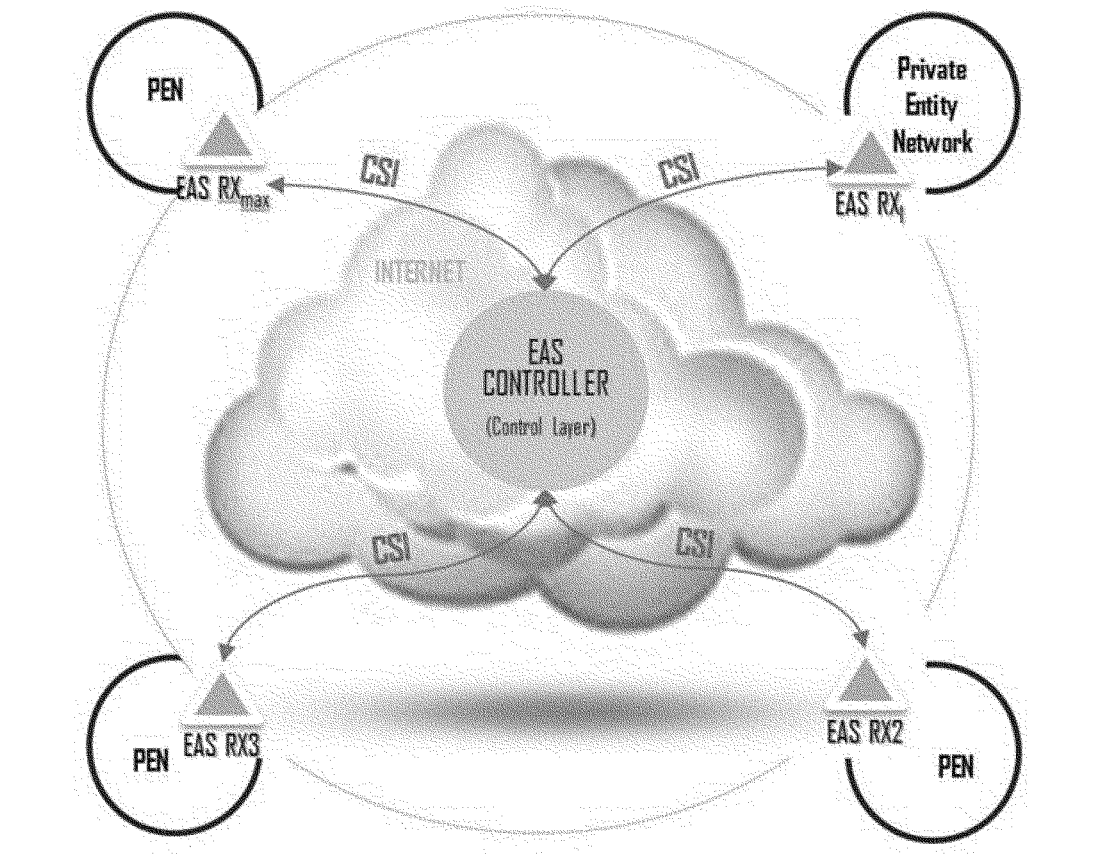


Figure 1: Diagram of Centralized EAS Configuration and Management Concept

199. The Commission seeks comment on whether a centralized configuration and management structure for EAS would result in significant security and operational benefits. The security of the EAS platform has been compromised on several occasions. While the Commission has proposed to adopt measures to further authenticate and validate EAS messages above, given the scope of human intervention required to completely inoculate the EAS against unauthorized alerts and other security threats, is it possible that continued piecemeal modification of the Part 11 rules, even with greater diligence on the part of EAS Participants in adhering to security best practices, might not be sufficient to fully secure the EAS? The Commission seeks comment on whether a broader approach to EAS architecture design may be necessary. Particularly, as threats evolve, what steps should the Commission take now as a proactive response to such threats? Specifically, the Commission seeks comment on whether centralization has potential to augment EAS capabilities, whether it has the potential to improve EAS security and reliability, and on the engineering challenges and operational issues, including cost, that implementation would entail.

200. *Augmented Capabilities.* Would centralization of EAS configuration and management have the potential to transform EAS into a more capable system? If so, to what extent and in what ways? If the distribution pathway of alerts were configured by a central controller connected to EAS equipment via an Internet connection, could a centralized configuration and management model for EAS be used to ensure that no single point of failure exists in the EAS alert distribution hierarchy? Could a tiered control model be developed such that SECCs could continue to determine the distribution paths and monitoring assignments for alerts and EAS Participants, respectively, in their states, pursuant to a ''no single point of failure'' principle that could be maintained by a central controller? Relatedly, could the ability to configure EAS alert distribution pathways improve geo-targeting, especially if it is implemented for all EAS Participants, not just key EAS sources? Indeed, could such a model enable EAS alerts to be targeted to not only geographic areas, but to specific EAS Participants? In the cable environment, could the centralization concept be expanded to include a connection to STBs that would enable alerts to be targeted to specific individuals? Further, the Commission seeks comment on whether a centralized configuration and management model could be made capable of ensuring that all EAS equipment across the nation is running the most up-to-date software available by performing periodic version checks of EAS software via the Internet. The Commission seeks comment on the extent to which this approach could bring uniformity and consistency to EAS equipment operation, and ensure that all EAS equipment is able to take advantage of the improvements that equipment manufacturers make available through software updates, obviating the risk of human error. The Commission also seeks comment on how the underlying heterogeneity of the EAS environment might complicate centralized control and uniform operation.

201. *Improved Security, Reliability and Resiliency.* Would central configuration and management increase EAS security and reliability by relying

on a secure Internet connection for communication between EAS devices? The Commission seeks comment on whether a central controller could provide a more efficient and effective solution than is currently available to prevent and redress malicious attack on, or mistaken use of EAS by pushing a software patch to EAS equipment that could address the issue. How could the central controller detect misuse in the nationwide EAS network? How quickly could software patches be developed and deployed? Further, the Commission seeks comment on whether the central controller could provide an additional layer of alert authentication and validation for alerts transmitted via traditional EAS alert distribution systems? Would EAS equipment be capable of performing the alert validation and authentication procedures proposed above while concurrently using the Internet to request that the central controller confirm the validation and authenticity of each message? The Commission seeks comment on the alert authentication and validation processes that should be tasked to the central controller. Further, the Commission seeks comment on whether intermittent traffic between EAS receivers and the controller, such a data traffic to transmit a software update, could be encrypted. Would such communications be as vulnerable as, if not more vulnerable than actual EAS alerts? What encryptions techniques would be best suited for this purpose? Finally, the Commission seeks comment on whether centralized configuration and management would improve EAS' resiliency. Could a centrally configured and managed EAS system continue to function properly after a catastrophic event that, for example, limited access to the Internet, or resulted in an electromagnetic pulse? In case of such an event, could all EAS equipment continue to operate pursuant to the most recent software update issued prior to the outage until a subsequent update is received? How would this level of resiliency compare with the current PEP-reliant model?

202. *Engineering Challenges.* Notwithstanding the tremendous potential benefits, could implementing centralized configuration and management of EAS present complex engineering challenges for EAS stakeholders? The Commission seeks comment on the engineering challenges implicit in developing a central controller, new EAS equipment, and protocols for communication between them. Specifically, the Commission seeks comment on the hardware, operating system, and software required to maintain a central controller. Would it be necessary to maintain multiple back-up copies of the controller on a fortified or cloud-based server to be used in the event of failure or attack? The Commission also seeks comment on whether and how EAS equipment would have to be redesigned. Would every EAS encoder/decoder require an Ethernet connection in order to successfully implement centralized configuration and management? Could EAS equipment connect to the Internet wirelessly? The Commission seeks comment on the optimal method of allocating responsibility for administrative tasks among nodes in a tiered control model, including if SECCs were to be given control over alert distribution pathways in their respective states. Could a centralized configuration and management EAS network design be implemented during an interim phase during which only some EAS equipment would be connected to the central controller? Does an Ethernet port provide the optimal method of connecting EAS equipment to the Internet? If not, what would be the ideal method?

203. The Commission seeks comment on whether centralized configuration and management would also include the development of at least three new, secure protocols. First, the Commission seeks comment on whether a secure protocol would be necessary to govern all communications between the central controller and EAS equipment. The Commission also seeks comment on whether a second secure protocol would be required to describe the master-slave relationship between the central controller and EAS receivers. Third, the Commission also seeks comment on whether a secure protocol would be required to automatically hand over control from one controller to another in the event of such an equipment failure or attack. Are there are additional protocols, equipment upgrades or engineering challenges of which the Commission should be aware?

204. *Operational Issues.* What operational issues might be raised by centralizing control of EAS? The Commission seeks comment on what, if any entities are well positioned to take responsibility for managing the EAS controller. Would it be preferable to have only one entity assume this role in order to ensure accountability? Would this entity also have to assume liability for interoperability, system misuse and error? Could this entity be required to finance system conversion and subsequent upgrades? Further, the Commission seeks comment on whether such a model would likely require EAS manufacturers to open their devices to receiving ''push'' updates. What, if any impact would ''push'' updates have on MVPD EAS Participants that currently do their own failure testing and regression analysis of all software updates prior to installation in order to ensure that the new software will not jeopardize the proper functionality of their system? Would EAS Participants, including such MVPDs, welcome a system of EAS governance where they could externalize the costs of failure and regression testing of EAS software to an entity charged with managing the central controller? Further, would a centralized model require vendors to disclose their customer lists to a third party? Do EAS equipment vendors maintain customer lists that could be shared, on a confidential basis, with the appropriate entity or entities?

205. *Costs.* What costs would EAS stakeholders expect to result from centralizing configuration and management of EAS? Would centralized configuration and management obsolete all legacy equipment, necessitating replacement? Would the augmented capabilities and improved security, reliability and resiliency potentially offered by centralization outweigh the costs? The Commission seeks comment on any steps that it could take to help minimize these costs, particularly for small businesses.

b. Network Function Virtualization

206. The Commission seeks comment on the benefits of virtualization of aspects of EAS equipment or alert distribution in the context of a wider transition among EAS Participants to IP-based platforms, and cloud-based network architectures and strategies in particular. Specifically, the Commission seeks comment on the benefits of virtualizing EAS equipment, operational issues and costs implicated by implementation, and on whether virtualization should be considered in the alternative, or as a complement to centralization.

207. *Benefits.* Would the virtualization of EAS equipment in the context of a larger industry-wide transition to cloud-based computing bring homogeneity, consistency and reliability to the EAS computing environment by allowing software to operate independently of the underlying hardware and operating systems produced by various equipment manufacturers? Specifically, could virtualizing EAS equipment result in a completely homogenous operating environment in which every EAS node (formerly EAS equipment) would be

programmed to authenticate, validate, and process EAS alerts in an identical matter, with the caveat that users could continue to specify which event codes should be carried by their EAS nodes based on the event's relevance to the geographic area in which the node is located, and the responsibilities of the alert originator? Would such a homogenous environment lead to alerts being processed in a more consistent manner? Is it likely that such a system would more reliably ensure that alerts are delivered to all intended recipients in a secure manner?

208. *Operational Issues and Costs.* Would the virtualization of EAS equipment implicate costs and operational issues for EAS equipment manufacturers, EAS Participants and alert originators not already subsumed within the costs of ongoing efforts to transition business operations to the cloud? Would a virtualized EAS architecture entirely obviate physical EAS equipment used for decades as the cornerstone of EAS alert transmission? The Commission seeks comments on the costs that might be imposed by such a transition, both in terms of short term equipment replacement, and long term savings on software updates, testing, and future hardware replacement. Would EAS software updates become less complex, and therefore less costly to develop? Similarly, would a homogenous operating environment for EAS reduce EAS costs for EAS Participants associated with failure testing and implementing equipment updates? Could virtualization reduce equipment costs in the long run by obviating the need for future hardware replacement? Would virtualization reduce the need for complexity in alert origination software? Would this increased simplicity lead to EAS alerts being more consistently delivered in an accurate manner?

209. Would virtualization add value to an EAS implementation that included a central controller? The Commission seeks comment on whether the system checking function of the central controller is sufficient to achieve consistency in function without the homogeneity of form that could be created by virtualization. Are there any additional benefits to a virtualized system not captured by centralized configuration and management? Would a virtualized approach to EAS implementation be consistent with the Commission's operating principle of technological neutrality?

6. Preserving EAS Defense Through Planned Diversity

a. Ensuring a Modern and Effective EAS Structure

210. The NPRM in its background section discusses the two complementary mechanisms by which EAS messages are transmitted: (1) Through the traditional, broadcast-based EAS Protocol; and (2) through the newer, Internet-based, CAP-formatted, IPAWS system. The Commission seeks comment on how stakeholders believe those two systems should relate to each other going forward. For example, does it make sense to keep the two different systems solely for resiliency considerations? Can the Commission, FEMA and other Federal partners and EAS Participants sufficiently secure the broadcast-based EAS to achieve appropriate levels of resiliency and to ensure that this EAS path does not expose EAS more generally to undue security risks? Are the failure modes of the two paths sufficiently different to suggest an enduring unique value from both elements? Does a sufficient number of EAS Participants, particularly in rural and other underserved areas have the Internet access or other technologies necessary to participate in the CAP-formatted system? Ultimately, does it make sense to migrate to one system? If so, over what time period? What should that new system look like? Would purely Internet-based systems be overly reliant on the need for strong cybersecurity?

211. Are stakeholders confused or is there any inefficiencies the Commission should be aware of because there are two systems? Also, given the ways in which communications have changed since the EAS and its predecessor system was introduced, *e.g.,* the introduction of social media alerts, WEA mobile alerts, and other technical innovations, does the Commission have an alerting system that is appropriate and tailored to today's communications landscape, both in terms of the technology in use and anticipated and in terms of the usage and communication patterns of today's public? If not, does the Commission need a wholesale re-thinking of the alerting system or is the current system sufficiently flexible that the Commission can evolve it over time so that it remains appropriate in light of today's technology, usage patterns and emerging security threats?

b. Securing the EAS Broadband Architecture

212. The current adoption of IPAWS–OPEN as a delivery method of alerts to all EAS participants in accordance with the Commission's requirements in the *Fifth Report and Order,* as well as its use in WEA, have increased the dependence of the EAS and related systems on broadband (*i.e.,* IP) networks. This migration will entail a shift from the legacy environment for EAS which was marked by physical route diversity. The nature of IP systems, however, will not reproduce this security element; indeed, several of the proposals above depend on movement toward centralized management and virtualization, which involve significant dependence on IP that, in turn, will require highly reliable, redundant, and secure Internet connectivity to mimic the security that physical diversity in the legacy EAS network currently provides. The Commission seeks comment on the nature and extent to which new alerting technologies will create such dependencies. What methods of securing the EAS would best maintain at least an equivalent level of redundancy and security as the legacy daisy chain presently provides? What additional considerations does this shift require the Commission to take into account when testing the EAS system? Do existing and planned test strategies adequately cover all redundant paths used to disseminate the alert? As the Commission continues the focus on the IPAWS–OPEN path, does it risk less frequent use of the legacy broadcast paths? If so, what are the implications for seamless operation of legacy paths and the resiliency of the entire system, and how can the Commission mitigate any deficiencies that may arise from any reduced dependability?

213. Given the importance of physical security in maintaining the integrity of the EAS system, what additional measures may be necessary to ensure access to EAS devices and the IP network that feeds them are protected from malicious damage or compromise? Are the existing practices and continuity of operation plans sufficient to ensure reliable delivery of EAS alerts to the public? What additional levels of redundant paths, equipment, power, and other services should be required to ensure operation? For example, in addition to the security measures proposed earlier in Section III(D)(2), what other methods could the Commission use to prevent IP-based attacks from compromising the EAS system? Should the Commission maintain a secondary broadcast EAS system based on legacy EAS in addition to and separate from the IPAWS–OPEN-based system?

E. Compliance Timeframes

214. The Commission seeks comment on the timeframes in which the proposals in this NPRM, if adopted, could reasonably be implemented by EAS Participants. As discussed in greater detail below, the Commission proposes that EAS Participants must comply with its proposed rules that include new information collection requirements (*i.e.,* the State EAS Plan rules, initial annual security certification, and security incident reporting requirements) within six months from the release of a Public Notice announcing Office of Management and Budget (OMB) approval of related information collection requirements, or within 60 days of a Public Notice announcing the availability of the Commission's relevant database to receive such information, whichever is later; with subsequent annual certifications due by June 30th of each calendar year. The Commission proposes that EAS Participants must comply with proposed alert authentication and validation measures within one year of the rules' publication in the **Federal Register**. The Commission notes that no action is required to comply with its live code test and PSA rules, and encourages EAS Participants to begin engaging in testing and outreach efforts pursuant to those rule amendments as soon as those rules become effective, thirty days from the date those rules are published in the **Federal Register**. The Commission seeks comment on whether this framework appropriately balances the burdens of compliance with the need for rapid improvement of EAS organization, testing, outreach, and security. For ease of reference and comment, *Figure 2,* below, sets forth proposed timeframes for those instances where the Commission proposes specific implementation deadlines.

Proposed rule amendments	Proposed compliance timeframes
EAS Designations	*Rules would be effective within 30 days of publication in the* ***Federal Register.***
State EAS Plan Contents	*Within six months of release of a Public Notice announcing OMB approval of related information collection requirements, or within 60 days of release of a Public Notice announcing the availability of SEPFI to receive State EAS Plans, whichever is later.*
Live Code Tests	*No action required; rules would be effective within 30 days of publication in the* ***Federal Register.***
EAS PSAs	*No action required; rules would be effective within 30 days of publication in the* ***Federal Register.***
Annual Certification	*For the first certification: Within six months of the release of a Public Notice announcing OMB approval of related information collection requirements, or within 60 days of release of a Public Notice announcing the availability of ETRS to receive such reports, whichever is later. For subsequent annual certifications: by June 30th of each calendar year.*
Reporting False Alerts and Lockouts	*Within six months of the release of a Public Notice announcing OMB approval of related information collection requirements, or within 60 days of release of a Public Notice announcing the availability of ETRS to receive such reports, whichever is later.*
Authentication and Validation Measures	*Within 1 year of the rules' publication in the* ***Federal Register.***

Figure 2: Proposed Implementation Timeframes

215. *State EAS Plan Rules.* The Commission proposes that the new EAS Designations would take effect 30 days from the publication of final rules in the **Federal Register**, and to require compliance with the Commission's State EAS Plan rules within six months of the release of a Public Notice announcing OMB approval of related information collection requirements, or within 60 days of release of a Public Notice announcing the availability of SEPFI to receive State EAS Plans, whichever is later. States should already have State EAS Plans in place, and the Commission's proposed rules would not require that states adopt any particular alerting strategy or necessitate any changes in alerting implementation. The Commission does not anticipate, however, that producing State EAS Plans that include the new elements the Commission proposes would require additional discussion, strategic planning, and outreach. This discussion may entail a rigorous assessment of state preparedness along the axes discussed above. For example, SECCs may need to perform outreach in order to ascertain the extent to which EAS Participants in their state are using alternative alerting mechanisms such as the satellite-based monitoring sources, highway signs or social media, and the extent to which they are prepared to leverage available technologies to implement ''one-to-many, many-to-one'' alerting. SECCs may also need to engage with key EAS sources in their state in order to aptly apply the Commission's proposed EAS Designations. The Commission seeks comment on whether requiring compliance with its proposed State EAS Plan rules within this proposed timeframe would provide SECCs with sufficient time to complete any required strategic planning, discussion and outreach necessitated by these proposed rules. Commenters are encouraged to specify an alternative timeline if compliance within six months is considered infeasible, or if compliance can be achieved earlier.

216. *Alert Authentication and Validation Rules.* The Commission proposes that EAS Participants should be required to comply with its alert authentication and validation rules within one year of the date of their publication in the **Federal Register**. In the *Sixth Report and Order,* the Commission provided EAS Participants one year to develop, test, and deploy any necessary software updates to support the national location code and National Periodic Test (NPT) code, and to replace any EAS equipment that no was no longer supported by the manufacturer. The Commission seeks comment on whether the changes that may be necessitated by its proposed alert validation and authentication requirements may be accomplished through a software update, and reason similarly that EAS Participants may be expected to develop, deploy and test any required software updates within a year's timeframe. Alternatively, could compliance with some or all of the proposed rules be satisfied within a shorter timeframe? Given the importance to the nation's safety of securing the EAS, the Commission seeks comment on the shortest practicable amount of time in which these measures could be implemented. To the extent an alternative timeframe would be more appropriate, the Commission asks commenters to provide a detailed explanation.

217. *Security Incident Reporting and Annual Security Certification.* The Commission proposes to require initial

compliance with its security incident reporting and annual security certification requirements within six months of the release of a Public Notice announcing OMB approval of related information collection requirements, or within 60 days of release of a Public Notice announcing that ETRS is capable of receiving such reports, whichever is later. With respect to subsequent annual certifications, the Commission proposes that this timeframe apply to the first certification, with subsequent certifications due by June 30 of each calendar year. The Commission expects that EAS Participants are already complying with most, if not all, of the best practices described above, and to the extent additional time is necessary to ensure that best practices are fully implemented, the Commission believes that 60 days provides a reasonable timeframe to accomplish that goal while also ensuring that security measures are taken as swiftly as possible. The Commission seeks comment on this proposed timeframe, and on its rationale.

218. *Live Code Tests and EAS PSAs.* The Commission proposes that its live code testing and PSA rules would become effective thirty days from the date of their publication in the **Federal Register**. The Commission observes that no action is required in order for EAS Participants to comply with these proposed rules. Further, in the meantime, EAS Participants may continue to conduct live code tests as regularly scheduled pursuant to the guidance the Bureau provided in the *Live Code Testing Public Notice.* This proposed rule, if adopted, would alleviate the burden on EAS Participants to seek waiver of the Commission's rules in order to engage in this common practice. With respect to EAS PSAs, the Commission proposes to expand the set of entities that are permitted to conduct EAS PSAs, and to allow them to include the EAS header codes and Attention Signal. This proposed rule, if adopted, would allow EAS PSAs to become more flexible tools for community public safety outreach. The Commission believes it would serve the public interest for the proposed live code testing and PSA rules to become effective as soon as possible, and seeks comment on its rationale.

F. Legal Authority

219. Under the Communications Act of 1934, as amended (Act), the Commission was established, among other things, to ''make available rapid, efficient . . . wire and radio communication service with adequate facilities . . . for the purpose of the national defense'' and ''for the purpose of promoting safety of life and property.'' The Commission's regulation of emergency broadcasting, both of the EBS and EAS, has been grounded, in significant part, in Sections 1, 4(i) and (o), 303(r), and 706 of the Act. Additionally, the Commission has authority to impose EAS obligations on cable systems under Section 624(g) of the Act, regulate participation by Commercial Mobile Service in the emergency alerting process under the WARN Act, and to ensure that emergency information is accessible under the Twenty-First Century Communications and Video Accessibility Act.

220. In order to enable the President to reliably execute this authority in the public interest, the Commission has long considered it necessary to ensure that the Commission's national alerting architecture is ready to transmit an alert authorized by the President (*i.e.,* a Presidential Alert) in an appropriate situation. Further, the President has defined roles and responsibilities for federal agencies to create a ''comprehensive system to alert and warn the American people'' in several executive documents, specifically directing the Commission to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system.'' The Commission seeks comment on whether this legal authority extends to mobile apps when offered by a covered entity.

221. In addition to the authorities discussed above, the Commission believes it has authority to adopt alert authentication and validation rules, require security certifications, and collect false alert and lockout reports from EAS Participants. First, the Commission has express authority under Title III to make changes to alert authentication and validation and to require EAS security certifications from Title III licensees. Title III directs the Commission to ''maintain the control of the United States over all channels of radio transmission'' and charges the Commission with protecting the viability of local broadcasting. Section 303 of the Act states that the Commission shall ''[p]rescribe the nature of the service to be rendered by each class of licensed stations'' where public convenience, interest, or necessity requires and encourage the effective use of radio in the public interest. Further, the Act prohibits the transmission or rebroadcast of ''false distress signals,'' a prohibition that includes false or fraudulent EAS alerts. Finally, the Commission believes that its authority to assure that the EAS is delivered in a secure fashion extends to requiring EAS Participants to provide reports that would allow the Commission to investigate, study, and be aware of any potential issues that may preclude the secure and reliable transmission of the EAN. Fraudulent EAS alerts create widespread public confusion and even panic. The Commission seeks comment on its authority under all the foregoing provisions discussed in this section to adopt the proposals in this NPRM, all of which are primarily intended to prepare the nation's alerting infrastructure for successful transmission of a Presidential Alert. The Commission also seeks comment on whether there are other sources of legal authority for the Commission to enact these rules. To the extent commenters believe that additional sources of authority would be necessary or relevant to allowing the Commission to address commenters' concerns, the Commission encourages commenters to offer additional sources of authority on which it may rely for this purpose.

III. Procedural Matters

A. Ex Parte Rules

222. The proceeding initiated by this *Notice of Proposed Rulemaking* shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to

be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

223. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

1. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

2. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

3. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

224. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

C. Regulatory Flexibility Analysis

225. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

D. Paperwork Reduction Analysis

226. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

IV. Ordering Clauses

227. Accordingly, *it is ordered* that pursuant to 47 U.S.C 151, 152, 154(i), 154(o), 301, 303(b), (g) and (r), 303(v), 307, 309, 335, 403, 544(g), 606, 613, 615 and 1302; The Warning, Alert and Response Network (WARN) Act, WARN Act §§ 602(a), (b), (c), (d), (f), 603, 604, and 606; *Twenty-First Century Communications and Video Accessibility Act of 2010,* Pub. L. 111–260 and Pub. L. 111–265, this *Notice of Proposed Rulemaking is* hereby *adopted.*

228. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking* including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

List of Subjects

47 CFR Part 11

Radio, Television, Emergency alerting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 11 to read as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

■ 2. Revise § 11.2 to read as follows:

§ 11.2 Definitions.

The definitions of terms used in part 11 are:

(a) *Emergency Action Notification (EAN).* The Emergency Action Notification is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency. EAN messages that are formatted in the EAS Protocol (specified in § 11.31) are sent from a government origination point to broadcast stations and other entities participating in the PEP system, and are subsequently disseminated via EAS Participants. Dissemination arrangements for EAN messages that are formatted in the EAS Protocol (specified in § 11.31) at the State and local levels are specified in the State and Local Area plans (defined at § 11.21). A national activation of the EAS for a Presidential message with the Event code EAN as specified in § 11.31 must take priority over any other message and preempt it if it is in progress.

(b) *EAS Participants.* Entities required under the Commission's rules to comply with EAS rules, *e.g.,* analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(c) *Wireline Video System.* The system of a wireline common carrier used to provide video programming service.

(d) *Intermediary Device.* An intermediary device is a stand-alone device that carries out the functions of monitoring for, receiving and/or acquiring, and decoding EAS messages

formatted in the Common Alerting Protocol (CAP) in accordance with § 11.56, and converting such messages into a format that can be inputted into a separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, so that the EAS message outputted by such separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, and all other functions attendant to processing such EAS message, comply with the requirements in this part.

■ 3. Revise § 11.18 to read as follows:

§ 11.18 EAS Designations.

(a) The Primary Entry Point System is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute EAS messages that are formatted in the EAS Protocol (specified in § 11.31), including the EAN and EAS national test messages. FEMA has designated some of the nation's largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(b) A National Primary (NP) is the entity tasked with the primary responsibility of delivering the Presidential alert to a state's EAS Participants. Thus, for a state that has a FEMA-designated PEP, that station would be designated as that state's National Primary. For a state that does not have a PEP, another station would act as National Primary.

(c) A State Primary (SP) is an entity tasked with initiating the delivery of a state EAS alert. A State Primary may be a broadcaster, a state emergency management office, or other entity authorized to and capable of initiating a state-based EAS alert. A State Primary and a National Primary may be the same broadcaster, but would need to be separately designated as such in any State EAS Plan.

(d) A Relay Station (RS) retransmits EAS messages, including the Presidential Alert and state and local alerts, to Local Primary (LP) sources for distribution to Participation National sources, and the public, as necessary.

(e) A Local Primary (LP) serves as a monitoring assignment for a Participating National (PN) entity. An LP source is responsible for coordinating the carriage of common emergency messages from sources such as the National Weather Service or local emergency management offices as specified in its State EAS Plan. If it is unable to carry out this function, other LP sources in the Local Area may be assigned the responsibility as indicated in State EAS Plans. LP sources are assigned numbers (LP–1, 2, 3, *etc.*) in the sequence they are to be monitored by other broadcast stations in the Local Area.

(f) Participating National (PN) entities transmit EAS National, State or Local Area messages. The EAS transmissions of PN sources are intended for direct public reception.

■ 4. Revise § 11.21 to read as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

(a) EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the following elements:

(1) A list of the EAS header codes and messages that will be transmitted by key EAS sources (National Primary (NP), State Primary (SP), Local Primary (LP), and State Relay (SR) stations);

(2) Procedures for state emergency management officials, the National Weather Service, and EAS Participant personnel to transmit emergency information to the public during an emergency using regulated alerting tools (*e.g.,* EAS and WEA) as well as any non-regulated alerting mechanisms (*e.g.,* highway signs, social media), including the extent to which the state's dissemination strategy for state and local emergency alerts differs from their Presidential Alerting strategy;

(3) A list of all entities authorized to activate EAS for state and local emergency messages (*e.g.,* Police and Public Safety Answering Points (PSAPs)), whose transmissions might be interrupted by a Presidential Alert;

(4) Monitoring assignments to receive the Presidential Alert, and the primary and back-up paths for the dissemination of the Presidential Alert to all key EAS sources organized by operational areas within the state;

(5) State procedures for special EAS tests, Required Monthly Tests (RMTs), Required Weekly Tests (RWTs) and national tests designed to ensure that the system will function as designed when needed for a Presidential Alert, including a description of the extent to which State and Local WEA Tests are utilized by alert originators as a complement to the Presidential Alert distribution system to verify that WEA is capable of informing the public that a Presidential Alert is presently being delivered over EAS;

(6) The extent to which alert originators coordinate ''one-to-many'' alerts with ''many-to-one'' community feedback mechanisms, such as 9–1–1, to make full use of public safety resources;

(7) Specific and detailed information describing the procedures for ensuring EAS Participants can authenticate the current assigned state, local and tribal originators, if the state initiates EAS messages formatted in the Common Alerting Protocol (CAP) signed with a digital signature as specified in the Organization for the Advancement of Structured Information Standards (OASIS) Common Alerting Protocol Version 1.2 (July 1, 2010), its EAS State Plan; and

(8) The SECC governance structure utilized by the state in order to organize state and local resources to ensure the efficient and effective delivery of a Presidential Alert, including the duties of SECCs, the membership selection process utilized by the SECC, and the proposed administration of the SECCs.

(b) The Local Area plan contains procedures for local officials or the NWS to transmit emergency information to the public during a local emergency using the EAS. Local plans may be a part of the State plan. A Local Area is a geographical area of contiguous communities or counties that may include more than one state.

(c) The FCC Mapbook is based on the consolidation of the data table required in each State EAS plan with the identifying data contained in the ETRS. The Mapbook organizes all EAS Participants according to their State, EAS Local Area, and EAS designation. EAS Participant monitoring assignments and EAS operations must be implemented in a manner consistent with guidelines established in a State EAS Plan submitted to the Commission in order for the Mapbook to accurately reflect actual alert distribution.

■ 5. Revise paragraph (c) of § 11.31 to read as follows:

§ 11.31 EAS protocol.

* * * * *

(c) The EAS protocol, including any codes, must not be amended, extended or abridged without FCC authorization. The EAS protocol and message format are specified in the following representation.

Examples are provided in FCC Public Notices.

[PREAMBLE]ZCZC–ORG–EEE–PSSCCC+TTTT–YYYYJJJHHMM–LLLLLLLL–(one second pause)

[PREAMBLE]ZCZC–ORG–EEE–PSSCCC+TTTT–YYYYJJJHHMM–LLLLLLLL–(one second pause)

[PREAMBLE]ZCZC–ORG–EEE–PSSCCC+TTTT–YYYYJJJHHMM–LLLLLLLL–(at least a one second pause)

(transmission of 8 to 25 seconds of Attention Signal)

(transmission of audio, video or text messages)

(at least a one second pause)

[PREAMBLE]NNNN (one second pause)

[PREAMBLE]NNNN (one second pause)

[PREAMBLE]NNNN (at least one second pause)

[PREAMBLE] This is a consecutive string of bits (sixteen bytes of AB hexadecimal [8 bit byte 10101011]) sent to clear the system, set AGC and set asynchronous decoder clocking cycles. The preamble must be transmitted before each header and End of Message code.

ZCZC—This is the identifier, sent as ASCII characters ZCZC to indicate the start of ASCII code.

ORG—This is the Originator code and indicates who originally initiated the activation of the EAS. These codes are specified in paragraph (d) of this section.

EEE—This is the Event code and indicates the nature of the EAS activation. The codes are specified in paragraph (e) of this section. The Event codes must be compatible with the codes used by the NWS Weather Radio Specific Area Message Encoder (WRSAME).

PSSCCC—This is the Location code and indicates the geographic area affected by the EAS alert. There may be 31 Location codes in an EAS alert. The Location code uses the codes described in the American National Standards Institute (ANSI) standard, ANSI INCITS 31–2009 (''Information technology—Codes for the Identification of Counties and Equivalent Areas of the United States, Puerto Rico, and the Insular Areas''). Each state is assigned an SS number as specified in paragraph (f) of this section. Each county and some cities are assigned a CCC number. A CCC number of 000 refers to an entire State or Territory. P defines county subdivisions as follows: 0 = all or an unspecified portion of a county, 1 = Northwest, 2 = North, 3 = Northeast, 4 = West, 5 = Central, 6 = East, 7 = Southwest, 8 = South, 9 = Southeast. Other numbers may be designated later for special applications. The use of county subdivisions will probably be rare and generally for oddly shaped or unusually large counties. Any subdivisions must be defined and agreed to by the local officials prior to use.

+ TTTT—This indicates the valid time period of a message in 15 minute segments up to one hour and then in 30 minute segments beyond one hour; *i.e.,* + 0015, + 0030, + 0045, + 0100, + 0430 and + 0600.

YYYYJJJHHMM—This is the year (YYYY), day in Julian Calendar days (JJJ) of the year and the time in hours and minutes (HHMM) when the message was initially released by the originator using 24 hour Universal Coordinated Time (UTC).

LLLLLLLL—This is the PSID identification of the EAS Participant, NWS office, etc., transmitting or retransmitting the message. These codes will be automatically affixed to all outgoing messages by the EAS encoder.

NNNN—This is the End of Message (EOM) code sent as a string of four ASCII N characters.

* * * * *

■ 6. Amend § 11.32 by revising paragraph (a)(5) to read as follows:

§ 11.32 EAS Encoder.

(a) * * *

(5) Day-Hour-Minute and Identification Stamps. The encoder shall affix the YYYYJJJHHMM and LLLLLLLL codes automatically to all initial messages.

* * * * *

■ 7. Amend § 11.33 by revising paragraph (a)(10) to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(10) *Message Validity.* An EAS Decoder must provide error detection and validation of the header codes of each message to ascertain if the message is valid. Header code comparisons may be accomplished through the use of a bit-by-bit compare or any other error detection and validation protocol. A header code must only be considered valid when two of the three headers match exactly, the Station ID header code matches one of the assigned monitoring sources as specified in the state plan and the expiration time is in the future. Duplicate messages must not be relayed automatically.

* * * * *

■ 8. Add § 11.44 to subpart C to read as follows:

§ 11.44 Security of EAS Participants.

(a) *Definitions.* Terms in this section shall have the following meanings:

(1) *Certification.* An attestation by a Certifying Official, under penalty of perjury, that an EAS Participant:

(i) Has satisfied the obligations of subsection (b) of this section.

(ii) Has adequate internal controls to bring material information regarding network architecture, operations, and maintenance to the Certifying Official's attention.

(iii) Has made the Certifying Official aware of all material information reasonably necessary to complete the certification.

(2) *Certifying Official.* A corporate officer of an EAS Participant with supervisory and budgetary authority over network operations in all relevant service areas.

(3) *Segmentation.* A category of best practice actions for certification purposes that logically group and compartmentalize assets and restrict trusted access to those compartments.

(b) *Annual EAS Security Certification.* The identifying information required by the ETRS as specified in § 11.61(a)(3)(iv) shall include a Certification to the Commission by a Certifying Official of every EAS Participant as follows.

(1) *Patch Management.*

(i) An EAS Participant shall certify whether it has, within the past year:

(A) Followed a program to identify and install updates and patches to EAS devices and attached systems in a timely manner;

(B) Verified EAS devices are running the current version and patch level of software and firmware; and

(C) Verified systems connected to EAS devices are running the current version and patch level of software and firmware.

(ii) If an EAS Participant does not conform with the elements in paragraph (b)(1)(i) of this section it must certify:

(A) Whether it has taken alternative measures or remediation to meet or exceed the security provided by the current version and patch level, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(2) *Account Management.*

(i) An EAS Participant shall certify that:

(A) All EAS device and connected system passwords have been changed from the default;

(B) Where passwords are used, password complexity is required; and

(C) Default, unnecessary, and expired accounts have been removed or disabled.

(ii) If an EAS Participant does not conform with all of the elements in paragraph (b)(2)(i) of this section, it must certify:

(A) Whether it has taken alternative measures to mitigate the risk of a unauthorized access or is taking steps to remediate any issues it has identified in complying with the above elements, in which case it shall provide a brief explanation of such alternative measures or such remediation steps, the date by which it anticipates such remediation will be completed, and why it believes those measures are reasonably sufficient to mitigate such risk; or

(B) Whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide a brief explanation of why it believes any such requirement does not apply.

(3) *Segmentation.*

(i) An EAS Participant shall certify that:

(A) All of its EAS devices are not directly accessible from the Internet; and

(B) If remote access to EAS devices is required, such access is properly logged and secured in accordance with industry best practices.

(ii) If an EAS Participant does not conform with all of the elements in paragraph (c)(3)(i) of this section, it must certify whether it believes that one or more of the requirements of this paragraph are not applicable to its network, in which case it shall provide an explanation of why it believes any such requirement does not apply.

(4) *CAP Digital Signature Validation.* An EAS Participant shall certify that EAS devices are configured to validate digital signatures on CAP messages if the source of the CAP message includes this feature.

(c) Other Matters.

(1) *Confidential Treatment.*

(i) The fact of filing or not filing an Annual EAS Security Certification and the responses on the face of such certification forms shall not be treated as confidential.

(ii) Information submitted with or in addition to such Certifications shall be presumed confidential to the extent that it consists of descriptions and documentation of alternative measures to mitigate the risks of nonconformance with certification elements, information detailing specific corrective actions taken with respect to certification elements, or supplemental information requested by the Commission or Bureau with respect to a certification.

(2) [Reserved]

■ 9. Revise § 11.45 to read as follows:

§ 11.45 Prohibition of false or deceptive EAS transmissions.

(a) No person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in §§ 11.46 and 11.61.

(b) All EAS Participants shall submit electronically a Notification to the Commission via ETRS:

(1) An initial report within 30 minutes of discovering the transmission of a false EAS alert by their station. The report shall include the time discovered, transmitted EAS alert fields, message source, and area covered by the transmission.

(2) An initial report within 15 minutes of discovering that EAS Participant equipment causes, contributes to, or participates in a lockout that adversely affects the public. The report shall include the time discovered, message source, and affected devices.

(3) Not later than 72 hours after discovering the event, the EAS Participant shall submit a final report to the Commission describing the root cause of the event, number of affected customers, and mitigation steps taken.

(c) Confidential Treatment.

(1) The fact of filing or not filing a false EAS alert report shall not be treated as confidential.

(2) Information submitted with or in addition to such reports shall be presumed confidential to the extent that it consists of descriptions and documentation of proprietary company information, root causes, or supplemental information requested by the Commission or Bureau with respect to an incident.

■ 10. Revise § 11.46 to read as follows:

§ 11.46 EAS code and Attention Signal Monitoring requirements.

Public Service Announcements and commercially-sponsored announcements, infomercials, or programs may be used to explain the EAS to the public, provided that the entity using the codes and Attention Signal presents them in a non-misleading and technically harmless manner.

■ 11. Amend § 11.52 by revising paragraph (d)(1) and removing paragraph (d)(3), and redesignating paragraphs (d)(4) and (d)(5) as (d)(3) and (d)(4), respectively. The revision to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

* * * * *

(d) EAS Participants must comply with the following monitoring requirements:

(1) With respect to monitoring for EAS messages that are formatted in accordance with the EAS Protocol, EAS Participants must monitor two EAS sources.

* * * * *

■ 12. Amend § 11.54 by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

(a) Immediately upon receipt of a valid EAN message, or the NPT Event code in the case of a nationwide test of the EAS, EAS Participants must comply with the following requirements, as applicable:

(1) Analog and digital broadcast stations may transmit their call letters and analog cable systems, digital cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation.

* * * * *

§ 11.55 [Amended].

■ 13. Amend § 11.55 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

■ 14. Amend § 11.56 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 11.56 Obligation to process CAP-formatted EAS messages.

* * * * *

(c) EAS Participants shall configure their systems to treat as invalid all CAP-formatted EAS messages that include a digital signature that does not match an authorized source from FEMA or from a designated source as specified in the state EAS plan.

■ 15. Amend § 11.61 by revising paragraphs (a)(3)(iv)(A) and adding (a)(5) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(3) * * *

(iv) * * *

(A) EAS Participants shall provide the identifying information required by the ETRS initially no later than sixty days after the publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995 and an effective date of the rule amendment, or within sixty days of the launch of the ETRS, whichever is later, and shall renew this identifying information on a yearly basis.

* * * * *

(5) *Live Code Tests.* Live Code Tests may be conducted to exercise the EAS and raise public awareness, provided that the entity conducting the test:

(i) Provides notification in accessible formats during the test (*e.g.,* audio voiceovers, video crawls as described in § 11.51) to make sure the public understands that the test is not, in fact, warning about an actual emergency;

(ii) Engages in outreach pre-test to coordinates among EAS Participants and with state and local emergency authorities, as well as first responder organizations (*e.g.,* Public Safety Answering Points (PSAPs)), police and fire agencies, and the public in order to notify them that live event codes will be used, but that no emergency is in fact occurring.

* * * * *

[FR Doc. 2016–05275 Filed 3–23–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 81 Thursday,
No. 57 March 24, 2016

Part III

Department of Energy

10 CFR Part 431
Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2013–BT–STD–0030]

RIN 1904–AD01

Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer equipment and certain commercial and industrial equipment, including commercial packaged boilers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. DOE has tentatively concluded that more stringent standards are technologically feasible and economically justified, and would result in significant additional conservation of energy. Therefore, DOE proposes amended energy conservation standards for commercial packaged boilers. This document also announces a public meeting to receive comment on the proposed standards and associated analyses and results.

DATES: *Meeting:* DOE will hold a public meeting on Thursday, April 21, 2016, from 9:30 a.m. to 3 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, Public Participation, for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than May 23, 2016. See section VII, Public Participation, for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section before April 25, 2016.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. To register for the webinar and receive call-in information, please use this link: *https://attendee.gotowebinar.com/register/6872804566336170753*.

Instructions: Any comments submitted must identify the NOPR on Energy Conservation Standards for Commercial Packaged Boilers, and provide docket number EERE–2013–BT–STD–0030 and/or regulatory information number (RIN) number 1904–AD01. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: PkgdBoilers2013STD0030@ee.doe.gov*. Include the docket number EERE–2013–BT–STD–0030 and/or RIN 1904–AD01 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Room 6094, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before April 25, 2016. Please indicate in the ''subject'' line of your email the title and Docket Number of this proposed rule.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempted from public disclosure.

A link to the docket Web page can be found at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=79*. This Web page contains a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII of this document for further information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *Jim.Raba@ee.doe.gov*.

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA''), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), establishes the Energy Conservation Program for Certain Industrial Equipment.[2] These include commercial packaged boilers (''CPB''), the subject of this document. (42 U.S.C. 6311(1)(J)) Commercial packaged boilers are also covered under the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1), ''Energy Standard for Buildings Except Low-Rise Residential Buildings.'' [3]

EPCA requires DOE to conduct an evaluation of its standards for CPB equipment every 6 years and to publish either a notice of determination that such standards do not need to be amended or a NOPR including proposed amended standards. (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further requires that any new or amended energy conservation standards that DOE prescribes for covered equipment shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Furthermore, the new or amended standard must result in a significant additional conservation of energy. *Id.* Under the applicable statutory provisions, DOE must determine that there is clear and convincing evidence supporting the adoption of more stringent energy conservation standards than the ASHRAE level. *Id.* Once complete, this

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

[3] ASHRAE Standard 90.1–2013 (*i.e.,* the most recent version of ASHRAE Standard 90.1) did not amend the efficiency levels for commercial packaged boilers. Thus, DOE is undertaking this rulemaking under the 6-year review requirement in 42 U.S.C. 6313(a)(6)(C), as opposed to the statutory provision regarding ASHRAE equipment (42 U.S.C. 6313(a)(6)(A). For more information on DOE's review of ASHRAE Standard 90.1–2013, see: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=108.*

rulemaking will satisfy DOE's statutory obligation under 42 U.S.C. 6313(a)(6)(C).

Pursuant to these and other statutory requirements discussed in this document, DOE initiated this rulemaking to evaluate CPB energy conservation standards and to determine whether new or amended standards are warranted. DOE has examined the existing CPB standards and has tentatively concluded that modifying and expanding the existing 10 CPB equipment classes to 12 equipment classes is warranted. As discussed in detail in section IV.A.2 of this document, DOE proposes to: (1) Discontinue the use of draft type as a criteria for equipment classes; and (2) establish separate equipment classes for ''very large'' commercial packaged boilers. Eliminating the use of draft type as a distinguishing feature for equipment classes would consolidate the 4 existing draft-specific equipment classes into 2 non-draft-specific equipment classes. Further, the proposed change to distinguish very large CPB as separate equipment classes would result in an additional 4 equipment classes. As a result, the total number of equipment classes would increase from 10 to 12. DOE has tentatively concluded that there is clear and convincing evidence to support more stringent standards for 8 of the 12 equipment classes proposed in this NOPR, which includes all classes except for the newly proposed very large CPB classes. The proposed standards, which prescribe minimum thermal efficiencies (E_T) or combustion efficiencies (E_C), are shown in Table I.1. These proposed standards, if adopted, would apply to the applicable equipment classes listed in Table I.1 and manufactured in, or imported into, the United States on and after the date 3 years after the publication of the final rule.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS

Equipment	Size category (input)	Proposed energy conservation standard *	Compliance date †
Small Gas-Fired Hot Water Commercial Packaged Boilers.	>300,000 Btu/h and ≤2,500,000 Btu/h	85.0% E_T	[date 3 years after publication of final rule].
Large Gas-Fired Hot Water Commercial Packaged Boilers.	>2,500,000 Btu/h and ≤10,000,000 Btu/h	85.0% E_C	[date 3 years after publication of final rule].
Very Large Gas-Fired Hot Water Commercial Packaged Boilers.	>10,000,000 Btu/h	82.0% E_C†	March 2, 2012.
Small Oil-Fired Hot Water Commercial Packaged Boilers.	>300,000 Btu/h and ≤2,500,000 Btu/h	87.0% E_T	[date 3 years after publication of final rule].
Large Oil-Fired Hot Water Commercial Packaged Boilers.	>2,500,000 Btu/h and ≤10,000,000 Btu/h	88.0% E_C	[date 3 years after publication of final rule].
Very Large Oil-Fired Hot Water Commercial Packaged Boilers.	>10,000,000 Btu/h	84.0% E_C†	March 2, 2012.
Small Gas-Fired Steam Commercial Packaged Boilers.	>300,000 Btu/h and ≤2,500,000 Btu/h	81.0% E_T	[date 3 years after publication of final rule].
Large Gas-Fired Steam Commercial Packaged Boilers.	>2,500,000 Btu/h and ≤10,000,000 Btu/h	82.0% E_T	[date 3 years after publication of final rule].
Very Large Gas-Fired Steam Commercial Packaged Boilers **.	>10,000,000 Btu/h	79.0% E_T†	March 2, 2012.
Small Oil-Fired Steam Commercial Packaged Boilers.	>300,000 Btu/h and ≤2,500,000 Btu/h	84.0% E_T	[date 3 years after publication of final rule].
Large Oil-Fired Steam Commercial Packaged Boilers.	>2,500,000 Btu/h and ≤10,000,000 Btu/h	85.0% E_T	[date 3 years after publication of final rule].
Very Large Oil-Fired Steam Commercial Packaged Boilers.	>10,000,000 Btu/h	81.0% E_T†	March 2, 2012.

* E_T means ''thermal efficiency.'' E_C means ''combustion efficiency.''

** Prior to March 2, 2022, for natural draft very large gas-fired steam commercial packaged boilers, a minimum thermal efficiency level of 77% is permitted and meets Federal commercial packaged boiler energy conservation standards.

† For very large CPB equipment classes DOE proposes to retain the existing standards for such equipment, which had a compliance date of March 2, 2012, as shown.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed energy conservation standards on consumers of commercial packaged boilers, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[4] The average LCC savings are positive for all equipment classes, and the PBP is less than the average lifetime of the equipment, which is estimated to be 24.8 years for all equipment classes evaluated in this NOPR.

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF COMMERCIAL PACKAGED BOILERS

Equipment class	Average LCC savings *(2014$)*	Simple payback period *(years)*
Small Gas-Fired Hot Water	$521	9.6

[4] The average LCC savings are measured relative to the no-new-standards case efficiency distribution, which depicts the CPB market in the compliance year in the absence of amended standard levels (see section IV.F.9 of this document and chapter 8 of the NOPR technical support document (TSD)). The simple PBP, which is designed to compare specific efficiency levels for commercial packaged boilers, is measured relative to the baseline CPB equipment (see section IV.F.10 of this document and chapter 8 of the TSD).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF COMMERCIAL PACKAGED BOILERS—Continued

Equipment class	Average LCC savings (2014$)	Simple payback period (years)
Large Gas-Fired Hot Water	3,647	11.0
Small Oil-Fired Hot Water	7,799	5.7
Large Oil-Fired Hot Water	30,834	4.7
Small Gas-Fired Steam	2,782	7.4
Large Gas-Fired Steam	16,802	4.7
Small Oil-Fired Steam	4,256	5.3
Large Oil-Fired Steam	36,128	2.8

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document and in chapter 8 of the NOPR TSD.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2014 to 2048). Using a real discount rate of 9.5 percent, DOE estimates that the INPV for manufacturers of commercial packaged boilers is $180.1 million in 2014$. Under the proposed standards, DOE expects that INPV may reduce by $23.8 to $13.1 million, which is approximately 13.2 to 7.3 percent respectively. Under today's proposed standard, DOE expects the industry to incur $27.5 million in conversion costs.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document.

C. National Benefits and Costs [5]

DOE's analyses indicate that the proposed standards would save a significant amount of energy. The lifetime energy savings for commercial packaged boilers purchased in the 30-year period that begins in the anticipated first full year of compliance with amended standards (2019–2048), relative to the case without amended standards (referred to as the ''no-new-standards case''), amount to 0.39 quadrillion Btu (quads).[6] This represents a savings of 0.8 percent relative to the energy use of this equipment in the no-new-standards case.[7]

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for commercial packaged boilers ranges from $0.414 billion (at a 7-percent discount rate) to $1.687 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment and installation costs for commercial packaged boilers purchased in 2019–2048.

In addition, the proposed CPB standards would have significant environmental benefits. The energy savings described in this section are estimated to result in cumulative emission reductions (over the same period as for energy savings) of 22 million metric tons (Mt) [8] of carbon dioxide (CO_2), 233 thousand tons of methane (CH_4), 2.1 thousand tons of sulfur dioxide (SO_2), 162 thousand tons of nitrogen oxides (NO_X), 0.1 thousand tons of nitrous oxide (N_2O), and 0.0003 tons of mercury (Hg).[9] The cumulative reduction in CO_2 emissions through 2030 amounts to 2.86 Mt, which is equivalent to the emissions resulting from the annual electricity use of 0.393 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[10] The derivation of the SCC values is discussed in section IV.L of this document. Using discount rates appropriate for each set of SCC values (see Table I.3), DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.14 billion and $2.0 billion, with a value of $0.66 billion using the central SCC case represented by $40.0 per metric ton in 2015.[11] DOE also estimates the present monetary value of the NO_X emissions reduction is $0.16 billion at a 7-percent discount rate and $0.45 billion at a 3-percent discount rate.[12] More detailed results can be found in chapter 14 of the NOPR TSD.

Table I.3 summarizes the national economic benefits and costs expected to result from the proposed standards for commercial packaged boilers.

[5] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015.

[6] A quad is equal to 10^{15} British thermal units (Btu). The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings include the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

[7] The no-new-standards case assumptions are described in section IV.F.9 of this document.

[8] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons (ton).

[9] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO2015*) Reference case. *AEO2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[10] *Techincal Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[11] The values only include CO_2 emissions; CO_2 equivalent emissions from other greenhouse gases are not included.

[12] DOE estimated the monetized value of NO_Xemissions reductions using benefits per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal10602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions by assessing the regional approach taken by EPA's Regulatory Impact Analysis of the Clean Power Plan Final Rule. Note the DOE is currently investigating valuation of avoided SO_2 and H_g emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS (TSL 2 *)

Category	Present value *(million 2014$)*	Discount rate (%)
Benefits		
Operating Cost Savings	925	7
	2,550	3
CO_2 Reduction (using mean SCC at 5% discount rate) **	136	5
CO_2 Reduction (using mean SCC at 3% discount rate) **	655	3
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	1,054	2.5
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **	1,998	3
NO_X Reduction †	158	7
	447	3
Total Benefits ††	1,738	7
	3,653	3
Costs		
Incremental Installed Costs	512	7
	863	3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value ††	1,227	7
	2,789	3

* This table presents the costs and benefits associated with commercial packaged boilers shipped in 2019 − 2048. These results include benefits to consumers that accrue after 2048 from the equipment purchased in 2019 − 2048. The incremental installed costs include incremental equipment cost as well as installation costs. The CO_2 reduction benefits are global benefits due to actions that occur nationally.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L.1 for more details.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with 3-percent discount rate.

The benefits and costs of this NOPR's proposed energy conservation standards, for covered commercial packaged boilers sold in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The annualized national economic value of the benefits from consumer operation of the equipment that meets the proposed standards (consisting primarily of reduced operating costs minus increases in product purchase price and installation costs); and (2) the annualized value of the benefits of CO_2 and NO_X emission reductions.[13]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing these equipment. The national operating cost savings is measured for the lifetime of commercial packaged boilers shipped in 2019–2048.

The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this proposed rule. Because CO_2 emissions have a very long residence time in the atmosphere,[14] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100 through 2300.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0 per metric ton in 2015, the cost of the standards proposed in this rulemaking is $51 million per year in increased equipment costs, while the benefits are $91 million per year in reduced equipment operating costs, $37 million in CO_2 reductions, and $16 million in reduced NO_X emissions. In

[13] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.4. Using the present value, DOE then calculated the fixed annual payment over a 30-year period starting in the compliance year that yields the same present value.

[14] The atmospheric lifetime of CO_2 is estimated to be on the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105 (2005).

this case, the net benefit amounts to $93 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0 per metric ton in 2015, the estimated cost of the CPB standards proposed in this rulemaking is $48 million per year in increased equipment costs, while the benefits are $142 million per year in reduced operating costs, $37 million in CO_2 reductions, and $25 million in reduced NO_X emissions. In this case, the net benefit amounts to $156 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS

	Discount rate	*Million 2014$/year*		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings *	7%	91	84	101.
	3%	142	129	160.
CO_2 Reduction (using mean SCC at 5% discount rate) ***	5%	10	10	11.
CO_2 Reduction (using mean SCC at 3% discount rate) ***	3%	37	34	39.
CO_2 Reduction (using mean SCC at 2.5% discount rate) ***	2.5%	54	51	58.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) ***.	3%	111	104	119.
NO_X Reduction †	7%	16	15	37.
	3%	25	23	59.
Total Benefits ††	7% plus CO_2 range	117 to 218	108 to 203	149 to 258.
	7%	143	133	177.
	3% plus CO_2 range	177 to 278	162 to 256	230 to 338.
	3%	204	186	258.
Costs				
Consumer Incremental Equipment Costs	7%	51	54	47.
	3%	48	52	45.
Net Benefits				
Total ††	7% plus CO_2 range	67 to 168	54 to 149	102 to 210.
	7%	93	79	130.
	3% plus CO_2 range	129 to 230	110 to 205	185 to 293.
	3%	156	135	213.

* This table presents the annualized costs and benefits associated with commercial packaged boilers shipped in 2019 – 2048. These results include benefits to consumers that accrue after 2048 from the equipment purchased in 2019 – 2048. The incremental installed costs include incremental equipment cost as well as installation costs. The CO_2 reduction benefits are global benefits due to actions that occur nationally. The Primary, Low Benefits, and High Benefits Estimates utilize projections of building stock and energy prices from the *AEO2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, DOE used a constant equipment price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. The equipment price projection is described in section IV.F.1 of this document and chapter 8 of the NOPR technical support document (TSD).

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L for more details.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

Based on clear and convincing evidence, DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that equipment achieving these standard levels is already commercially available for at least some, if not most, equipment classes covered by this

proposal.[15] Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more stringent energy efficiency levels as potential standards, and is considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments that DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of standards for commercial packaged boilers.

A. Authority

Title III, Part C [16] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), sets forth a variety of provisions designed to improve energy efficiency.[17] It established the ''Energy Conservation Program for Certain Industrial Equipment,'' which includes commercial packaged boilers that are the subject of this rulemaking. The energy conservation standards for commercial packaged boilers are codified in DOE's regulations under subpart E of Title 10 of the Code of Federal Regulations (CFR), Part 431.

The ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ''ASHRAE equipment'').[18] EPCA directs DOE to consider amending the existing Federal energy conservation standard for each type of covered ASHRAE equipment whenever ASHRAE amends the efficiency levels in Standard 90.1. (42 U.S.C. 6313(a)(6)(A)) For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless clear and convincing evidence supports a determination that adoption of a more stringent level would produce significant additional energy savings and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more stringent standard is justified, then it must establish such more stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

In the event that ASHRAE does not act to amend Standard 90.1, EPCA provides an alternative statutory mechanism for initiating such review. More specifically, EPCA requires that every six years, the Secretary of Energy (Secretary) shall consider amending the energy conservation standards for covered commercial equipment and shall publish either a notice of determination that those standards do not need to be amended, or a notice of proposed rulemaking for more stringent energy efficiency standards. (42 U.S.C. 6313(a)(6)(C))

Pursuant to EPCA, DOE's energy conservation program for covered equipment consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) compliance certification and enforcement procedures. Subject to certain criteria and conditions, DOE has authority, as discussed above, to adopt amended energy conservation standards for commercial packaged boilers. In addition, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314(a)(2)) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d)(1)) Similarly, DOE must use these test procedures to determine whether the equipment comply with standards adopted pursuant to EPCA. The DOE test procedures for commercial packaged boilers currently appear at 10 CFR 431.86.

When setting standards for the ASHRAE equipment addressed by this document, EPCA, as amended, prescribes certain statutory criteria for DOE to consider. See generally 42 U.S.C. 6313(a)(6)(A)–(D). Any amended standard for covered equipment more stringent than the level contained in ASHRAE Standard 90.1 must be designed to achieve significant improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i)) Furthermore, DOE may not adopt a more stringent standard that would not result in the significant additional conservation of energy. *Id.* In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment which are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered product likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

[15] See chapter 3 of the NOPR TSD for information about the efficiency ratings of equipment currently available on the market.

[16] For editorial reasons, upon codification in the United States Code (U.S.C.), Part C was re-designated Part A–1.

[17] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

[18] For more information, see *www.ashrae.org.*

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314) Specifically, EPCA requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines that the amended test procedure is not reasonably designed to produce test results that reflect the energy efficiency, energy use, or estimated operating costs of the ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4)) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with standards adopted pursuant to EPCA. The DOE test procedure for commercial packaged boilers currently appear at 10 CFR 431.86.

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I) and (C)(i)) Furthermore, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) and (C)(i))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. For this rulemaking, DOE considered the criteria for rebuttable presumption as part of its analysis.

Additionally, when a type or class of covered equipment has two or more subcategories, DOE often specifies more than one standard level. DOE generally will adopt a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class), or (B) have a capacity or other performance-related feature that other products within such type (or class) do not have and which justifies a higher or lower standard. In determining whether a performance-related feature justifies a different standard for a group of products, DOE generally considers such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. In a rule prescribing such a standard, DOE includes an explanation of the basis on which such higher or lower level was established. DOE considered these criteria for this rulemaking.

Because ASHRAE did not update its efficiency levels for commercial packaged boilers in any of its most recent updates to ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2010 and ASHRAE Standard 90.1–2013), DOE is analyzing amended standards consistent with the procedures defined under 42 U.S.C. 6313(a)(6)(C). Specifically, pursuant to 42 U.S.C. 6313(a)(6)(C)(i)(II), DOE must use the procedures established under subparagraph (B) when issuing a NOPR.

After carefully reviewing all commercial packaged boiler equipment classes, DOE has tentatively concluded that there is clear and convincing evidence that the proposed amended standards for eight of the twelve proposed commercial packaged boiler equipment classes (*i.e.,* all commercial packaged boilers with fuel input rate ≤10,000 kBtu/h) would result in significant additional conservation of energy and would be technologically feasible and economically justified, as mandated by 42 U.S.C. 6313(a)(6).

For the remaining four equipment classes, (*i.e.,* all commercial packaged boilers with fuel input rate >10,000 kBtu/h) DOE proposes to maintain the existing standards because there is not sufficient data to provide clear and convincing evidence that more stringent standards would be technologically feasible and economically justified, and would result in significant additional energy savings.

B. Background

1. Current Standards

DOE amended its energy conservation standards for commercial packaged boilers through a final rule published in the **Federal Register** on July 22, 2009 (July 2009 final rule). 74 FR 36312. More specifically, the July 2009 final rule updated the energy conservation standards for commercial packaged boilers to correspond to the levels in the 2007 revision of ASHRAE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2007). Compliance with the amended standards was required beginning on March 2, 2012. These levels are shown in Table II.1. Also in the July 2009 final rule, DOE again followed ASHRAE's approach in Standard 90.1–2007 and adopted a second tier of energy conservation standards for two classes of commercial packaged boilers, which are shown in Table II.2. Compliance with the latter standards will be required beginning on March 2, 2022.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL PACKAGED BOILERS MANUFACTURED ON OR AFTER MARCH 2, 2012

Equipment type	Subcategory	Size category (input)	Efficiency level—effective date: March 2, 2012 *
Hot Water Commercial Packaged Boilers.	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	80.0% E_T.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL PACKAGED BOILERS MANUFACTURED ON OR AFTER MARCH 2, 2012—Continued

Equipment type	Subcategory	Size category (input)	Efficiency level—effective date: March 2, 2012 *
Hot Water Commercial Packaged Boilers.	Gas-fired	>2,500,000 Btu/h	82.0% E_C.
Hot Water Commercial Packaged Boilers.	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	82.0% E_T.
Hot Water Commercial Packaged Boilers.	Oil-fired	>2,500,000 Btu/h	84.0% E_C.
Steam Commercial Packaged Boilers	Gas-fired—All, Except Natural Draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—All, Except Natural Draft	>2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—Natural Draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	77.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—Natural Draft	>2,500,000 Btu/h	77.0% E_T.
Steam Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h	81.0% E_T.
Steam Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	81.0% E_T.

* E_T means ''thermal efficiency.'' E_C means ''combustion efficiency.''

TABLE II.2—FEDERAL ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL PACKAGED BOILERS MANUFACTURED ON OR AFTER MARCH 2, 2022

Equipment type	Subcategory	Size category (input)	Efficiency level—effective date: March 2, 2022
Steam Commercial Packaged Boilers	Gas-fired—Natural Draft	≥300,000 Btu/h and ≤2,500,000 Btu/h	79.0% E_T.
Steam Commercial Packaged Boilers	Gas-fired—Natural Draft	>2,500,000 Btu/h	79.0% E_T.

2. History of Standards Rulemaking for Commercial Packaged Boilers

DOE is conducting this rulemaking pursuant to 42 U.S.C. 6313(a)(6)(C), which requires that every six years, DOE must publish either: (1) A notice of the determination that standards for the equipment do not need to be amended, or (2) a NOPR including proposed energy conservation standards. As noted above, DOE's last final rule for commercial packaged boilers was published on July 22, 2009, so as a result, DOE is required to act to publish one of the above two documents within 6 years. Once completed, this rulemaking will satisfy DOE's statutory obligation under 42 U.S.C. 6313(a)(6)(C). DOE must publish a final rule not later than two years after this NOPR is issued. (42 U.S.C. 6313(a)(6)(C)(iii)(I))

In initiating this rulemaking, DOE prepared a Framework document, ''Energy Conservation Standards Rulemaking Framework Document for Commercial Packaged Boilers,'' which describes the procedural and analytical approaches DOE anticipated using to evaluate energy conservation standards for commercial packaged boilers. DOE published a notice that announced both the availability of the Framework document and a public meeting to discuss the proposed analytical framework for the rulemaking. That notice also invited written comments from the public. 78 FR 54197 (Sept. 3, 2013). The Framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/79*.

DOE held a public meeting on October 1, 2013, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives of manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting. The participants discussed the following major topics, among others: (1) The rulemaking scope (2) test procedures for commercial packaged boilers; and (3) various issues related to the planned analyses of amended energy conservation standards. Interested parties also provided comments on the Framework document, which DOE considered and responded to in chapter 2 of the preliminary analysis TSD.

On November 20, 2014, DOE published a second notice, ''Energy Conservation Standards for Commercial Packaged Boilers: Public Meeting and Availability of the Preliminary Technical Support Document'' in the **Federal Register** to announce the availability of the preliminary analysis technical support document. 79 FR 69066. The preliminary analysis technical support document (TSD) provided preliminary results of the analyses that DOE conducted in support of the energy conservation standards rulemaking. DOE invited interested parties to comment on the preliminary analysis, and requested public comments on specific issues related to the TSD. These issues are listed in the Executive Summary chapter of the preliminary TSD. The preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/79*.

On December 9, 2014, DOE held a public meeting, at which it described the methodology and preliminary results of the various analyses it conducted as part of the rulemaking, such as the engineering analysis, the LCC and PBP analyses, and the NIA. Representatives of manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting. The public meeting provided an opportunity for the attendees to provide feedback and comments that would help improve DOE's analysis and results for the NOPR stage. In addition, DOE also received several written comments from interested parties and stakeholders, in response to the preliminary analysis TSD. Parties providing comments are shown in Table II.3. DOE considered the comments and feedback for the updating the analysis in preparation of

this document. Relevant comments and DOE's responses are provided in section III and section IV of this document.

TABLE II.3—PARTIES THAT PROVIDED COMMENTS ON THE PRELIMINARY ANALYSIS TSD

Name of party	Abbreviation	Source of comments	Type *
Air-Conditioning, Heating and Refrigeration Institute	AHRI	Public Meeting, Written	TA
American Boiler Manufacturers Association	ABMA	Public Meeting, Written	TA
American Council for Energy Efficient Economy, Appliance Standards Awareness Project, National Resource Defense Council.	ACEEE, ASAP & NRDC	Written	EA
American Council for Energy Efficient Economy	ACEEE	Public Meeting	EA
Lochinvar, LLC	Lochinvar	Public Meeting, Written	M
Raypak, Inc	Raypak	Public Meeting, Written	M
PVI Industries	PVI	Public Meeting	M
Plumbing, Heating and Cooling Contractors	PHCC	Public Meeting	C
Appliance Standards Awareness Project	ASAP	Public Meeting	EA
Pacific Gas & Electric, Southern California Edison	PGE & SCE	Written	U

* TA: Trade Association; EA: Efficiency/Environmental Advocate; M: Manufacturer; C: Contractor; U: Utility.

In parallel to the energy conservation standards rulemaking, DOE published a notice of proposed determination on August 13, 2013 (August 2013 NOPD), which initiated a coverage determination to explicitly clarify DOE's statutory authority under EPCA to cover natural draft commercial packaged boilers. DOE initiated this coverage determination because the existing definition of ''packaged boiler'' could have allowed for differing interpretations as to whether natural draft commercial packaged boilers are covered equipment. 78 FR 49202. In the August 2013 NOPD, DOE proposed a definition for natural draft commercial packaged boilers that would clarify its statutory authority to cover such equipment. DOE sought public comments in response to its proposed determination and definition for natural draft commercial packaged boilers, and received several written comments from interested parties. In addition, DOE also received several comments in response to the preliminary analysis TSD that are relevant to the issue of coverage determination of natural draft commercial packaged boilers.[19] After carefully reviewing all of the comments received on the issue of coverage determination of natural draft commercial packaged boilers and determining that the comments indicated a common and long-standing understanding from interested parties that natural draft commercial packaged boilers are and have been covered equipment under part A–1 of Title III of EPCA, DOE decided to withdraw the August 2013 NOPD on August 25, 2015 (August 2015 withdrawal notice). 80 FR 51487.

Lastly, DOE is also currently conducting a separate test procedure rulemaking to consider an amended test procedure for commercial packaged boilers. On February 20, 2014, DOE published a request for information (RFI) in the **Federal Register** that sought comments and information from stakeholders on several issues pertaining to the CPB test procedure. 79 FR 9643. On February 22, 2016, DOE issued a NOPR, which proposed to update the test procedure for determining the efficiency of commercial packaged boilers (February 2016 test procedure NOPR).[20] Through the proposed test procedure, DOE has sought to addresses some of the issues raised by DOE in the RFI and by interested parties in their comments. Section III.B of this document briefly discusses the changes proposed to the current test procedure and the potential impact on the energy conservation standards.[21] The analyses conducted for this NOPR reflect the changes proposed in the February 2016 test procedure NOPR.

III. General Discussion

A. Compliance Dates

In 42 U.S.C. 6313(a), EPCA prescribes a number of compliance dates for any resulting amended standards for commercial packaged boilers. These compliance dates vary depending on specific statutory authority under which DOE is conducting its review (*i.e.,* whether DOE is triggered by a revision to ASHRAE Standard 90.1 or whether DOE is undertaking a 6-year review), and the action taken (*i.e.,* whether DOE is adopting ASHRAE Standard 90.1 levels or more stringent levels). The discussion that follows explains the potential compliance dates as they pertain to this rulemaking.

As discussed in section II.A of this document, EPCA requires that at least once every 6 years, DOE must review standards for commercial packaged boilers and publish either a notice of determination that standards for this type of equipment do not need to be amended or a NOPR for any equipment for which more than 6 years has elapsed since the issuance of the most recent final rule. (42 U.S.C. 6313(a)(6)(C)(i)) EPCA requires that an amended standard prescribed under 42 U.S.C. 6313(a)(6)(C) must apply to products manufactured after the date that is the later of: (1) The date 3 years after publication of the final rule establishing a new standard or (2) the date 6 years after the effective date of the current standard for a covered product. (42 U.S.C. 6313(a)(6)(C)(iv)). For commercial packaged boilers, the final rule is scheduled to be published in 2016 and the current standards went into effect in 2012. Thus, the date 3 years after the publication of a final rule (2019) would be later than the date 6 years after the effective date of the current standard (2018) for this round of rulemaking. As a result, compliance with any amended energy conservation standards promulgated in the final rule would be required beginning on the date that is 3 years after the publication of the final rule.

[19] Comments with regards to the coverage determination of natural draft CPB from both the 2013 NOPD and the preliminary analysis TSD are discussed in detail in the 2015 withdrawal notice (80 FR 51487).

[20] A link to the February 2016 test procedure NOPR issued by DOE can be found at: *http://energy.gov/eere/buildings/downloads/issuance-2016-02-22-energy-conservation-program-certain-commercial-and.*

[21] For detailed discussion on the test procedure including the comments and DOE's response please see the docket no. EERE–2014–BT–TP–0006. The docket can also be accessed using the following link: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0006.*

B. Test Procedure

The current test procedure for commercial packaged boilers is found at 10 CFR 431.86, and incorporates by reference the Hydronics Institute (HI) BTS–2000 (Rev 06.07) testing standard, *Method to Determine Efficiency of Commercial Space Heating Boilers.* As stated previously, on February 22, 2016, DOE issued a notice of proposed rulemaking that proposes several amendments to the CPB test procedure. The changes that are proposed in the new test procedure include: (1) Clarify the coverage for field-constructed commercial packaged boilers and the applicability of DOE's test procedure and standards for this category of commercial packaged boilers, (2) provide an optional field test for commercial packaged boilers with fuel input rate greater than 5,000,000 Btu/h, (3) provide a conversion method to calculate thermal efficiency based on combustion efficiency testing for steam commercial packaged boilers with fuel input rate greater than 5,000,000 Btu/h, (4) modify the inlet and outlet water temperatures during tests of hot water commercial packaged boilers, (5) establish limits on the ambient temperature and relative humidity conditions during testing, (6) modify setup and instrumentation requirements to remove ambiguity, and (7) standardize terminology and provisions for ''fuel input rate.'' [22]

In the comments received on the preliminary analysis TSD for the energy conservation standards rulemaking, DOE received several comments that are specifically related to the current test procedure for commercial packaged boilers. Comments related to the technical aspects of the test procedure development were considered and addressed in the test procedure NOPR.

In addition, DOE received several comments related to the timing of the test procedure and energy conservation standard. AHRI stated that it appreciates DOE's effort to finalize the test procedure revisions in advance of the standards revisions and that it is critical that the revised test procedures be finalized so that the analysis for the revised standard is based properly on the test procedures that will be applied to products to establish their compliance with the revised efficiency standard. AHRI also stated that there must be sufficient time between the completion of the revised test procedure and the NOPR for the efficiency standard to allow all parties to assess the effect of test procedure revisions on potential increased efficiency standards, and encouraged DOE to continue its efforts to minimize the burden. (AHRI, No. 37 at p. 2) [23] Raypak stated that it is concerned about the lack of a finalized efficiency test procedure, and argued that this will adversely affect the capability of DOE to properly evaluate potential efficiency standard changes. (Raypak, No. 35 at p. 1) At the preliminary analysis public meeting, AHRI commented regarding the need to finalize both the test procedure and the coverage determination prior to the NOPR for the energy conservation standards rulemaking. (AHRI, Public Meeting Transcript, No. 39 at p. 16 and pp. 209–211) In the meeting, ACEEE acknowledged the challenges in compliance, certification, and enforcement for large commercial packaged boilers and asked whether DOE is likely to have regulation without enforcement or whether the Department is planning ahead now for enforcement of large (*e.g.,* 10 million Btu/h) commercial packaged boilers. (ACEEE, Public Meeting Transcript, No. 39 at p. 21)

As noted previously, the test procedure NOPR for commercial packaged boilers was issued by DOE on February 22, 2016. Although the test procedure has not yet been finalized, DOE believes the proposed test method updates give enough insight as to the changes under consideration that amended standard levels can reasonably be considered in this rulemaking. DOE conducted analyses for this NOPR based on the amended test procedure proposed in the February 2016 test procedure NOPR. However, DOE notes its final rule analyses will be based on DOE's most recently adopted CPB test procedure available at the time of the analyses. EPCA requires that, at least once every 7 years, the Secretary of Energy shall evaluate each type of covered equipment, including packaged boilers, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle; and would not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(1)–(2)) DOE adopted its latest amendments to its CPB test procedure in a final rule published on July 22, 2009. 74 FR 36312. Pursuant to EPCA's provision at 42 U.S.C. 6314(a)(1)–(2), DOE is conducting a concurrent test procedure rulemaking to evaluate its current CPB test procedure.

Regarding the effect of the amended test procedure on efficiency ratings, DOE notes that it tested several commercial packaged boilers with both the previous and the proposed test procedure to observe the variation in efficiency ratings as a result of the amended test procedure. As explained in the February 2016 test procedure NOPR, based on the results of this testing, DOE has tentatively determined that the proposed amendments, in aggregate, would not result in an overall measurable impact on ratings.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE conducts a market and technology assessment that develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii) through (iv). Additionally, DOE notes that these screening criteria do not directly address the proprietary status of design options. DOE only

[22] In this notice and the NOPR TSD, DOE uses ''fuel input rate,'' to refer to the maximum rate at which a commercial packaged boiler uses energy, in order to be consistent with Test Procedure definition and language. The industry also uses terms such as input capacity, input ratings, capacity, and rating, and any such instances should be considered synonymous with fuel input rate.

[23] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for commercial packaged boilers (Docket No. EERE–2013–BT–STD–0030, which is maintained at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0030*). This particular notation refers to a comment: (1) Submitted by AHRI; (2) appearing in document number 0035; and (3) appearing on page 3 of that document.

considers efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency). DOE believes the proposed standards for the equipment covered in this rulemaking would not mandate the use of any proprietary technologies, and that all manufacturers would be able to achieve the proposed levels through the use of non-proprietary designs. Section IV.B of this document discusses the results of the screening analysis for commercial packaged boilers, particularly the designs DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for commercial packaged boilers, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.4 of this document and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the commercial packaged boilers that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048).[24] The savings are measured over the entire lifetime of commercial packaged boilers purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards-case. The no-new-standards case represents a projection of energy consumption in the absence of amended efficiency standards, and it considers market forces and policies that may affect future demand for more-efficient equipment.

DOE uses its NIA spreadsheet models to estimate energy savings from potential amended standards. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in site energy, which is the energy directly consumed by equipment at the locations where they are used. For electricity, DOE calculates national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For electricity and natural gas and oil, DOE also calculates full-fuel-cycle (FFC) energy savings. As discussed in DOE's statement of policy and notice of policy amendment, the FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy efficiency standards. 76 FR 51281 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

To calculate primary energy savings, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA's) most recent *Annual Energy Outlook.* For FFC energy savings, DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information, see section IV.H.2 of this document.

2. Significance of Savings

To amend standards for commercial packaged boilers, DOE must determine with clear and convincing evidence that the standards would result in ''significant'' additional energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' DOE has tentatively concluded the energy savings for the proposed standards (presented in section V.B.3.a of this document) are ''significant'' as required by 42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i).

E. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII) and (C)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

EPCA requires DOE to consider the economic impact of a standard on manufacturers and the commercial consumers of the products subject to the standard. (42 U.S.C. 6313(a)(6)(B)(I) and (C)(i)) In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry based on expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national NPV of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

[24] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

b. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment that are likely to result from an amended standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II) and (C)(i)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of the equipment (including installation cost and sales tax) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with amended standards.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

The LCC savings for the considered efficiency levels are calculated relative to a no-new-standards-case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III) As discussed in section III.D.1 and section IV.E of this document and chapter 10 of the NOPR TSD, DOE uses spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Equipment

In determining whether a proposed standard is economically justified, DOE evaluates any lessening of the utilities or performance of the considered equipment. (42 U.S.C. 6313(a)(6)(B)(ii)(IV) and (C)(i)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the equipment under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General of the United States that is likely to result from a proposed standard. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and (C)(i)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

In considering new or amended energy conservation standards, EPCA also directs DOE to consider the need for the national energy conservation. (42 U.S.C. 6313(a)(6)(B)(ii)(VII) and (C)(i)) The proposed standards are likely to improve the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M of this document.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how standards may affect these emissions, as discussed in section IV.K of this document. DOE reports the emissions impacts from each TSL it considered in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII) and (C)(i)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of the equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test.

In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.11 of this document.

IV. Methodology and Discussion of Related Comments

DOE used three analytical tools to estimate the impact of the proposed standards. The first tool is a spreadsheet that calculates LCCs and PBPs of potential new energy conservation standards. The second tool is a spreadsheet that calculates national energy savings and net present value resulting from potential amended energy conservation standards.[25] The third spreadsheet tool, the Government

[25] The shipments model was developed as a Microsoft Excel spreadsheet, which is integrated into the spreadsheet for the NIA. The ''shipment forecast'' and ''historical shipments'' worksheets of the NIA model present the scope of the shipment analysis and the total shipments in units for the commercial packaged boilers in scope.

Regulatory Impact Model (GRIM), helped DOE to assess manufacturer impacts of potential standards. These tools are available on the DOE Web site for this rulemaking: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=79.*

Additionally, DOE estimated the impacts of energy conservation standards for commercial packaged boilers on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook (AEO),* a widely known energy forecast for the United States. The version of NEMS used for appliance standards analysis is called NEMS–BT and is based on the *AEO* version with minor modifications.[26] The NEMS–BT model offers a sophisticated picture of the effect of standards, because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

1. General

For the market and technology assessment, DOE develops information that provides an overall snapshot of the market for the equipment considered, including the nature of the equipment, market characteristics, industry structure, and technologies that improve energy efficiency. The analysis carried out under this chapter is broadly divided into two categories: (1) Market assessment and (2) technology assessment. The purpose of the market assessment is to develop a qualitative and quantitative characterization of the CPB industry and market structure, based on information that is publicly available and on data submitted by manufacturers and other interested parties. Issues addressed include CPB characteristics, market share and equipment classes; existing regulatory and non-regulatory efficiency improvement initiatives; overview of historical equipment shipments and lifetimes and trends in the equipment markets. The purpose of the technology assessment is to investigate technologies that will improve the energy efficiency of commercial packaged boilers, and results in a preliminary list of technology options that can improve the thermal and/or combustion efficiency of commercial packaged boilers. Chapter 3 of the NOPR TSD contains all the information related to the market and technology assessment. The chapter also provides additional details on the methodology used, information gathered and results. DOE typically uses the information gathered in this chapter in the various downstream analyses such as engineering analysis, shipment analysis, and manufacturer impact analyses.

In this NOPR, DOE also explored the market to identify manufacturers of commercial packaged boilers. As per the definition set forth in 10 CFR 431.82, a manufacturer of a commercial packaged boiler is any person who: (1) Manufactures, produces, assembles or imports a commercial packaged boiler in its entirety; (2) manufactures, produces, assembles or imports a commercial packaged boiler in part, and specifies or approves the boiler's components, including burners or other components produced by others, as for example by specifying such components in a catalogue by make and model number or parts number; or (3) is any vendor or installer who sells a commercial packaged boiler that consists of a combination of components that is not specified or approved by a person described in the two previous definitions.

Through extensive search of publicly available information, including ABMA's and AHRI's Web sites, DOE identified 45 CPB manufacturers that meet this definition. The complete list of manufacturers can be found in chapter 3 of the NOPR TSD.

DOE requests comment on the number and names of manufacturers that qualify as CPB manufacturers according to the list of manufacturers in chapter 3 of the NOPR TSD.

2. Scope of Coverage and Equipment Classes

EPCA lists ''packaged boilers'' as a type of covered equipment. (42 U.S.C 6311(1)). EPCA defines the term ''packaged boiler'' as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' (42 U.S.C. 6311(11)(B)) In its regulations, DOE clarifies the term ''packaged boiler'' to exclude a boiler that is ''custom designed and field constructed,'' and it further provides that if the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer and may be originated or shipped at different times and from more than one location. 10 CFR 431.82.

DOE's regulations also define the term ''commercial packaged boiler'' as ''a type of packaged low pressure boiler that is industrial equipment with a capacity (rated maximum input) of 300,000 Btu per hour (Btu/h) or more which, to any significant extent, is distributed in commerce (1) for heating or space conditioning applications in buildings; or (2) for service water heating in buildings but does not meet the definition of 'hot water supply boiler' in [10 CFR part 431].'' A ''packaged low pressure boiler'' means, ''a packaged boiler that is (1) a steam boiler designed to operate below a steam pressure of 15 psig; or (2) a hot water boiler designed to operate at or below a water pressure of 160 psig and a temperature of 250°F or (3) a boiler that is designed to be capable of supplying either steam or hot water, and designed to operate under the conditions in paragraphs (1) and (2) of this definition.'' 10 CFR 431.82.

As noted above, the current definition of ''packaged boiler'' refers to a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls. The definition does not explicitly include natural draft equipment. However, as discussed in the August 2015 withdrawal notice, DOE interprets the definitions in the statute to include natural draft commercial packaged boilers. After considering written comments on the August 2013 NOPD and comments on the preliminary analysis TSD related to the coverage of natural draft equipment, DOE concluded that natural draft commercial packaged boilers are and have been covered equipment subject to DOE's energy conservation standards. Therefore, DOE concluded it was unnecessary to publish a determination to clarify its statutory authority to cover natural draft commercial packaged boilers. Accordingly, DOE has included natural draft commercial packaged boilers under the scope of the rulemaking.

In the preliminary analysis, DOE specifically sought public comment on its tentative decision not to set an upper limit to the fuel input rate for commercial packaged boilers. This issue was first raised in the Framework document (Item 2–4 at page 12), where DOE requested feedback on whether there were any size related issues that may render energy conservation

[26] The EIA allows the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. For more information on NEMS, refer to The National Energy Modeling System: An Overview, DOE/EIA–0581 (98) (Feb.1998), available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf.*

standards infeasible for very large commercial packaged boilers. DOE received several comments in response to the Framework document that included suggestions of input capacities at which the scope of the standards rulemaking could be capped. AHRI recommended that the scope of the rulemaking should be capped at 5,000 kBtu/h. (AHRI, No.17 at pp. 1–2) ABMA, Burnham Holdings, and Cleaver Brooks suggested that the scope should be capped at 2,500 kBtu/h, citing high testing costs and practicability concerns. (ABMA, No. 14 at pp. 2–3; Cleaver-Brooks, No. 12 at p. 1; Burnham, No. 15 at p. 2) HTP recommended three commercial packaged boiler classifications: ''small,'' with fuel input rates ≥300 kBtu/h to <2,500 kBtu/h; ''medium,'' with fuel input rates ≥2,500 kBtu/h and <5,000 kBtu/h; and ''large,'' with fuel input rates ≥5,000 kBtu/h. (HTP, No. 18 at pp. 1–2) DOE provided responses to all these comments in chapter 2 of the preliminary analysis TSD. In its response, DOE acknowledged the difficulty of testing and rating very large commercial packaged boilers. However, DOE pointed out that defining a fuel input rate upper limit above which standards will not apply could violate EPCA's anti-backsliding provision. As a result, in the preliminary analysis TSD, DOE analyzed all equipment classes for commercial packaged boilers that fit EPCA's definition and have a fuel input rate of 300 kBtu/h or more with no upper limit. DOE also requested further public comment from interested parties on its tentative decision to not set an upper limit.

Several interested parties and stakeholders commented on this issue in response to the preliminary analysis TSD. Lochinvar commented in support of DOE's decision, stating that the inclusion of commercial packaged boilers with very large fuel input rate is needed to ensure a level playing field and accurate product ratings. Lochinvar further commented that many concerns regarding the test burden are addressed by the revised Alternative Efficiency Determination Methods (AEDM) rules. (Lochinvar, No. 34 at p. 1) ABMA stated that DOE's decision not to set an upper limit on input capacity for commercial packaged boilers is causing significant concern among their member boiler manufacturers. ABMA reported that boilers can approach capacities as high as 80,000 kBtu/h with the testing cost approaching one million dollars, which imposes a prohibitively high financial burden on companies manufacturing large institutional sized space heating boilers. ABMA also argued that their member manufacturers have been offering efficiency guarantees since the late 1970s on the large space heating commercial and institutional packaged boilers and have been capable of meeting current efficiency requirements since 1970. Further, ABMA stated that there exists significant difference between smaller boilers that are built in large quantities to a standard specification and large custom engineered boilers manufactured to specifications for a particular installation. ABMA recommended that DOE cap the efficiency certification requirements for commercial packaged boilers at 2,500 kBtu/h. (ABMA, No. 33 at pp. 1–2) AHRI stated that the commercial boilers that have input rates in the high millions of Btu/h are very different products and that many factors that are considered in DOE's analysis and the associated conclusions cannot be extrapolated up to characterize very large commercial packaged boilers. (AHRI, No. 37 at p. 1) AHRI also stated that when going from 3,000 kBtu/h to tens of millions of Btu/h, a whole different price structure should be employed and there may be an upper limit at which the price structure changes completely. (AHRI, Public Meeting Transcript, No. 39 at p. 45) During the public meeting, ABMA also expressed concern on how DOE would extrapolate prices for an 80 million Btu/h boiler using a 3 million Btu/h boiler as the representative unit. (ABMA, Public Meeting Transcript, No. 39 at pp. 64–65)

DOE considered the comments received from interested parties. Comments regarding testing large commercial packaged boilers were addressed separately in the ongoing test procedure rulemaking (discussed further in section III.B of this document). DOE also acknowledges other issues with regards to the compliance burden of very large commercial packaged boilers, particularly those that are engineered-to-order. Some stakeholders suggested capping the scope of the energy conservation standards as an option to resolve this issue. However, as discussed previously, setting an upper limit to the scope of DOE's energy conservation standards for commercial packaged boilers could violate EPCA's anti-backsliding provision. Therefore, DOE has not set an upper limit for fuel input rate above which the standards will not be applicable. However, as discussed in further detail below, DOE proposes a separate equipment class for ''very large'' commercial packaged boilers with input capacities greater than 10 million Btu/h.

When evaluating and establishing energy conservation standards, DOE typically divides covered equipment into equipment classes based on the type of energy used, capacity, or performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE considers such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate.

The current regulations for commercial packaged boilers list 10 equipment classes with corresponding energy efficiency levels for each.[27] 10 CFR 431.87. These equipment classes are based on (1) size (fuel input rate), (2) heating media (hot water or steam), and (3) type of fuel used (oil or gas).[28] The gas-fired steam commercial packaged boilers are further classified according to draft type (thereby creating two additional equipment classes). Table IV.1 shows equipment classes that are set forth in the current regulations at 10 CFR 431.87.

TABLE IV.1—CPB EQUIPMENT CLASSES SET FORTH IN THE CURRENT REGULATIONS AT 10 CFR 431.87

Equipment type	Subcategory	Size category (input)	Equipment class	Energy efficiency metric
Hot Water Commercial Packaged Boilers.	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	Small Gas Hot Water	Thermal Efficiency.

[27] These standard levels were adopted in the July 2009 final rule.

[28] Under subpart E of 10 CFR part 431, commercial packaged boilers are divided into equipment classes based on fuel input rate (*i.e.,* size category). Throughout this document, DOE refers to units with an fuel input rate of ≥300,000 Btu/h and ≤2,500,000 Btu/h as ''small'' and units with an fuel input rate >2,500,000 Btu/h as ''large.'' *See* 10 CFR 431.87.

TABLE IV.1—CPB EQUIPMENT CLASSES SET FORTH IN THE CURRENT REGULATIONS AT 10 CFR 431.87—Continued

Equipment type	Subcategory	Size category (input)	Equipment class	Energy efficiency metric
Hot Water Commercial Packaged Boilers.	Gas-fired	>2,500,000 Btu/h	Large Gas Hot Water	Combustion Efficiency.
Hot Water Commercial Packaged Boilers.	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	Small Oil Hot Water	Thermal Efficiency.
Hot Water Commercial Packaged Boilers.	Oil-fired	>2,500,000 Btu/h	Large Oil Hot Water	Combustion Efficiency.
Steam Commercial Packaged Boilers.	Gas-fired—all except natural draft.	≥300,000 Btu/h and ≤2,500,000 Btu/h.	Small Gas Mechanical Draft Steam.	Thermal Efficiency.
Steam Commercial Packaged Boilers.	Gas-fired—all except natural draft.	>2,500,000 Btu/h	Large Gas Mechanical Draft Steam.	Thermal Efficiency.
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h.	Small Gas Natural Draft Steam.	Thermal Efficiency.
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	>2,500,000 Btu/h	Large Gas Natural Draft Steam.	Thermal Efficiency.
Steam Commercial Packaged Boilers.	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	Small Oil Steam	Thermal Efficiency.
Steam Commercial Packaged Boilers.	Oil-fired	>2,500,000 Btu/h	Large Oil Steam	Thermal Efficiency.

In the preliminary analysis, DOE divided commercial packaged boilers into 16 equipment classes, based on size, fuel, heating medium, and type of draft. DOE sought public comment on its tentative decision to classify commercial packaged boilers into 16 equipment classes.

In response to the request, ACEEE, ASAP, and NRDC recommended that DOE adopt a single equipment class for natural draft and mechanical draft commercial packaged boilers, citing that natural draft commercial packaged boilers are inherently less efficient and that this will ensure maximum energy efficiency improvement. The commenters also stated that they are unaware of any distinct utility that is offered by natural draft commercial packaged boilers that is different from mechanical draft commercial packaged boilers. (ACEEE, ASAP, and NRDC, No. 36 at p. 2) PG&E and SCE noted that natural draft commercial packaged boilers have much lower part-load efficiency and are rapidly becoming obsolete due to changes in consumer buying behavior. The commenters argued against the separation of the equipment classes, specifically hot water commercial packaged boilers and stated that both mechanical draft and natural draft systems have the same utility and, therefore, should be considered in the same equipment class. (PG&E and SCE, No. 38 at p. 3) Raypak recommended DOE to revert back to the 10 equipment classes that are set forth in the current energy conservation standards at 10 CFR 431.87. (Raypak, No. 35 at p. 2) Raypak noted that non-condensing boilers are still a significant part of the market and offer several advantages such as simple operation and maintenance, higher design water temperature, lower costs, and higher lifetimes, and encouraged DOE to maintain the natural draft boiler equipment classes. Raypak further encouraged DOE not to amend energy conservation standards to a level that would not support natural draft commercial packaged boilers. (Raypak, No. 35 at pp. 6–7) Lochinvar encouraged DOE to maintain the 10 equipment classes that are set forth in the current energy conservation standards at 10 CFR 431.87 and stated that the division of the classes will lead to different minimum ratings for natural draft and mechanical draft boilers and competitive inequality. Lochinvar also cited commercial water heaters as an example, stating that commercial water heaters are available with mechanical and natural draft systems, but the energy conservation standards are applicable to all types of equipment irrespective of the draft type (Lochinvar, No. 34 at p. 1) AHRI argued that natural draft commercial packaged boilers are covered equipment subject to DOE's efficiency standards, but this does not extend to creating separate equipment classes for such products in the efficiency standards. AHRI further stated that the current 10 equipment classes set forth in 10 CFR 431.87 are appropriate. (AHRI, No. 37 at p. 2) AHRI also commented during the preliminary analysis public meeting that the 16 equipment classes used in the preliminary analysis were a good starting point, but that the classes can be squeezed together. (AHRI, Public Meeting Transcript, No. 39 at p. 26) ASAP questioned DOE's rationale for adopting separate equipment classes for mechanical and natural draft commercial packaged boilers. (ASAP, Public Meeting Transcript, No. 39 at p. 39)

DOE agrees with comments stating that both natural draft and mechanical draft commercial packaged boilers provide the same utility. Based on DOE's understanding, there appears to be no distinct performance related utility that is provided by natural draft commercial packaged boilers that justifies a separate equipment class for such equipment. Consequently, there appears to be no justification to maintain separate equipment classes for natural draft commercial packaged boilers. Therefore, in this document, DOE proposes to consolidate CPB equipment classes that are currently divided by draft type.[29] Specifically, DOE proposes to combine the small (≥300,000 Btu/h and ≤2,500,000 Btu/h), gas fired—all except natural draft, steam and small (≥300,000 Btu/h and ≤2,500,000 Btu/h), gas fired—natural draft, steam classes; and the large (>2,500,000 Btu/h and ≤10,000,000 Btu/h), gas fired—all except natural draft, steam and large (≥2,500,000 Btu/h and ≤10,000,000 Btu/h), gas fired—natural draft, steam classes.

In addition, based on the concerns expressed by interested parties regarding the complexities of regulating very large commercial packaged boilers discussed earlier in this section, DOE has tentatively decided to propose

[29] Because DOE has not proposed amended standards for commercial packaged boilers with input ratings above 10,000,000 Btu/h, the standards for equipment in this class will remain unchanged. Thus, although DOE is consolidating this equipment into a single class, an allowance will still be made for natural draft units to have a lower minimum efficiency until March 2, 2022, as is allowed under the current standards.

separate equipment classes for commercial packaged boilers with fuel input rates above 10,000 kBtu/h. In order to determine the fuel input rate at which to separate the proposed large CPB equipment classes (*i.e.,* equipment classes with a fuel input rate >2,500 kBtu/h) and the proposed new equipment class for ''very large'' commercial packaged boilers, DOE performed a calculation to estimate the energy savings potential for very large CPB equipment classes at various minimum fuel input rate thresholds. DOE estimated the potential for energy savings for commercial packaged boilers with fuel input rates above 10,000 kBtu/h to be between 0.014 and 0.025 quads based on the range of TSLs considered in the NOPR, by assigning the same efficiency level to the very large equipment classes as was considered for the corresponding large equipment classes. Further, DOE examined the price data collected for the engineering analysis and noticed a smooth linear trend in prices as they vary with fuel input rate, from 300 kBtu/h up to approximately 9,500 kBtu/h. The smooth trend created by the data appears to indicate that commercial packaged boilers below 10,000 kBtu/h do not have a separate price structure; this linear price trend is discussed further in the engineering analysis, section IV.C of this document. Despite extensive efforts, DOE was unable to obtain pricing data for commercial packaged boilers with fuel input rate above 10,000 kBtu/h. Based on these assessments, including the lack of available data, DOE is proposing to classify commercial packaged boiler with fuel input rate above 10,000 kBtu/h as very large equipment classes. As commercial packaged boilers with fuel input rate above 10,000 kBtu/h are currently covered equipment, the existing standards at 10 CFR 431.87 are still applicable. DOE proposes to maintain the existing standards for commercial packaged boilers with fuel input rate above 10,000 kBtu/h (referred to as very large commercial package boilers in this notice) because there is not sufficient data to provide clear and convincing evidence that more stringent standards would be technologically feasible and economically justified, and would result in significant additional energy savings.

DOE requests data on manufacturer selling prices, shipments and conversion costs of very large commercial packaged boilers with fuel input rate above 10,000 kBtu/h that can be used to supplement the analyses of such equipment in this rulemaking.

See section VII.E for a list of issues on which DOE seeks comment.

DOE also believes that creating separate equipment classes for very large commercial packaged boilers would reduce the overall compliance burden of manufacturers.

In summary, DOE proposes the following changes to the equipment classes: (1) Separating the equipment classes for commercial packaged boilers that have a fuel input rate above 10,000 kBtu/h, and (2) consolidating the equipment classes for small and large gas-fired steam boilers that are currently divided based on draft type into equipment classes that are not draft specific. Thus, in total, DOE proposes 12 equipment classes [30] for this NOPR. These classes are categorized based on three performance parameters: (1) Size; (2) heating medium; and (3) fuel type. Table IV.2 shows all of the proposed CPB equipment classes, including the eight equipment classes for which DOE proposes amended standards and four equipment classes for which DOE did not propose to amend standards. In subsequent sections of this document, DOE uses the designated name of equipment classes given in the first column of Table IV.2 to explain various aspects of the rulemaking analyses.

TABLE IV.2—PROPOSED EQUIPMENT CLASSES FOR COMMERCIAL PACKAGED BOILERS

Equipment class	Size	Fuel	Heating medium	Acronym	Propose amended standards
Small Gas-fired Hot Water	≥300kBtu/h to ≤2,500kBtu/h	Gas	Hot Water	SGHW	Yes.
Small Gas-fired Steam*	≥300kBtu/h to ≤2,500kBtu/h	Gas	Steam	SGST	Yes.
Small Oil-fired Hot Water	≥300kBtu/h to ≤2,500kBtu/h	Oil	Hot Water	SOHW	Yes.
Small Oil-fired Steam	≥300kBtu/h to ≤2,500kBtu/h	Oil	Steam	SOST	Yes.
Large Gas-fired Hot Water	>2,500kBtu/h to ≤10,000kBtu/h	Gas	Hot Water	LGHW	Yes.
Large Gas-fired Steam*	>2,500kBtu/h to ≤10,000kBtu/h	Gas	Steam	LGST	Yes.
Large Oil-fired Hot Water	>2,500kBtu/h to ≤10,000kBtu/h	Oil	Hot Water	LOHW	Yes.
Large Oil-fired Steam	>2,500kBtu/h to ≤10,000kBtu/h	Oil	Steam	LOST	Yes.
Very Large Gas-fired Hot Water**	>10,000kBtu/h	Gas	Hot Water	VLGHW	No.
Very Large Gas-fired Steam**	>10,000kBtu/h	Gas	Steam	VLGST	No.
Very Large Oil-fired Hot Water**	>10,000kBtu/h	Oil	Hot Water	VLOHW	No.
Very Large Oil-fired Steam**	>10,000kBtu/h	Oil	Steam	VLOST	No

* The existing small, gas-fired, steam, natural draft equipment classes and small, gas-fired steam, all except natural draft equipment classes are proposed to be consolidated into a single small gas-fired, steam equipment class. Similarly, the existing large, gas-fired, steam, natural draft equipment classes and large, gas-fired steam, all except natural draft equipment classes are proposed to be consolidated into a single large, gas-fired, steam equipment class.

** DOE proposes to establish separate equipment classes for CPB with fuel input rate above 10,000kBtu/h.

In addition to the two issues discussed previously in this section, DOE received several comments in response to the preliminary analysis related to standby mode and off mode energy consumption. In chapter 2 of the preliminary analysis TSD, DOE reported that standby mode and off mode energy consumption is a negligible proportion of the total energy consumption of the commercial packaged boiler (about 0.02 percent of total energy used). Consequently, DOE decided in the preliminary analysis not to analyze standards for commercial packaged boilers to regulate their standby mode and off mode energy consumption. AHRI, Raypak, and Lochinvar supported DOE's preliminary findings on the standby mode and off mode energy consumption and discouraged DOE from pursuing the development of standards for these modes of operation. (AHRI, No. 37 at p. 2; Raypak, No. 35 at p. 2; Lochinvar, No. 34 at p. 2) Lochinvar stated that the data on standby mode and off mode is very

[30] Consolidating the 4 draft-specific classes into 2 non-draft-specific classes reduces the number of equipment classes from 10 to 8, and creating separate equipment classes for very large CPB equipment adds 4 equipment classes. These changes result in a total of 12 equipment classes.

limited because its measurement is not required and based on measurements conducted on their commercial hot water boilers, the standby mode power consumption was found to be 0.007 percent of the total power consumed by the boiler. (Lochinvar, No. 34 at p. 2) ABMA urged DOE not to consider standby and off cycles or the energy consumed in different operational modes, stating that there are multiple variables related to system design, set-up, and operation for a one-size fits all rule. (ABMA, No. 33 at p. 2) No interested parties commented in support of standby mode and off mode standards, and DOE did not receive any new standby loss or off mode energy consumption data that would cause DOE to reverse its previous tentative conclusion. Therefore, DOE has not conducted any further analysis of potential standby mode and off mode energy conservation standards for commercial packaged boilers.

3. Technology Options

As part of the rulemaking analysis, DOE identifies technology options that are currently used in commercial packaged boilers at different efficiency levels available on the market. This helps DOE to assess the technology changes that would be required to increase the efficiency of a commercial packaged boiler from baseline to other higher efficiency levels. Initially, these technologies encompass all those DOE believes are technologically feasible.

As a starting point, DOE typically uses information relating to existing and past technology options as inputs to determine what technologies manufacturers use to attain higher performance levels. DOE also researches emerging technologies that have been demonstrated in prototype designs. DOE developed its list of technologically feasible design options for the considered equipment through consultation with manufacturers, including manufacturers of components and systems, and from trade publications and technical papers.

In the preliminary analysis, DOE presented a list of technologies for improving the efficiency of commercial packaged boilers. Based on comments received in response to the preliminary analysis (discussed in detail in section IV.B of this document), DOE retained all the technology options that were identified in the preliminary analysis. However, for ''pulse combustion burners,'' DOE is now considering the technology as a path to achieve condensing operation and categorizing it as a condensing boiler design. Additionally, in research for the NOPR, DOE identified a new technology option: oxygen trim system. The technology options that DOE identified for this NOPR analysis are listed in Table IV.3:

TABLE IV.3—TECHNOLOGY OPTIONS THAT IMPROVE COMBUSTION EFFICIENCY OR THERMAL EFFICIENCY THAT ARE CONSIDERED IN THE MARKET AND TECHNOLOGY ASSESSMENT

Jacket Insulation.
Heat Exchanger Improvements (Including Condensing Heat Exchanger).
Burner Derating.
Improved Burner Technology.
Combustion Air Preheaters.
Economizers.
Blowdown Waste Heat Recovery.
Oxygen Trim Systems.
Integrated, High-Efficiency Steam Boilers.

B. Screening Analysis

After DOE identified the technologies that might improve the energy efficiency of commercial packaged boilers, DOE conducted a screening analysis. The goal of the screening analysis is to identify technology options that will be considered further, and those that will be eliminated from further consideration, in the rulemaking analyses. DOE applied the following set of screening criteria to each of the technologies identified in the technology assessment to determine which technology options are unsuitable for further consideration in the rulemaking:

- *Technological feasibility:* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible.
- *Practicability to manufacture, install, and service:* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.
- *Adverse impacts on product utility or equipment availability:* If DOE determines a technology would have a significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.
- *Adverse impacts on health or safety:* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

(10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b))

Additionally, DOE notes that these screening criteria do not directly address the propriety status of design options. DOE only considers efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency).

In the preliminary analysis TSD, DOE applied the screening criteria to the technology options that were considered in the market and technology assessment and sought comments and feedback on the technology options that passed the screening analysis.

DOE received several general comments on the options that passed the screening analysis in the preliminary analysis TSD chapter. Lochinvar agreed with technology options that passed the screening test, noting that the options identified are technologically feasible. (Lochinvar, No. 34 at p. 2) AHRI and Raypak agreed with the technology options that successfully passed the screening analysis, with the exception of pulse combustion (as discussed in further detail later in this section). (AHRI, No. 37 at p. 3; Raypak No. 35 at p. 2)

ACEEE commented that the deficiencies in the current test procedure have led to the exclusion of modulating gas burners as an efficiency improving technology. (ACEEE, Public Meeting Transcript, No. 39 at p. 29)

Regarding modulating boilers, DOE notes that in the equipment database it found several CPB models at baseline and near baseline efficiency levels that utilize a modulating burner. As noted by ACEEE, the test procedure currently does not provide an efficiency advantage for modulating burners. DOE notes that the February 2016 test procedure NOPR also does not provide an efficiency benefit for the inclusion of a modulating burner for reasons explained further in that notice. As a result, DOE did not consider modulating burners as a technology option for improving the efficiency of commercial packaged boilers for this NOPR.

The technology options that were identified in the market and technology assessment are presented immediately below, along with whether or not the technology was ultimately considered further in the analysis.

Jacket Insulation

Optimizing jacket insulation thickness reduces the heat loss from commercial packaged boiler to the

outside air. However, most manufacturers already use this technology option and the potential benefits of using this option are a minimal increase in thermal efficiency. Consequently, DOE did not consider this technology option further.

Heat Exchanger Improvements (Including Condensing Heat Exchanger)

DOE considered several heat exchanger improvement options that can increase thermal and combustion efficiencies of commercial packaged boilers. These options include incorporation of baffles and turbulators; improved fin designs such as micro-fins and louvered fins; improved tube designs such as corrugated tubes and internally rifled tubes; and addition of a condensing heat exchanger. In response to these technology options, Lochinvar commented that options such as increased heat exchanger surface area, baffles and creative pin/fin arrangements are all viable options for natural draft boilers and have been implemented by manufacturers for decades. Lochinvar also stated that DOE needs to consider that design changes are complex and often involve significant redesign to achieve efficiency targets without sacrificing safety and reliability. (Lochinvar, No. 34 at p. 2) Raypak commented that consideration of any additional restrictions of the heat exchanger must be balanced with the need to ensure safe operation and venting. (Raypak No. 35 at p. 2) AHRI commented that DOE must avoid considering heat exchanger designs that are so restrictive that they adversely affect safe operation and venting of the boiler. (AHRI, No. 37 at p. 3)

DOE reviewed the comments and examined whether the extent of heat exchanger improvements considered are restrictive such that any of these options would potentially adversely impact safe operation and venting of the commercial packaged boiler. In considering improved heat exchanger designs, DOE focused on technology options that are currently being used by commercial packaged boilers available on the market, as a vast array of heat exchanger designs and efficiencies was observed. DOE examined product literature and operation manuals and is not aware of potential safety concerns for commercial packaged boilers with heat exchanger designs that achieve the efficiency levels analyzed in this NOPR. Where upgraded venting is required for potential condensate formation in the vent piping, DOE considered such cost in its analysis of installation costs (see section IV.F.2 of this document). Consequently, the technology option of heat exchanger improvements passed the screening analysis and is considered as a design option to improve CPB thermal or combustion efficiency.

Burner Derating

Burner derating increases the ratio of the heat transfer area to fuel input by reducing the burner input rating while maintaining the same heat exchanger, which can increase the thermal efficiency of commercial packaged boilers. In the preliminary analysis public meeting, AHRI commented that burner derating has already been used by the industry to achieve the current efficiency standards, so there is not much more potential for this option to further improve efficiency. (AHRI, Public Meeting Transcript, No. 39 at pp. 25–26)

As in the preliminary analysis, DOE proposes to screen out burner derating as it reduces the usable heat output, and would reduce utility. Therefore, DOE did not consider this technology option further in the analysis.

Improved Burner Technology

Burner technologies that were considered under this technology option include pulse combustion, premix burners and low pressure, air atomized oil burners. In the preliminary analysis TSD, all three burner technology options passed the screening analysis and were considered as options to improve thermal and combustion efficiency. In response to the inclusion of the three burner technologies, AHRI and Raypak commented that they do not consider pulse combustion as a technology option. Raypak stated that it views pulse combustion more as a fundamental aspect of the boiler design comparable to whether the boiler is water tube or fire tube. (Raypak No. 35 at p. 2) AHRI also stated pulse combustion is one way to create a boiler that condenses. (AHRI, No. 37 at p. 3)

After considering the comments discussed above, DOE has re-classified pulse combustion as a type of condensing boiler technology, rather than a design option that would be applied to a less efficient boiler to make it more efficient. In the screening analysis of the NOPR TSD, DOE included pulse combustion under heat exchanger improvement technology options and premix burners and low pressure air atomized oil burners under improved burner technology options. All three technology options passed the screening analysis.

Combustion Air Preheaters

Combustion air pre heaters use a gas to gas heat exchanger to transfer heat from the flue gases to the incoming combustion air. Although this option can increase the operating efficiency of a commercial packaged boiler in the field, this efficiency is not measured by the current test procedure, because the current test procedure requires inlet air to be within ± 5°F of the room ambient temperature. Therefore, DOE did not consider this technology option further in its analysis.

Economizers

Economizers are gas to water heat exchangers that are used to transfer residual heat in the flue gases to the inlet water to the commercial packaged boiler. Unlike a condensing commercial packaged boiler that operates on the same principle, economizers are used as an add-on to the existing commercial packaged boilers and improve efficiency by pre heating the incoming water before it enters the primary heat exchanger. Although this technology option has the potential to improve efficiency by reducing the fuel input required to heat the water, the improvement in efficiency is not measured by the current test procedure, because the current test procedure requires the inlet water to have a set temperature before it enters the primary heat exchanger of the commercial packaged boiler. Therefore, DOE did not consider economizers as a technology option for improving commercial packaged boiler efficiency ratings.

Blowdown Waste Heat Recovery

Some large commercial steam boilers require a blowdown operation to remove dissolved solids and salts that are left behind after the boiling process. These solids are usually dissolved in water that is hot and can be utilized to pre heat incoming water before it enters the primary heat exchanger of the commercial packaged boiler. Although this option can improve operating efficiency, measurement of the improvement in efficiency can only occur is there is sufficient deposit left behind in the boiler after continuous boiler operation. The current DOE test procedure is a laboratory based test that uses a commercial packaged boiler that is not previously installed or commissioned. During the test, the commercial packaged boiler will not be able to extract the waste heat from a blowdown operation. Therefore, DOE did not consider blowdown waste heat recovery further in the analysis.

Oxygen Trim Systems

DOE added this technology option in the market and technology assessment chapter at the NOPR stage of the rulemaking. An oxygen ''trim'' system is a control strategy that can be used to minimize excess combustion air and optimize the air-to-fuel ratio. These systems can increase efficiencies by 1 to 2 percentage points. This option passed the screening analysis.

For this NOPR the following technology options were found to have an impact on the rated efficiency metric and passed the screening analysis to be considered further in the downstream analyses: (1) Heat exchanger improvements (including condensing heat exchanger), (2) improvement in burner technology, and (3) oxygen trim systems.

C. Engineering Analysis

The engineering analysis establishes the relationship between manufacturer selling prices (MSP) and energy-efficiency of commercial packaged boilers. This price-efficiency relationship serves as a basis for subsequent cost-benefit calculations for individual consumers, manufacturers, and the nation.

To determine this price-efficiency relationship, DOE uses data from the market and technology assessment, publicly available equipment literature and research reports, and information from manufacturers, distributors, and contractors. For this rulemaking, DOE first used information from the market and technology assessment to identify efficiency levels and representative equipment for analysis. In the market assessment DOE compiled a set of data containing the rated performance information and various characteristics of all CPB equipment available on the market. In the engineering analysis DOE refers to this as the ''equipment database''. The equipment database contains all commercial packaged boilers that are listed in AHRI's Directory of Certified Product Performance [31] and commercial packaged boilers that are manufactured by members of ABMA. In the engineering analysis, DOE collected CPB prices primarily from manufacturers, mechanical contractors, and equipment distributors. DOE tabulated all of the price data in a separate database, which is referred to as the ''prices database.''

[31] AHRI's Directory of Certified Product Performance can be found at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx.*

1. Methodology

DOE has identified three basic methods for developing price-efficiency curves: (1) The design-option approach, which provides the incremental manufacturing costs of adding design options to a baseline model that will improve its efficiency; (2) the efficiency-level approach, which provides the incremental price of moving to higher efficiency levels without regard to any particular design option; (3) the reverse-engineering (or cost-assessment) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency based on teardown analyses (or physical teardowns) providing detailed data on costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.[32]

For this rulemaking, DOE has decided to use the efficiency-level approach to conduct the engineering analysis. This methodology generally involves calculating prices of commercial packaged boilers for a given fuel input rate (representative fuel input rate) for each manufacturer at different efficiency levels spanning from the minimum allowable standard (*i.e.,* baseline level) to the maximum technologically feasible efficiency level. The primary output of the analysis is a set of price-efficiency relationships that represent the average change in manufacturer selling price for higher efficiency equipment (*i.e.,* ''incremental price''). In the subsequent markups analysis (chapter 6 in the NOPR TSD), DOE determines customer prices by applying additional distribution chain markups and sales tax to the manufacturer selling prices developed in the engineering analysis. After applying these markups, the data serve as inputs to the life-cycle cost and payback period analyses (chapter 8 in the NOPR TSD).

In the preliminary analysis, as noted previously, DOE classified commercial packaged boilers into sixteen equipment classes and analyzed each class separately. DOE received CPB price information for several mechanical draft equipment classes that was sufficient to develop a price-efficiency trend. However, DOE was unable to collect sufficient pricing data to develop a price-efficiency trend for the condensing efficiency levels, and the large mechanical draft steam and all natural draft equipment classes, and instead relied on alternate methodologies.

In the preliminary analysis for the classes that had sufficient price data, DOE calculated the incremental increase in price at each efficiency level analyzed for each manufacturer at the representative fuel input rate, and then took an average of these price at each efficiency level to get the final price efficiency curve for all equipment classes. For the other equipment classes that did not have adequate pricing information, DOE used alternate methods of calculating incremental prices. These methods include extrapolation of price efficiency curves or actual pricing data to other equipment classes. DOE requested comments and feedback from interested parties on various aspects of the engineering analysis performed for the preliminary analysis, and specifically on the methodology and results. In response, DOE received several comments, which are discussed further in the following applicable sections.

For the NOPR, as discussed in section IV.C.2 of this document, DOE was able to obtain more pricing information than it had for the preliminary analysis. As a result, DOE updated its approach for several equipment classes to include a direct analysis of that class using only pricing data obtained for that class. DOE also improved its methodology to account for the difference in equipment price as a function of capacity.

In the NOPR analysis, for each price obtained, DOE first calculated the ratio of the price of the commercial packaged boiler with respect to its fuel input rate to obtain all prices on a per unit fuel input rate basis (dollars per kBtu/h). DOE then used its equipment database to determine and apply appropriate weights to individual prices (on a per fuel input rate basis) based on the distribution of input capacities on the market. The weight given to each CPB price per fuel input rate represents the number of commercial packaged boilers of that fuel input rate available in the market. Thus, price per fuel input rate of models that are similar in capacity to higher numbers of models on the market were weighted more heavily than price per fuel input rate of models at a fuel input rate for which relatively few models are available. DOE applied these weights to calculate the weighted average price per fuel input rate and the weighted average fuel input rate for each efficiency level analyzed.

Next, DOE scaled the weighted average price (on a per fuel input rate basis) at each efficiency level from the weighted average fuel input rate (at

[32] The term 'cost' refers to the manufacturing cost, while the term 'price' refers to the manufacturer selling price. In some of the engineering analysis approaches DOE calculates the manufacturing cost which is multiplied with the appropriate markups to get the manufacturer selling price.

which the price was calculated in the previous step) to the representative fuel input rate for a given equipment class. To do this, DOE plotted the price per input as a function of fuel input rate and applied a non-linear regression model that best represented the trend. In these plots, it is apparent that for lower input capacities the price on a per input basis is higher, and as the fuel input rate increases, the price per input decreases. In addition, the rate of change of the price on a per-unit input basis with respect to fuel input rate also decreases considerably as the fuel input rate increases. The result is a scatter plot that appears to resemble a decreasing exponential curve. DOE applied the regression equation to determine the weighted average price per input at the representative fuel input rate.

DOE performed a regression analysis on the weighted average price per input results at the representative fuel input rate and the efficiency levels to deduce the equation that best represents the price-efficiency relationship. Using the regression equation, DOE calculated the predicted weighted average price per input at the representative fuel input rate for all efficiency levels that were analyzed in each equipment class. DOE then multiplied the predicted weighted average price per input at the representative fuel input rate by the representative fuel input rate to get the manufacturer selling price at each efficiency level. As a final step, DOE calculated the incremental prices by subtracting the baseline price from the manufacturer selling price of each efficiency level above the baseline. Further details on the methodology and results are provided in the chapter 5 of the NOPR TSD.

DOE requests feedback on the methodology used to analyze all equipment classes and the results obtained. In particular DOE is interested in comments on whether the results are appropriate and representative of the current market prices for such type of equipment.

See section VII.E for a list of issues on which DOE seeks comment.

a. Overall Methodology and Extrapolation of Prices

DOE received several comments from interested parties in response to DOE's preliminary analyses on the overall methodology that was used to develop the price-efficiency relationships.

ACEEE, ASAP, and NRDC noted that in other rulemakings, DOE typically constructs cost estimates by conducting teardowns and generating a Bill of Materials (BOMs); however, for the current rulemaking, DOE has not conducted any teardowns for commercial packaged boilers. The commenters stated that in contractor-installed systems such as commercial packaged boilers, prices are highly variable and may be based on factors other than efficiency (*e.g.* labor costs). (ACEEE, ASAP, and NRDC, No. 36 at p. 2) ASAP asked if DOE looked at the incremental costs, as opposed to incremental prices and that in looking at the incremental prices, the actual costs to improve efficiency are overestimated. (ASAP, Public Meeting Transcript No. 39 at p. 60)

As discussed previously, DOE has decided to use the efficiency-level approach to conduct the engineering analysis. In this approach DOE collects prices at various efficiency levels and estimates the incremental price for higher efficiency models as an average or weighted average of the commercial packaged boilers available on the market. Although DOE commonly uses a reverse-engineering approach, DOE decided not to use this approach for commercial packaged boilers due to practical concerns involved in tearing down commercial packaged boilers, especially those belonging to large equipment classes. Commercial packaged boilers exhibit a large variety of designs depending on a number of factors including, size, efficiency, fuel used, heating medium, draft type, heat exchanger design/material, and whether it is fire-tube or water-tube. In the analysis for this rulemaking, DOE collected pricing information for 584 commercial packaged boilers, which covered a range of different types of CPB equipment. Tearing down enough units to perform a reverse-engineering analysis would be extremely time intensive given the large number of CPB designs at each efficiency level and within each equipment class, and the physical size of some commercial packaged boilers. In addition, there are several practical issues involved with tearing down large commercial packaged boilers, given the size and weight of this equipment, which can require upgraded infrastructure for handling the equipment. In view of these issues, DOE felt that a pricing survey to collect information on actual CPB prices at various efficiency levels for each equipment class is a more practical methodology for conducting the engineering analysis for commercial packaged boilers.

ACEEE, ASAP, and NRDC also encouraged DOE to ensure that the estimates of incremental prices only include the incremental price associated with the technology options required to meet a given efficiency level, and not the cost of auxiliary options that are often associated with premium products but are not associated with efficiency. (ACEEE, ASAP, and NRDC, No. 36 at pp. 3–4)

DOE shares the commenters' concerns regarding the incremental price options being influence by auxiliary options that are not associated with energy efficiency. To the extent possible, DOE normalized optional features when gathering pricing by specifying the same options for all CPB prices collected. For example, DOE noticed that in several CPB series, prices of burner systems are listed separately and the price of the burner system that is selected is added to the basic model trade price for the total price for the commercial packaged boiler. For such cases, DOE chose the same type of burner for all CPB models where a choice is offered. While selecting the prices DOE also encountered scenarios where (1) a feature that DOE has consistently selected for all CPB models is not offered for a particular series; and (2) a particular feature becomes inapplicable for commercial packaged boilers of higher capacity within the same CPB series. In such cases DOE selected a similar feature that would offer similar functionality. DOE believes this approach helped to minimize the effects of optional auxiliary components.

At the preliminary analysis public meeting ACEEE argued that the level field for comparing purchase options would be output capacity, and as a result it is time to migrate to output capacities, rather than input capacities, that are comparable across classes. (ACEEE, Public Meeting Transcript No. 39 at p. 44) DOE notes that in EPCA, commercial packaged boilers are defined as having ''capacity (rated maximum input)'' greater than or equal to 300 kBtu/h, and CPB equipment classes are currently divided based on fuel input rate. DOE notes that in adopting the existing equipment class divisions based on fuel input rate, DOE followed the approach in ASHRAE Standard 90.1 for dividing equipment based on fuel input rate. Moreover, while DOE agrees many purchasers would consider output capacity when purchasing a replacement commercial packaged boiler, DOE believes there is also a contingent of CPB purchasers that may only look at the fuel input rate for comparison purposes when choosing a new commercial packaged boiler, as both ratings are featured prominently in product literature. Therefore, DOE believes it appropriate to continue to use rated fuel input rate as the performance parameter for carrying out the analyses.

b. Large CPB Analysis and Representative Fuel Input Rate

Another topic on which DOE received comments and feedback is related to large CPB pricing and its representative fuel input rate for analysis. AHRI commented that most of the analysis appears to be based on information for models with input rates of 5,000,000 Btu/h or less, and commercial packaged boilers that have input rates in the high millions of Btu per hour are very different products. AHRI stated that many factors that have been considered in the engineering analysis and the associated conclusions cannot be simply extrapolated up to characterize the particular factor as it applies to those very large commercial packaged boiler. (AHRI, No. 37 at p. 1) AHRI also commented that DOE should not assume a linear relationship between boiler size and component costs and encouraged DOE to review the data it has collected so far on the relationship and extrapolation between input rate and price, or obtain additional data for the analysis. (AHRI, No. 37 at p. 3 and p. 5) Raypak stated that DOE should not assume a linear relationship between commercial packaged boiler size and component costs and that as a commercial packaged boiler gets larger in input the cost of gas burner and blower components rises exponentially. (Raypak, No. 35 at pp. 2–4) Raypak also provided comments during the preliminary analysis public meeting stating that made-to-order units will be priced higher due to the engineering work necessary to create a custom boiler. (Raypak, Public Meeting Transcript, No. 39 at p. 49)

ABMA provided written comments on the methodology used for analyzing large commercial packaged boilers. In particular, ABMA expressed concern over the large commercial packaged boilers representative fuel input rate being 3,000 kBtu/h. ABMA argued that the representative fuel input rate of 3,000 kBtu/h is one of the smallest size boilers manufactured by ABMA member manufacturers and that it does not accurately represent the large boiler market. (ABMA, No. 33 at p. 2) ABMA advocated capping the scope of the analysis to 2.5 million Btu/h. (ABMA, No. 33 at p. 2; ABMA, Public Meeting Transcript, No. 39 at p. 65)

PGE & SCE commented that the comparison of small and large sized custom made boilers is not linear and DOE should look at methods for estimating very large equipment other than simply extrapolation. Further, PGE and SCE stated their concern that the methods used to estimate energy use, equipment classes and prices for medium sized commercial boilers are not appropriate for extrapolation to large commercial custom engineered boilers. (PGE & SCE, No. 38 at p. 3)

As discussed in section IV.A.2, DOE has proposed to establish separate equipment classes for very large commercial packaged boilers with input capacities of greater than10,000 kBtu/h, and DOE is not considering amended standards for the proposed very large equipment classes in this rulemaking. Instead, DOE's current energy conservation standards that are set forth at 10 CFR 431.87 for commercial packaged boilers with a fuel input rate greater than 2,500 kBtu/h would continue to apply to all commercial packaged boilers that have a fuel input rate above 10,000 kBtu/h. DOE believes this addresses many concerns that the analysis does not apply to very large commercial packaged boilers. As discussed previously, DOE noticed a smooth increase in prices (devoid of any inflection) from the low fuel input rate commercial packaged boilers (*i.e.,* near 300 kBtu/h) to the maximum fuel input rate commercial packaged boiler for which prices are available (~9,500 kBtu/h). DOE did not observe any sudden change in the price structure within this range of fuel input rate and, based on this observation, believes its analysis would be applicable for input capacities ranging from 300 kBtu/h to 10,000 kBtu/h.

DOE chose the representative fuel input rate in the preliminary analysis as 3,000 kBtu/h by considering CPB models offered in the market and information received during manufacturer interviews. Several commenters suggested that a fuel input rate of 3,000 kBtu/h would not be appropriate for representing very large commercial packaged boilers. However, as discussed above, for this NOPR DOE proposes to consider commercial packaged boilers with fuel input rate above 10,000 kBtu/h separately from the commercial packaged boilers in the large (*i.e.,* > 2,500 and ≤ 10,000 kBtu/h) equipment class (which would be represented by the 3,000 kBtu/h fuel input rate). Further, the analysis of prices included data points for prices of commercial packaged boilers with input capacities up to 9,500 kBtu/h, and DOE did not observe any step change in the price-efficiency trend up to that point. DOE did not receive any new data that would justify choosing a different representative fuel input rate for large equipment classes, and therefore has maintained the 3,000 kBtu/h representative fuel input rate for this NOPR analysis.

In the preliminary analysis, DOE used the price of two small commercial packaged boilers at 1,500 kBtu/h as a proxy for the price of one large 3,000 kBtu/h commercial packaged boiler, because DOE did not have sufficient price data in certain large CPB equipment classes to accurately establish the relationship between boiler size and price. In response to the preliminary analysis, DOE received comments from ACEEE, ASAP, and NRDC, questioning the accuracy of this approach. ACEEE, ASAP, and NRDC encouraged DOE to collect additional data to validate its assumption that the price of two 1,500 kBtu/h boilers is an accurate proxy for the price of a 3,000 kBtu/h boiler. The commenters elaborated that a large boiler will have only one burner, one heat exchanger, one shell, and one set of controls, possibly reducing prices for large boilers in comparison to two smaller boilers; however, there are far fewer 3,000 kBtu/h boilers sold than 1,500 kBtu/h boilers, so the allocation of design, testing, certification and other common costs will be much higher. (ACEEE, ASAP, and NRDC, No. 36 at pp. 2–3) The commenters also argued that DOE's methodology related to slope and inflection points of the efficiency curves for small gas-fired mechanical draft hot water boilers raises questions about the overall accuracy of the analysis. (ACEEE, ASAP, and NRDC, No. 36 at p. 3)

For the NOPR analysis, as discussed in section IV.C.2, DOE was able to collect an additional 258 CPB prices. Despite the additional data, there were still certain efficiency levels for large CPB equipment classes where DOE lacked enough data to perform a robust analysis. Generally these were levels where there are few models available on the market to begin with. In these cases, DOE again leveraged the pricing collected for the small CPB equipment classes to estimate the price of a large commercial packaged boiler. However, in the NOPR analysis, to address the concerns expressed by stakeholders, DOE used a modified approach to calculate the price of a large commercial packaged boiler based on two or more smaller sized boilers. In this approach, DOE first combined the price data of each small and large equipment classes that have the same characteristics (*e.g.,* small oil fired hot water and large oil fired hot water classes). DOE then performed a regression analysis of the entire dataset to find an equation that represents the relationship between equipment price and fuel input rate for the given type of equipment. DOE then

used the equation to estimate the price of a commercial packaged boiler when its size is scaled up to 3,000 kBtu/h. DOE used this modified approach for three equipment classes: (1) Large, oil-fired, hot water; (2) large, oil-fired, steam and (3) large, gas-fired, steam. The detailed methodology for the engineering analysis including the plots that show the variation of CPB price with fuel input rate are included in chapter 5 of the NOPR TSD. The new methodology adopted by DOE addresses the concerns expressed by stakeholders in their comments as it considers pricing data across a range of input capacities to estimate the change in price as input increases.

2. Data Collection and Categorization

As part of the engineering analysis, DOE collected CPB prices from manufacturers, wholesalers, distributors and contractors. In the preliminary analysis, DOE collected pricing data, but as discussed previously was able to conduct a direct analysis of only six equipment classes: (1) Small, gas-fired, mechanical draft hot water; (2) large, gas-fired, mechanical draft hot water; (3) small, oil-fired, mechanical draft, hot water; (4) large, oil-fired, mechanical draft, hot water; (5) small, gas-fired, mechanical draft, steam; and (6) small, oil-fired, mechanical draft, steam. For the remaining classes, DOE did not have enough data to analyze the equipment directly, and consequently relied upon extrapolation of results from the equipment classes with adequate pricing information. In response to the preliminary analysis, DOE received several comments urging DOE to collect additional data for the NOPR stage.

ACEEE, ASAP, and NRDC commented that the limited amount of price data available for classes other than small, gas-fired, mechanical draft boilers forces DOE to rely on very uncertain extrapolations. The commenters encouraged DOE to collect additional price data to supplement its analysis, as they are concerned that the price-efficiency curves in the preliminary TSD were developed using a limited data set that may yield inaccurate results. Further the commenters also expressed concern that the analysis does not contain any information about the number of individuals surveyed, number of useful results, etc. (ACEEE, ASAP, and NRDC, No. 36 at p. 2) ACEEE, ASAP, and NRDC encouraged DOE to collect additional price data through interviews with and surveys of those who write specifications (consulting engineers and others) and those who bid on projects (mechanical contractors). The commenters also suggested DOE could obtain data on CPB purchases by the Federal government. Finally, ACEEE, ASAP, and NRDC stated that DOE should ensure that the data reflects the prices that consumers are actually paying as opposed to the ''list'' price that are widely discounted in actual bids (ACEEE, ASAP, and NRDC, No. 36 at p. 3) AHRI and Raypak encouraged DOE to contact additional contractors and others involved in selling and installing commercial packaged boilers to obtain more prices for natural draft models. (AHRI, No. 37 at p. 3; Raypak, No. 35 at p. 2) PGE and SCE recommended that DOE pursue other options for obtaining sales and price figures for commercial boilers that will generate more accurate results, and suggested the use of use market surveys or working with industry to gain insight into costs for larger boiler equipment. PGE and SCE also recommended that DOE explore California's Database of Energy Efficiency Resources for incremental costs of commercial boilers. (PGE & SCE, No. 38 at p. 3) ACEEE commented during the public meeting that the Building Services Research and Information Association (BSRIA) is a resource that has done cost comparisons, including condensing boilers, and various commercial sizes. ACEEE also suggested reviewing the comments from the transcripts of negotiated rulemaking of 2013 on certification, compliance, and enforcement (CCE) where many CPB manufacturers were represented. (ACEEE, Public Meeting Transcript No. 39 at p. 54)

DOE explored the suggestions provided by stakeholders, and found that the most reliable and complete price information was obtained directly from manufacturers, contractors, and distributors. DOE was able to collect a significant number of additional CPB prices in the NOPR stage, which were used to conduct a direct analysis of each equipment class. This eliminated the need to extrapolate price results between two different equipment classes, addressing the concerns of ACEEE, ASAP, and NRDC.

DOE agrees with ACEEE, ASAP, and NRDC that the list price is different from the actual manufacturer selling price and that this should be accounted for in the analysis. DOE accounted for this in both the preliminary analysis and in this NOPR analysis. A distributor or wholesaler is usually the first consumer in the distribution chain and typically receives a discount compared to the list price when purchasing equipment from the manufacturer. This discount varies by manufacturer and also depends on the business relationship between the manufacturer and the purchaser (*i.e.,* the discount may vary depending on the volume of units that a distributor or contractor purchases). While collecting price data, DOE also obtained information on typical discounts given from the list pricing, and applied the average discount to list prices to obtain the actual manufacturer selling price. All manufacturer selling prices used in the engineering analysis include the appropriate discount to the list prices.

In the NOPR analysis, DOE used prices collected in the preliminary analysis stage with additional CPB prices that were collected in the NOPR stage.[33] In total, DOE was able to obtain prices for a variety of commercial packaged boilers. These commercial packaged boilers included mechanical draft, natural (or atmospheric) draft, condensing boilers and non-condensing boilers. And their input capacities ranged from 300 kBtu/h to 9,500 kBtu/h. In aggregate, DOE used 584 CPB prices for its analysis. The 584 prices include 326 CPB prices that were used in the preliminary analysis stage and 258 that were collected in the NOPR stage of the rulemaking. The Table IV.4 shows the number of CPB prices that DOE used in the engineering analysis in each equipment class.

TABLE IV.4—NUMBER OF PRICES COLLECTED FOR ENGINEERING ANALYSIS

Equipment class	Number of prices used in analysis
SGHW	203
LGHW	52
SHOW	70
LOHW	44
SGST	72
LGST	76
SOST	24
LOST	43
Total	584

3. Baseline Efficiency

DOE selects baseline efficiency levels as reference points for each equipment class, against which DOE calculates potential changes in energy use, cost, and utility that could result from an amended energy conservation standard. A baseline unit is one that meets, but does not exceed, the required existing energy conservation standard, as applicable, and provides basic consumer utility. A CPB model that has a rated efficiency equal to its applicable

[33] For the prices used from the preliminary analysis stage, DOE first confirmed the models were still active and then updated the price to account for inflation.

baseline efficiency is referred to as a ''baseline model.'' DOE uses the baseline model for comparison in several phases of the analyses, including the engineering analysis, life-cycle cost (LCC) analysis, payback period (PBP) analysis and national impacts analysis (NIA). For the engineering analysis, DOE used the current energy conservation standards that are set forth in CFR 431.87 as baseline efficiency levels.

As discussed previously in section IV.A.2 of this document, DOE has proposed to modify the equipment classes for commercial packaged boilers for this analysis. If the proposed equipment classes are ultimately adopted in the final rule, then the equipment classes that are set forth in the current regulations would be consolidated such that the current draft-specific classes (*i.e.,* those identified as being ''natural draft'' and ''all except natural draft'') would be merged into non-draft-specific classes. For the remaining equipment classes, DOE retained the current standards in 10 CFR 431.87 as the baseline efficiency levels in the engineering analysis. For the four draft-specific classes, DOE used the natural draft equipment class efficiency standard as the baseline efficiency level. The baseline efficiency levels for each equipment class are presented in Table IV.5.

TABLE IV.5—BASELINE EFFICIENCIES CONSIDERED IN THE ENGINEERING ANALYSIS

Equipment class	Baseline efficiency* (%)
Small Gas fired Hot Water ...	80
Large Gas fired Hot Water ...	82
Small Oil fired Hot Water	82
Large Oil fired Hot Water	84
Small Gas fired Steam	**77
Large Gas fired Steam	**77
Small Oil fired Steam	81
Large Oil fired Steam	81

*Efficiency levels represent thermal efficiency for all equipment classes except for Large Gas Hot Water and Large Oil Hot Water, for which the efficiency levels are in terms of combustion efficiency.

**Mechanical draft equipment within this class currently has a minimum standard of 79 percent thermal efficiency. (10 CFR 431.87) All equipment analyzed below 79 percent is natural draft equipment.

4. Intermediate and Max-tech Efficiency Levels

As part of its engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvement in energy efficiency for each equipment class of commercial packaged boilers. DOE surveyed the CPB market and the research literature relevant to commercial packaged boilers to determine the max-tech efficiency levels. Additionally, for each equipment class, DOE generally identifies several intermediate efficiency levels between the baseline efficiency level and max-tech efficiency level. These efficiency levels typically represent the most common efficiencies available on the market or a major design change (*e.g.,* switching to a condensing heat exchanger). In the analysis, DOE uses the intermediate and max-tech efficiency levels as target efficiencies for conducting the cost-benefit analysis of achieving increased efficiency levels.

During the market assessment, DOE conducted an extensive review of publicly available CPB equipment literature. DOE used the equipment database compiled during the market assessment to identify intermediate and max-tech efficiency levels for analysis. The efficiency levels for each equipment class that DOE considered in the NOPR TSD are presented in Table IV.6

TABLE IV.6—BASELINE, INTERMEDIATE AND MAX TECH EFFICIENCY LEVELS ANALYZED IN THE ENGINEERING ANALYSIS

Equipment class	Efficiency* (%)	Efficiency level identifier
Small Gas Hot Water	80	EL–0 Baseline.
	81	EL–1.
	82	EL–2.
	84	EL–3.
	85	EL–4.
	93	EL–5.
	95	EL–6.
	99	EL–7 Max Tech.
Large Gas Hot Water	82	EL–0 Baseline.
	83	EL–1.
	84	EL–2.
	85	EL–3.
	94	EL–4.
	97	EL–5 Max Tech.
Small Oil Hot Water	82	EL–;0 Baseline.
	83	EL–1.
	84	EL–2.
	85	EL–3.
	87	EL–4.
	88	EL–5.
	97	EL–6 Max Tech.
Large Oil Hot Water	84	EL–0 Baseline.
	86	EL–1.
	88	EL–2.
	89	EL–3.
	97	EL–4 Max Tech.
Small Gas Steam	77	EL–0 Baseline.
	78	EL–1.
	79	EL–2.
	80	EL–3.
	81	EL–4.
	83	EL–5 Max Tech.
Large Gas Steam	77	EL–0 Baseline.
	78	EL–1.

TABLE IV.6—BASELINE, INTERMEDIATE AND MAX TECH EFFICIENCY LEVELS ANALYZED IN THE ENGINEERING ANALYSIS—Continued

Equipment class	Efficiency* (%)	Efficiency level identifier
	79	EL–2.
	80	EL–3.
	81	EL–4.
	82	EL–5.
	84	EL–6 Max Tech.
Small Oil Steam	81	EL–0 Baseline.
	83	EL–1.
	84	EL–2.
	86	EL–3 Max Tech.
Large Oil Steam	81	EL–0 Baseline.
	83	EL–1.
	85	EL–2.
	87	EL–3 Max Tech.

*Efficiency levels represent thermal efficiency for all equipment classes except for Large Gas Hot Water and Large Oil Hot Water, for which the efficiency levels are in terms of combustion efficiency.

In the preliminary analysis, DOE selected several efficiency levels for consideration in the analysis, many of which were retained in this NOPR. In response to the preliminary analysis, ACEEE, ASAP, and NRDC encouraged DOE to evaluate at the least one additional condensing level for the small, oil-fired, mechanical draft, hot water and the large, oil-fired, mechanical draft, hot water equipment classes at a level that could be considered ''baseline'' condensing equipment (*i.e.,* efficiency levels at or just above 90%). (ACEEE, ASAP, and NRDC, No. 36 at p. 4) During the preliminary analysis public meeting, AHRI also noted the absence of an interim point for some classes, particularly referring to the small oil mechanical draft hot water class. However, in continuation, AHRI also noted that making a condensing oil boiler has many challenges. (AHRI, Public Meeting Transcript, No. 39 at p. 41) In the public meeting ACEEE also commented that the inclusion of low-level condensing product in the analysis will illustrate the challenges faced in marketing such a product, at a cost-effective price and encouraged DOE to explore additional intermediate levels for this reason. (ACEEE, Public Meeting Transcript, No. 39 at p. 43) DOE notes that in the preliminary analysis for small oil fired mechanical draft hot water equipment class there was an eleven percentage point jump between the efficiency level just below max-tech and max tech. Similarly, for the large oil-fired mechanical draft hot water equipment class, there was a 9 percentage point jump.

DOE considered these comments carefully and examined whether there is a need to add interim condensing efficiency levels between max-tech and the level below max tech in the oil-fired hot water CPB equipment classes. While selecting intermediate efficiency levels for this rulemaking, DOE examined the distribution of commercial packaged boilers available in the market at all efficiency levels.[34] DOE then, selected several intermediate efficiency levels that have a substantial representation of commercial packaged boilers in the market. In the case of oil-fired hot water equipment classes, the large equipment class has three commercial packaged boilers and the small equipment class has one commercial packaged boiler that achieve efficiencies that require condensing operation. The one small condensing boiler has a thermal efficiency of 96.8% while the three large condensing boilers have combustion efficiencies of 95.8%, 96.9% and 97%. Based on this assessment, there appears to be no oil-fired hot water condensing boilers in the market with efficiency less than 95% that could potentially serve as a baseline for condensing efficiency levels. In addition, DOE also agrees with the commenters that there are significant challenges involved in designing and operating oil-fired condensing boilers.

Given the absence of such boilers available in the market and the challenges and uncertainties inherent to analyzing a product that does not exist, DOE has decided not to analyze additional interim condensing efficiency levels below max-tech for the oil-fired hot water equipment classes. DOE believes the consideration of the max-tech levels in these classes, which include condensing technology, are adequate for determining the cost-effectiveness of condensing designs.

DOE notes that for the small gas-fired hot water equipment class, efficiency levels of 93 percent and 95 percent were included in the analysis and represent interim condensing efficiency levels. Similarly, for the large gas-fired hot water equipment class, DOE has analyzed 94 percent as an interim condensing efficiency level below the max-tech. For these classes, the availability of commercial packaged boilers at these efficiency levels in the dataset in sufficiently large numbers justifies DOE's selection of intermediate efficiency levels.

5. Incremental Price and Price-Efficiency Curves

The final results of the engineering analysis are a set of price-efficiency curves that represent the manufacturer selling price for higher efficiency models. DOE uses these results as inputs to the downstream analyses such as the life cycle cost analysis.

DOE received several comments on the incremental price results and the price-efficiency curves published in the preliminary analysis TSD. Lochinvar commented that the variation in manufacturing cost and the markup at each stage of distribution makes an accurate projection of incremental costs difficult, but that the methodology seems sound. Lochinvar also stated that the projected cost to the consumer appears to be a little high (5-10%) across the board and suggested a modest underestimation of markup as a reason. (Lochinvar, No. 34 at p. 2) ACEEE, ASAP, and NRDC commented that DOE's results for condensing efficiency levels of small gas mechanical draft hot water equipment class appear to be inconsistent with DOE's statements that

[34] The efficiency levels refer to combustion efficiency for large hot water equipment classes and thermal efficiency for all other equipment classes.

there is generally a step change in price from a non-condensing boiler to a condensing boiler. (ACEEE, ASAP, and NRDC, No. 36 at p. 3).

DOE appreciates Lochinvar's comments comparing the results to their own pricing, but also notes that the analysis performed covered a wide variety of manufacturers and CPB models. Thus, DOE does not believe that a 5- to 10-percent variation from Lochinvar's results would be unexpected, as each individual manufacturer will set its prices differently.

DOE also examined the issue regarding the step change in prices of condensing boilers. More specifically, DOE investigated why there exists a relatively flatter trend in the incremental prices when going from non-condensing efficiency levels to condensing efficiency levels given the step change in technology from non-condensing to condensing. From the pricing data collected for small gas-fired hot water commercial packaged boilers, it is evident that the price of a commercial packaged boiler generally increases as it approaches the highest non-condensing efficiency levels, then displays a relatively flat trend to achieve lower condensing levels. The prices then increase as the efficiency approaches the mid-condensing efficiency levels, suggesting that achieving lower condensing levels is only slightly more costly than achieving the highest non-condensing levels.

There could be several reasons for this trend. First, commercial packaged boilers achieving efficiencies at the highest end of the non-condensing range sometimes incorporate designs that anticipate formation of condensate under certain conditions, such as high-grade stainless steel vent connectors, which will increase the cost and price of the commercial packaged boiler. DOE also notes from the market and technology assessment that only about 5 percent of all the small gas hot water boilers have a thermal efficiency that is greater than 86 percent and less than 90 percent. The comparatively lower production volumes of these commercial packaged boilers could also contribute to the higher prices. In this NOPR, DOE is analyzing the efficiency levels 93% and 95% for the small gas hot water equipment class. These efficiency levels represent the mid-level condensing levels that are a step higher than the other non-condensing and low condensing efficiency levels. As explained in section IV.A.2 of this document, these levels were chosen due to the high number of models already available on the market at these efficiencies. The price-efficiency curves for all equipment classes including small gas hot water are shown in chapter 5 of the NOPR TSD. Table IV.7 shows the incremental manufacturer selling price results for all eight equipment classes along with the baseline prices.

TABLE IV.7—MANUFACTURER SELLING PRICE–EFFICIENCY RESULTS

Equipment class	Efficiency level (%)	Incremental MSP	Baseline MSP
Small Gas Hot Water	Baseline—80	$0	$6,928
	81	472	
	82	977	
	84	2,759	
	85	3,561	
	93	10,027	
	95	10,494	
	Max Tech—99	13,966	
Large Gas Hot Water	Baseline—82	0	21,244
	83	2,534	
	84	5,370	
	85	8,544	
	94	32,796	
	Max Tech—97	36,904	
Small Oil Hot Water	Baseline—82	0	8,404
	83	634	
	84	1,315	
	85	2,048	
	87	3,683	
	88	4,594	
	Max Tech—97	17,687	
Large Oil Hot Water	Baseline—84	0	18,915
	86	4,785	
	88	10,781	
	89	14,326	
	Max Tech—97	49,923	
Small Gas Steam	Baseline—77	0	6,659
	78	540	
	79	1,124	
	80	1,756	
	81	2,439	
	Max Tech—83	3,975	
Large Gas Steam	Baseline—77	0	19,122
	78	1,097	
	79	2,256	
	80	3,483	
	81	4,779	
	82	6,150	
	Max Tech—84	9,132	
Small Oil Steam	Baseline—81	0	7,294
	83	1,722	
	84	2,730	

TABLE IV.7—MANUFACTURER SELLING PRICE–EFFICIENCY RESULTS—Continued

Equipment class	Efficiency level (%)	Incremental MSP	Baseline MSP
Large Oil Steam	Max Tech—86	5,097	18,702
	Baseline—81	0	
	83	3,017	
	85	6,521	
	Max Tech—87	10,590	

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain (*e.g.,* retailer markups, distributer markups, contractor markups, and sales taxes) to convert the estimates of manufacturer selling price derived in the engineering analysis to consumer prices (''consumer'' refers to purchasers of the equipment being regulated), which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. DOE develops baseline and incremental markups based on the equipment markups at each step in the distribution chain. For this rulemaking, DOE developed distribution chain markups in the form of multipliers that represent increases above equipment purchase costs for key market participants, including CPB wholesalers/distributors, and mechanical contractors and general contractors working on behalf of CPB consumers. The baseline markup relates the change in the manufacturer selling price of baseline models to the change in the consumer purchase price. The incremental markup relates the change in the manufacturer selling price of higher efficiency models (the incremental cost increase) to the change in the consumer purchase price.

Four different markets exist for commercial packaged boilers: (1) New construction in the residential buildings sector, (2) new construction in the commercial buildings sector, (3) replacements in the residential buildings sector, and (4) replacements in the commercial buildings sector. In the preliminary analyses, DOE characterized eight distribution channels to address these four markets.

For both the residential and commercial buildings sectors, DOE characterizes the replacement distribution channels as follows:

- Manufacturer → Wholesaler → Mechanical Contractor → Consumer
- Manufacturer → Manufacturer Representative → Mechanical Contractor → Consumer

DOE characterizes the new construction distribution channels for both the residential and commercial buildings sectors as follows:

- Manufacturer → Wholesaler → Mechanical Contractor → General Contractor → Consumer
- Manufacturer → Manufacturer Representative → Mechanical Contractor → General Contractor → Consumer

In addition to these distribution channels, there are scenarios in which manufacturers sell commercial packaged boilers directly to a consumer through a national account (assumed as 17.5% of sales in the preliminary analysis; other distribution channels previously discussed make up the remaining 82.5% market share). These scenarios occur in both new construction and replacements markets and in both the residential and commercial sectors. The relative shares for these are dependent on product class and details may be found in chapter 6 of the TSD. In these instances, installation is typically accomplished by site personnel. These distribution channels are depicted as follows:

- Manufacturer → Commercial Consumer (National Account)

To develop markups for the parties involved in the distribution of the commercial packaged boilers, DOE utilized several sources, including (1) the Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2013 Profit Report [35] to develop wholesaler markups, (2) the 2005 Air Conditioning Contractors of America's (ACCA) financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry [36] to develop mechanical contractor markups, and (3) U.S. Census Bureau's 2007 Economic Census data [37] for the commercial and institutional building construction industry to develop general contractor markups. In addition to the markups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[38] These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis.

During the preliminary analysis public meeting and in written comments responding to DOE's preliminary analyses, DOE received feedback regarding distribution channels and market share of equipment through different channels. Lochinvar, Plumbing-Heating-Cooling Contractors National Association (PHCC), and Raypak commented that DOE's considered distribution channels seem accurate. Lochinvar estimates that commercial sales for all CPB sizes are primarily (80% or more) through manufacturer's representatives. (Lochinvar, No. 34 at p. 2) PHCC noted that boilers below 4,000,000 Btu/h are likely to have wholesaler presence, but anything larger would most likely be sold through a manufacturer's representative. (PHCC, Public Meeting Transcript, No. 39 at p. 79) Raypak stated that, due to complexity of installation of commercial packaged boilers, sales are done primarily through a manufacturer's representative that provides additional equipment and expertise needed, and that wholesalers do not really apply to commercial packaged boilers. (Raypak, Public Meeting Transcript, No. 39 at p. 81)

DOE received contradictory comments from stakeholders regarding the presence of wholesalers in the distribution chain for commercial packaged boilers. However, for the NOPR analysis, consistent with the preliminary analysis, the impact on markups from sales through wholesalers and sales through manufacturer's representatives are assumed to be equal. As a result, the distinction would not result in any impact on the overall markups. For its NOPR analysis DOE retained the distribution channels, and the assumed share of equipment

[35] *Heating, Air Conditioning & Refrigeration Distributors International 2013 Profit Report.* Available at *http://www.hardinet.org/Profit-Report.*

[36] Air Conditioning Contractors of America (ACCA). *Financial Analysis for the HVACR Contracting Industry: 2005.* Available at *http://www.acca.org/store/.*

[37] Census Bureau, 2007 Economic Census Data (2007) (Available at: *http://www.census.gov/econ/*)

[38] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates, 2013 (Available at: *http://thestc.com/STrates.stm*).

through these channels, as established in the preliminary analysis.

In addition, DOE received comments on the value of the markups, the applicability of the markups to small businesses, and tax exemption for commercial packaged boilers used for manufacturing purposes. Lochinvar suggested that DOE's markups in the preliminary analysis were 5–10% higher than they expected, resulting in overestimation of consumer price of the same order. (Lochinvar, No. 34 at pp. 2–3) PVI Industries, LLC (PVI) noted that the markups established from publicly traded companies are not reflective of smaller manufacturers that may not benefit from higher volume sales and economies of scale. (PVI, Public Meeting Transcript, No. 39 at p. 82) PHCC noted that, in some states, a tax exemption may exist for commercial packaged boilers if they are used for manufacturing purposes, citing Indiana and Michigan as states where such tax exemptions exist. (PHCC, Public Meeting Transcript, No. 39 at p. 77)

Based on these comments, DOE reexamined the markups and encountered errors in its preliminary analysis calculations resulting in overly high markups. DOE has corrected this issue in the NOPR markups analysis. With respect to adequately representing markups for small businesses that may not benefit from high volume sales, and thus certain economies of scale, DOE is not generally privy to financial data for non-publically traded firms and cannot assess the likely impact, or magnitude of impact, on overall markups of smaller firms with reduced sales. With respect to tax exemptions that may exist for commercial packaged boilers used for manufacturing purposes, this rulemaking does not cover process boilers that are not used for space heating. In addition, based on the information available to DOE, DOE did not identify any tax exemptions available for the commercial packaged boilers covered in this rulemaking. As such, DOE did not consider tax exemptions in its NOPR analyses for this rulemaking.

Chapter 6 of the NOPR TSD provides further detail on the estimation of markups.

DOE requests information or insight that can better inform its markups analysis.

See section VII.E for a list of issues on which DOE seeks comment.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of commercial packaged boilers in use in the United States and assess the energy savings potential of increases in efficiency (thermal efficiency (E_T) or combustion efficiency (E_C)). In contrast to the CPB test procedure under title 10 of the Code of Federal Regulations part 431, which uses fixed operating conditions in a laboratory setting, the energy use analysis for commercial packaged boilers seeks to estimate the range of energy consumption of the equipment in the field. DOE estimates the annual energy consumption of commercial packaged boilers at specified energy efficiency levels across a range of climate zones, building characteristics, and space and water heating applications. The annual energy consumption includes natural gas, liquid petroleum gas (LPG), oil, and/or electricity use by the commercial packaged boiler for space and water heating. The annual energy consumption of commercial packaged boilers is used in subsequent analyses, including the LCC and PBP analysis and the national impact analysis.

In its preliminary analyses, DOE estimated the energy consumption of commercial packaged boilers in commercial buildings and multi-family housing units by developing building samples for each of eight equipment classes examined based on the Energy Information Administration's (EIA) 2003 Commercial Building Energy Consumption Survey [39] (CBECS 2003) and EIA's 2009 Residential Energy Consumption Survey (RECS 2009), respectively. In their written comments in response to DOE's preliminary analyses, Raypak and AHRI expressed concern regarding the use of 2003 CBECS data, noting that it would not properly reflect the energy use of commercial packaged boilers being installed in 2019 and beyond, and urged DOE to await the release of CBECS 2012. (Raypak, No. 35 at p. 1; AHRI, No. 37 at p. 2)

DOE acknowledges there is benefit to the use of more recent CBECS data. However, EIA, so far, has released only a single microdata file (''Building Characteristics Public Use Microdata,'' June 25, 2015) covering the ''building characteristics'' portion of the 2012 CBECS survey sample results.[40] In its NOPR analysis, DOE used this data for updating the equipment class distributions in the analysis period, the shipment analysis, and the national impact analysis. To use the CBECS sample data for the LCC analysis, DOE requires the microdata file covering consumption and expenditure data. Since CBECS 2003 is the latest survey, with complete microdata available for the purpose of DOE's energy use analysis, DOE continued to use CBECS 2003 in the LCC analysis.

1. Energy Use Characterization

DOE's energy characterization modeling approach calculates CPB energy use based on rated thermal efficiency and building heat load (BHL), accounting for the conversion from combustion efficiency to thermal efficiency when applicable, part-load operation (in the case of multi-stage equipment), and cycling losses (for single-stage equipment), as well as return water temperature (RWT) and climate zones. In the preliminary analyses, DOE analyzed CPB annual energy use based on the building sample, equipment efficiency characteristics, and equipment performance at part-load conditions.

In the preliminary analyses, in determining building heat load, DOE adjusted the building heat load to reflect the expectation that buildings in 2019 would have a somewhat different building heat load than buildings in the CBECS 2003 and RECS 2009 building sample. The adjustment involved multiplying the calculated BHL for each CBECS 2003 or RECS 2009 building by the building shell efficiency index from *AEO2014.* This factor differs for commercial and residential buildings as well as new construction and replacement buildings. Additionally, DOE also adjusted the building heat load reported in CBECS 2003 and RECS 2009 for each building using the ratio of the historical National Oceanic and Atmospheric Administration (NOAA) average heating degree day data for the specific region each CBECS or RECS building sampled is in to the 2003 or 2009 heating degree days value, respectively, for the same region, to reflect the heating load under historical average climate conditions.

DOE requests feedback on the methodology and assumptions used for the building heat load adjustment.

See section VII.E for a list of issues on which DOE seeks comment.

For its preliminary analyses, DOE adjusted the rated thermal efficiency of evaluated commercial packaged boilers based on RWT, cycling losses, and part-load operation. High RWT is applied to all non-condensing boiler installations. For condensing boiler installations, low

[39] U.S. Energy Information Administration (EIA). *2003 Commercial Building Energy Consumption Survey (CBECS) Data.* 2003. Available at *http://www.eia.gov/consumption/commercial/data/2003/.*

[40] U.S. Energy Information Administration (EIA). *2012 Commercial Building Energy Consumption Survey (CBECS) Data.* 2012. Available at *http://www.eia.gov/consumption/commercial/data/2012/index.cfm?view=microdata.*

RWT is applied to all commercial packaged boilers in the new construction market, 25 percent of replacement boilers in buildings built after 1990, and 5 percent of replacement boilers in buildings built before 1990. DOE assumed that all other condensing boiler installations are high RWT applications. The efficiency adjustment for low and high RWT is dependent on climate, with low RWT values resulting in the condensing CPB equipment operating in condensing mode, on average, and high RWT values resulting in the condensing CPB equipment operating in non-condensing mode, on average. See appendix 7B of the NOPR TSD for the adjustment factors used for RWT, part-load operation, and cycling by climate zone. For commercial packaged boilers rated in combustion efficiency, DOE converted combustion efficiency to thermal efficiency. DOE used combustion and thermal efficiency data from the AHRI database to create a conversion factor that is representative of the range of commercial packaged boilers on the market.

DOE received comments on the preliminary analysis regarding the energy modeling approach. Regarding DOE's approach to converting combustion efficiency to thermal efficiency, Lochinvar suggested that, in order to avoid confusion, DOE should not convert one to the other. (Lochinvar, No. 34 at p. 7) Relative to adjusting rated thermal efficiency of commercial packaged boilers using return water temperature, Lochinvar urged DOE not to attempt correcting the efficiency of hot water commercial packaged boilers based on expected return water temperature conditions, noting that certain aspects of the BTS–2000 test procedure are being overlooked, such as the use of a recirculating loop used in some instances allowing for higher return water temperature into the boiler. Lochinvar also noted that efficiency curves over a wide range of return water temperatures used to derive conversion factors in the analysis are not based on BTS–2000 methodology, and using data created without a consistent test procedure is certain to introduce errors. (Lochinvar, No. 34 at p. 3) Similarly, AHRI expressed concerns regarding DOE's decision to try to adjust rated thermal efficiency and annual energy consumption estimates of commercial packaged boilers to account for differences in return and supply water temperatures, noting the lack of field data and the use of outdoor reset in many installations, a field condition variable that adjusts return water temperature based on building heating load and ambient air temperature. AHRI furthered stated that such efficiency adjustment would be an estimate not supported by adequate field data. (AHRI, No. 37 at p. 4) Raypak noted that return water temperature is unique to every boiler application, building design, and engineering plans for building operation. Raypak stated that there is no representative profile of return water temperature in the field. (Raypak, No. 35 at p. 3)

AHRI commented that, given the trends toward multiple boilers, the energy use calculations in buildings where multiple boilers are installed should be considered in DOE's energy use analysis. (AHRI, Public Meeting Transcript, No. 39 at pp. 95–96) DOE's analysis of non-condensing boilers considers cycling loss curves that reflect staging with multiple boilers, where multiple boilers exist, reducing the cycling adjustment factor based on the modulation capability of multiple-boiler systems. For condensing boilers, the part-load curves do not consider effects of multiple boilers but instead consider impact on efficiency due to modulation.

With respect to the adjustments made to CPB efficiencies and annual energy use based on return water temperature conditions, DOE understands that field conditions may be variable but recognizes that one of the key drivers impacting CPB efficiency is return water temperature. In its analysis, DOE sought to estimate the energy use of equipment in the field and, as such, considered factors that may impact CPB efficiency, including return water temperature conditions. DOE's energy use analysis has been designed to reflect conditions in the field, considering the expectations for existing buildings and the potential in new construction, as well as the proposed testing conditions in DOE's concurrent test procedure rulemaking.[41]

Regarding DOE's approach to converting combustion efficiency to thermal efficiency, Lochinvar stated that DOE's conversion factor where every 1 percent increase in combustion efficiency equates to a 1.0867 percent increase in thermal efficiency could be misleading when reversing the conversion factor to prescribe new minimum combustion standards. Lochinvar believes such reversed conversions would require DOE to justify a greater energy savings for large commercial packaged boilers in order to justify an increase in combustion efficiency. Lochinvar suggested that, in order to avoid confusion, DOE should not convert one to the other. (Lochinvar, No. 34 at p. 7)

DOE disagrees that its method of converting combustion efficiency to thermal efficiency for applicable large commercial packaged boilers is misleading. As detailed in chapter 7 of the NOPR TSD, DOE calculated annual energy use of covered commercial packaged boilers based on the thermal efficiency of the equipment while accounting for cycling loss, part load operating conditions, and return water temperature. For equipment classes rated in combustion efficiency, DOE converted the combustion efficiency levels defined in the engineering analysis to thermal efficiency levels in order to appropriately characterize the energy use of the equipment. However, DOE did not reverse the conversion when establishing standard levels in combustion efficiency. Rather, DOE identified combustion efficiency levels through its engineering analysis by evaluating technologically feasible options. DOE then calculated energy use and associated operating cost savings through converting combustion efficiency to thermal efficiency when determining economic justification of each identified combustion efficiency level. As such, DOE disagrees with Lochinvar's point that the conversion from combustion efficiency to thermal efficiency is misleading or will create confusion. DOE did review the conversion factor that DOE developed in the preliminary analysis and adjusted it to ensure the NOPR analysis does not result in a conversion where the thermal efficiency value is higher than the combustion efficiency. DOE applied the same methodology to convert combustion efficiency to thermal efficiency to determine energy use of equipment rated in combustion efficiency in its energy analysis for the NOPR.

DOE also received comments related to system considerations that may impact return water temperature conditions, and the resulting impact on the expected performance of condensing units that replace non-condensing commercial packaged boilers. ABMA commented that unless the boiler sizing closely follows the seasonal load profile, and the control system is capable of selecting the correct boiler for the prevailing load, the efficiency savings will not be maximized. (ABMA, No. 33 at p. 3) Raypak similarly commented that DOE should be aware of the distribution system considerations for ensuring proper operation with lower boiler water temperatures, as needed for

[41] A link to the February 2016 test procedure NOPR issued by DOE can be found at: *http://energy.gov/eere/buildings/downloads/issuance-2016-02-22-energy-conservation-program-certain-commercial-and.*

a condensing system to yield the maximum energy savings, and that it is aware of many condensing boiler installations that have not realized the desired savings due to system considerations that prevent condensation from taking place. (Raypak, No. 35 at p. 4) Raypak and PVI commented that installing a high efficiency condensing commercial packaged boiler in a system that operates with return water temperatures that do not allow for high efficiency operation will yield little or no cost/energy savings. (Raypak, No. 35 at p. 4; PVI, Public Meeting Transcript, No. 39 at p. 183) PVI further noted that the analysis assumes that a high efficiency condensing commercial packaged boiler operates at high efficiency all the time but that, anecdotally, the vast majority of buildings in the United States today have return water temperatures of between 140 and 160 degrees that do not allow for condensing, and that a system redesign would be required to allow for condensing to take place. (PVI, Public Meeting Transcript, No. 39 at pp. 182–183) AHRI and Raypak stated that the costs associated with a system retrofit in such cases should be considered in the model. (Raypak, Public Meeting Transcript, No. 39 at p. 186; AHRI, Public Meeting Transcript, No. 39 at pp. 119–120) PHCC inquired as to the fraction of commercial packaged boilers that the preliminary analysis assumed are condensing boilers operating in condensing mode and noted that water temperature requirements for a system are more a function of system conditions than sizing of the boiler and that a minimum water temperature may be required to transfer heat from the emitter to the space being heated. (PHCC, Public Meeting Transcript, No. 39 at pp. 121 and 133) PHCC commented that in new installations, it is important to note that when using high-efficiency products, a system must be designed such that you obtain lower return water temperatures to operate in the effective part of the boiler efficiency curve. (PHCC, Public Meeting Transcript, No. 39 at p. 98) ACEEE, however, noted that field experience has demonstrated system conversions to high efficiency commercial packaged boilers to be feasible, despite assertions to the contrary based on designed-in system temperatures. (ACEEE, Public Meeting Transcript, No. 39 at pp. 183–184) ACEEE commented on the potential impact that oversizing practices in the field may have on system efficiencies, stating that it expects substantial oversizing for the actual peak draws that would be expected in a facility, and inquired as to how this may impact the amount of time a condensing boiler spends in condensing mode. (ACEEE, Public Meeting Transcript, No. 39 at pp. 93–94 and 132–133) ACEEE also commented that the DOE is focusing too much on the CPB costs and not enough on other system costs, recommending Vermont Efficiency Community as a source of information and interactions with design engineers to obtain a better understanding of design considerations and to obtain relevant case studies. (ACEEE, Public Meeting Transcript, No. 39 at p. 127) PVI also commented that interacting with the engineering community is essential to understanding what is involved in converting a system designed for high water temperature to use low water temperature. (PVI, Public Meeting Transcript, No. 39 at p. 126–127) AHRI and Lochinvar identified the Centre of Energy Efficiency at Minneapolis (MNCEE) as a possible source of useful information and suggested that DOE should contact them. (AHRI No. 37 at p. 4; Lochinvar No. 34 at p. 3) DOE reviewed relevant published literature from the MNCEE Web site, and after contacting them learned about an ongoing study on ''Condensing Boiler Optimization in Commercial Buildings.''

DOE acknowledges that there are system considerations that can negatively impact the performance of a condensing commercial packaged boiler, resulting in less than optimum CPB efficiency. The analysis considered the return water temperature's effect on condensing boiler efficiency and took into account climate zone data to account for expected differences in operation and performance between different climates. DOE's analysis developed a heating load-weighted average return water temperature for two scenarios. In one scenario, a low return water temperature is provided for commercial packaged boilers that are installed in a system that would allow for condensation to occur. In a second scenario, a high return water temperature is provided for commercial packaged boilers that are installed in a system that does not allow for condensation to occur. For buildings in new construction, DOE assumed that all buildings will be designed to allow for condensing boilers to condense for a significant part of the heating season and therefore used low return water temperatures for its analysis. For buildings built after 1990, DOE assumed that 25% of buildings will be capable of low return water temperatures to allow condensing during part of the heating season. For buildings built before 1990, DOE assumed that 5% of buildings will be capable of low return water temperatures to allow condensing during part of the heating season. For the remainder of buildings, DOE's analysis used the average high return water temperature scenario. DOE tentatively concluded that it has appropriately considered the building hot water and steam distribution systems to appropriately account for the performance impact on commercial packaged boilers resulting from return water temperature conditions in the field.

DOE received feedback from Lochinvar, AHRI, ABMA, and PHCC relative to the various control options for commercial packaged boilers, particularly those used in multiple-boiler installations. Some of these controls may include fixed thermostats, fixed lead/lag thermostats with rotation on lead, individual thermistors with modulation, individual modulation with rotating lead, and group modulation. Lochinvar notes that some of the control options may be integral or external to the CPB, a point also echoed by AHRI, which commented on the variety of control systems and that some (*e.g.,* building energy management systems) are independent of the control system provided on the boiler. PHCC further noted that contractors specializing in building management systems may be used to install and integrate such control systems. PHCC also noted that multiple-boiler staging may be accomplished with aftermarket products that are designed to communicate with boilers or between boilers, and that a contractor may perform the installation but a different control contractor may integrate the boiler control to a building management program. (Lochinvar, No. 34 at p. 4; AHRI, No. 37 at p. 4; PHCC, Public Meeting Transcript, No. 39 at pp. 99–101) AHRI noted that in CPB installations with mixed efficiency levels, the control system usually calls on the secondary (*i.e.,* less efficient) boiler to operate only in increased load situations. AHRI also noted that it would be useful to understand how many commercial boiler installations include a system control panel that adds sophistication to controlling the boiler and system. (AHRI, No. 37 at p. 4; AHRI, Public Meeting Transcript, No. 39 at p. 100) AHRI also notes that ASHRAE Standard 90 requires load-sensing controls for boiler-based heating systems. (AHRI, Public Meeting Transcript, No. 39 at pp. 32–33) ABMA

noted that unless the boiler sizing closely follows the seasonal load profile, and the control system is capable of selecting the correct boiler for the prevailing load, the efficiency savings will not be maximized. In consideration of these comments, DOE notes that while the analysis does not specifically apply any individual controls for multiple-boiler situations, it does consider the impact on the efficiency of a boiler on a multiple-boiler installation (through providing for differing part load/cycling adjustment where staging of multiple-boilers is possible). The analysis does not consider multiple-boiler installations where commercial packaged boilers of different fuel input rate are used; nor does it consider hybrid systems that may use condensing and non-condensing boilers together and controlled in sequence as part of its no-new-standards case. For more information on this part of the analysis, refer to chapter 7 and appendix 7B of the TSD.

For the NOPR, DOE modified the energy use characterization conducted in the preliminary analysis to improve the modeling of equipment performance. The modifications that DOE performed included changes to the cycling loss factors for individual commercial packaged boilers, improved accounting for estimating performance of multiple-boiler installations, and improving the return water temperature efficiency adjustment factors.

A more detailed description of the energy use characterization approach can be found in appendix 7B of the NOPR TSD.

2. Building Sample Selection and Sizing Methodology

In its energy analysis for this NOPR, DOE's estimation of the annual energy savings of commercial packaged boilers from higher efficiency equipment alternatives relies on building sample data from CBECS 2003, RECS 2009, and CBECS 2012.[42] CBECS 2003 includes energy consumption and building characteristic data for 5,215 commercial buildings representing 4.9 million commercial buildings. RECS 2009 includes similar data from 12,083 housing units that represent almost 113.6 million residential households.

The subset of CBECS 2003 and RECS 2009 building records used in the analysis met the following criteria. The CPB application

- used commercial packaged boiler(s) as one of the main heating equipment components in the building,
- used a heating fuel that is natural gas (including propane and LPG) or fuel oil or a dual fuel combination of natural gas and fuel oil,
- served a building with estimated design condition building heating load exceeding the lower limit of CPB qualifying size (300,000 Btu/hr), and
- had a non-trivial consumption of heating fuel allocable to the commercial packaged boiler.

DOE analyzed commercial packaged boilers in the qualifying building samples. DOE disaggregated the selected sample set of commercial packaged boilers into subsets based on the fuel types (gas or oil), fuel input rate (small or large), heating medium (steam or hot water). DOE then used these CPB subsets to group the sample buildings equipped with the same class of equipment evaluated in its NOPR analysis. In the LCC analysis, DOE used the ratio of the weighted floor space of the groups of commercial and residential building samples associated with each equipment class to determine the respective sample weights for the commercial and residential sectors. In absence of the newer sample data from CBECS 2012, DOE's new construction sample was based on the same selection algorithms as the replacement sample but included only buildings built after 1990, which DOE tentatively concluded would have building characteristics more similar to the new construction buildings in the start of the analysis period in 2019 (*e.g.,* building insulation, regional distribution of the buildings, etc.).

To disaggregate a selected set of commercial packaged boilers into large and small equipment classes, DOE uses a sizing methodology to determine the sizes of the commercial packaged boilers installed in the building. In the preliminary analysis, DOE used a rule-based sizing methodology (*i.e.,* predetermined number of commercial packaged boilers for a building with a given sizing heating load) with key threshold size parameters estimated from the AHRI directory model counts. In the NOPR analysis, DOE used a statistical sizing approach described in this section.

First, the total sizing of the heating equipment is determined from the heated square footage of the building, the percentage of area heated, a uniform heating load requirement of 30 Btu/h per square foot of heated area, and an assumed equipment efficiency mapped to the construction year. DOE's sizing methodology also takes outdoor design conditions into consideration. The outdoor design condition for the building is based on the specific weather location of the building. The estimated total CPB sizing (MMBtu/h) is the aggregate heating equipment sizing prorated using the area fraction heated by the commercial packaged boilers and multiplied by an oversize factor of 1.1. For the sample of residential multi-family buildings, the heating equipment sizing methodology for commercial buildings is modified to calculate the heating load for each residential unit of the multi-family buildings and this value is multiplied by the number of units, assuming each unit to have identical area and design heating load. The modified methodology for residential multi-family buildings further assumes that a centrally located single or a multiple-boiler installation would meet the entire design heating load of the building.

DOE computed the size of each commercial packaged boiler in each sample building by dividing the aggregate CPB sizing heating load (MMBtu/hr) by an estimated number of boilers of equal capacity. To estimate the number of commercial packaged boilers in a given sample building, DOE established a CPB count distribution for a given sizing load range in a set of sample buildings from CBECS data of 1979 and 1983—the only two CBECS surveys where the CPB count data were available for the sample buildings. DOE assigned the number of commercial packaged boilers to all the qualified sample buildings of 2003 CBECS based on this distribution. The number of commercial packaged boilers in each sample building was multiplied by the respective building sample weights in CBECS to obtain an estimate of the overall CPB population and their respective capacities. The CPB size distributions obtained by this method were compared with the size distribution of the space heating boilers obtained in an EPA database[43] having size information of over 120,000 space heating boilers. The comparison from these two different datasets did not reveal any significant differences. Minor tweaks were made to the statistical assignment of the number of commercial packaged boilers so as to maximize the utility of the sampled buildings used for the NOPR analysis;

[42] EIA released only building characteristic micro-data tables for CBECS 2012 in June 2015. These buildings could not be used as sample buildings for this rulemaking because they did not have energy consumption details. However this partial set of data in CBECS 2012 was used to determine useful trends for developing the final sample distribution across various equipment classes during the analysis period.

[43] Environmental Protection Agency. *13 State Boiler Inspector Inventory Database with Projections (Area Sources).* EPA–HQ–OAR–2006–0790–0013 (April 2010) (Available at *http://www.epa.gov/ttnatw01/boiler/boilerpg.html*).

i.e., the number of commercial packaged boilers assigned to very large buildings in cold climates with large design sizing loads were high enough to ensure that the capacity of a single unit of the multiple-boiler installation was lower than 10 MMBtu/h, the maximum CPB size for the equipment classes analyzed. At the lower end of the heating load spectrum, the number of commercial packaged boilers assigned to the installation were matched to ensure that any commercial packaged boiler in the installation has a capacity higher than 300,000 Btu/h—the minimum size for a covered commercial packaged boiler.

DOE received several comments pertaining to its sizing methodology used in the preliminary analyses—*i.e.,* its use of a rule-based sizing methodology, oversize factors used in the aggregate sizing calculation, and number of commercial packaged boilers used to meet a given design load. Raypak commented that there is no such thing as typical CPB sizing practice and that engineers and architects are responsible for creating the buildings the way the owner wants it. (Raypak, No. 35 at p. 3) PHCC commented that the design heating load is not the only criterion for sizing, but ''connected load'' is an important determinant of the sizing practice, especially for steam systems. (PHCC, Public Meeting Transcript, No. 39 at p. 97) Sizes of individual commercial packaged boilers in any installation depend on the aggregate design condition heating load and the number of commercial packaged boilers in the installation. DOE recognizes that the number of commercial packaged boilers assigned to meet the system heating load of a given building and to create some degree of redundancy varies in current HVAC system design practice. DOE's approach to sizing is based on CPB counts distributions from previous CBECS surveys and statistics gathered from the EPA database of space heating boilers. This methodology does not use a set number of commercial packaged boilers for a given design heating load but assigns the number of commercial packaged boilers within a range of counts based on previous observations from CBECS surveys. Regarding PHCC's comment on impact of connected load on CPB sizing, since DOE is not aware of any currently available data on the heat distribution equipment in commercial buildings, it was unable to make reasonable assumptions that could be incorporated in its sizing methodology. DOE welcomes comments on improving this sizing methodology and any other data that may assist DOE to establish a correlation between a given building heating load and the number of commercial packaged boilers in the installation.

The CBECS 2003 and RECS 2009 weightings for each building sample indicate how frequently each commercial building or household unit occurs on the national level in 2003 and 2009, respectively. DOE used these weightings from CBECS 2003 and RECS 2009 buildings for estimation of individual equipment class sample weights. Appendix 7A of the NOPR TSD presents the variables included and their definitions, as well as further information about the derivation of the building samples, the adjustments to the CPB weights, and sampling fractions for each of the four samples: Commercial and residential, each divided between new construction and retrofit.

DOE received multiple comments regarding the sizing methodology and other assumptions used in estimation of the equipment sample weights. PHCC pointed out that in the retrofit situation, though there are contractors who just replace the boilers on ''like for like'' basis, most contractors look at the overall system load and then size the installation appropriately considering the design heating load, particularly when a higher efficiency system is being considered. (PHCC, Public Meeting Transcript, No. 39 at p. 98) AHRI noted that it is not unusual to have a backup boiler in installations of some building types, creating some redundancy, in particular where absence of heating is unacceptable. (AHRI, Public Meeting Transcript, No. 39 at p. 94–95) AHRI further observed that this has been a historical practice, and current design practice mostly provides for multiple-boiler installations. ACEEE commented that installations needing 100-percent backup may use a second large boiler, or some may opt for having various small boilers that together cover 130 or 120 percent of the peak load. (ACEEE, Public Meeting Transcript, No. 39 at pp. 101–103). DOE's use of data-driven boiler count distributions to estimate the number of boilers in a given installation obviates the need for assumptions on the percent of the sample buildings requiring redundancy in the boiler installation and the extent of redundancy. For example, DOE estimated that 30% of the sample buildings having design heating loads between 570,000 and 865,000 Btu/hr would have two commercial packaged boilers, the rest being single boiler installations. While the capacity of the single commercial packaged boiler is based on an oversize factor of 110%, in the two-boiler situation each commercial packaged boiler has half the capacity of the single large commercial packaged boiler. The two-boiler situation creates redundancy only to the extent of 55% of the design load but has no provision for 100% redundancy under design heating condition. In the NOPR analysis, the maximum number of commercial packaged boilers assigned to any sample building is eight, implying redundancy of 96% of the design heating load. PHCC commented that fully redundant boilers are less frequent now than it has been in the past. (PHCC, Public Meeting Transcript, No. 39 at pp. 103–104) PHCC further noted that reasonable degree of redundancy can be created even when only 100% of the design load is shared by multiple boilers in an installation. PHCC observed that presently building owners are unwilling to spend a significant amount of additional funds to ensure redundancy as there are acceptable and safe alternatives. (PHCC, Public Meeting Transcript, No. 39 at p. 104) DOE's NOPR analysis assumes an average oversize factor of 110%, which appear reasonable.

The issues of redundant, modular, and multiple-boiler use in a given installation are intertwined, and DOE received several comments in this area. AHRI, Lochinvar, and Raypak noted that ASHRAE Standard 90.1–2013 requires a 3:1 turndown ratio for boiler systems with an input rate of 1 MMBtu/hr or more (accomplished with a modulating boiler or multiple boilers) to provide some measure of load following. (AHRI, No. 37 at p. 4; Lochinvar, No. 34 at p. 4; Raypak, No. 35 at p. 3). Raypak commented that trends show that more buildings, new and existing, are being provided with multiple smaller boilers instead of a single large boiler, and that buildings such as hospitals, hotels, colleges, and prisons are examples where redundant equipment may be used, though not necessarily providing 100% coverage. ACEEE also commented that there is some shift away from larger boilers to multiple smaller boilers. (ACEEE No. 39 at p. 33)

DOE notes that one of the key drivers of the trend toward installation of multiple or modular commercial packaged boilers in any installation would be ASHRAE standard 90.1–2013,[44] which requires CPB systems with an input rate of 1 MMBtu/hour or more to have a turndown ratios of 3:1 or more. As this can be achieved either by staging of multiple smaller

[44] ANSI/ASHRAE/IESNA Standard 90.1–2013, Energy Standard for Buildings Except Low-Rise Residential Buildings, American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc., Atlanta, GA 30329.

commercial packaged boilers or having large commercial packed boilers with modular heat exchangers and turndown capability, greater usage of multiple boilers or modular boilers are mutually offsetting. In the NOPR analysis, DOE has considered that commercial packaged boilers at the high end of the efficiency spectrum do have built-in turndown capability. Further in its NOPR analysis, DOE assumed that all commercial packaged boilers installed in new buildings will be part of a system with at least 3:1 turndown ratio and calculated the adjusted thermal efficiency of commercial packaged boilers in such systems accordingly. DOE could not quantify a definitive impact of ASHRAE standard 90.1–2013 on future CPB sizing practices because the standard is yet to be incorporated in most state building codes. However it modified future sizing methodology in the analysis period (2019–2048) to have a minimum count of at least two commercial packaged boilers of the same size for design heating loads exceeding 1 MM Btu/hr for new constructions.

Raypak noted that DOE's assumption in the preliminary analysis that all multiple boilers are of the same size and type when installed in the same building is incorrect. Raypak stated that it is seeing more ''hybrid'' systems that include both condensing and non-condensing boilers on the same system, with some of these hybrid systems having the ability to monitor the return water temperature and initiate condensing boiler operation. (Raypak, No. 35 at p. 3) PHCC commented that use of one low-efficiency and one high-efficiency boiler in a new installation could be rare but may happen in retrofit scenarios. (PHCC, Public Meeting Transcript, No. 39 at p. 104) DOE agrees with PHCC that hybrid installations are possible in retrofit situations where new condensing boiler(s) operating in the ''base load mode'' combine with the pre-existing non-condensing boilers to meet the design load. In new construction, DOE's analysis can be limited only to single efficiency levels for all commercial packaged boilers as any mandated efficiency standards stipulate a single minimum efficiency level only. It is likely that operation in the hybrid configuration may improve the economics of the ''condensing boiler'' efficiency option in DOE's NOPR analysis because of higher utilization of the condensing boilers in the hybrid retrofitted systems vis-à-vis utilizations currently estimated in the sample buildings under a ''uniform configuration.'' However to quantify this impact, DOE needs to develop a reasonable baseline assumption regarding the current degree of adoption of the hybrid configuration practice in retrofit situations.

DOE requests information on what constitutes a reasonable baseline assumption about the current degree of adoption of hybrid boiler configurations in retrofit situations and on other related parameters such as percentage of total installed capacity typically assigned to the new condensing boilers, climate zones where it may be more prevalent and any other supporting documentation.

See section VII.E for a list of issues on which DOE seeks comment.

Building sampling methodology is detailed in NOPR TSD appendix 7A.

3. Miscellaneous Energy Use

The annual energy used by commercial packaged boilers, in some cases, may include energy used for non-space heating use such as water heating. In the preliminary analysis, DOE assumed that if the CBECS data indicates that the CPB fuel is the same as the fuel used for water heating then in 50% of the sample buildings, the same commercial packaged boiler is also used for water heating. Several stakeholders commented on the reasonableness and validity of this assumption. AHRI stated that in the collective opinion of its members, the fraction of boilers used for both space heating and hot water in commercial building is far less than the 50% assumed in the preliminary analysis. (AHRI, No. 37 at p. 5) Raypak agreed with AHRI's comment and further pointed out that this practice, though common in Europe for condensing boilers in residential applications, is not commonly observed in commercial buildings in the United States. (Raypak, No. 35 at p. 4) Lochinvar expressed that possibly a greater percentage of residential boilers are used for both space and water heating than boilers in commercial buildings. ACEEE pointed out that using packaged boilers also for hot water heating is a wasteful practice because of the presence of long recirculating loops, which are restricted in the new building codes. (ACEEE, Public Meeting Transcript, No. 39 at p. 113) ACEEE further pointed out that the current system design practice is moving away from having dual-use installations in commercial buildings. DOE agrees with the previous comments and consequently limited the fraction of occurrence of dual-use boilers to 20% of the samples in the NOPR analysis compared to the previously considered level of 50%.

Other associated energy consumption is due to electricity use by electrical components of commercial packaged boilers including circulating pump, draft inducer, igniter, and other auxiliary equipment such as condensate pumps. In evaluating electricity use, DOE considered electricity consumed by commercial packaged boilers both in active mode as well as in standby and off modes in the preliminary analysis.

DOE received several comments regarding energy use by pumps. AHRI noted that there has been significant progress on ASHRAE 90.1 in requiring or specifying more efficient mode of pumps for the circulating pumps and that there is a parallel rulemaking on commercial industrial pumps, and the impact of such rulemaking should be considered in this analysis and rulemaking as it relates to pumps used in commercial packaged boilers. (AHRI, Public Meeting Transcript, No. 39 at pp. 108–109 and 114) PHCC noted that the analysis should be clear as to whether pump power refers to a system pump, boiler pump, or both, and commented that small boilers are probably all provided with a system circulating pump, but, as systems get larger, the pumps may be field selected, and coming up with an average efficiency would be complicated given the various pump options available out there. (PHCC, Public Meeting Transcript, No. 39 at pp. 109–110 and 112–113) Similarly, Raypak noted that boiler pumps may not be included with the commercial packaged boiler but rather be a purchase decision made by the manufacturer's representative or contractor to meet the CPB flow and head requirements, and that care should be taken when taking this energy consumption into consideration. (Raypak, Public Meeting Transcript, No. 39 at pp. 115–116) ACEEE noted that care must be taken in the analysis to include only energy use for pumps integral to the operation of the boiler and not for those that are used for distribution to the system. (ACEEE, Public Meeting Transcript, No. 39 at p. 111)

With respect to the electricity use of pumps, DOE wishes to clarify that the current analysis only considered the electricity use of pumps needed for proper operation of the commercial packaged boiler, but not the electricity use of additional pumps that may be necessary used for distributing water throughout a system since the circulating pumps are not part of the commercial packaged boiler itself and inclusion of its energy consumption would not be appropriate to the development of the standard.

In its NOPR analysis, DOE maintained the electricity use analysis method used for the preliminary analysis.

F. Life-Cycle Cost and Payback Period Analysis

The purpose of the LCC and PBP analysis is to analyze the effects of potential amended energy conservation standards on consumers of commercial packaged boilers by determining how a potential amended standard affects their operating expenses (usually decreased) and their total installed costs (usually increased).

The LCC is the total consumer cost of owning and operating an appliance or equipment, generally over its lifetime. The LCC calculation includes total installed cost (equipment manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), equipment lifetime, and discount rate. Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance or equipment. The PBP is the amount of time (in years) it takes consumers to recover the assumed higher purchase price of more energy-efficient equipment through reduced operating costs. DOE calculates the PBP by dividing the change in total installed cost (normally higher) due to a standard by the change in annual operating cost (normally lower) that result from the standard.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the no-new-standards efficiency distribution. The no-new-standards estimate reflects the market in the absence of amended energy conservation standards, including market trends for equipment that exceed the current energy conservation standards.

DOE analyzed the net effect of potential amended CPB standards on consumers by calculating the LCC and PBP for each efficiency level of each sample building using the engineering performance data, the energy-use data, and the markups. DOE performed the LCC and PBP analyses using a spreadsheet model combined with Crystal Ball (a commercially available software program used to conduct stochastic analysis using Monte Carlo simulation and probability distributions) to account for uncertainty and variability among the input variables (*e.g.,* energy prices, installation cost, and repair and maintenance costs). The spreadsheet model uses weighting factors to account for distributions of shipments to different building types and different states to generate LCC savings by efficiency level. Each Monte Carlo simulation consists of 10,000 LCC and PBP calculations using input values that are either sampled from probability distributions and building samples or characterized with single point values. The analytical results include a distribution of 10,000 data points showing the range of LCC savings and PBPs for a given efficiency level relative to the no-new-standards case efficiency forecast. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers that already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure and then multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required.

DOE calculated the LCC and PBP for all consumers of commercial packaged boilers as if each were to purchase new equipment in the year that compliance with amended standards is required. The projected compliance date for amended standards is early 2019. Therefore, for purposes of its analysis, DOE used January 1, 2019 as the beginning of compliance with potential amended energy standards for commercial packaged boilers.

As noted in this section, DOE's LCC and PBP analysis generates values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the 3-year payback period contemplated under the rebuttable presumption test. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment. The results of the full economic analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

Inputs to the LCC and PBP analysis are categorized as (1) inputs for establishing the purchase cost, otherwise known as the total installed cost, and (2) inputs for calculating the operating cost (*i.e.,* energy, maintenance, and repair costs). The following sections contain brief discussions of comments on the inputs and key assumptions of DOE's LCC and PBP analysis and explain how DOE took these comments into consideration.

1. Equipment Costs

For each distribution channel, DOE derives the consumer equipment cost for the baseline equipment by multiplying the baseline equipment manufacturer production cost and the baseline overall markup (including any applicable sales tax). For each efficiency level above the baseline, DOE derives the consumer equipment cost by adding baseline equipment consumer cost to the product of incremental manufacturer cost and the appropriate incremental overall markup (including any applicable sales tax). This consumer equipment cost is reflective of the representative equipment size analyzed for each equipment class in the engineering analysis. Since the LCC analysis considers consumers whose CPB capacities vary from the representative equipment size, the consumer equipment cost is adjusted to account for this.

DOE examined whether CPB equipment prices changed over time. DOE tentatively determined that there is no clear historical price trend for CPB equipment and used costs established in the engineering analysis directly for determining 2019 equipment prices for the LCC and PBP analysis.

2. Installation Costs

The installation cost is the cost incurred by the consumer for installing the commercial packaged boiler. The cost of installation covers all labor and material costs associated with the replacement of an existing commercial packaged boiler for replacements or the installation of a commercial packaged boiler in a new building, removal of the existing boiler, and any applicable permit fees. DOE estimates the

installation costs at each considered efficiency level using a variety of sources, including RS Means 2015 facilities construction cost data, manufacturer literature, and information from expert consultants.[45] Appendix 8D of the NOPR TSD contains a detailed discussion of the development of installation costs.

DOE received feedback regarding installation costs for commercial packaged boilers, including comments related to installation locations within buildings, venting materials and sizes, and common venting. AHRI commented that boilers located within buildings are usually in the basement or penthouse, and in high-rise buildings, they are often located in intermediate floors, and that vertical vent termination is most common. (AHRI, No. 37 at p. 6) Raypak commented that there is no ''typical'' boiler installation, and that boilers may be located in basements, mechanical rooms, penthouses, or outdoors and, in high-rise buildings, boilers are often located in intermediate floors due to other system limitations. (Raypak, No. 35 at p. 6) PHCC also noted that likely places for boiler installations are boiler rooms, equipment rooms, basements of hotels, and powerhouses in hospitals. Venting in these installations could be through sidewalls, roofs, masonry, chimneys, or stainless steel vents. (PHCC, No. 39 at p. 138) Lochinvar noted that they do not have specific information but speculate that less than 10% of installations will require significant additional installation expenses, and that most likely this expense would occur for condensing boilers with long vent runs that require custom-designed common vent systems with modulating draft control systems. (Lochinvar, No. 34 at p. 5) ACEEE suggested getting in touch with ASHRAE technical committees to obtain more specific information on design practices, and engaging the engineering community, system designers, and contractors to get a better handle on installation costs. (ACEEE, No. 39 at pp. 105 and 128) PHCC suggested that information on this topic may be more succinctly gathered from a survey sent to contractors, engineers, and manufacturers. (PHCC, No. 39 at p. 135)

Regarding costs associated with venting, AHRI, Lochinvar, and Raypak noted that venting material selection is a function of system design, but generally vents 8 inches and larger are metal, 4 inches and smaller are PVC/CPVC/PP,[46] and that 6-inch vents may be either, with Raypak also noting that plastic vent materials that are ULC S636 certified are not readily available in larger sizes. (AHRI, No. 37 at p. 5; Lochinvar, No. 34 at p. 5; Raypak, No. 35 at p. 5) PHCC's comment agreed with the general trend identified as PHCC commented that plastic venting is more common in small-capacity installations, but stainless steel is more typical in larger boilers with an input of 1 MM Btu/h sizes and higher. (PHCC, No. 39 at p. 130) AHRI further noted that stainless steel is rarely used in existing CPB installations with efficiencies in the low 80 percent range. (AHRI, No. 37 at p. 6) However, Raypak noted that the same boiler, when designed to use a Category I vent in a vertical vent situation, may be required to use a Category III stainless steel vent if vented horizontally, but noted that manufacturers have limited knowledge of the final installation and whether a particular boiler will be vented horizontally or vertically.[47] (Raypak, No. 39 at p. 136 and No. 35 at p. 5) PHCC proposed that most of the time condensing boilers are direct vented but noted that they have no specific data to support that opinion. (PHCC, No. 39 at p. 130) Lochinvar commented that almost all condensing commercial packaged boilers have the option of direct venting, and that the majority of non-condensing commercial packaged boilers sold do not have the direct vent option. They further noted that there is a small fraction of near condensing commercial packaged boilers that require stainless steel venting, but almost all are designed for either non-condensing conventional venting or condensing with PVC or stainless steel venting, noting the selection of PVC versus stainless steel being based on size rather than efficiency. (Lochinvar, No. 34 at p. 5) Lochinvar commented that vent termination has historically been vertical, but that direct venting options have caused a trend toward side wall venting, and in some instances that has resulted in functional problems. The trend is currently reverting to vertical venting for all products, with side wall venting currently applied in less than 20% of cases and this percentage is declining. (Lochinvar, No. 34 at p. 5) Raypak stated that direct venting has nothing to do with boiler efficiency, and that many mechanical draft boilers and some natural draft boilers are designed to accommodate standard venting or direct venting, depending on the installation requirements. Raypak commented that stainless steel venting is rarely used in existing installations of commercial packaged boilers with efficiencies below condensing, and that stainless steel venting is much more costly than standard ''B-vent'' which is used for most non-condensing boilers vented in Category I venting configurations. Raypak also commented that venting configuration for outdoor installations is not addressed by the DOE analysis. (Raypak, No. 35 at p. 5) In the public meeting, AHRI commented that venting approaches may differ between small and large boilers, and that DOE's analysis focuses on fairly small boilers. AHRI offered to discuss this perspective with their members and provide additional information. (AHRI, No. 39 at p. 132)

With respect to common venting, Lochinvar commented that multiple-boiler installations are often commonly vented (10% and growing), but that common venting commercial packaged boilers with water heaters is rare, and they advise against mixing unlike product types when venting. (Lochinvar, No. 34 at p. 6) AHRI noted that the National Fuel Gas Code (NFGC) requires condensing boilers to be separately vented, and that it is customary to commonly vent non-condensing boilers, but that commercial water heaters are usually not commonly vented with commercial packaged boilers. (AHRI, No. 37 at p. 6) AHRI further elaborated on this point during the public meeting, stating that common venting may become problematic for the water heater when the boiler is not firing and the vent size is very large. (AHRI, No. 39 at p. 141) Raypak, in their comments submitted in response to the public meeting, also noted that the NFGC addresses common venting of non-condensing Category I equipment, but when it comes to common venting of condensing boilers or other category boilers, the NFGC calls for ''Engineered Vent Systems,'' resulting in additional costs for the design, including a Registered Professional Engineer's stamp (approving the venting system design), and equipment over and above the cost of the vent materials alone. (Raypak, No. 35 at p. 6) Similarly, PVI noted that non-condensing boilers are commonly vented together; condensing boilers are most commonly vented individually, but some (research) projects are investigating what it would

[45] RS Means, *Facilities Maintenance & Repair Cost Data 2015,* 73rd ed. (2014).

[46] Plastic polymers: Polyvinyl chloride (PVC), chlorinated polyvinyl chloride (CPVC), polypropylene (PP).

[47] DOE interprets the referenced Category III venting requirement to relate to the lack of flue gas buoyancy in horizontally vented equipment, and that venting designed to maintain a positive internal pressure is therefore utilized in these installations.

take to common vent condensing boilers. (PVI, No. 39 at p. 140) Raypak further notes that boilers designed for Category III, if vented horizontally, would use stainless steel to comply with categorization requirements for boilers. (Raypak, No. 35 at p. 6)

DOE acknowledges that the number of possible variations in venting arrangements is significant and has utilized this input in a logic sequence based upon probability distribution of venting conditions to provide representative venting costs for the range of products analyzed. See chapter 8 and appendix 8D of the NOPR TSD for details on DOE's analysis of installation costs including venting costs.

DOE seeks input on its characterization and development of representative installation costs, including venting costs, in new and replacement commercial package boiler installations, including data to support assumptions on vent sizing, vent length distributions, and vent materials.

See section VII.E for a list of issues on which DOE seeks comment.

3. Annual Per-Unit Energy Consumption

DOE estimated annual natural gas, fuel oil, and electricity consumed by each class of CPB equipment, at each considered efficiency level, based on the energy use analysis described in section IV.E of this document and in chapter 7 of the NOPR TSD.

DOE conducted a literature review on the direct rebound effect in commercial buildings, and found very few studies, especially with regard to space heating and cooling. In a paper from 1993, Nadel describes several studies on takeback in the wake of utility lighting efficiency programs in the commercial and industrial sectors.[48] The findings suggest that in general the rebound associated with lighting efficiency programs in the commercial and industrial sectors is very small. In a 1995 paper, Eto et al.[49] state that changes in energy service levels after efficiency programs have been implemented have not been studied systematically for the commercial sector. They state that while pre-/post-billing analyses can implicitly pick up the energy use impacts of amenity changes resulting from program participation, the effect is usually impossible to isolate. A number of programs attempted to identify changes in energy service levels through customer surveys. Five concluded that there was no evidence of takeback, while two estimated small amounts of takeback for specific end uses, usually less than 10-percent. A recent paper by Qiu,[50] which describes a model of technology adoption and subsequent energy demand in the commercial building sector, does not present specific rebound percentages, but the author notes that compared with the residential sector, rebound effects are smaller in the commercial building sector. An important reason for this is that in contrast to residential heating and cooling, HVAC operation adjustment in commercial buildings is driven primarily by building managers or owners. The comfort conditions are already established in order to satisfy the occupants, and they are unlikely to change due to installation of higher-efficiency equipment. While it is possible that a small degree of rebound could occur for higher-efficiency CPBs, *e.g.,* building managers may choose to increase the operation time of these heating units, there is no basis to select a specific value. Because the available information suggests that any rebound would be small to negligible, DOE did not include a rebound effect for this proposed rule.

EIA includes a rebound effect for several end-uses in the commercial sector, including heating and cooling, as well as improvements in building shell efficiency in its AEO reports.[51] The DOE analysis presented here does not include either the rebound effect for building shell efficiency or the rebound effect for equipment efficiency as is included in the AEO, and therefore cannot definitively assess what the impact of including the rebound effect would have on this analysis. For example, if the building shell efficiency improvements included in the AEO reduced heating and cooling load by 10 percent and the rebound effect on building shell efficiency was assumed to be 10 percent, the total impact would be to reduce heating and cooling loads by 9 percent. The DOE analysis presented here includes only the building shell improvements from the AEO but not the rebound effect on the building shell efficiency improvements. For illustrative purposes, DOE estimates that a rebound effect of 10 percent on CPB efficiency for heating improvements could reduce the energy savings by 0.04 quads (10 percent) over the analysis period. However, this ignores that the proposed rule would have saved more than 0.39 quads if the building shell efficiency rebound effect included in the AEO was also included in DOE's analysis.

DOE requests comment and seeks data on the assumption that a rebound effect is unlikely to occur for these commercial applications.

See section VII.E for a list of issues on which DOE seeks comment.

4. Energy Prices and Energy Price Trends

DOE derives average monthly energy prices for a number of geographic areas in the United States using the latest data from EIA and monthly energy price factors that it develops. The process then assigns an appropriate energy price to each commercial building and household in the sample, depending on its type (commercial or residential), and its location. DOE derives 2014 annual electricity prices from EIA Form 826 data.[52] DOE obtains the data for natural gas prices from EIA's Natural Gas Navigator, which includes monthly natural gas prices by state for residential, commercial, and industrial commercial consumers.[53] DOE collects 2013 average commercial fuel oil prices from EIA's State Energy Consumption, Price, and Expenditure Estimates (SEDS) and adjusts it using CPI inflation factors to reflect 2014 prices.[54]

To arrive at prices in future years, DOE multiplies the prices by the forecasts of annual average price changes in *AEO2015.* To estimate the trend after 2040, DOE uses the average rate of change during 2030–2040. Appendix 8C of the NOPR TSD includes more details on energy prices and trends.

[48] S. Nadel (1993). The Takeback Effect: Fact or Fiction? Conference paper: American Council for an Energy-Efficient Economy.

[49] Eto et al. (1995). Where Did the Money Go? The Cost and Performance of the Largest Commercial Sector DSM Programs. LBL–3820. Lawrence Berkeley National Laboratory, Berkeley, CA.

[50] Qui, Y. (2014). Energy Efficiency and Rebound Effects: An Econometric Analysis of Energy Demand in the Commercial Building Sector. Environmental and Resource Economics, 59(2): 295–335.

[51] Energy Information Administration, Commercial Demand Module of the National Energy Modeling System: Model Documentation 2013, Washington, DC, November 2013, page 57. The building shell efficiency improvement index in the AEO accounts for reductions in heating and cooling load due to building code enhancements and other improvements that could reduce the buildings need for heating and cooling.

[52] U.S. Energy Information Administration. *Form EIA–826 Monthly Electric Utility Sales and Revenue Report with State Distributions* (EIA–826 Sales and Revenue Spreadsheets) (Available at *http://www.eia.gov/electricity/data/eia826/*).

[53] U.S. Energy Information Administration, *Natural Gas Prices* (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PCS_DMcf_a.htm*).

[54] Source: CPI factors derived from U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) (Available at: *www.bls.gov/cpi/cpifiles/cpiai.txt*).

5. Maintenance Costs

The maintenance cost is the routine cost incurred by the consumer for maintaining equipment operation. The maintenance cost depends on CPB capacity and heating medium (hot water or steam). DOE used the most recent ''RS Means Facility Maintenance and Repair Cost Data'' to determine labor and materials costs and maintenance frequency associated with each maintenance task for each CPB equipment class analyzed.[55] Within an equipment class, DOE assumed that the maintenance cost is the same at all non-condensing efficiency levels, and that the maintenance cost at condensing efficiency levels is slightly higher.

DOE requested comments regarding the frequency and typical cost of maintenance of minimum- and high-efficiency commercial packaged boilers. ABMA commented that the maintenance costs shown in the analysis seem low and more along the lines of residential maintenance costs. (ABMA, Public Meeting Transcript, No. 39 at p. 65) Similarly, Raypak believes that DOE should not assume that there is a linear relationship between the size of the boiler and the cost of its components. (Raypak, No. 35 at p. 4) Additionally, Raypak commented that the frequency and cost of maintenance, major repairs, *etc.* presented in the analysis is representative of older technology boilers, but newer technology boilers have a higher cost of service/repair since they require a higher level of expertise from technicians and specialized equipment. Raypak also added that, although they do not have specific data, Raypak believes that the vast majority of maintenance/service is performed by manufacturer factory-trained personnel due to the specialized equipment and expertise required to properly diagnose and repair current commercial packaged boilers. However, Raypak noted there may be some general maintenance items such as checking for blockages in vent/air intake, looking at burner flame, and maintaining or adjusting water quality that may be accomplished by on-site staff. (Raypak, No. 35 at p. 5) AHRI similarly noted that the industry trend for boiler maintenance is toward using external contractors who specialize in servicing advance design boilers or boiler systems. (AHRI, No. 37 at p. 5) PHCC, on the contrary, noted that maintenance estimates seem adequate. (PHCC, Public Meeting Transcript, No. 39 at p. 146) PHCC also noted that hospitals, larger apartment buildings, and other sites with competent maintenance staff are likely to use on-site staff for general boiler maintenance but resort to external contractors for repair work. Large boiler installations are likely to use external contractors for maintenance and repairs. (PHCC, Public Meeting Transcript, No. 39 at p. 147)

Two stakeholders proposed that DOE implement additional data collection techniques. ACEEE encouraged DOE to look at international experience/comparisons relative to maintenance, maintenance contracts, incremental costs, and lifetime estimates, especially where it related to condensing technology where other regions have more history of condensing technology use. (ACEEE, Public Meeting Transcript, No. 39 at p. 209) PVI suggested that surveying boiler service companies regarding maintenance and frequency of repairs, as well as self-service versus external, may help provide some answers for the analysis. (PVI, No. 39 at p. 153) DOE appreciates the recommendations made by commenters. However, DOE considers the information it was able to collect and examine through publically available sources to be sufficient to perform the NOPR analyses.

With respect to adherence to a maintenance schedule on commercial packaged boilers, Lochinvar noted that CPB manufacturers recommend annual maintenance, but evidence supports that it is often neglected. (Lochinvar, No. 34 at p. 4) Raypak also noted the lack of maintenance requirements on boilers and the impact that lack of maintenance can have on boiler lifetime. (Raypak, Public Meeting Transcript, No. 39 at p. 208)

DOE appreciates the stakeholder comments received regarding CPB equipment maintenance frequency and costs. DOE notes that for the NOPR, DOE is not changing the maintenance cost calculation methodology used in the preliminary analysis as it risks oversimplifying the maintenance cost estimating methodology, which may result in costs that are not reflective of the recommended preventive maintenance tasks performed in the facilities and boiler plants, and not significantly different from one equipment class to another.

The cost estimates used in the analysis are specific to preventive maintenance tasks performed by the in-plant engineer/technician. DOE notes that RS Means is a representative, well-documented, and widely accepted data resource specifically developed for cost estimating purposes depicting typical preventive maintenance tasks and associated costs at different CPB capacities, which is the requirement for the purposes of the LCC analysis. Furthermore, the version of RS Means used for the LCC purposes specifically looked at facilities that used CPB plants and larger commercial packaged boilers to ensure that the costs used are appropriate.

6. Repair Costs

The repair cost is the cost to the commercial consumer for replacing or repairing components that have failed in the commercial packaged boiler (such as the ignition, controls, heat exchanger, mechanical vent damper, or power vent blower). In its preliminary analysis, DOE used the latest version of the ''RS Means Facility Maintenance and Repair Cost Data'' to determine labor and materials costs associated with repairing each CPB equipment class analyzed.

DOE received comments regarding repair costs for commercial packaged boilers. AHRI commented that DOE should not assume a linear relationship between boiler size and component costs, and both AHRI and Raypak noted that repair costs shown in the analysis may be representative of historical models, but newer commercial models require more specialized equipment and technicians, resulting in an underestimation of repair costs in the analysis for higher efficiency equipment. (AHRI, No. 37 at p. 5; Raypak, No. 35 at p. 4) With respect to heat exchanger repairs, Raypak notes that a replacement heat exchanger would show up simply in replacement parts orders and a replacement boiler would show up as a boiler shipment, but it has no knowledge of the instances of heat exchanger replacements versus boiler replacements in repair/replace decisions. (Raypak, No. 35 at p. 5) Lochinvar comments that in cases where they are involved in the decision to repair or replace a heat exchanger, about 80% of the times the heat exchanger is replaced, and that it is consistent for condensing and non-condensing commercial packaged boilers they manufacture. Lochinvar has no data on repair or replacement percentages for cases in which they are not involved in the decision-making process. (Lochinvar, No. 34 at p. 5) Lochinvar further notes that the type of boiler impacts whether heat exchanger failure will result in replacement rather than repair. (Lochinvar, No. 34 at p. 4) PHCC opines that for smaller boilers, it is likely that the entire boiler would be replaced if there is a heat exchanger failure, but for larger boilers, it is more likely that the heat exchanger would be

[55] RS Means, 2015 Facilities Maintenance & Repair Cost Data (Available at: *http://rsmeans.com*).

repaired or replaced. (PHCC, Public Meeting Transcript, No. 39 at p. 148)

DOE appreciates the comments it received regarding repair costs for commercial packaged boilers. Regarding the comments noting an underestimation of repair costs, DOE notes that it used ''RS Means Facility Maintenance and Repair Cost Data'' [56] to determine repair costs, a well-documented and widely accepted data resource specifically developed for cost estimating purposes. With respect to heat exchanger repairs, DOE considered comments it received and adjusted the repair methodology to allow for noncondensing and condensing heat exchangers to be treated separately in the analysis to account for the impacts of condensation on heat exchanger surfaces.

In the NOPR, DOE used the latest ''RS Means Facility Maintenance and Repair Cost Data'' to determine labor and materials costs associated with repairing each CPB equipment class analyzed. DOE assumes that all commercial packaged boilers have a 1-year warranty for parts and labor and a 10-year warranty on the heat exchanger. For a detailed discussion of the development of repair costs, see appendix 8E of the NOPR TSD.

DOE requests comments on the representativeness of using 1-year as warranty for parts and labor, and 10-years as warranty for the heat exchanger.

See section VII.E for a list of issues on which DOE seeks comment.

7. Lifetime

Equipment lifetime is defined as the age at which equipment is retired from service. DOE uses national survey data, published studies, and projections based on manufacturer shipment data to calculate the distribution of CPB lifetimes. DOE based equipment lifetime on a retirement function, which was based on the use of a Weibull probability distribution, with a resulting mean lifetime of 24.8 years. DOE assumed that the lifetime of a commercial packaged boiler is the same across the different equipment classes and efficiency levels. For a detailed discussion of CPB lifetime, see appendix 8F of the NOPR TSD. In the Framework and preliminary analysis documents, DOE sought comment on how it characterized equipment lifetime. DOE also requested any data or information regarding the accuracy of its 24.8-year lifetime and whether equipment lifetime varies based on equipment class.

DOE received various comments regarding CPB lifetime. ABMA, AHRI, and Raypak commented that the average life assumption developed by DOE in the analysis for both condensing and non-condensing boilers is incorrect, noting that condensing boilers have only been on the market for about 15 years, so using an average life of 24.8 years for them in the analysis is unwarranted. ABMA further notes that the preliminary analysis TSD Table 8–F.2.1 shows condensing boilers listed as having 10–15 year life, but the analysis sets lifetime as 24.8 years regardless of CPB technology. ABMA, and Raypak believe the average life of condensing boilers to be in the neighborhood of 15 years, and Lochinvar suggested that condensing product life should be in the range of 19 to 20 years. (ABMA, Public Meeting Transcript, No. 39 at p. 152; Lochinvar, No. 34 at p. 6; Raypak, No. 35 at p. 6; Raypak, Public Meeting Transcript, No. 39 at p. 208) PHCC stated that 25 year lifetime is high for condensing technology. (PHCC, Public Meeting Transcript, No. 39 at p. 149) Lochinvar commented that non-condensing product lifetime estimates are consistent with their experience, but that lifetime calculations must not aggregate condensing and non-condensing products for average lifetime cost calculations. (Lochinvar, No. 34 at p. 6) ACEEE commented that the material the heat exchanger is made of is likely to be as relevant as the condensing versus non-condensing operation of the boiler. (ACEEE, No. 39 at p. 154) AHRI also suggested that lifetime for condensing commercial packaged boilers be determined differently based on their limited history. (AHRI, No. 37 at p. 6) PVI agreed that there is insufficient historical data on condensing boilers to confirm that their lifetime is similar to traditional boilers, but that early evidence suggests they have shorter lives. (PVI, Public Meeting Transcript, No. 39 at p. 151) ABMA and PVI suggested that the life-cycle cost of a condensing boiler installation should consider accelerated replacement of commercial packaged boilers, with ABMA noting that calculations using this proposed lifetime is highly suspect unless the life cycle cost of a condensing boiler installation includes the cost of two condensing boilers, rather than one. (ABMA, No. 33 at p. 2)

In response, DOE notes that in developing the residential Boilers Specification Version 3.0 for the ENERGY STAR® program in 2013, the Environmental Protection Agency (EPA) held numerous discussions with manufacturers and technical experts to explore the concern that condensing boilers may have a shorter lifetime. In the absence of data showing otherwise, EPA concluded that if condensing boilers are properly installed and maintained, the life expectancy should be similar to noncondensing boilers.[57]

EPA also discussed boiler life expectancy with the Department for Environment, Food & Rural Affairs (DEFRA) in the United Kingdom, and stated that DEFRA has no data which contradict EPA's conclusion that with proper maintenance, condensing and non-condensing modern boilers have similar life expectancy.[58] Regarding the preliminary analysis TSD Table 8–F.2.1 showing condensing boilers listed as having 10–15 year life, DOE agrees with commenters that it is difficult to estimate lifetime of a technology that has only been broadly available on the market for about 15 years, and DOE believes that the values captured in those survey results may be more representative of early experience based on new technology or installation issues. DOE expects that, as condensing boiler technology matures and installers become better trained at installing and maintaining condensing boilers, lifetime of condensing commercial packaged boilers sold and installed in 2019 and beyond would be expected to be similar to their noncondensing counterparts. While commenters opined on a shorter life for condensing products, no commenters provided definitive data that illustrate a shorter life for condensing boilers relative to their noncondensing counterparts. For the NOPR, DOE did not apply different lifetimes for non-condensing and condensing commercial packaged boilers. However, as noted in the discussion of repair costs in section IV.F.6 of this document, commenters noted the option for and higher likelihood of heat exchanger replacements for commercial packaged boilers instead of boiler replacement. DOE did consider the potential impact of condensate on heat exchangers in commercial packaged boilers that operate in condensing mode and established a higher likelihood and sooner time-to-failure for CPB heat

[56] RS Means, 2015 Facilities Maintenance & Repair Cost Data (Available at: *http://rsmeans.com/60305.aspx*).

[57] Stakeholder Comments on Draft 1 Version 3.0 Boilers Specification (August 5, 2013) (Available at *http://www.energystar.gov/products/spec/boilers_specification_version_3_0_pd.*).

[58] *Energy Efficiency Best Practice in Housing, Domestic Condensing Boilers—'The Benefits and the Myths'* (2003) (Available at *http://www.west-norfolk.gov.uk/pdf/CE52.pdf.*).

exchangers that are exposed to such condensate.

Details on how DOE adjusted the repair costs for heat exchangers may be found in appendix 8E of the NOPR TSD. For more details on how DOE derived the CPB lifetime, see appendix 8F of the NOPR TSD.

8. Discount Rate

The discount rate is the rate at which future expenditures and savings are discounted to establish their present value. DOE estimates discount rates separately for commercial and residential end users. For commercial end users, DOE calculates commercial discount rates as the weighted average cost of capital (WACC), using the Capital Asset Pricing Model (CAPM). For residential end users, DOE calculates discount rates as the weighted average real interest rate across consumer debt and equity holdings.

DOE derived the discount rates by estimating the cost of capital of companies that purchase commercial packaged boilers. Damodaran Online is a widely used source of information about company debt and equity financing for most types of firms, and was the primary source of data for the commercial discount rate analysis.[59] To derive discount rates for residential applications, DOE used publicly available data (the Federal Reserve Board's ''Survey of Consumer Finances'') to estimate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs.[60] More details regarding DOE's estimates of consumer discount rates are provided in chapter 8 of the NOPR TSD.

9. No-New-Standards-Case Market Efficiency Distribution

For the LCC analysis, DOE analyzes the considered efficiency levels relative to a no-new-standards-case (*i.e.,* the case without amended energy efficiency standards). This analysis requires an estimate of the distribution of equipment efficiencies in the no-new-standards-case (*i.e.,* what consumers would have purchased in the compliance year in the absence of amended standards). DOE refers to this distribution of equipment energy efficiencies as the no-new-standards-case efficiency distribution.

In its preliminary analysis, DOE used the AHRI directory to analyze trends in product classes and efficiency levels from 2007 to 2014 to determine the anticipated no-new-standards-case efficiency distribution in 2019, the assumed compliance year for amended standards. The trends show the market moving toward higher efficiency commercial packaged boilers, and DOE accounted for the trend in its no-new-standards-case projection.

In the preliminary analysis, DOE requested data on current CPB efficiency market shares (of shipments) by equipment class, and also similar historical data. DOE also requested information on expected trends in efficiency over the next five years.

DOE received various comments regarding the data contained in the AHRI database and its use in the analysis. PVI commented that there is no link between the number of listings in the AHRI directory and sales volumes of any particular product type. (PVI, Public Meeting Transcript, No. 39 at pp. 158–159) Raypak noted that the trend toward condensing technologies for some product classes is evident in the number of series of boilers now in their catalog that are condensing, compared to 10 years ago when only one single system was available. (Raypak, No. 35 at p. 4) AHRI similarly noted the continuing growth in condensing boilers and improvements in overall efficiencies and offered to provide additional data related to distribution of equipment by efficiencies. (AHRI, Public Meeting Transcript, No. 39 at p. 158) Relative to trends in condensing oil boilers, AHRI commented that oil condensing products are rare and there may not be a big enough sample to establish any trends in the technology. (AHRI, Public Meeting Transcript, No. 39 at pp. 176–177)

DOE recognizes that the AHRI directory of commercial packaged boilers is not an indicator of shipments in the industry, but it does reflect the general trends taken by manufacturers to meet their consumer's needs. Due to the lack of any other data source documenting the historical trend for product efficiency and condensing technology, the NOPR analysis used the AHRI directory to analyze trends in product classes and efficiency levels from 2007 to 2015 to determine the anticipated no-new-standards-case efficiency distribution in 2019, the assumed compliance year for amended standards. The trends show the market moving toward higher efficiency commercial packaged boilers, and DOE accounted for the trend in its no-new-standards-case projection. As it relates to condensing oil boilers, DOE observed, as a result of incorporating 2015 AHRI directory data, that for a second year in a row (in 2014 and 2015), the number of condensing oil boilers in the AHRI directory was lower than in previous years. As a result, DOE adjusted the condensing boiler trends for small and large oil commercial packaged boilers. DOE considered alternatives to estimate sales, and the shipments methodology has been updated to not depend on the AHRI directory. An overview of the shipments methodology is provided in section IV.G of this document.

Table IV.8 presents the estimated no-new-standards-case efficiency market shares for each analyzed CPB equipment class in 2019.

TABLE IV.8—ESTIMATED NO-NEW-STANDARDS CASE BOILER EFFICIENCY DISTRIBUTION * OF ANALYZED COMMERCIAL PACKAGED BOILER EQUIPMENT CLASSES ** IN 2019

Efficiency	SGHW (%)	LGHW (%)	SOHW (%)	LOHW (%)	SGST (%)	LGST (%)	SOST (%)	LOST (%)
77	.....	.....	.....	.....	47	13	.....	.....
78	.....	.....	.....	.....	7	31	.....	.....
79	.....	.....	.....	.....	16	13	.....	.....
80	7	.....	.....	.....	16	21	.....	.....
81	8	.....	.....	.....	10	5	34	41
82	12	17	35	.....	.....	11	.....	.....
83	.....	21	24	.....	4	.....	51	39
84	11	6	9	44	.....	7	10	.....
85	22	16	16	.....	.....	.....	.....	19

[59] Damodaran Online, *The Data Page: Cost of Capital by Industry Sector,* (2004–2013) (Available at: *http://pages.stern.nyu.edu/~adamodar/*).

[60] *The Federal Reserve Board, Survey of Consumer Finances,* (1989, 1992, 1995, 1998, 2001, 2004, 2007, 2010) (Available at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html*).

TABLE IV.8—ESTIMATED NO-NEW-STANDARDS CASE BOILER EFFICIENCY DISTRIBUTION * OF ANALYZED COMMERCIAL PACKAGED BOILER EQUIPMENT CLASSES ** IN 2019—Continued

Efficiency	SGHW (%)	LGHW (%)	SOHW (%)	LOHW (%)	SGST (%)	LGST (%)	SOST (%)	LOST (%)
86				42			5	
87			11					†0
88			3	9				
89				1				
90								
91								
92								
93	19							
94		37						
95	19							
96								
97		3	3	4				
98								
99	3							

* Results may not add up to 100% due to rounding.
** SGHW = Small Gas-fired Hot Water; LGHW = Large Gas-fired Hot Water; SOHW = Small Oil-fired Hot Water; LOHW = Large Oil-fired Hot Water; SGST = Small Gas-fired Steam; LGST = Large Gas-fired Steam; SOST = Small Oil-fired Steam; LOST = Large Oil-fired Steam.
† Result is zero due to rounding.

DOE calculated the LCC and PBP for all consumers as if each were to purchase new equipment in the year that compliance with amended standards is required. EPCA directs DOE to publish a final rule amending the standard for the equipment covered by this NOPR not later than 2 years after a notice of proposed rulemaking is issued. (42 U.S.C. 6313(a)(6)(C)(iii)) As discussed previously in section III.A of this document, for purposes of its analysis, DOE used 2019 as the first year of compliance with amended standards.

10. Payback Period Inputs

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation are the total installed cost of the equipment to the consumer for each efficiency level and the average annual operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

11. Rebuttable-Presumption Payback Period

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required. The rebuttable presumption criteria of less than 3-year payback was not achieved for any of the equipment classes analyzed for this rulemaking. More details on this may be found in Table V.27.

G. Shipments Analysis

In its shipments analysis, DOE developed shipment projections for commercial packaged boilers and, in turn, calculated equipment stock over the course of the analysis period. DOE uses the shipments projection and the equipment stock to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on estimated historical shipment and an analysis of key market drivers for each kind of equipment.

In the preliminary analysis, DOE estimated historical shipments of commercial packaged boilers based on historical shipments of residential boilers and percent share of equipment classes in the AHRI model directory. During the preliminary public meeting and in written comments in response to DOE's preliminary analysis, the stakeholders questioned the data sources DOE used in its shipment analysis. PVI commented that the number of listings in the AHRI model directory and sales volumes of any particular equipment class are not correlated. (PVI, Public Meeting Transcript, No. 39 at pp. 158–159)

DOE recognizes that the AHRI directory of commercial packaged boilers is not an indicator of shipments in the industry and DOE modified its analysis approach to project shipments from 2014 through the end of the thirty year analysis period 2018–2047. DOE estimated historical shipments in its NOPR analysis from stock estimates based on the CBECS data series from 1979 to 2012. Since no CBECS survey was conducted prior to 1979, DOE used the trends in historical shipment data for residential boilers to estimate the historical shipments for the 1960–1978 time period. For estimation of stocks of gas and oil boilers, DOE used the data on growth of commercial building floor space for nine building types from AEO reports, percent floor space heated by CPB data from CBECS for these building types, and estimated saturations of commercial packaged boilers in these building types. From these stock estimates, DOE derived the shipments of gas-fired and oil-fired commercial packaged boilers using separate correlations between stock and shipment for gas and oil boilers. As noted in section IV.E.2 of this document, to obtain individual equipment class shipments from the aggregate values, DOE used the steam to

hot water and oil to gas shift trends DOE derived from the EPA database for space heating boilers. The equipment class shipments were further disaggregated between shipment to new construction and replacement/switch shipments.

To project equipment class shipments for new construction, DOE relied on building stock and floor space data obtained from the *AEO2015.* DOE assumes that CPB equipment is used in both commercial and residential multi-family dwellings. DOE estimated a total saturation rate for each equipment class based on prior CBECS data and size distribution of space heating boilers in an EPA database. For estimation of saturation rates in the new construction, DOE compared the area heated by boilers in commercial buildings for two different nine year periods (*i.e.,* 2000–2012 covered in CBECS 2012 and 1995–2003 covered in CBECS 2003). The new construction saturation rates were derived from the calculated saturation rate averaged over the 1995–2003 period and adjusted for the trends in the area heated by boilers, as well as oil to gas shift trends in CBECS 2012. The new construction saturation rates were projected into the future considering currently observed trends from CBECS 2012 and *AEO2015* (for oil to gas shifts). For residential multi-family units, DOE used RECS 2009 data and considered multi-family buildings constructed in the 9 year period from 2001 to 2009 as new construction for calculating the new construction saturation. DOE assumed that the new construction saturation trend in multi-family buildings for the period of analysis is identical to that for commercial buildings. DOE applied these new construction saturation rates to new building additions in each year over the analysis period (2018–2049), yielding shipments to new buildings. The building stock and additions projections from the *AEO2015* are shown in Table IV.9.

In addition, DOE received several comments on results of the preliminary shipment analysis. Lochinvar commented that the flat shipment projection from 2020 shown in the preliminary analysis is unrealistic under the growing national economy. (Lochinvar, No.34 at p. 6) Lochinvar further commented that the rapid decline of natural draft boilers assumed in the preliminary shipment analysis is highly overstated and the impact of any proposed efficiency standard on shipment of non-condensing, natural draft and steam boilers would be insignificant under less stringent efficiency standards, but could be significant under very stringent standards. (Lochinvar, No.34 at pp. 6 and 7) In the NOPR analysis, DOE analyzed eight equipment classes that are no longer separated by different draft types. Consequently, DOE's shipment projections were made on an aggregate basis including both natural draft and mechanical draft equipment for each equipment class examined. As to the impact of the stringency of standards on shipments of lower efficiency boilers like natural draft and steam boilers, DOE notes that its method of analysis takes how consumers and manufacturers are impacted by the proposed standards into full consideration.

AHRI commented that DOE should make an effort to determine the trend for numbers of boilers installed in new building construction in order to improve the shipments projection. (AHRI, Public Meeting Transcript, No. 39 at p. 168–169) In the NOPR shipment analysis, DOE used a different methodology that takes into consideration the current trends of usage of commercial packaged boilers for heating in commercial buildings as evidenced in CBECS 2012. This analysis could be refined further as more data from CBECS 2012 become available. AHRI also indicated that it is in discussions with its members to estimate shipments in different efficiency bins and historical shipment weighted efficiency levels. (AHRI, Public Meeting Transcript No. 39 at p. 96) DOE has not received this data from AHRI. ACEEE commented that it would like to see capacity class shipment estimates. (ACEEE, No. 39 at p. 50) DOE estimated percent share of different capacity bins across the equipment classes as detailed in the TSD chapter 9 of this document.

TABLE IV.9—BUILDING STOCK PROJECTIONS

Year	Total commercial building floorspace million sq. ft.	Commercial building floorspace additions million sq. ft.	Total residential building stock millions of units	Residential building additions millions of units
2014	81,879	1,546	114.80	1.06
2019	85,888	2,077	119.41	1.67
2020	86,938	2,089	120.51	1.69
2025	92,037	2,027	125.82	1.70
2030	96,380	1,987	131.09	1.66
2035	100,920	2,302	136.04	1.62
2040	106,649	2,408	140.96	1.62
2045	112,186	2,651	146.22	1.73
2048	115,646	2,808	149.48	1.77

Source: EIA *AEO2015.*

DOE seeks feedback on the assumptions used to develop historical and projected shipments of commercial packaged boilers and the representativeness of its estimates of projected shipments. DOE also requests information on historical shipments of commercial packaged boilers including shipments by equipment class for small, large, and very large commercial packaged boilers.

See section VII.E for a list of issues on which DOE seeks comment.

Commercial consumer purchase decisions are influenced by the purchase price and operating cost of the equipment, and therefore may be different across standards levels. To estimate the impact of the increase in relative price from a particular standard level on CPB shipments, DOE assumes that a portion of affected commercial consumers are more price-sensitive and would repair equipment purchased prior to enactment of the standard (in 2019) rather than replace it, extending the life of the equipment by 6 years. DOE models this impact using a relative price elasticity approach. When the extended repaired units fail after 6 more years, DOE assumes they will be replaced with new ones. A detailed description of the extended repair

calculations is provided in chapter 9 of the NOPR TSD.

In response to the extrapolation of a residential product price elasticity to commercial packaged boilers used in the preliminary analyses, interested parties noted concerns regarding the application of residential data to commercial equipment. Specifically, AHRI noted that residential and commercial boiler consumers have a different pricing structure and consumer relationship, and expressed concern over the use of residential data for commercial packaged boilers. (AHRI, Public Meeting Transcript, No. 39 at p. 169–170)

AHRI also noted that, because of the higher installation costs and time involved, commercial boiler owners would be more likely to repair an existing boiler than to replace it. (AHRI, No. 37 at p. 6) Similarly, ACEEE expressed concerns regarding price sensitivity and the application of a residential price elasticity to a commercial equipment and how the resulting numbers will be interpreted in downstream analyses. (ACEEE, Public Meeting Transcript, No. 39 at p. 172–173) Both AHRI and Raypak remarked that while an incremental increase in the cost associated with a new standard would not be expected to have a significant effect on shipments, larger increases associated with the cost of the standard would result in lower shipments as existing consumers would be more likely to repair an existing boiler rather than replace it. (AHRI, No. 37 at p. 7; Raypak, No. 35 at p. 7)

Given the AHRI and Raypak comments regarding the impact of increased repairs on shipments, DOE determined that use of price elasticity to model the extended repair option should be maintained for the NOPR analysis. In response to the AHRI and ACEEE comments, DOE revised the price elasticity from a residential product study to use sales and price data for commercial unitary air conditioners [61] to more closely approximate an elasticity for commercial equipment (data specific to commercial packaged boilers were not available). DOE notes that it performed two sensitivity analyses—one without the use of the price elasticity, and one in which the price elasticity was increased ten-fold. The results of the sensitivity analyses are presented in appendix 10D of the NOPR TSD.

The resulting shipment projection is shown in Table IV.10.

TABLE IV.10—SHIPMENTS OF COMMERCIAL PACKAGED BOILER EQUIPMENT

[Thousands]

Year	SGHW CPB *	LGHW CPB	SOHW CPB	LOHW CPB	SGST CPB	LGST CPB	SOST CPB	LOST CPB
2014	14,270	2,282	792	114	1,933	251	416	97
2019	16,907	2,707	868	119	1,854	240	399	93
2020	17,201	2,754	877	121	1,838	238	396	92
2025	18,512	2,963	910	125	1,663	216	380	88
2030	19,066	3,052	932	129	1,406	182	364	85
2035	21,025	3,365	969	133	1,135	147	349	81
2040	22,953	3,674	1,014	139	846	110	335	78
2045	24,363	3,900	1,053	144	522	68	321	75
2048	25,409	4,067	1,076	147	312	40	313	73

* SGHW = Small Gas-fired Hot Water; LGHW = Large Gas-fired Hot Water; SOHW = Small Oil-fired Hot Water; LOHW = Large Oil-fired Hot Water; SGST = Small Gas-fired Steam; LGST = Large Gas-fired Steam; SOST = Small Oil-fired Steam; LOST = Large Oil-fired Steam.

Because the estimated energy usage of CPB equipment differs by commercial and residential setting, the NIA employs the same fractions of shipments (or sales) to commercial and to residential commercial consumers as is used in the LCC analysis. The fraction of shipments by type of commercial consumer is shown in Table IV.11.

TABLE IV.11—SHIPMENT SHARES BY TYPE OF COMMERCIAL CONSUMER

Equipment class	Commercial (%)	Residential (%)
Small Gas-Fired Hot Water Commercial Packaged Boiler	85	15
Large Gas-Fired Hot Water Commercial Packaged Boiler	85	15
Small Oil-Fired Hot Water Commercial Packaged Boiler	85	15
Large Oil-Fired Hot Water Commercial Packaged Boiler	85	15
Small Gas-Fired Steam Commercial Packaged Boiler	85	15
Large Gas-Fired Steam Commercial Packaged Boiler	85	15
Small Oil-Fired Steam Commercial Packaged Boiler	85	15
Large Oil-Fired Steam Commercial Packaged Boiler	85	15

DOE requests feedback on the assumptions used to estimate the impact of relative price increases on commercial packaged boiler shipments due to proposed standards.

See section VII.E for a list of issues on which DOE seeks comment.

H. National Impact Analysis

The national impact analysis (NIA) analyzes the effects of a potential energy conservation standard from a national perspective. The NIA assesses the national energy savings (NES) and the national NPV of total consumer costs and savings that would be expected to result from amended standards at specific efficiency levels. The NES and NPV are analyzed at specific efficiency levels (*i.e.,* TSLs) for each equipment class of CPB equipment. DOE calculates the NES and NPV based on projections

[61] U.S. Department of Energy, *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Distribution Transformers, Chapter 9 Shipments Analysis* (April 2013).

of annual equipment shipments, along with the annual energy consumption and total installed cost data from the LCC analysis. For the NOPR analysis, DOE forecasted the energy savings, operating cost savings, equipment costs, and NPV of commercial consumer benefits for equipment sold from 2019 through 2048—the year in which the last standards-compliant equipment would be shipped during the 30-year analysis period.

To make the analysis more accessible and transparent to all interested parties, DOE uses a computer spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL.[62] Chapter 10 and appendix 10A of the NOPR TSD explain the models and how to use them, and interested parties can review DOE's analyses by interacting with these spreadsheets. The models and documentation are available on DOE's Web site.[63] The NIA calculations are based on the annual energy consumption and total installed cost data from the energy use analysis and the LCC analysis. DOE forecasted the lifetime energy savings, energy cost savings, equipment costs, and NPV of consumer benefits for each equipment class for equipment sold from 2019 through 2048—the year in which the last standards-compliant equipment would be shipped during the 30-year analysis period.

DOE evaluated the impacts of potential new and amended standards for commercial packaged boilers by comparing no-new-standards-case projections with standards-case projections. The no-new-standards-case projections characterize energy use and consumer costs for each equipment class in the absence of new and amended energy conservation standards. DOE compared these projections with those characterizing the market for each equipment class if DOE were to adopt amended standards at specific energy efficiency levels (*i.e.,* the standards cases) for that class. For the standards cases, DOE assumed a ''roll-up'' scenario in which equipment at efficiency levels that do not meet the standard level under consideration would ''roll up'' to the efficiency level that just meets the proposed standard level, and equipment already being purchased at efficiency levels at or above the proposed standard level would remain unaffected.

Unlike the LCC analysis, the NES analysis does not use distributions for inputs or outputs, but relies on national average equipment costs and energy costs. DOE used the NES spreadsheet to perform calculations of energy savings and NPV using the annual energy consumption, maintenance and repair costs, and total installed cost data from the LCC analysis. The NIA also uses projections of energy prices and building stock and additions from the *AEO2015* Reference case. Additionally, DOE analyzed scenarios that used inputs from the *AEO2015* Low Economic Growth and High Economic Growth cases. These cases have lower and higher energy price trends, respectively, compared to the reference case. NIA results based on these cases are presented in appendix 10D of the NOPR TSD.

A detailed description of the procedure to calculate NES and NPV and inputs for this analysis are provided in chapter 10 of the NOPR TSD. Table IV.12 summarizes the inputs and methods DOE used for the NIA analysis.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
First Year of Analysis Period	2019.
No-New-Standards Case Forecasted Efficiencies.	Efficiency distributions are forecasted based on historical efficiency data.
Standards Case Forecasted Efficiencies	Used a ''roll-up'' scenario.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates forecast of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit, and energy prices.
Energy Prices	*AEO2015* forecasts (to 2040) and extrapolation through 2110.
Energy Site-to-Source Conversion Factors	Varies yearly and is generated by NEMS-BT.
Discount Rate	3 and 7 percent real.
Present Year	Future expenses discounted to 2015, when the NOPR will be published.

1. Equipment Efficiency in the No-New-Standards Case and Standards Cases

As described in section IV.F.9 of this document, DOE uses a no-new-standards-case distribution of efficiency levels to project what the CPB equipment market would look like in the absence of amended standards. DOE applied the percentages of models within each efficiency range to the total unit shipments for a given equipment class to estimate the distribution of shipments for the no-new-standards case. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a no-new-standards-case scenario and for standards-case scenarios.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that compliance would be required with amended standards. The analysis starts with the no-new-standards-case distributions wherein shipments are assumed to be distributed across efficiency levels. When potential standard levels above the base level are analyzed, as the name implies, the shipments in the no-new-standards case that did not meet the efficiency standard level being considered would roll up to meet the amended standard level. This information also suggests that equipment efficiencies in the no-new-standards case that were above the standard level under consideration would not be affected.

[62] DOE understands that MS Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of MS Excel as the basis for the spreadsheet models provides interested parties with access to the models within a familiar context.

[63] DOE's Web page on commercial packaged boiler equipment is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/74.*

The estimated efficiency trends in the no-new-standards-case and standards cases are described in chapter 10 of the NOPR TSD.

2. National Energy Savings

For each year in the forecast period, DOE calculates the national energy savings for each standard level by multiplying the shipments of commercial packaged boilers by the per-unit annual energy savings. Cumulative energy savings are the sum of the annual energy savings over the lifetime of all equipment shipped during 2019–2048.

The inputs for determining the NES are (1) annual energy consumption per unit, (2) shipments, (3) equipment stock, and (4) site-to-source and full-fuel-cycle conversion factors.

DOE calculated the NES associated with the difference between the per-unit energy use under a standards-case scenario and the per-unit energy use in the no-new-standards case. The average energy per unit used by the CPB equipment stock gradually decreases in the standards case relative to the no-new-standards case as more-efficient CPB units gradually replaces less-efficient units.

Unit energy consumption values for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the per-unit energy reduction (*i.e.,* the difference between the energy directly consumed by a unit of equipment in operation in the no-new-standards case and the standards case) for each class of CPB equipment for each year of the analysis period. The analysis period begins with the expected compliance date of amended energy conservation standards (*i.e.,* 2019, or 3 years after the publication of a final rule issued as a result of this rulemaking). Second, DOE determined the annual site energy savings by multiplying the stock of each equipment class by vintage (*i.e.,* year of shipment) by the per-unit energy reduction for each vintage (from step one). Third, DOE converted the annual site electricity savings into the annual amount of energy saved at the source of electricity generation (the source or primary energy), using a time series of conversion factors derived from the latest version of EIA's National Energy Modeling System (NEMS). Finally, DOE summed the annual primary energy savings for the lifetime of units shipped over a 30-year period to calculate the total NES. DOE performed these calculations for each efficiency level considered for CPB equipment in this rulemaking.

DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, primary energy savings includes the energy lost in the power system in the form of losses as well as the energy input required at the electric generation station in order to convert and deliver the energy required at the site of consumption. DOE uses a multiplicative factor called ''site-to-source conversion factor'' to convert site energy consumption to primary energy consumption. In response to the recommendations of a committee on ''Point-of-Use and Full- Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of EIA's NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register**, in which DOE explained its determination that NEMS is a more appropriate tool for its FFC analysis as well as its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). DOE received one comment, which was supportive of the use of NEMS for DOE's FFC analysis.[64] The approach used for this NOPR analysis, the site-to-source ratios, and the FFC multipliers that were applied, are described in appendix 10B of the NOPR TSD. NES results are presented in both primary and FFC savings in section V.B.3 of this document.

3. Net Present Value of Consumer Benefit

The inputs for determining the NPV of the total costs and benefits experienced by consumers of the considered equipment are (1) total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor. DOE calculates the lifetime net savings for equipment shipped each year as the difference between total operating cost savings and increases in total installed costs. DOE calculates lifetime operating cost savings over the life of each commercial packaged boiler shipped during the forecast period.

a. Total Annual Installed Cost

DOE determined the difference between the equipment costs under the standard-level case and the no-new-standards case in order to obtain the net equipment cost increase resulting from the higher standard level. As noted in section IV.F.1 of this document, DOE used a constant real price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time.

b. Total Annual Operating Cost Savings

DOE determined the difference between the no-new-standards-case operating costs and the standard-level operating costs in order to obtain the net operating cost savings from each higher efficiency level. DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year.

c. Discount Rate

DOE discounted the annual net savings (or expenses) to 2015 for CPB equipment bought on or after 2019 and summed the discounted values to provide the NPV for an efficiency level.

In accordance with the OMB's guidelines on regulatory analysis,[65] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the

[64] Docket ID: EERE–2010–BT–NOA–0028–0048, comment by Kirk Lundblade. Available at *http://www.regulations.gov/#!docketDetail;D=EERE-2010-BT-NOA-0028.*

[65] Office of Management and Budget, section E in *OMB Circular A–4* (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4*).

Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

I. Consumer Subgroup Analysis

In analyzing the potential impacts of new or amended standards, DOE evaluates impacts on identifiable groups (*i.e.,* subgroups) that may be disproportionately affected by a national energy conservation standard. DOE received comments from manufacturers regarding identification of subgroups. Lochinvar and AHRI suggested that DOE talk to mechanical contractors, design engineers, and the Association of Facilities Engineers to determine appropriate consumer subgroups. (Lochinvar, No. 34 at p. 7; AHRI, No. 37 at p. 7) For the NOPR analysis, DOE identified 'low-income households for residential and small businesses for commercial sectors as subgroups and evaluated impacts using the LCC spreadsheet model. The consumer subgroup analysis is discussed in detail in chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

DOE performed an MIA to determine the financial impact of amended energy conservation standards on manufacturers of commercial packaged boilers and to estimate the potential impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are industry cost structure data, shipment data, product costs, and assumptions about markups and conversion costs. The key output is the industry net present value (INPV). DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a no-new-standards case and various TSLs (the standards case). The difference in INPV between the no-new-standards case and standards cases represents the financial impact of amended energy conservation standards on CPB manufacturers. DOE used different sets of assumptions (markup scenarios) to represent the uncertainty surrounding potential impacts on prices and manufacturer profitability as a result of amended standards. These different assumptions produce a range of INPV results. The qualitative part of the MIA addresses the proposed standard's potential impacts on manufacturing capacity and industry competition, as well as any differential impacts the proposed standard may have on any particular subgroup of manufacturers. The qualitative aspect of the analysis also addresses product characteristics, as well as any significant market or product trends. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared an industry characterization based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. As part of its profile of the residential boilers industry, DOE also conducted a top-down cost analysis of manufacturers in order to derive preliminary financial inputs for the GRIM (*e.g.,* sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including company SEC 10–K filings,[66] corporate annual reports, the U.S. Census Bureau's Economic Census,[67] and Hoover's reports [68] to conduct this analysis.

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways. These include: (1) Creating a need for increased investment; (2) raising production costs per unit; and (3) altering revenue due to higher per-unit prices and possible changes in sales volumes. DOE estimated industry cash flows in the GRIM at various potential standard levels using industry financial parameters derived in Phase 1.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with a variety of manufacturers that represent approximately 40 percent of domestic CPB product offerings covered by this rulemaking. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM. DOE also solicited information about manufacturers' views of the industry as a whole and their key concerns regarding this rulemaking. See section IV.J.3 for a description of the key issues manufacturers raised during the interviews.

Additionally, in Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected by amended energy conservation standards. DOE identified one subgroup (small manufacturers) for a separate impact analysis.

To identify small businesses for this analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. To be categorized as a small business under North American Industry Classification System (NAICS) code 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing,'' a residential boiler manufacturer and its affiliates may employ a maximum of 500 employees. The 500-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified 34 CPB companies that qualify as small businesses. The CPB small manufacturer subgroup is discussed in section 0 of this document and in chapter 12 of the NOPR TSD.

1. Government Regulatory Impact Model

DOE uses the GRIM to analyze the financial impacts of amended energy conservation standards on the CPB industry. Standards will potentially require additional investments, raise production costs, and affect revenue through higher prices and, possibly, lower sales. The GRIM is designed to take into account several factors as it calculates a series of annual cash flows for the year standards take effect and for several years after implementation. These factors include annual expected revenues, costs of sales, increases in labor and assembly expenditures, selling and general administration costs, and taxes, as well as capital expenditures, depreciation and maintenance related to new standards. Inputs to the GRIM include manufacturing costs, shipments forecasts, and price forecasts developed in other analyses. DOE also uses

[66] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://www.sec.gov/edgar/searchedgar/companysearch.html*).

[67] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2013) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

[68] Hoovers Inc. Company Profiles, Various Companies (Available at: *http://www.hoovers.com*).

industry financial parameters as inputs for the GRIM analysis, which it develops by collecting and analyzing publically available industry financial information. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2014 (the base year of the analysis) and continuing to 2048 (the end of the analysis period). DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For CPB manufacturers, DOE used a real discount rate of 9.5 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews. DOE also used the GRIM to model changes in costs, shipments, investments, and manufacturer margins that could result from amended energy conservation standards.

After calculating industry cash flows and INPV, DOE compared changes in INPV between the no new standards case and each standard level. The difference in INPV between the no new standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers at a particular TSL. As discussed previously, DOE collected this information on GRIM inputs from a number of sources, including publically-available data and confidential interviews with a number of manufacturers. GRIM inputs are discussed in more detail in the next section. The GRIM results are discussed in section V.B.2. Additional details about the GRIM, discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components, which are typically more costly than baseline components. The changes in the manufacturer production cost (MPC) of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs for each considered efficiency level that were calculated using product pricing found in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from its teardown analysis (described in chapter 5 of the TSD) to disaggregate the MPCs into material, labor, and overhead costs. To determine the industry manufacturer selling price-efficiency relationship, DOE used data from the market and technology assessment, publicly available equipment literature and research reports, and information from manufacturers, distributors, and contractors. Using these resources, DOE calculated manufacturer selling prices of commercial packaged boilers for a given fuel input rate (representative fuel input rate) for each manufacturer at different efficiency levels spanning from the minimum allowable standard (*i.e.,* baseline level) to the maximum technologically feasible efficiency level. DOE then used product markups along with the product pricing to determine MPCs for each efficiency level. These cost breakdowns and product markups were validated and revised with input from manufacturers during manufacturer interviews.

Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis from 2015 (the base year) to 2048 (the end year of the analysis period). The shipments model divides the shipments of commercial packaged boilers into specific market segments. The model starts from a historical base year and calculates retirements and shipments by market segment for each year of the analysis period. This approach produces an estimate of the total product stock, broken down by age or vintage, in each year of the analysis period. In addition, the product stock efficiency distribution is calculated for the no-new-standards case and for each standards case for each product class. The NIA shipments forecasts are, in part, based on a roll-up scenario. The forecast assumes that a product in the no-new-standards case that does not meet the standard under consideration would ''roll up'' to meet the amended standard beginning in the compliance year of 2019. See section IV.G of this document and chapter 9 of the NOPR TSD for additional details.

Equipment and Capital Conversion Costs

Amended energy conservation standards would cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs; and (2) product conversion costs. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards.

To evaluate the level of capital conversion expenditures, manufacturers would likely incur to comply with amended energy conservation standards, DOE used manufacturer interviews to gather data on the anticipated level of capital investment that would be required at each efficiency level. Based on equipment listings provided by AHRI and ABMA, DOE developed a market-share-weighted manufacturer average capital expenditure which it then scaled up and applied to the entire industry. DOE supplemented manufacturer comments and tailored its analyses with information obtained during engineering analysis described in chapter 5 of the TSD.

DOE assessed the product conversion costs at each considered efficiency level by integrating data from quantitative and qualitative sources. DOE considered market-share-weighted feedback regarding the potential costs of each efficiency level from multiple manufacturers to estimate product conversion costs (*e.g.,* R&D expenditures, certification costs). DOE combined this information with product listings to estimate how much manufacturers would have to spend on product development and product testing at each efficiency level. Manufacturer data was aggregated to better reflect the industry as a whole and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the amended standards. The conversion cost figures used in the GRIM can be found in section V.B.2 of this notice. For additional information on the estimated product and capital conversion costs, see chapter 12 of the NOPR TSD.

DOE received limited information on the conversion costs for oil-fired products in interviews. Using product listing counts, DOE scaled the feedback on gas-fired equipment to estimate the conversion cost for oil-fired equipment.

DOE requests additional information from manufacturers regarding conversion costs for oil-fired products. Specifically, DOE is interested in estimates of capital conversion costs at each TSL and the change in manufacturing equipment associated with those costs.

See section VII.E for a list of issues on which DOE seeks comment.

b. Government Regulatory Impact Model Scenarios

Markup Scenarios

As discussed in the previous section, MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the inputted MPCs, result in varying revenue and cash-flow impacts.

Under the preservation of gross margin percentage markup scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that following amended standards, manufacturers would be able to maintain the same amount of profit as a percentage of revenue at all efficiency levels within a product class. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly-available financial information for manufacturers of commercial packaged boilers, as well as comments from manufacturer interviews, DOE assumed the average non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.41 for small gas-fired hot water, small gas-fired steam boilers, large gas-fired hot water boilers, and large oil-fired hot water boilers; 1.40 for small oil-fired hot water boilers; 1.38 for small oil-fired steam boilers; and 1.37 for large gas-fired and oil-fired steam boilers. This markup scenario represents the upper bound of the CPB industry's profitability in the standards case because manufacturers are able to fully pass through additional costs due to standards to consumers.

DOE decided to include the preservation of per-unit operating profit scenario in its analysis because manufacturers stated that they do not expect to be able to mark up the full cost of production in the standards case, given the highly competitive nature of the CPB market. In this scenario, manufacturer markups are set so that operating profit one year after the compliance date of amended energy conservation standards is the same as in the no-new-standards case on a per-unit basis. In other words, manufacturers are not able to garner additional operating profit from the higher production costs and the investments that are required to comply with the amended standards; however, they are able to maintain the same operating profit in the standards case that was earned in the no-new-standards case. Therefore, operating margin in percentage terms is reduced between the no-new-standards case and standards case. DOE adjusted the manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case. The preservation of per-unit operating profit markup scenario represents the lower bound of industry profitability in the standards case. This is because manufacturers are not able to fully pass through to consumers the additional costs necessitated by CPB standards, as they are able to do in the preservation of gross margin percentage markup scenario.

2. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 95 percent of the CPB market by revenue. DOE contractors endeavor to conduct interviews with a representative cross section of manufacturers (including large and small manufacturers, covering all equipment classes and product offerings). DOE contractors reached out to all the small business manufacturers that were identified as part of the analysis, as well as larger manufacturers that have significant market share in the CPB market. These interviews were in addition to those DOE conducted as part of the engineering analysis. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the CPB industry. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the CPB industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

In interviews, DOE asked manufacturers to describe their major concerns with potential standards arising from a rulemaking involving commercial packaged boilers. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this notice. The following sections highlight the most significant manufacturers' statements that helped shape DOE's understanding of potential impacts of an amended standard on the industry. Manufacturers raised a range of general issues for DOE to consider, including a diminished ability to serve the replacement market, concerns that condensing boilers may not perform as rated without heating system modifications, and concerns about reduced product durability. Below, DOE summarizes these issues, which were raised in manufacturer interviews, in order to obtain public comment and related data.

a. Testing Burden

Several manufacturers expressed concern regarding the testing burden associated with amended energy conservation standards. Manufacturers noted that amended standards and an altered test procedure will result in them having to retest all of their equipment, which they pointed out is a costly and logistically challenging process due to the large size of the equipment and the fact that a lot of commercial packaged boilers are customized for particular customers. Manufacturers stated that retesting all of their models would put a strain on their lab resources and would be financially burdensome.

b. Condensing Boilers Not Appropriate for Many Commercial Applications

Several manufacturers expressed concern that they would only be able to

meet certain efficiency levels with condensing technology in gas-fired hot water equipment. They argued that this technology would not be effective in many commercial applications. Several manufacturers pointed out that that condensing boilers will not operate in condensing mode in larger applications and they will not realize any efficiency gains when buildings and heat distribution systems are not designed around condensing technology. Manufacturers noted that it is very difficult to sell condensing boilers in the replacement market (which, according to manufacturers, comprises about 90% of boiler sales) because customers would have to make expensive retrofit changes to venting and distribution systems.

Manufacturers also pointed out that condensing boilers may not save energy in commercial applications, even if they were to operate in condensing mode. Several manufacturers argued that condensing equipment requires higher pump force power and higher horsepower blower motors, and thus they consume more electricity. They noted that even if the boiler were operating in condensing mode, the fuel savings could be partially offset by higher electricity use.

c. Not Many American Companies Produce Condensing Heat Exchangers

Several manufacturers expressed concern that if DOE were to mandate efficiency levels that could only be achieved with condensing technology for gas-fired hot water equipment, companies would likely face high conversion costs. While many companies in the U.S. currently produce condensing equipment, most condensing heat exchangers are sourced from European or Asian companies. American companies would have to decide whether to develop their own condensing heat exchanger production capacity or assemble a baseline product around a condensing heat exchanger. Developing condensing heat exchanger production capacity would require large capital investments in new production lines and new equipment to handle the different metals that are required. Companies that are currently heavily invested in lower-efficiency products may not be able to make these investments. The other option would be for companies to drop their noncondensing equipment and assemble equipment around a sourced heat exchanger. In this scenario, companies would lose a significant piece of the value chain.

d. Reduced Product Durability and Reliability

Several manufacturers commented that higher-efficiency condensing boilers on the market have not demonstrated the same level of durability and reliability as lower-efficiency products. Manufacturers stated that condensing products require more upkeep and maintenance and generally do not last as long as non-condensing products. Several manufacturers pointed out that they generally incur large after-sale costs with their condensing products because of additional warranty claims. Maintenance calls for these boilers require more skilled technicians and occur more frequently than they do with non-condensing boilers.

3. Discussion of Comments

During the preliminary analysis public meeting, interested parties commented on the assumptions and results of the preliminary analysis. Oral and written comments addressed several topics, including concerns regarding the impact condensing technology has on the industry.

a. Impacts on Condensing Technology

In written comments, Lochinvar expressed concern that setting a stringent standard, specifically at condensing levels, will cause significant impacts to the CPB industry. If a condensing level is adopted by DOE, it is possible that natural draft boilers and steam boilers will become obsolete in the CPB industry. To limit significantly negative industry impacts on manufacturers and product offerings, Lochinvar recommends that DOE does not set a standard that requires condensing technology. (Lochinvar, No. 31 at p. 6)

Additionally, Lochinvar states that a majority of heat exchangers for condensing technology are imported. Lochinvar believes overhead and equipment used to produce non-condensing heat exchangers may become obsolete if condensing technology is effectively mandated. (Lochinvar, Public Meeting Transcript, No. 39 at p. 205)

While DOE acknowledges that a stringent standard, specifically condensing technology, may negatively impact INPV and limit industry product offerings, the proposed standards in this document do not mandate condensing technology. Moreover, EPCA requires DOE to set forth energy conservation standards that are technologically feasible and economically justified and would result in significant additional energy conservation, supported by clear and convincing evidence. 42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i). In determining whether a standard is economically justified, DOE considers, to the greatest extent practicable, the following factors: (1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard; (2) the savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, or in the initial charges for, or maintenance expenses of the covered products which are likely to result from the imposition of the standard; (3) the total projected amount of energy (or as applicable, water) savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or performance of the covered products likely to result directly from the imposition of the standard; (5) the impact of any lessening competition, as determined in the writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors the Secretary considers relevant.

As such, DOE assesses impacts on competition, manufacturing capacity, employment, cumulative regulatory burden and impacts on INPV in the Manufacturer Impact Analysis, which is discussed in greater detail in chapter 12 of the CPB NOPR TSD.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO2015,* as described in section IV.M of this document. The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO2015,* as described in section IV.M of this document. The

methodology is described in chapter 13 and chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[69] The FFC upstream emissions are estimated based on the methodology described in appendix 10D of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_{2eq}). Gases are converted to CO_{2eq} by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[70] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

Because the on-site operation of commercial packaged boilers requires use of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards. Site emissions were estimated using emissions intensity factors from an EPA publication.[71]

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous states and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern states and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the DC Circuit, but it remained in effect.[72] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[73] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[74] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[75] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015. On July 28, 2015, the DC Circuit issued its opinion regarding CSAPR on remand from the Supreme Court. The court largely upheld CSAPR, but remanded to EPA without vacateur certain states' emissions budgets for reconsideration.[76]

EIA was not able to incorporate CSAPR into *AEO2015,* so DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force. However, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[77] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

[69] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[70] Intergovernmental Panel on Climate Change. Anthropogenic and Natural Radiative Forcing. Chapter 8 in *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.* Stocker, T.F., D. Qin, G.–K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex, and P.M. Midgley, Editors. 2013. Cambridge University Press: Cambridge, United Kingdom and New York, NY, USA.

[71] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources (1998). Available at: *http://www.epa.gov/ttn/chief/ap42/index.html*).

[72] *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[73] *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[74] See *EPA* v. *EME Homer City Generation,* 134 S. Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[75] See *Georgia* v. *EPA,* Order (D. C. Cir. filed October 23, 2014) (No. 11–1302).

[76] See *EME Homer City Generation, LP* v. *EPA 795 F.3d 118 (D.C. Cir. 2015).*

[77] DOE notes that the Supreme Court remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions (see chapter 13 of the NOPR TSD for further discussion). Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

CAIR established a cap on NO_X emissions in 28 eastern states and the District of Columbia.[78] Energy conservation standards are expected to have little effect on NO_X emissions in those states covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the states not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this document for these states.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2015,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this document.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A recent report from the National Research Council [79] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying the future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing CO_2 emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approaches and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC—the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and

[78] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[79] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models—climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher than expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time.

Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[80] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.13 presents the values in the 2010 interagency group report,[81] which is reproduced in appendix 14A of the NOPR TSD.

TABLE IV.13—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this NOPR analysis were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[82]

Table IV.14 shows the updated sets of SCC estimates from the latest interagency update in five-year increments from 2010 to 2050. Appendix 14B of the NOPR TSD provides the full set of values and a discussion of the revisions made in 2015. The central value that emerges is the average SCC across models at a 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.14—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197

[80] It is recognized that this caculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[81] Interagency Working Group on Social Cost of Carbon, United States Government, *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[82] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

TABLE IV.14—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050—Continued
[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytic challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. Although uncertainties remain, the revised estimates used for this NOPR are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, and with input from the public. In November 2013, OMB announced a new opportunity for public comments on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586 (Nov. 26, 2013). In July 2015, OMB published a detailed summary and formal response to the many comments that were received.[83] It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters. DOE stands ready to work with OMB and the other members of the interagency working group on further review and revision of the SCC estimates as appropriate.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions resulting from this proposed rule, DOE used the values from the 2013 interagency report, adjusted to 2014$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four SCC cases specified, the values used for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 states not affected by the CAIR. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent (see chapter 14 of the NOPR TSD).[84] DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the 2030 value. DOE multiplied the emissions reduction in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make appropriate updates of the current analysis for the final rulemaking. DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO2015.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. See chapter 15 of the NOPR TSD for further details regarding the utility impact analysis.

N. Employment Impact Analysis

Employment impacts from new or amended energy conservation standards include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject

[83] Available at: *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.*

[84] U.S. Environmental Protection Agency, *Sector-based $PM_{2.5}$ Benefit Per Ton Estimates* (Available at: *http://www2.epa.gov/benmap/sector-based-pm25-benefit-ton-estimates.*

to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient equipment. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to (1) reduced spending by end users on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the purchase of new equipment, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital intensive and less labor intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor intensive sector (*e.g.,* the utility sector) to more labor intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase because of shifts in economic activity resulting from amended standards.

For the standard levels considered in this document, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies, Version 3.1.1 (ImSET). ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR analysis, DOE used ImSET only to estimate short-term employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results

The following sections address the results from DOE's analyses with respect to potential amended energy conservation standards for the CPB equipment that is the subject of this rulemaking. They address the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for CPB equipment, and the standard levels that DOE is proposing in this NOPR. Additional details regarding DOE's analyses are contained in the relevant TSD chapters supporting this NOPR.

A. Trial Standard Levels

At the NOPR stage, DOE develops trial standard levels (TSLs) for consideration. DOE established TSLs for this document by grouping different efficiency levels, which are potential standard levels for each equipment class. DOE analyzed the benefits and burdens of the TSLs developed for this proposed rule. DOE examined five TSLs for commercial packaged boilers.

Table V.1 and Table V.2 present the TSLs analyzed and the corresponding efficiency levels for each equipment class. The efficiency levels in each TSL can be characterized as follows:

- TSL 5 corresponds to the max-tech efficiency level for each equipment class.
- TSL 4 is composed of the efficiency levels corresponding to the maximum NPV at a 7% discount rate for each equipment class.
- TSL 3 is composed of a mixture of condensing and non-condensing efficiency levels.
- TSL 2 and TSL 1 are each composed of a mixture of non-condensing efficiency levels only.

A more detailed description of TSLs may be found in appendix 10C of the TSD.

TABLE V.1—TRIAL STANDARD LEVELS FOR COMMERCIAL PACKAGED BOILERS BY EFFICIENCY LEVEL

Equipment class	Trial standard level				
	1	2	3	4	5
	EL	EL	EL	EL	EL
Small Gas-Fired Hot Water Commercial Packaged Boilers	3	4	6	7	7
Large Gas-Fired Hot Water Commercial Packaged Boilers	2	3	3	5	5
Small Oil-Fired Hot Water Commercial Packaged Boilers ..	4	4	4	5	6
Large Oil-Fired Hot Water Commercial Packaged Boilers ..	1	2	2	3	4
Small Gas-Fired Steam Commercial Packaged Boilers	3	4	4	5	5
Large Gas-Fired Steam Commercial Packaged Boilers	4	5	5	6	6
Small Oil-Fired Steam Commercial Packaged Boilers	1	2	2	3	3
Large Oil-Fired Steam Commercial Packaged Boilers	1	2	2	3	3

TABLE V.2—TRIAL STANDARD LEVELS FOR COMMERCIAL PACKAGED BOILERS BY THERMAL EFFICIENCY AND COMBUSTION EFFICIENCY

Equipment class	Trial standard level *									
	1		2		3		4		5	
	E_T	E_C	E_T	E_C	E_T	E_C	E_T	E_C	E_T	E_C
Small Gas-Fired Hot Water Commercial Packaged Boilers	84%	n/a	85%	n/a	95%	n/a	99%	n/a	99%	n/a
Large Gas-Fired Hot Water Commercial Packaged Boilers	n/a	84%	n/a	85%	n/a	85%	n/a	97%	n/a	97%
Small Oil-Fired Hot Water Commercial Packaged Boilers ..	87%	n/a	87%	n/a	87%	n/a	88%	n/a	97%	n/a
Large Oil-Fired Hot Water Commercial Packaged Boilers ..	n/a	86%	n/a	88%	n/a	88%	n/a	89%	n/a	97%
Small Gas-Fired Steam Commercial Packaged Boilers	80%	n/a	81%	n/a	81%	n/a	83%	n/a	83%	n/a
Large Gas-Fired Steam Commercial Packaged Boilers	81%	n/a	82%	n/a	82%	n/a	84%	n/a	84%	n/a
Small Oil-Fired Steam Commercial Packaged Boilers	83%	n/a	84%	n/a	84%	n/a	86%	n/a	86%	n/a
Large Oil-Fired Steam Commercial Packaged Boilers	83%	n/a	85%	n/a	85%	n/a	87%	n/a	87%	n/a

* E_T stands for thermal efficiency, and E_C stands for combustion efficiency.

B. Economic Justification and Energy Savings

As discussed in section II.A of this document, EPCA provides seven factors to be evaluated in determining whether a more stringent standard for commercial packaged boilers is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i)) The following sections generally discuss how DOE is addressing each of those factors in this rulemaking.

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on CPB consumers by looking at the effects standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of proposed standards on CPB consumers, DOE conducted LCC and PBP analyses for each TSL. In general, higher-efficiency equipment would affect consumers in two ways: (1) Annual operating expense would decrease, and (2) purchase price would increase. LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy cost, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD and section IV.F of this document discuss the detailed information on the LCC and PBP analysis.

DOE's LCC and PBP analyses provided key outputs for each efficiency level above the baseline for each equipment class, as reported in Table V.3 to Table V.18. Two tables are presented for each equipment class. The first table presents the results of the LCC analysis by efficiency levels and TSLs and shows installed costs, first year's operating cost, lifetime operating cost, and mean LCC, as well as simple PBP. The second table presents the percentage of consumers who experience a net cost, as well as the mean LCC savings for all commercial consumers.

TABLE V.3—AVERAGE LCC AND SIMPLE PBP RESULTS BY EFFICIENCY LEVEL FOR SMALL GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$25,571	$12,551	$218,155	$243,727	.....
	1	26,427	12,420	215,863	242,290	6.5
	2	27,350	12,292	213,627	240,977	6.9
1	3	30,302	12,046	209,326	239,627	9.4
2	4	31,573	11,927	207,252	238,826	9.6
	5	40,896	11,587	202,027	242,924	15.9
3	6	41,637	11,371	198,263	239,901	13.6
4, 5	7	47,145	10,969	191,355	238,500	13.6

Note: The results for each TSL are calculated assuming that all consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR SMALL GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
	1	2	$106
	2	4	318
1	3	20	223
2	4	23	521
	5	46	−2,031
3	6	42	302
4, 5	7	56	1,656

*The calculation includes consumers with zero LCC savings (no impact).

TABLE V.5—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Average costs (2014$)				Simple payback period *years*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$94,053	$49,620	$842,932	$936,985	.....
.....	1	99,700	49,025	832,857	932,556	9.5
1	2	106,020	48,445	823,055	929,074	10.2
2, 3	3	113,093	47,881	813,516	926,609	11.0
.....	4	169,571	45,655	779,745	949,315	19.0
4, 5	5	178,725	44,197	755,202	933,927	15.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR LARGE GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
.....	1	10	$924
1	2	21	2,419
2, 3	3	27	3,647
.....	4	57	−13,074
4, 5	5	56	2,062

*The calculation includes consumers with zero LCC savings (no impact).

TABLE V.7—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SMALL OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$27,566	$17,797	$323,016	$350,583	.....
.....	1	28,457	17,607	319,481	347,938	4.7
.....	2	29,414	17,422	316,032	345,447	4.9
.....	3	30,444	17,242	312,666	343,110	5.2

TABLE V.7—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SMALL OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS—Continued

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
1, 2, 3	4	32,742	16,893	306,170	338,912	5.7
4	5	34,666	16,724	303,036	337,701	6.6
5	6	51,938	16,087	292,517	344,455	14.3

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR SMALL OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
	1	8	$1,040
	2	13	2,544
	3	16	4,208
1, 2, 3	4	20	7,799
4	5	26	8,939
5	6	56	2,333

*The calculation includes consumers with zero LCC savings (no impact).

TABLE V.9—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$66,053	$101,507	$1,804,595	$1,870,649	.....
1	1	74,942	99,348	1,766,049	1,840,992	4.1
2, 3	2	86,080	97,281	1,729,192	1,815,272	4.7
4	3	92,980	96,281	1,711,365	1,804,345	5.2
5	4	159,031	93,901	1,670,295	1,829,325	12.2

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR LARGE OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
1	1	1	$10,108
2, 3	2	5	30,834
4	3	7	40,983

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR LARGE OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS—Continued

TSL	Combustion efficiency (E_C) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
5	4	46	17,076

*The calculation includes consumers with zero LCC savings (no impact).

TABLE V.11—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SMALL GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$22,540	$12,354	$212,456	$234,996	.....
	1	23,330	12,228	210,244	233,574	6.3
	2	24,183	12,106	208,090	232,274	6.6
1	3	25,107	11,987	205,992	231,098	7.0
2, 3	4	26,105	11,871	203,946	230,051	7.4
4, 5	5	28,350	11,647	200,010	228,360	8.2

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR SMALL GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
	1	10	$600
	2	12	1,205
1	3	18	1,933
2, 3	4	26	2,782
4, 5	5	34	4,383

*The calculation includes consumers with zero LCC savings (no impact).

TABLE V.13—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$82,527	$53,362	$926,128	$1,008,655	.....
	1	84,898	52,735	915,193	1,000,091	3.8
	2	87,405	52,125	904,540	991,946	3.9
	3	90,056	51,529	894,159	984,215	4.1
1	4	92,859	50,949	884,039	976,898	4.3
2, 3	5	96,563	50,383	874,171	970,734	4.7

TABLE V.13—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS—Continued

TSL	Thermal efficiency (E_T) level	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
4, 5	6	103,011	49,292	855,155	958,165	5.0

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR LARGE GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
	1	1	880
	2	5	3,528
	3	7	7,059
1	4	12	12,255
2, 3	5	15	16,802
4, 5	6	19	28,295

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.15—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SMALL OIL-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs 2014$				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$21,965	$20,964	$375,253	$397,218	.....
1	1	24,212	20,513	366,987	391,199	5.0
2, 3	2	25,527	20,296	363,005	388,532	5.3
4, 5	3	28,615	19,876	355,328	383,942	6.1

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR SMALL OIL-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	0	0	.....
1	1	4	1,985
2, 3	2	12	4,256
4, 5	3	16	8,637

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.17—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE OIL-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average costs 2014$				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	0	$67,991	$99,776	$1,738,018	$1,806,009	.....
1	1	73,849	97,444	1,697,166	1,771,014	2.5
2, 3	2	80,651	95,223	1,658,263	1,738,914	2.8
4, 5	3	88,551	93,105	1,621,176	1,709,727	3.1

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.18—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR LARGE OIL-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Life-cycle cost savings	
		% of commercial consumers that experience a net cost	Average life-cycle cost savings * (2014$)
0	0	0	.....
1	1	0	13,243
2, 3	2	1	36,128
4, 5	3	1	65,128

* The calculation includes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impacts of the considered TSLs on low-income residential and small business consumers. Given the magnitude of the installation and operating expenditures in question for each equipment class, the LCC savings and corresponding payback periods for low-income residential and small business consumers are generally similar to the impacts for all consumers, with the residential low-income subgroup showing somewhat higher than average benefits and the small business consumers showing slightly lower benefits when compared to the overall CPB consumer population. DOE estimated the average LCC savings and PBP for the low-income residential subgroup compared with average CPB consumers, as shown in Table V.19 through Table V.26. DOE also estimated LCC savings and PBP for small businesses, and presented the results in Table V.19 through Table V.26. Chapter 11 of the NOPR TSD presents detailed results of the consumer subgroup analysis.

TABLE V.19—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, SMALL GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
	1	$185	$86	$106	4.2	6.9	6.5
	2	549	252	318	4.4	7.2	6.9
1	3	1,126	−27	223	6.2	9.8	9.4
2	4	1,839	152	521	6.3	10.1	9.6
	5	1,011	−2,933	−2,031	11.0	16.6	15.9
3	6	4,554	−960	302	9.2	14.3	13.6
4, 5	7	9,657	−532	1,656	9.0	14.3	13.6

* Parentheses indicate negative values.

TABLE V.20—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, LARGE GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
	1	$1,634	$671	$924	7.9	9.5	9.5
1	2	4,456	1,639	2,419	8.5	10.2	10.2
2, 3	3	7,172	2,265	3,647	9.1	11.0	11.0
	4	−2,683	−17,455	−13,074	17.1	19.1	19.0
4, 5	5	18,622	−5,178	2,062	13.6	15.7	15.6

* Parentheses indicate negative values.

TABLE V.21—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, SMALL OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
	1	$2,045	$562	$1,040	2.7	6.5	4.7
	2	5,065	1,355	2,544	2.8	6.8	4.9
	3	8,466	2,189	4,208	3.0	7.2	5.2
1, 2, 3	4	16,048	3,832	7,799	3.3	7.9	5.7
4	5	18,773	4,172	8,939	4.2	8.8	6.6
5	6	22,248	−7,130	2,333	8.4	19.3	14.3

* Parentheses indicate negative values.

TABLE V.22—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, LARGE OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILERS

TSL	Combustion efficiency (E_C) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	1	$16,193	$8,602	$10,108	2.9	4.3	4.1
2, 3	2	50,146	25,900	30,834	3.3	4.9	4.7
4	3	67,827	34,104	40,983	3.6	5.3	5.2
5	4	49,517	6,596	17,076	9.5	12.5	12.2

* Parentheses indicate negative values.

TABLE V.23—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, SMALL GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
	1	$930	$503	$600	4.5	6.5	6.3
	2	1,897	1,004	1,205	4.8	6.8	6.6
1	3	3,084	1,597	1,933	5.0	7.2	7.0
2, 3	4	4,556	2,277	2,782	5.3	7.6	7.4
4, 5	5	7,591	3,507	4,383	5.9	8.4	8.2

* Parentheses indicate negative values.

TABLE V.24—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, LARGE GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
	1	$877	$795	$880	3.6	3.8	3.8
	2	3,433	3,161	3,528	3.8	3.9	3.9
	3	6,930	6,308	7,059	3.9	4.1	4.1
1	4	12,169	10,892	12,255	4.1	4.3	4.3
2, 3	5	16,849	14,792	16,802	4.5	4.7	4.7
4, 5	6	28,667	24,796	28,295	4.8	5.0	5.0

* Parentheses indicate negative values.

TABLE V.25—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, LARGE GAS-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	1	$3,135	$1,687	$1,985	3.7	5.2	5.0
2, 3	2	6,704	3,577	4,256	4.0	5.5	5.3
4, 5	3	13,943	7,123	8,637	4.5	6.3	6.1

* Parentheses indicate negative values.

TABLE V.26—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, LARGE OIL-FIRED STEAM COMMERCIAL PACKAGED BOILERS

TSL	Thermal efficiency (E_T) level	Average LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	1	$19,961	$11,806	$13,243	1.7	2.5	2.5
2, 3	2	54,869	32,079	36,128	1.9	2.8	2.8
4, 5	3	100,020	57,562	65,128	2.1	3.1	3.1

* Parentheses indicate negative values.

c. Rebuttable Presumption Payback

As discussed in section III.E.2 of this document, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. DOE calculated a rebuttable-presumption PBP for each TSL to determine whether DOE could presume that a standard at that level is economically justified.

DOE calculated a rebuttable presumption payback period for each TSL using average installed cost to the commercial consumers and first year energy savings. As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of PBPs, for each TSL. Table V.27 shows the rebuttable-presumption PBPs for the considered TSLs. The rebuttable presumption is fulfilled in those cases where the PBP is three years or less. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment, as required by EPCA. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any three-year PBP analysis). Section V.C of this document addresses how DOE considered the range of impacts to select the proposed standards.

TABLE V.27—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT CLASSES

Equipment class	Rebuttable presumption payback (years)				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	8.0	8.2	11.4	11.5	11.5
Large Gas-Fired Hot Water Commercial Packaged Boilers	8.3	9.0	9.0	12.7	12.7
Small Oil-Fired Hot Water Commercial Packaged Boilers ..	11.2	11.2	11.2	12.9	27.4
Large Oil-Fired Hot Water Commercial Packaged Boilers ..	7.6	8.8	8.8	9.5	22.7

TABLE V.27—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT CLASSES—Continued

Equipment class	Rebuttable presumption payback (years)				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Steam Commercial Packaged Boilers	6.0	6.3	6.3	7.1	7.1
Large Gas-Fired Steam Commercial Packaged Boilers	3.6	3.9	3.9	4.2	4.2
Small Oil-Fired Steam Commercial Packaged Boilers	9.2	9.8	9.8	11.3	11.3
Large Oil-Fired Steam Commercial Packaged Boilers	4.6	5.1	5.1	5.6	5.6

2. Economic Impacts on Manufacturers

As noted above, DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of commercial packaged boilers. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

Table V.28 and Table V.29 depict the estimated financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of commercial packaged boilers, as well as the conversion costs that DOE expects manufacturers would incur for all product classes at each TSL. To evaluate the range of cash-flow impacts on the CPB industry, DOE modeled two different markup scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) The preservation of gross margin percentage scenario; and (2) the preservation of per-unit operating profit scenario. Each of these scenarios is discussed immediately below.

To assess the upper (less severe) bound of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform ''gross margin percentage'' markup is applied across all potential efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the standards case.

To assess the lower (more severe) bound of the range of potential impacts, DOE modeled the preservation of operating profit markup scenario, which assumes that manufacturers would not be able to generate greater operating profit on a per-unit basis in the standards case as compared to the no-new-standards case. Rather, as manufacturers make the necessary investments required to convert their facilities to produce new standards-compliant products and incur higher costs of goods sold, their percentage markup decreases. Operating profit does not change in absolute dollars and decreases as a percentage of revenue.

As noted in the MIA methodology discussion (see IV.J.1), in addition to markup scenarios, the MPC, shipments, and conversion cost assumptions also affect INPV results.

The results in Table V.28 and Table V.29 show potential INPV impacts for CPB manufacturers, Table V.28 reflects the upper bound of impacts, and Table V.29 represents the lower bound.

Each of the modeled scenarios in the analysis results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that results from the sum of discounted cash flows from the base year 2014 through 2048, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE discusses the change in free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards would take effect. These figures provide an understanding of the magnitude of the required conversion costs at each TSL relative to the cash flow generated by the industry in the no-new-standards case.

TABLE V.28—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PACKAGED BOILERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO*

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV	*2014$ millions*	180.1	173.7	167.0	157.7	145.9	146.7
Change in INPV	*2014$ millions*		(6.4)	(13.1)	(22.4)	(34.3)	(33.4)
	%		(3.6)	(7.3)	(12.4)	(19.0)	(18.6)
Product Conversion Costs	*2014$ millions*		10.7	18.2	19.3	20.8	21.4
Capital Conversion Costs	*2014$ millions*		4.8	9.3	20.8	33.9	35.2
Total Conversion Costs	*2014$ millions*		15.5	27.5	40.1	54.7	56.6
Free Cash Flow (no-new-standards case = 2019).	*2014$ millions*	12.8	7.2	2.7	(2.8)	(9.2)	(9.9)
Decrease in Free Cash Flow (change from no-new-standards case).	*2014$ millions*		5.6	10.1	15.6	22.0	22.8
	%		43.9	78.7	121.7	171.5	177.4

* Parentheses indicate negative values.

TABLE V.29—MANUFACTURER IMPACT ANALYSIS FOR COMMERCIAL PACKAGED BOILERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO *

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV	*2014*$ millions	180.1	166.8	156.3	116.2	56.1	51.2
Change in INPV	*2014*$ millions		(13.4)	(23.8)	(64.0)	(124.1)	(128.9)
	%		(7.4)	(13.2)	(35.5)	(68.9)	(71.6)
Product Conversion Costs	*2014*$ millions		10.7	18.2	19.3	20.8	21.4
Capital Conversion Costs	*2014*$ millions		4.8	9.3	20.8	33.9	35.2
Total Conversion Costs	*2014*$ millions		15.5	27.5	40.1	54.7	56.6
Free Cash Flow (2018)	*2014*$ millions	12.8	7.2	2.7	(2.8)	(9.2)	(9.9)
Decrease in Free Cash Flow (2018).	*2014*$ millions		5.6	10.1	15.6	22.0	22.8
	%		43.9	78.7	121.7	171.5	177.4

* Parentheses indicate negative values.

TSL 1 represents EL 3 (84%) for small gas-fired hot water boilers, EL 2 (84%) for large gas-fired hot water boilers, EL 4 (87%) for small oil-fired hot water boilers, EL 1 (86%) for large oil-fired hot water boilers, EL 3 (80%) for small gas-fired steam boilers, EL 4 (81%) for large gas-fired steam boilers, EL 1 (83%) for small oil-fired steam boilers, and EL 1 (83%) for large oil-fired steam boilers. At TSL 1, DOE estimates impacts on INPV for CPB manufacturers to range from −7.4 percent to −3.6 percent, or a change in INPV of −$13.4 million to −$6.4 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 43.9 percent to $7.2 million, compared to the no-new-standards case value of $12.8 million in 2018, the year before the compliance date. Overall, DOE expects industry to incur product conversion costs of $10.7 million and capital conversion costs of $4.8 million to reach this standard level.

TSL 2 sets the efficiency level at EL 4 (85%) for small gas-fired hot water boilers, EL 3 (85%) for large gas-fired hot water boilers, EL 4 (87%) for small oil-fired hot water boilers, EL 2 (88%) for large oil-fired hot water, EL 4 (81%) for small gas-fired steam boilers, EL 5 (82%) for large gas-fired steam boilers, EL 2 (84%) for small oil-fired steam boilers, and EL 2 (85%) for large oil-fired steam boilers. At TSL 2, DOE estimates impacts on INPV for commercial packaged boilers manufacturers to range from −13.2 percent to −7.3 percent, or a change in INPV of −$23.8 million to −$13.1 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 78.7 percent to $2.7 million, compared to the no-new-standards case value of $12.8 million in 2018, the year before the compliance date. Overall, DOE estimates manufactures would incur product conversion costs of $18.2 million and capital conversion costs of $9.3 million at this standard level.

TSL 3 represents EL 6 (95%) for small gas-fired hot water boilers, EL 5 (85%) for large gas-fired hot water boilers, EL 4 (87%) for small oil-fired hot water boilers, EL 2 (88%) for large oil-fired hot water boilers, EL 4 (81%) for small gas-fired steam boilers, EL 5 (82%) for large gas-fired steam boilers, EL 2 (84%) for small oil-fired steam boilers, and EL 2 (85%) for large oil-fired steam boilers. At TSL 3, DOE estimates impacts on INPV for CPB manufacturers to range from −35.5 percent to −12.4 percent, or a change in INPV of −$64.0 million to −$22.4 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 121.7 percent in 2018, the year before compliance to −$2.8 million compared to the no-new-standards case value of $12.8 million. DOE estimates manufactures would incur product conversion costs of $19.3 million and capital conversion costs of 20.8 million to reach this standard level.

TSL 4 represents EL 7 (99%) for small gas-fired hot water boilers, EL 5 (97%) for large gas-fired hot water boilers, EL 5 (88%) for small oil-fired hot water boilers, EL 3 (89%) for large oil-fired hot water boilers, EL 5 (83%) for small gas-fired steam boilers, EL 6 (84%) for large gas-fired steam boilers, EL 3 (86%) for small oil-fired steam boilers, and EL 3 (87%) for large oil-fired steam boilers. At TSL 4, DOE estimates impacts on INPV for CPB manufacturers to range from −68.9 percent to −19.0 percent, or a change in INPV of −$124.1 million to −$34.3 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 171.5 percent in the year before compliance (2018) to −$9.2 million relative to the no-new-standards case value of $12.8 million. DOE estimates that manufacturers would incur product conversion costs of $20.8 million and capital conversion costs of $33.9 million to reach this standard level.

TSL 5 represents EL 7 (99%) for small gas-fired hot water boilers, EL 5 (97%) for large gas-fired hot water boilers, EL 6 (97%) for small oil-fired hot water boilers, EL 4 (97%) for large oil-fired hot water boilers, EL 5 (83%) for small gas-fired steam boilers, EL 6 (84%) for large gas-fired steam boilers, EL 3 (86%) for small oil-fired steam boilers, and EL 3 (87%) for large oil-fired steam boilers. TSL 5 represents max-tech for all product classes. At TSL 5, DOE estimates impacts on INPV for CPB manufacturers to range from −71.6 percent to −18.6 percent, or a change in INPV of -$128.9 million to −$33.4 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 177.4 percent in the year before compliance (2018) to −$9.9 million relative to the no-new-standards case value of $12.8 million. DOE estimates manufacturers would incur product conversion costs of $21.4 million and capital conversion costs of $35.2 million to reach this standard level.

b. Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on direct employment in the CPB industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the no-new-standards case and at each TSL in 2019. DOE used statistical data from the U.S. Census Bureau's 2013 Annual Survey of Manufacturers (ASM) [85], the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-

[85] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2013) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

wide labor expenditures and domestic employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM are converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2013 ASM). The estimates of production workers in this section cover workers, including line-supervisors who are directly involved in fabricating and assembling a product within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. The total direct employment impacts calculated in the GRIM are the sum of the changes in the number of production workers resulting from the amended energy conservation standards for commercial packaged boilers, as compared to the no-new-standards case. In general, more-efficient commercial packaged boilers are more complex and more labor intensive and require specialized knowledge about control systems, electronics, and the different metals needed for the heat exchanger. Per-unit labor requirements and production time requirements increase with higher energy conservation standards. As a result, the total labor calculations described in this paragraph (which are generated by the GRIM) are considered an upper bound to direct employment forecasts.

DOE estimates that in the absence of amended energy conservation standards, there would be 464 domestic production workers in the CPB industry in 2019, the year of compliance. DOE estimates that 80 percent of commercial packaged boilers sold in the United States are manufactured domestically. Table V.30 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers of commercial packaged boilers.

TABLE V.30—POTENTIAL CHANGES IN THE TOTAL NUMBER OF COMMERCIAL PACKAGED BOILERS PRODUCTION WORKERS IN 2019

	No-new-standards case	Trial standard level*				
		1	2	3	4	5
Total Number of Domestic Production Workers in 2019 (without changes in production locations)	464	371 to 495	292 to 516	232 to 522	130 to 608	32 to 629
Potential Changes in Domestic Production Workers in 2019		(93) to 31	(172) to 52	(232) to 58	(334) to 144	(431) to 165

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

At the upper end of the range, all examined TSLs show positive impacts on domestic employment levels. Producing more-efficient commercial packaged boilers tends to require more labor, and DOE estimates that if CPB manufacturers chose to keep their current production in the U.S., domestic employment could increase at each TSL. In interviews, some manufacturers who produce high-efficiency boiler products stated that a standard that went to condensing levels could cause them to hire more employees to increase their production capacity.

To establish a lower bound end of production worker employment, DOE assumes no manufacturer chooses to invest in redesign of products that do not meet the proposed standard. Production worker employment drops in proportion with the percentage of products which are retired. Since this is a lower bound, DOE does not account for additional production labor needed for higher efficiency products. Several manufacturers expressed that they could lose a significant number of employees at TSL 3, TSL 4 and TSL 5, due to the fact that these TSLs contain condensing efficiency levels for the gas-fired hot water boiler product classes and oil-fired hot water boiler product classes. These manufacturers have employees who work on production lines that produce cast iron sections and carbon steel or copper heat exchangers for lower to mid-efficiency products. If amended energy conservation standards were to require condensing efficiency levels, these employees would no longer be needed for that function, and manufacturers would have to decide whether to develop their own condensing heat exchanger production, source heat exchangers from Asia or Europe and assemble higher-efficiency products, or leave the market entirely.

DOE notes that the employment impacts discussed here are independent of the indirect employment impacts to the broader U.S. economy, which are documented in chapter 15 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

Most CPB manufacturers stated that their current production is only running at 50-percent to 75-percent capacity and that any standard that does not propose efficiency levels where manufacturers would use condensing technology for hot water boilers would not have a large effect on capacity. The impacts of a potential condensing standard on manufacturer capacity are difficult to quantify. Some manufacturers who are already making condensing products with a sourced heat exchanger said they would likely be able to increase production using the equipment they already have by utilizing a second shift. Others said a condensing standard would idle a large portion of their business, causing stranded assets and decreased capacity. These manufacturers would have to determine how to best increase their condensing boiler production capacity. DOE believes that some larger domestic manufacturers may choose to add production capacity for a condensing heat exchanger production line.

Manufacturers stated that in a scenario where a potential standard would require efficiency levels at which manufacturers would use condensing

technology, there is concern about the level of technical resources required to redesign and test all products. The engineering analysis shows that increasingly complex components and control strategies are required as standard levels increase. Manufacturers commented in interviews that the industry would need to add electrical engineering and control systems engineering talent beyond current staffing to meet the redesign requirements of higher TSLs. Additional training might be needed for manufacturing engineers, laboratory technicians, and service personnel if condensing products were broadly adopted. However, because TSL 2 (the proposed level) would not require condensing standards, DOE does not expect manufacturers to face long-term capacity constraints due to the standard levels proposed in this notice.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the CPB industry, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup—small manufacturers. The SBA defines a ''small business'' as having 500 employees or less for NAICS 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' Based on this definition, DOE identified 34 manufacturers in the CPB industry that qualify as small businesses. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section 0 of this document and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to equipment efficiency.

For the cumulative regulatory burden analysis, DOE looks at other regulations that could affect CPB manufacturers that will take effect approximately three years before or after the 2019 compliance date of amended energy conservation standards for these products. In interviews, manufacturers cited Federal regulations on equipment other than commercial packaged boilers that contribute to their cumulative regulatory burden. The compliance years and expected industry conversion costs of relevant amended energy conservation standards are indicated in Table V.31. Included in the table are Federal regulations that have compliance dates beyond the six year range of DOE's analysis.

TABLE V.31—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING COMMERCIAL PACKAGED BOILERS MANUFACTURERS

Regulation *	Comm. Air Conditioners/ Heat Pumps (Air-Cooled)	Comm. Warm Air Furnaces	Res. Furnace Fans	Comm. Water Heaters	Res. Boilers	Res. Furnaces	Res. Central Air Conditioners/Heat Pumps	Res. Water Heaters	Res. Pool Heaters
Approximate Compliance Date	2018	2018	2019	2019	2020	2021	2021	2021	2021
Industry Conversion Costs (*$M*)	226.4**	19.9**	40.6	TBD	4.3				
Ace Heating Solutions LLC				x					
ACV International NV (Triangle Tube/Phase III Co.)				x	x			x	
AESYS Technologies, LLC.									
AO Smith (Lochinvar)				x	x			x	x
Axeman-Anderson					x			x	
Bradford White (Laars Heating Systems)				x	x			x	
Burnham Holdings		x	x	x	x	x	x	x	
Camus Hydronics				x	x			x	
Dennison Holdings Ltd (NY Thermal)					x				
ECR International			x	x	x	x	x	x	
E–Z Rect Manufacturing (Allied Engineering Company)					x				
Fulton Heating Solutions.									
Gasmaster Industries				x					
Hamilton Engineering				x	x				
Harbour Group Industries (Cleaver-Brooks).									
Harsco Industrial, Patterson-Kelley.									
HTP, Inc				x	x				
Hurst Boiler & Welding Company.									
IBC Technologies, Inc					x				
Lanair Holdings, LLC (Clean Burn, LLC)					x			x	
Mestek					x		x	x	
National Combustion Co, Inc				x					
Paloma Co, Ltd (Raypak, Inc)	x	x	x	x		x	x	x	x
Parker Boiler Company				x					
Peerless Boilers (PB Heat LLC)					x			x	
Rite Engineering & Manufacturing Corp (Rite Boiler).									
Robert Bosch (Bosch Thermotechnology Corp)				x	x				
SIME (SIME North America)					x			x	
Slant/Fin Corporation					x			x	
SPX					x			x	
Stichting Aandelen Remeha (Baxi S.P.A.)					x				
Superior Holdings, Inc.									
Tennessee Valley Ventures LP (Precision Boiler).									
Unilux Advanced Manufacturing.									
Vari Corp					x			x	
Watts Water Technologies, Inc (AERCO International, Inc)				x					
Williams & Davis Boilers.									

*The final rule for this energy conversation standard has not been published. The compliance date and analysis of conversion costs have not been finalized at this time. (If a value is provided for total industry conversion expense, this value represents an estimate from the NOPR.)

In addition to Federal energy conservation standards, DOE identified other regulatory burdens that would affect manufacturers of commercial packaged boilers:

DOE Certification, Compliance, and Enforcement (CC&E) Rule

Any amended standard that DOE establishes would also impose accompanying CC&E requirements for manufacturers of commercial packaged boilers. DOE conducted a rulemaking to expand AEDM coverage to commercial HVAC, including commercial packaged boilers, and issued a final rule on December 31, 2013. (78 FR 79579) An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. In the final rule, DOE is allowing manufacturers of commercial packaged boilers to rate basic models using AEDMs, reducing the need for sample units and reducing burden on manufacturers. The final rule establishes revised verification tolerances CPB manufacturers. More information can be found at *http://www1.eere.energy.gov/buildings/appliance_standards/implement_cert_and_enforce.html*.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for commercial packaged boilers purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2019–2048). The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards-case. Table V.32 presents the estimated primary energy savings for each considered TSL, and Table V.33 presents the estimated FFC energy savings for each TSL. Table V.34 shows cumulative primary national energy savings by TSL as a percentage of the no-new-standards-case primary energy usage. The approach for estimating national energy savings is further described in section IV.H of this document.

TABLE V.32—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR COMMERCIAL PACKAGED BOILERS PURCHASED IN 2019–2048

[Quads]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.138	0.199	0.708	1.332	1.332
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.043	0.075	0.075	0.617	0.617
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.019	0.019	0.019	0.023	0.043
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.004	0.012	0.012	0.017	0.029
Small Gas-Fired Steam Commercial Packaged Boilers	0.009	0.018	0.018	0.038	0.038
Large Gas-Fired Steam Commercial Packaged Boilers	0.009	0.014	0.014	0.026	0.026
Small Oil-Fired Steam Commercial Packaged Boilers	0.002	0.004	0.004	0.010	0.010
Large Oil-Fired Steam Commercial Packaged Boilers	0.003	0.008	0.008	0.014	0.014
Total	0.226	0.349	0.859	2.077	2.108

* Numbers may not add to totals, due to rounding.

TABLE V.33—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR COMMERCIAL PACKAGED BOILERS PURCHASED IN 2019–2048

[Quads]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.155	0.223	0.797	1.497	1.497
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.049	0.085	0.085	0.693	0.693
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.022	0.022	0.022	0.027	0.050
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.004	0.015	0.015	0.020	0.033
Small Gas-Fired Steam Commercial Packaged Boilers	0.010	0.020	0.020	0.042	0.042
Large Gas-Fired Steam Commercial Packaged Boilers	0.010	0.016	0.016	0.029	0.029
Small Oil-Fired Steam Commercial Packaged Boilers	0.002	0.005	0.005	0.011	0.011
Large Oil-Fired Steam Commercial Packaged Boilers	0.003	0.009	0.009	0.017	0.017
Total	0.255	0.394	0.967	2.336	2.373

* Numbers may not add to totals, due to rounding.

TABLE V.34—CUMULATIVE PRIMARY NATIONAL ENERGY SAVINGS BY TSL AS A PERCENTAGE OF CUMULATIVE NO-NEW-STANDARDS-CASE ENERGY USAGE OF COMMERCIAL PACKAGED BOILERS PURCHASED IN 2019–2048

Equipment class	No-new-standards-case energy usage quads	TSL savings as percent of no-new-standards-case usage *				
		TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	21.053	0.7	0.9	3.4	6.3	6.3
Large Gas-Fired Hot Water Commercial Packaged Boilers	15.097	0.3	0.5	0.5	4.1	4.1
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.807	2.3	2.3	2.3	2.9	5.4
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.782	0.5	1.6	1.6	2.2	3.7
Small Gas-Fired Steam Commercial Packaged Boilers	1.633	0.5	1.1	1.1	2.3	2.3
Large Gas-Fired Steam Commercial Packaged Boilers	1.035	0.8	1.3	1.3	2.5	2.5
Small Oil-Fired Steam Commercial Packaged Boilers	0.453	0.4	1.0	1.0	2.2	2.2
Large Oil-Fired Steam Commercial Packaged Boilers	0.551	0.5	1.4	1.4	2.6	2.6
Total	41.411	0.5	0.8	2.1	5.0	5.1

* Components may not sum to total due to rounding.

Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs.[86] Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years rather than 30 years of equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[87] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to commercial packaged boilers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The estimated national primary and full-fuel-cycle energy savings results based on a nine-year analytical period are presented in Table V.35 and Table V.36, respectively. The impacts are counted over the lifetime of equipment purchased in 2019–2027.

TABLE V.35—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT PURCHASED IN 2019–2027

Equipment class	Trial standard level *				
	1	2	3	4	5
	quads				
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.045	0.065	0.223	0.392	0.392
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.022	0.038	0.038	0.226	0.226
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.005	0.005	0.005	0.007	0.013
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.001	0.003	0.003	0.005	0.008
Small Gas-Fired Steam Commercial Packaged Boilers	0.005	0.009	0.009	0.018	0.018
Large Gas-Fired Steam Commercial Packaged Boilers	0.004	0.006	0.006	0.012	0.012
Small Oil-Fired Steam Commercial Packaged Boilers	0.001	0.001	0.001	0.003	0.003
Large Oil-Fired Steam Commercial Packaged Boilers	0.001	0.003	0.003	0.005	0.005
Total	0.084	0.131	0.289	0.667	0.676

* Numbers may not add to totals, due to rounding.

[86] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[87] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain equipment, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6313(a)(6)(C)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some commercial equipment, the compliance period is 5 years rather than 3 years.

TABLE V.36—CUMULATIVE FULL-FUEL-CYCLE NATIONAL ENERGY SAVINGS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT PURCHASED IN 2019–2027

Equipment class	Trial standard level *				
	1	2	3	4	5
	quads				
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.050	0.073	0.251	0.441	0.441
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.025	0.043	0.043	0.254	0.254
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.006	0.006	0.006	0.008	0.015
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.001	0.004	0.004	0.006	0.010
Small Gas-Fired Steam Commercial Packaged Boilers	0.005	0.010	0.010	0.020	0.020
Large Gas-Fired Steam Commercial Packaged Boilers	0.005	0.007	0.007	0.013	0.013
Small Oil-Fired Steam Commercial Packaged Boilers	0.001	0.002	0.002	0.004	0.004
Large Oil-Fired Steam Commercial Packaged Boilers	0.001	0.003	0.003	0.005	0.005
Total	0.094	0.148	0.326	0.750	0.761

* Numbers may not add to totals, due to rounding.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for commercial packaged boilers. In accordance with OMB's guidelines on regulatory analysis,[88] DOE calculated the NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. This discount rate approximates the opportunity cost of capital in the private sector (OMB analysis has found the average rate of return on capital to be near this rate). The 3-percent rate reflects the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. It can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes), which has averaged about 3 percent for the past 30 years.

Table V.37 and Table V.38 show the consumer NPV results at 3-percent and 7-percent discount rates respectively for each TSL considered for commercial packaged boilers covered in this rulemaking. In each case, the impacts cover the lifetime of equipment purchased in 2019–2048.

TABLE V.37—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR CPB TRIAL STANDARD LEVELS AT A 3-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2048

[Billion 2014$]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.463	0.665	1.570	3.187	3.187
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.129	0.208	0.208	1.446	1.446
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.278	0.278	0.278	0.337	0.372
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.063	0.199	0.199	0.271	0.331
Small Gas-Fired Steam Commercial Packaged Boilers	0.038	0.074	0.074	0.145	0.145
Large Gas-Fired Steam Commercial Packaged Boilers	0.039	0.060	0.060	0.110	0.110
Small Oil-Fired Steam Commercial Packaged Boilers	0.032	0.070	0.070	0.148	0.148
Large Oil-Fired Steam Commercial Packaged Boilers	0.048	0.134	0.134	0.244	0.244
Total	1.090	1.687	2.593	5.888	5.982

* Numbers may not add to totals, due to rounding.

TABLE V.38—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR CPB TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2048

[Billion 2014$]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.092	0.132	0.052	0.209	0.209
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.027	0.036	0.036	0.089	0.089
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.080	0.080	0.080	0.093	0.040

[88] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4*).

TABLE V.38—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR CPB TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2048—Continued

[Billion 2014$]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.019	0.059	0.059	0.080	0.067
Small Gas-Fired Steam Commercial Packaged Boilers	0.012	0.022	0.022	0.038	0.038
Large Gas-Fired Steam Commercial Packaged Boilers	0.013	0.020	0.020	0.035	0.035
Small Oil-Fired Steam Commercial Packaged Boilers	0.010	0.021	0.021	0.044	0.044
Large Oil-Fired Steam Commercial Packaged Boilers	0.016	0.044	0.044	0.079	0.079
Total	0.269	0.414	0.334	0.668	0.603

* Numbers may not add to totals, due to rounding.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.39 and Table V.40. The impacts are counted over the lifetime of commercial packaged boilers purchased in 2019–2027. As mentioned previously, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.39—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR CPB TRIAL STANDARD LEVELS AT A 3-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2027

[Billion 2014$]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.153	0.220	0.417	0.829	0.829
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.066	0.105	0.105	0.375	0.375
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.082	0.082	0.082	0.099	0.096
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.018	0.057	0.057	0.078	0.089
Small Gas-Fired Steam Commercial Packaged Boilers	0.022	0.038	0.038	0.071	0.071
Large Gas-Fired Steam Commercial Packaged Boilers	0.020	0.029	0.029	0.053	0.053
Small Oil-Fired Steam Commercial Packaged Boilers	0.011	0.024	0.024	0.050	0.050
Large Oil-Fired Steam Commercial Packaged Boilers	0.017	0.046	0.046	0.084	0.084
Total	0.389	0.602	0.799	1.639	1.647

* Numbers may not add to totals, due to rounding.

TABLE V.40—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR CPB TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT PURCHASED IN 2019–2027

[Billion 2014$]

Equipment class	Trial standard level *				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Small Gas-Fired Hot Water Commercial Packaged Boilers	0.038	0.054	−0.044	−0.020	−0.020
Large Gas-Fired Hot Water Commercial Packaged Boilers	0.015	0.020	0.020	−0.058	−0.058
Small Oil-Fired Hot Water Commercial Packaged Boilers	0.032	0.032	0.032	0.038	0.006
Large Oil-Fired Hot Water Commercial Packaged Boilers	0.008	0.024	0.024	0.032	0.023
Small Gas-Fired Steam Commercial Packaged Boilers	0.008	0.014	0.014	0.023	0.023
Large Gas-Fired Steam Commercial Packaged Boilers	0.008	0.012	0.012	0.021	0.021
Small Oil-Fired Steam Commercial Packaged Boilers	0.005	0.010	0.010	0.020	0.020
Large Oil-Fired Steam Commercial Packaged Boilers	0.007	0.021	0.021	0.037	0.037
Total	0.122	0.186	0.089	0.093	0.052

* Numbers may not add to totals, due to rounding.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for commercial packaged boilers to reduce energy costs for equipment owners, and the resulting net savings to be redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2019–

2025), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results.

4. Impact on Utility or Performance

DOE has tentatively concluded that the standards it is proposing in this document would not lessen the utility or performance of commercial packaged boilers.

5. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and (C)(i))

To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this document and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Potential energy savings from the proposed amended standards for the considered CPB equipment classes could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V.41 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.41—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL STANDARDS OF COMMERCIAL PACKAGED BOILERS SHIPPED IN 2019–2048

	TSL				
	1	2	3	4	5
Power Sector and Site Emissions					
CO_2 (*million metric tons*)	12.66	19.61	46.61	111.89	114.33
NO_X (*thousand tons*)	74.66	118.07	156.81	294.40	366.68
Hg (*tons*)	0.0002	0.0002	(0.002)	(0.002)	(0.002)
N_2O (*thousand tons*)	0.07	0.11	0.15	0.32	0.37
CH_4 (*thousand tons*)	0.29	0.45	0.95	2.34	2.41
SO_2 (*thousand tons*)	1.24	1.96	1.49	2.87	4.18
Upstream Emissions					
CO_2 (*million metric tons*)	1.84	2.85	6.84	16.28	16.66
NO_X (*thousand tons*)	28.43	43.99	108.03	258.23	263.07
Hg (*tons*)	0.00003	0.0001	0.00003	0.0001	0.0001
N_2O (*thousand tons*)	0.01	0.01	0.02	0.03	0.04
CH_4 (*thousand tons*)	150.66	232.21	616.94	1,502.56	1,507.48
SO_2 (*thousand tons*)	0.08	0.13	0.14	0.25	0.34
Total Emissions					
CO_2 (*million metric tons*)	14.50	22.46	53.45	128.17	130.99
NO_X (*thousand tons*)	103.09	162.06	264.84	552.63	629.75
Hg (*tons*)	0.0002	0.0003	(0.002)	(0.002)	(0.002)
N_2O (*thousand tons*)	0.07	0.12	0.17	0.36	0.41
N_2O (*thousand tons CO_2eq*) *	19.42	30.55	44.39	94.37	109.42
CH_4 (*thousand tons*)	150.95	232.66	617.89	1,504.90	1,509.89
CH_4 (*thousand tons CO_2eq*) *	4,226.55	6,514.58	17,300.87	42,137.12	42,276.97
SO_2 (*thousand tons*)	1.32	2.10	1.63	3.12	4.53

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
Note: Parentheses indicate negative values.

As part of the analysis for this NOPR, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X estimated for each of the TSLs considered for commercial packaged boilers. As discussed in section IV.L of this document, for CO_2, DOE used values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. The four SCC values for CO_2 emissions reductions in 2015, expressed in 2014$, are $12.2 per metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0 per metric ton (the average value from a distribution that uses a 3-percent

discount rate), $62.3 per metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117 per metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values for later years are higher due to increasing emissions-related costs as the magnitude of projected climate change increases.

Table V.42 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.42—ESTIMATE OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS OF COMMERCIAL PACKAGED BOILERS SHIPPED IN 2019–2048

TSL	SCC Scenario* million 2014$			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector and Site Emissions				
1	76	369	594	1,125
2	118	572	920	1,744
3	275	1,343	2,165	4,096
4	655	3,208	5,175	9,784
5	670	3,278	5,287	9,996
Upstream Emissions				
1	11	54	86	163
2	17	83	134	254
3	40	197	318	602
4	95	467	753	1,424
5	98	478	770	1,457
Total Emissions				
1	87	423	680	1,288
2	136	655	1,054	1,998
3	316	1,540	2,483	4,697
4	751	3,675	5,928	11,208
5	767	3,755	6,057	11,452

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3 and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.,* not CO_2eq of other greenhouse gases).

DOE is well aware that scientific and economic knowledge continues to evolve rapidly regarding the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for commercial packaged boilers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.43 presents the cumulative present value for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.45. Detailed discussions on NO_X emissions reductions are available in chapter 14 of the NOPR TSD.

TABLE V.43—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR COMMERCIAL PACKAGED BOILERS

TSL	3% Discount rate	7% Discount rate
	million 2014$	
Power Sector and Site Emissions		
1	203	71
2	322	112
3	428	149
4	802	279
5	997	346
Upstream Emissions		
1	80	29
2	125	46
3	299	106
4	708	248
5	721	253
Total Emissions		
1	284	100
2	447	158
3	727	255
4	1,510	527
5	1,718	599

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.44 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns correspond to the four sets of SCC values discussed in section IV.L.1 of this document.

TABLE V.44—COMMERCIAL PACKAGED BOILERS TSLS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% Discount Rate added with:			
	SCC at 5% discount rate* and 3% low NO_X value	SCC at 3% discount rate* and 3% low NO_X value	SCC at 2.5% discount rate* and 3% low NO_X value	95th percentile SCC at 3% discount rate* and 3% low NO_X value
	(billion 2014$)			
1	1.461	1.797	2.054	2.662
2	2.269	2.789	3.188	4.132
3	3.635	4.860	5.802	8.017
4	8.148	11.073	13.325	18.605
5	8.467	11.455	13.757	19.152
TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC at 5% discount rate* and 7% low NO_X value	SCC at 3% discount rate* and 7% low NO_X value	SCC at 2.5% discount rate* and 7% low NO_X value	95th percentile SCC at 3% discount rate* and 7% low NO_X value
	(billion 2014$)			
1	0.456	0.792	1.049	1.658
2	0.707	1.227	1.625	2.569
3	0.905	2.129	3.072	5.286
4	1.946	4.870	7.123	12.403

TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC at 5% discount rate* and 7% low NO_X value	SCC at 3% discount rate* and 7% low NO_X value	SCC at 2.5% discount rate* and 7% low NO_X value	95th percentile SCC at 3% discount rate * and 7% low NO_X value
	(billion 2014$)			
5	1.969	4.957	7.259	12.654

* The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. commercial consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[89] the SCC values in future years reflect future CO_2 emissions impacts that continue beyond 2100.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) No other factors were considered in this analysis.

C. Conclusion

To adopt national standards more stringent than the current standards for commercial packaged boilers, DOE must determine that such action would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii) and (C)(i)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII) and (C)(i))

For this NOPR, DOE considered the impacts of amended standards for commercial packaged boilers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard.

1. Benefits and Burdens of Trial Standard Levels Considered for Commercial Packaged Boilers

Table V.45, Table V.46, and Table V.47 summarize the quantitative impacts estimated for each TSL for commercial packaged boilers. The national impacts are measured over the lifetime of commercial packaged boilers purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results.

TABLE V.45—SUMMARY OF ANALYTICAL RESULTS FOR COMMERCIAL PACKAGED BOILERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National FFC Energy Savings (*quads*)	0.25	0.39	0.97	2.34	2.37.
NPV of Commercial consumer Benefits (billion 2014$)					
3% discount rate	1.09	1.69	2.59	5.89	5.98.
7% discount rate	0.27	0.41	0.33	0.67	0.60.
Manufacturer Impacts					
Industry NPV (*2014$ million*)	166.8 to 173.7	156.3 to 167.0	116.2 to 157.7	56.1 to 145.9	51.2 to 146.7.
Change in Industry NPV (%)	(7.4) to (3.6)	(13.2) to (7.3)	(35.5) to (12.4)	(68.9) to (19.0)	(71.6) to (18.6).
Cumulative Emissions Reduction (Total FFC Emissions)					
CO_2 (*million metric tons*)	15	22	53	128	131

[89] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105 (2005).

TABLE V.45—SUMMARY OF ANALYTICAL RESULTS FOR COMMERCIAL PACKAGED BOILERS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
NO_X (*thousand tons*)	103	162	265	553	630
Hg (tons)	0.0002	0.0003	(0.002)	(0.002)	(0.002)
N_2O (*thousand tons*)	0.07	0.12	0.17	0.36	0.41
N_2O (*thousand tons CO_2eq*)	19	31	44	94	109
CH_4 (*thousand tons*)	151	233	618	1,505	1,510
CH_4 (*thousand tons CO_2eq*)	4,227	6,515	17,301	42,137	42,277
SO_2 (*thousand tons*)	1.3	2.1	1.6	3.1	4.5
Value of Emissions Reduction (Total FFC Emissions)					
CO_2 (*2014$ million*)*	87 to 1,288	136 to 1,998	316 to 4,697	751 to 11,208	767 to 11,452
NO_X—3% discount rate (*2014$ million*)	284 to 627	447 to 988	727 to 1,605	1,510 to 3,335	1,718 to 3,794
NO_X—7% discount rate (*2014$ million*)	100 to 223	158 to 353	255 to 570	527 to 1,177	599 to 1,338.

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: Parentheses indicate negative values.

TABLE V.46—NPV OF COMMERCIAL CONSUMER BENEFITS BY EQUIPMENT CLASS

Equipment class	Discount rate %	Trial standard level (billion 2014$)				
		1	2	3	4	5
Small Gas-Fired Hot Water Commercial Packaged Boilers	3	0.463	0.665	1.570	3.187	3.187
	7	0.092	0.132	0.052	0.209	0.209
Large Gas-Fired Hot Water Commercial Packaged Boilers	3	0.129	0.208	0.208	1.446	1.446
	7	0.027	0.036	0.036	0.089	0.089
Small Oil-Fired Hot Water Commercial Packaged Boilers	3	0.278	0.278	0.278	0.337	0.372
	7	0.080	0.080	0.080	0.093	0.040
Large Oil-Fired Hot Water Commercial Packaged Boilers	3	0.063	0.199	0.199	0.271	0.331
	7	0.019	0.059	0.059	0.080	0.067
Small Gas-Fired Steam Commercial Packaged Boilers	3	0.038	0.074	0.074	0.145	0.145
	7	0.012	0.022	0.022	0.038	0.038
Large Gas-Fired Steam Commercial Packaged Boilers	3	0.039	0.060	0.060	0.110	0.110
	7	0.013	0.020	0.020	0.035	0.035
Small Oil-Fired Steam Commercial Packaged Boilers	3	0.032	0.070	0.070	0.148	0.148
	7	0.010	0.021	0.021	0.044	0.044
Large Oil-Fired Steam Commercial Packaged Boilers	3	0.048	0.134	0.134	0.244	0.244
	7	0.016	0.044	0.044	0.079	0.079
Total—All Classes	3	1.090	1.687	2.593	5.888	5.982
	7	0.269	0.414	0.334	0.668	0.603

TABLE V.47—SUMMARY OF ANALYTICAL RESULTS FOR CPB CONSUMER IMPACTS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Commercial Consumer Mean LCC Savings 2014$					
Small Gas-Fired Hot Water Commercial Packaged Boilers	$223	$521	$302	$1,656	$1,656
Large Gas-Fired Hot Water Commercial Packaged Boilers	2,419	3,647	3,647	2,062	2,062
Small Oil-Fired Hot Water Commercial Packaged Boilers	7,799	7,799	7,799	8,939	2,333
Large Oil-Fired Hot Water Commercial Packaged Boilers	10,108	30,834	30,834	40,983	17,076
Small Gas-Fired Steam Commercial Packaged Boilers	1,933	2,782	2,782	4,383	4,383
Large Gas-Fired Steam Commercial Packaged Boilers	12,255	16,802	16,802	28,295	28,295
Small Oil-Fired Steam Commercial Packaged Boilers	1,985	4,256	4,256	8,637	8,637
Large Oil-Fired Steam Commercial Packaged Boilers	13,243	36,128	36,128	65,128	65,128
Commercial Consumer Simple PBP Years					
Small Gas-Fired Hot Water Commercial Packaged Boilers	9.4	9.6	13.6	13.6	13.6
Large Gas-Fired Hot Water Commercial Packaged Boilers	10.2	11.0	11.0	15.6	15.6
Small Oil-Fired Hot Water Commercial Packaged Boilers	5.7	5.7	5.7	6.6	14.3
Large Oil-Fired Hot Water Commercial Packaged Boilers	4.1	4.7	4.7	5.2	12.2
Small Gas-Fired Steam Commercial Packaged Boilers	7.0	7.4	7.4	8.2	8.2
Large Gas-Fired Steam Commercial Packaged Boilers	4.3	4.7	4.7	5.0	5.0
Small Oil-Fired Steam Commercial Packaged Boilers	5.0	5.3	5.3	6.1	6.1
Large Oil-Fired Steam Commercial Packaged Boilers	2.5	2.8	2.8	3.1	3.1

TABLE V.47—SUMMARY OF ANALYTICAL RESULTS FOR CPB CONSUMER IMPACTS—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Distribution of Commercial Consumer LCC Impacts					
Small Gas-Fired Hot Water Commercial Packaged Boilers Net Cost (%)	20%	23%	42%	56%	56%
Large Gas-Fired Hot Water Commercial Packaged Boilers Net Cost (%)	21%	27%	27%	56%	56%
Small Oil-Fired Hot Water Commercial Packaged Boilers Net Cost (%)	20%	20%	20%	26%	56%
Large Oil-Fired Hot Water Commercial Packaged Boilers Net Cost (%)	1%	5%	5%	7%	46%
Small Gas-Fired Steam Commercial Packaged Boilers Net Cost (%)	18%	26%	26%	34%	34%
Large Gas-Fired Steam Commercial Packaged Boilers Net Cost (%)	12%	15%	15%	19%	19%
Small Oil-Fired Steam Commercial Packaged Boilers Net Cost (%)	4%	12%	12%	16%	16%
Large Oil-Fired Steam Commercial Packaged Boilers Net Cost (%)	0%	1%	1%	1%	1%

Note: Parentheses indicate negative values.

TSL 5 corresponds to the max-tech level for all the equipment classes and offers the potential for the highest cumulative energy savings through the analysis period from 2019 through 2048. The estimated energy savings from TSL 5 are 2.37 quads of energy. TSL 5 has an estimated NPV of consumer benefit of $0.60 billion using a 7-percent discount rate, and $6.0 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 5 are 131 million metric tons of CO_2, 4.53 thousand tons of SO_2, 630 thousand tons of NO_X, 1,510 thousand tons of CH_4, and 0.41 thousand tons of N_2O, and an emissions increase of 0.002 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $767 million to $11,452 million.

At TSL 5, the average LCC savings range from $1,656 to $65,128 depending on equipment class. The fraction of consumers incurring a net cost range from 1 percent for large oil-fired steam CPB equipment class to 56 percent for small gas-fired hot water CPB equipment class.

At TSL 5, the projected change in INPV ranges from a decrease of $128.9 million to a decrease of $33.4 million, which corresponds to a change in INPV of −71.6 percent to −18.6 percent, respectively. The industry is expected to incur $56.6 million in total conversion costs at this level. Approximately 98.7 percent of industry equipment listings would require additional engineering expertise and production lines, or possibly source parts from other manufacturers.

Accordingly, the Secretary tentatively concludes that at TSL 5 for commercial packaged boilers, the benefits of energy savings, NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the very large negative change in INPV for manufacturers. Consequently, DOE has tentatively concluded that TSL 5 is not economically justified.

TSL 4 corresponds to the efficiency level within each equipment class that provides the highest consumer NPV at a 7% discount rate over the analysis period from 2019 through 2048. The estimated energy savings from TSL 4 are 2.34 quads of energy. TSL 4 has an estimated NPV of consumer benefit of $0.67 billion using a 7-percent discount rate, and $5.9 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 128 million metric tons of CO_2, 3.1 thousand tons of SO_2, 553 thousand tons of NO_X, 1,505 thousand tons of CH_4, and 0.36 thousand tons of N_2O, and an emissions increase of 0.002 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $751 million to $11,208 million.

At TSL 4, the average LCC savings range from $1,656 to $65,128 depending on equipment class. The fraction of consumers incurring a net cost range from 1 percent for large oil-fired steam CPB equipment class to 56 percent for small gas-fired hot water CPB equipment class.

At TSL 4, the projected change in INPV ranges from a decrease of $124.1 million to a decrease in $34.3 million, which corresponds to a change of −68.9 percent to −19.0 percent, respectively. The industry is expected to incur $54.7 million in total conversion costs at this level. Approximately 98.4 percent of industry equipment listings require redesign to meet this standard level today.

Accordingly, the Secretary tentatively concludes that at TSL 4 for commercial packaged boilers, the benefits of energy savings, NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative change in INPV for manufacturers. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

TSL 3 corresponds to the intermediate level with both condensing and high efficiency noncondensing standard levels, depending on equipment class, and offers the potential for significant cumulative energy savings over the analysis period from 2019 through 2048. The estimated energy savings from TSL 3 are 0.97 quads of energy. TSL 3 has an estimated NPV of consumer benefit of $0.33 billion using a 7-percent discount rate, and $2.6 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 53 million metric tons of CO_2, 1.63 thousand tons of SO_2, 265 thousand tons of NO_X, 618 thousand tons of CH_4, and 0.17 thousand tons of N_2O, and an emissions increase of 0.002 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $316 million to $4,698 million.

At TSL 3, the average LCC savings range from $302 to $36,128 depending on equipment class. The fraction of consumers incurring a net cost range from 1 percent for large oil-fired steam CPB equipment class to 42 percent for small gas-fired hot water CPB equipment class.

At TSL 3, the projected INPV ranges from a decrease of $64.0 million to a decrease of $22.4 million, which corresponds to a change of −35.5 percent to −12.4 percent, respectively. The industry is expected to incur $40.1 million in total conversion costs at this level. Approximately 73.8 percent of industry equipment listings require redesign to meet this standard level today.

The Secretary carefully considered proposing TSL 3. However, in weighing the benefits of energy savings, NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions against the negative change in INPV for manufacturers, DOE has tentatively concluded that TSL 3 is not economically justified. DOE may

reexamine this decision based on the public comments received in response to this NOPR.

TSL 2 corresponds to the highest noncondensing efficiency level analyzed for the gas-fired hot water equipment classes and efficiency levels for oil-fired hot water equipment classes that are 2 or 3 percentage points above the equivalent size gas-fired hot water equipment classes, depending on equipment class, and one level below max tech for all steam CPB equipment classes and offers the potential for significant energy savings through the analysis period from 2019 through 2048. The estimated energy savings from TSL 2 are 0.39 quads of energy. TSL 2 has an estimated NPV of consumer benefit of $0.41 billion using a 7-percent discount rate, and $1.69 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 22 million metric tons of CO_2, 2.1 thousand tons of SO_2, 162 thousand tons of NO_X, 0.0003 tons of Hg, 233 thousand tons of CH_4, and 0.12 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $136 million to $1,998 million.

At TSL 2, the average LCC savings range from $521 to $36,128 depending on equipment class. The fraction of consumers incurring a net cost range from 1 percent for large oil-fired steam CPB equipment class to 27 percent for large gas-fired hot water CPB equipment class.

At TSL 2, the projected INPV ranges from a decrease of $23.8 million to a decrease of $13.1 million, which corresponds to a change of −13.2 percent to −7.3 percent, respectively. The industry is expected to incur $27.5 million in total conversion costs at this level. Approximately 52.5 percent of industry equipment listings require redesign to meet this standard level today.

Accordingly, the Secretary tentatively concludes that at TSL 2 for commercial packaged boilers, the benefits of energy savings, NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the negative change in INPV for manufacturers. Consequently, DOE has tentatively concluded that TSL 2 is economically justified.

After carefully considering the analysis results and weighing the benefits and burdens of TSL 2, DOE believes that setting the standards for commercial packaged boilers at TSL 2 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 2 is technologically feasible because the technologies required to achieve these levels already exist in the current market and are available from multiple manufacturers. TSL 2 is economically justified because the benefits to the nation in the form of energy savings, consumer NPV at 3 percent and at 7 percent, and emissions reductions outweigh the costs associated with reduced INPV. Therefore, DOE proposes to adopt amended energy conservation standards for commercial packaged boilers at the levels established by TSL 2 and presented in

However, the only difference between TSL 2 and TSL 3 is in the small gas-fired hot water CPB equipment class. TSL 3 includes the 95% TE level while TSL 2 includes the 85% TE level for that equipment class. TSL 3 results in energy savings that are 250 percent greater than TSL 2. Approximately 72 percent of small gas-fired hot water CPB equipment manufacturers offer at least one product that meets TSL 3.

DOE requests comment on whether DOE should adopt TSL 3.

See section VII.E for a list of issues on which DOE seeks comment.

Table V.48.

However, the only difference between TSL 2 and TSL 3 is in the small gas-fired hot water CPB equipment class. TSL 3 includes the 95% TE level while TSL 2 includes the 85% TE level for that equipment class. TSL 3 results in energy savings that are 250 percent greater than TSL 2. Approximately 72 percent of small gas-fired hot water CPB equipment manufacturers offer at least one product that meets TSL 3.

DOE requests comment on whether DOE should adopt TSL 3.

See section VII.E for a list of issues on which DOE seeks comment.

TABLE V.48—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS EVALUATED IN THIS NOPR

[Compliance required starting (date three years after publication of final rule)]

Equipment	Energy conservation standards	
	Minimum thermal efficiency (%)	Minimum combustion efficiency (%)
Small Gas-Fired Hot Water Commercial Packaged Boilers	85	n/a
Large Gas-Fired Hot Water Commercial Packaged Boilers	n/a	85
Small Oil-Fired Hot Water Commercial Packaged Boilers	87	n/a
Large Oil-Fired Hot Water Commercial Packaged Boilers	n/a	88
Small Gas-Fired Steam Commercial Packaged Boilers	81	n/a
Large Gas-Fired Steam Commercial Packaged Boilers	82	n/a
Small Oil-Fired Steam Commercial Packaged Boilers	84	n/a
Large Oil-Fired Steam Commercial Packaged Boilers	85	n/a

2. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of this NOPR's proposed energy conservation standards, for covered commercial packaged boilers sold in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The annualized national economic value (expressed in 2014$) of the benefits from consumer operation of equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs), and (2) the annualized value of the benefits of CO_2 and NO_X emission reductions.[90]

[90] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the

Continued

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing these equipment. The national operating cost savings is measured for the lifetime of commercial packaged boilers shipped in 2019–2048.

The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this proposed rule. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100 through 2300.

Estimates of annualized benefits and costs of the proposed standards for commercial packaged boilers under TSL 2 are shown in Table V.49. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate, the cost of the standards proposed in this rulemaking is $51 million per year in increased equipment costs; while the estimated benefits are $91 million per year in reduced equipment operating costs, $37 million in CO_2 reductions, and $16 million in reduced NO_X emissions. In this case, the net benefit would amount to $93 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series, the estimated cost of the standards proposed in this rulemaking is $48 million per year in increased equipment costs; while the estimated benefits are $142 million per year in reduced operating costs, $37 million in CO_2 reductions, and $25 million in reduced NO_X emissions. In this case, the net benefit would amount to approximately $156 million per year.

TABLE V.49—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR COMMERCIAL PACKAGED BOILERS *

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings *	7%	91	84	101.
	3%	142	129	160.
CO_2 Reduction (using mean SCC at 5% discount rate) * **	5%	10	10	11.
CO_2 Reduction (using mean SCC at 3% discount rate) * **	3%	37	34	39.
CO_2 Reduction (using mean SCC at 2.5% discount rate) * **.	2.5%	54	51	58.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) * **.	3%	111	104	119.
NO_X Reduction †	7%	16	15	37.
	3%	25	23	59.
Total Benefits ††	7% plus CO_2 range	117 to 218	108 to 203	149 to 258.
	7%	143	133	177.
	3% plus CO_2 range	177 to 278	162 to 256	230 to 338.
	3%	204	186	258.
Costs				
Consumer Incremental Equipment Costs	7%	51	54	47.
	3%	48	52	45.
Net Benefits				
Total ††	7% plus CO_2 range	67 to 168	54 to 149	102 to 210.
	7%	93	79	130.
	3% plus CO_2 range	129 to 230	110 to 205	185 to 293.
	3%	156	135	213.

* This table presents the annualized costs and benefits associated with commercial packaged boilers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the equipment purchased in 2019–2048. The incremental installed costs include incremental equipment cost as well as installation costs. The CO_2 reduction benefits are global benefits due to actions that occur nationally. The Primary, Low Benefits, and High Benefits Estimates utilize projections of building stock and energy prices from the AEO2015 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, DOE used a constant equipment price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. The equipment price projection is described in section IV.F.1 of this document and chapter 8 of the NOPR TSD.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific.

shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf*.) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that this standards address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and national security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an ''economically significant regulatory action'' under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking. DOE will transmit a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business

Administration (SBA) for review under 5 U.S.C 605(b).

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333414, which applies to ''heating equipment (except warm air furnaces) manufacturing'' and includes commercial packaged boilers, is 500 employees.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Rule

A statement of the need for, objectives of, and legal basis for, the proposed rule is stated elsewhere in the preamble and not repeated here.

2. Description on Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using publically-available information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI), public databases (*e.g.,* AHRI Directory,[91] ABMA Directory [92]), individual company Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture or sell products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered commercial packaged boilers. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified 45 potential manufacturers of commercial packaged boilers sold in the U.S. DOE then determined that 15 are large manufacturers, manufacturers that are foreign owned and operated. DOE was able to determine that 30 manufacturers meet the SBA's definition of a ''small business.'' Of these 30 small businesses, DOE estimates that 23 domestically manufacture commercial packaged boilers covered by this rulemaking.

Before issuing this NOPR, DOE attempted to contact all the small business manufacturers of commercial packaged boilers it had identified. Six small businesses agreed to take part in an MIA interview. DOE also obtained information about small business impacts while interviewing large manufacturers.

3. Description and Estimate of Compliance Requirements

In the engineering analysis, DOE compiled an equipment database based on equipment listing information provided by the AHRI and ABMA trade associations. However, DOE notes that it does not have product listings data for 11 of the identified 30 small manufacturers since they are not AHRI or ABMA trade association members. The following discussion reflects the available data provided by AHRI and ABMA and assumes the distribution of equipment efficiencies data to be representative of the industry. Additionally, despite extensive interviews with small and large companies, DOE was not able to obtain sufficient financial or sales data to determine typical small manufacturer revenue, operating profit and market share. The small manufacturers provided insufficient data to determine the effect these standards will have on small business revenue or operating profit.

However, in an effort to gauge the relative impacts of this rulemaking on small manufacturers, DOE has conducted a detailed product availability analysis. The analysis investigates the portion of small manufacturers that are currently able to meet the proposed standard. Additionally, it looks that number of equipment models small manufacturers must redesign or eliminate relative to the industry-at-large.

DOE identified 18 small manufacturers and 13 large manufactures that produce gas-fired equipment covered by this rulemaking based on companies included in DOE's equipment database. Roughly 56% of gas-fired equipment listings in the database already meet the proposed standard at TSL 2. This would suggest that TSL 2 already has a strong market presence. DOE's engineering analysis concludes that no proprietary technology is required to meet today's proposed standard level. Manufacturers would likely need to adopt one or a combination of different technology options: (1) Switch from natural or atmospheric draft systems to mechanical draft boilers; (2) improve heat exchanger design using tabulators, fins and multi-pass designs; (3) use high efficiency burner technology such as pulse combustion; or (4) increase jacket insulation (*e.g.* 3–4 inches of fiberglass wool).

Assuming the equipment database used in the engineering analysis is representative of the industry as a whole, small manufacturers have similar portions of product listings at TSL 2 as their larger competitors in the gas-fired sector. Industry conversion costs for gas-fired product at TSL 2 total $18.3 million. This results in an average conversion cost of approximately $0.42 million per manufacturer.[93]

Table VI.1 and Table VI.2 looks at the differential impacts of the standard on small manufacturers versus the industry at large. Table VI.1 estimates the percent of small manufacturers and their listings that currently comply with TSL 2. Table VI.2 estimates the percent of all manufacturers, both large and small, and their listings that currently comply with TSL 2.

[91] See *www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[92] See *http://www.abma.com/.*

[93] This estimate was derived by taking total conversion costs for gas-fired equipment divided by total gas-fired equipment manufacturers.

TABLE VI.1—SMALL GAS-FIRED MANUFACTURERS COMPLIANT AT THE PROPOSED STANDARD LEVEL

Product class	Small manufacturers: manufacturers with products compliant at TSL 2 (%)	Small manufacturers: total listings	Small manufacturers: listings compliant at TSL 2	Small manufacturers: listings compliant at TSL 2 (%)
Small Gas Hot Water	100	433	348	80
Large Gas Hot Water	67	220	120	55
Small Gas Steam	50	106	26	25
Large Gas Steam	71	127	46	36

TABLE VI.2—INDUSTRY GAS-FIRED MANUFACTURERS COMPLIANT AT THE PROPOSED STANDARD LEVEL

Product class	Small manufacturers: manufacturers with products compliant at TSL 2 (%)	Small manufacturers: total listings	Small manufacturers: listings compliant at TSL 2	Small manufacturers: listings compliant at TSL 2 (%)
Small Gas Hot Water	97	1,149	712	62
Large Gas Hot Water	78	373	188	50
Small Gas Steam	67	252	72	29
Large Gas Steam	82	186	80	43

Using product listings as representative market data, DOE estimates average conversion costs of $0.63 million for large manufacturers and $0.31 million for small manufacturers of gas-fired equipment. Since this is a relatively low volume market where most products are built-to-order, DOE assumes that capital conversion costs do not vary significantly between large and small manufacturers.[94]

In the market for oil-fired equipment, DOE identified seven small manufacturers and six large manufacturers producing equipment covered by this rulemaking based on the equipment database. Combined, they sell roughly 1,000 units per year, or 5% of the total annual market for CPB equipment. Due to the small size of the oil-fired market, DOE expects that the manufacturing processes and production costs to be similar for both small and large manufacturers. DOE notes that the market for oil-fired commercial packaged boilers is shrinking. Some manufacturers, both small and large, may choose not to invest in product redesign given the small market size and projected decline in shipments. For manufacturers that do stay in the oil-fired market, DOE's analysis indicates that there are no proprietary technologies required to meet TSL 2. Manufacturers would likely need to adopt one or a combination of different technology options: (1) Integrate oxygen trimmers; (2) improve heat exchanger design; (3) use high efficiency burner technology such as pulse combustion; or (4) increase jacket insulation. Thus, DOE would expect similar conversion costs for small and large manufacturers on a per product basis.

Table VI.3 estimates the percent of small manufacturers and their listings that currently comply with TSL 2.

Table VI.4 estimates the percent of all manufacturers, both large and small, and their listings that currently comply with TSL 2.

TABLE VI.3—SMALL OIL-FIRED MANUFACTURERS COMPLIANT AT THE PROPOSED STANDARD LEVEL

Product class	Small manufacturers: manufacturers with products compliant at TSL 2 (%)	Small manufacturers: total listings	Small manufacturers: listings compliant at TSL 2	Small manufacturers: listings compliant at TSL 2 (%)
Small Oil Hot Water	33	31	1	3
Large Oil Hot Water	25	24	3	13
Small Oil Steam	25	49	5	10
Large Oil Steam	17	45	6	13

[94] The amount of engineering effort is proportional to the number of models that require redesign. For this estimate, DOE used its product database to determine what portion of industry models would need to be redesigned for large and small manufacturers to determine the values for each. DOE used the number of models requiring redesign to scale large versus small product conversion costs. For gas-fired equipment, DOE used gas-fired model listings.

TABLE VI.4—INDUSTRY OIL-FIRED MANUFACTURERS COMPLIANT AT THE PROPOSED STANDARD LEVEL

Product class	Small manufacturers: manufacturers with products compliant at TSL 2 (%)	Small manufacturers: total listings	Small manufacturers: listings compliant at TSL 2	Small manufacturers: listings compliant at TSL 2 (%)
Small Oil Hot Water	36	124	17	14
Large Oil Hot Water	20	83	5	6
Small Oil Steam	44	127	32	25
Large Oil Steam	40	109	36	33

Using product listings as representative market data, DOE estimates average conversion costs of $0.90 million for large manufacturers and $0.28 million for small manufacturers of oil-fired equipment. Since this is a relatively low volume market where most products are built-to-order, DOE assumes that capital conversion costs do not vary significantly between large and small manufacturers.[95]

DOE assumed the data for small manufacturer's products in the AHRI and ABMA databases are representative of all small manufacturers.

DOE requests comment on the appropriateness of the Manufacturer Impact Analysis' assumption that the AHRI and ABMA equipment databases are representative of all small manufacturers.

DOE also requests product listing data from small manufacturers that are not AHRI or ABMA trade association members—including model numbers, capacity, and efficiency ratings.

DOE also continues to seek financial, sales, and market share data from small manufacturers to better understand and analyze the impact of these proposed standards and conversion costs on the revenue and operating profit of a small business.

See section VII.E for a list of issues on which DOE seeks comment.

4. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rulemaking being proposed today.

5. Significant Alternatives to the Rule

The discussion above analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to considering other TSLs in this rulemaking, DOE considered several policy alternatives in lieu of standards that could potentially result in energy savings while reducing burdens on small businesses. DOE considered the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) voluntary energy efficiency targets; and (5) bulk government purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the standards, DOE determined that the energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels. Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. (See 10 CFR 431.401) Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and Part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of commercial packaged boilers must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for commercial packaged boilers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer equipment and commercial equipment, including commercial packaged boilers. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. DOE requested OMB approval of an extension of this information collection for three years, specifically including the collection of information proposed in the present rulemaking, and estimated that the annual number of burden hours under this extension is 30 hours per company. In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017. 80 FR 5099 (January 30, 2015).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of

[95] The amount of engineering effort is proportional to the number of models that require redesign. For this estimate, DOE used its product database to determine what portion of industry models would need to be redesigned for large and small manufacturers to determine the values for each. DOE used the number of models requiring redesign to scale large versus small product conversion costs. For oil-fired equipment, DOE used oil-fired model listings to scale product conversion costs.

1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer equipment or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.*

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include (1) investment in research and development and in capital expenditures by commercial packaged boilers manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency commercial packaged boilers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6313(a), this proposed rule would establish energy conservation standards for commercial packaged boilers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 15, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order, and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which sets forth energy conservation standards for commercial packaged boilers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report*.

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar

participants will be published on DOE's Web site at: *https://attendee.gotowebinar.com/register/6872804566336170753*.

Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov*. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests data on manufacturer selling prices, shipments and conversion costs of very large commercial packaged boilers with fuel input rate above 10,000 kBtu/h that can be used to supplement the analyses of such equipment in this rulemaking.

(2) DOE requests feedback on the methodology used to analyze all equipment classes and the results obtained. In particular DOE is interested in comments on whether the results are appropriate and representative of the current market prices for such type of equipment.

(3) DOE requests information or insight that can better inform its markups analysis.

(4) DOE requests feedback on the methodology and assumptions used for the building heat load adjustment.

(5) DOE requests information on what constitutes a reasonable baseline assumption about the current degree of adoption of hybrid boiler configurations in retrofit situations and on other related parameters such as percentage of total installed capacity typically assigned to the new condensing boilers, climate zones where it may be more prevalent and any other supporting documentation.

(6) DOE seeks input on its characterization and development of representative installation costs, including venting costs, in new and replacement commercial package boiler installations, including data to support assumptions on vent sizing, vent length distributions, and vent materials.

(7) DOE requests comment and seeks data on the assumption that a rebound effect is unlikely to occur for these commercial applications.

(8) DOE requests comments on the representativeness of using 1-year as warranty for parts and labor, and 10-years as warranty for the heat exchanger.

(9) DOE seeks feedback on the assumptions used to develop historical and projected shipments of commercial packaged boilers and the representativeness of its estimates of projected shipments. DOE also requests information on historical shipments of commercial packaged boilers including shipments by equipment class for small, large, and very large commercial packaged boilers.

(10) DOE requests feedback on the assumptions used to estimate the impact of relative price increases on commercial packaged boiler shipments due to proposed standards.

(11) DOE requests additional information from manufacturers regarding conversion costs for oil-fired products. Specifically, DOE is interested in estimates of capital conversion costs at each TSL and the change in manufacturing equipment associated with those costs.

(12) DOE requests comment on whether DOE should adopt TSL 3.

(13) DOE requests comment on the appropriateness of the Manufacturer Impact Analysis' assumption that the AHRI and ABMA equipment databases are representative of all small manufacturers.

(14) DOE also requests product listing data from small manufacturers that are not AHRI or ABMA trade association members—including model numbers, capacity, and efficiency ratings.

(15) DOE also continues to seek financial, sales, and market share data from small manufacturers to better understand and analyze the impact of these proposed standards and conversion costs on the revenue and operating profit of a small business.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on March 11, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 3. Section 431.87 is revised to read as follows:

§ 431.87 Energy conservation standards and their effective dates.

(a) Each commercial packaged boilers listed in Table 1 to § 431.87 and manufactured on or after March 2, 2012 and prior to [DATE 3 YEARS AFTER PUBLICATION IN THE **FEDERAL REGISTER** OF THE FINAL RULE ESTABLISHING AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS], must meet the applicable energy conservation standard levels in Table 1.

TABLE 1 TO § 431.87—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATIONS STANDARDS

Equipment	Subcategory	Size category (fuel input rate)	Energy conservation standard *
Hot Water Commercial Packaged Boilers	Gas-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	80.0% E_T
Hot Water Commercial Packaged Boilers	Gas-fired	>2,500,000 Btu/h	82.0% E_C
Hot Water Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	82.0% E_T
Hot Water Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	84.0% E_C
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft.	≥300,000 Btu/h and ≤2,500,000 Btu/h.	79.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—all, except natural draft.	>2,500,000 Btu/h	79.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	≥300,000 Btu/h and ≤2,500,000 Btu/h.	77.0% E_T
Steam Commercial Packaged Boilers	Gas-fired—natural draft	>2,500,000 Btu/h	77.0% E_T
Steam Commercial Packaged Boilers	Oil-fired	≥300,000 Btu/h and ≤2,500,000 Btu/h.	81.0% E_T
Steam Commercial Packaged Boilers	Oil-fired	>2,500,000 Btu/h	81.0% E_T

* Where E_T means ''thermal efficiency'' and E_C means ''combustion efficiency'' as defined in 10 CFR 431.82

(b) Each commercial packaged boilers listed in Table 2 to § 431.87 and manufactured on or after [DATE 3 YEARS AFTER PUBLICATION IN THE **FEDERAL REGISTER** OF THE FINAL RULE ESTABLISHING AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS], must meet the applicable energy conservation standard levels in Table 2.

TABLE 2 TO § 431.87—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATIONS STANDARDS

Equipment	Size category (fuel input rate)	Energy conservation standard *
Small Gas-Fired Hot Water Commercial Packaged Boilers	>300,000 Btu/h and ≤2,500,000 Btu/h	85.0% E_T
Large Gas-Fired Hot Water Commercial Packaged Boilers	>2,500,000 Btu/h and ≤10,000,000 Btu/h	85.0% E_C
Very Large Gas-Fired Hot Water Commercial Packaged Boilers	>10,000,000 Btu/h	82.0% E_C
Small Oil-Fired Hot Water Commercial Packaged Boilers	>300,000 Btu/h and ≤2,500,000 Btu/h	87.0% E_T
Large Oil-Fired Hot Water Commercial Packaged Boilers	>2,500,000 Btu/h and ≤10,000,000 Btu/h	88.0% E_C
Very Large Oil-Fired Hot Water Commercial Packaged Boilers	>10,000,000 Btu/h	84.0% E_C
Small Gas-Fired Steam Commercial Packaged Boilers	>300,000 Btu/h and ≤2,500,000 Btu/h	81.0% E_T
Large Gas-Fired Steam Commercial Packaged Boilers	>2,500,000 Btu/h and ≤10,000,000 Btu/h	82.0% E_T
Very Large Gas-Fired Steam Commercial Packaged Boilers **	>10,000,000 Btu/h	79.0% E_T
Small Oil-Fired Steam Commercial Packaged Boilers	>300,000 Btu/h and ≤2,500,000 Btu/h	84.0% E_T
Large Oil-Fired Steam Commercial Packaged Boilers	>2,500,000 Btu/h and ≤10,000,000 Btu/h	85.0% E_T
Very Large Oil-Fired Steam Commercial Packaged Boilers	>10,000,000 Btu/h	81.0% E_T

* Where E_T means ''thermal efficiency'' and E_C means ''combustion efficiency'' as defined in 10 CFR 431.82

** Prior to March 2, 2022, for natural draft very large gas-fired steam commercial packaged boilers, a minimum thermal efficiency level of 77% is permitted and meets Federal commercial packaged boiler energy conservation standards.

[FR Doc. 2016–06588 Filed 3–23–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 81 Thursday,
No. 57 March 24, 2016

Part IV

Department of Labor

Office of Labor-Management Standards

29 CFR Parts 405 and 406

Interpretation of the ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 405 and 406

RIN 1215–AB79; 1245–AA03

Interpretation of the ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (''Department'') is revising the Form LM–20 Agreement and Activities Report and the Form LM–10 Employer Report upon review of the comments received in response to its June 21, 2011 Notice of Proposed Rulemaking (NPRM). In the NPRM, the Department proposed to revise its interpretation of the advice exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA) to better effectuate section 203's requirement that employers and their labor relations consultants report activities undertaken with an object, directly or indirectly, to persuade employees about how to exercise their rights to union representation and collective bargaining. Under the prior interpretation, reporting was effectively triggered only when a consultant communicated directly with employees. This interpretation left a broad category of persuader activities unreported, thereby denying employees important information that would enable them to consider the source of the information about union representation directed at them when assessing the merits of the arguments and deciding how to exercise their rights. The Department proposed to eliminate this reporting gap. The final rule adopts the proposed rule, with modifications, and provides increased transparency to workers without imposing any restraints on the content, timing, or method by which an employer chooses to make known to its employees its position on matters relating to union representation or collective bargaining. The final rule also maintains the LMRDA's section 203(c) advice exemption and the traditional privileges and disclosure requirements associated with the attorney-client relationship. The Department has also revised the forms and instructions to make them more user-friendly and to require more detailed reporting on employer and consultant agreements. Sections of the Department's regulations have also been amended consistent with the instructions. Additionally, with this rule, the Department requires that Forms LM–10 and LM–20 be filed electronically. This rule largely implements the Department's proposal in the NPRM, with modifications of several aspects of the revised instructions as proposed.

DATES: This final rule is effective on April 25, 2016. The rule will be applicable to arrangements and agreements as well as payments (including reimbursed expenses) made on or after July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5609, Washington, DC 20210; *olms-public@dol.gov*; (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose, Justification, and Summary of the Rule

The purpose of this rule is to revise the Department's interpretation of section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA) to require reporting of ''indirect'' persuader activities and agreements. The LMRDA and the National Labor Relations Act (NLRA) address generally the obligations of unions and employers to conduct labor-management relations in a manner that protects the rights of employees to exercise their right to choose whether to be represented by a union for purposes of collective bargaining. While the NLRA, enforced by the National Labor Relations Board (NLRB), ensures compliance with these rights by investigating and prosecuting unfair labor practice complaints, the LMRDA promotes these rights by requiring unions, employers, and labor relations consultants to publicly disclose information about certain financial transactions, agreements, and arrangements.

Section 203(b) of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 433(b), requires employers and labor relations consultants to report their agreements pursuant to which the consultant undertakes activities with ''an object . . . , *directly or indirectly*'' to persuade employees concerning their rights to organize and bargain collectively. (Emphasis added). The Department's authority to promulgate regulations implementing section 203 is established by sections 203 and 208 of the LMRDA. The Secretary of Labor has delegated this authority to the Office of Labor-Management Standards (OLMS).

Section 203(c) of the LMRDA exempts ''advice'' from triggering the reporting requirement. Specifically, employers and consultants are not required to file a report covering the services of a consultant ''by reason of his giving or agreeing to give advice'' to the employer. Under the Department's original, 1960 interpretation of the ''advice'' exemption, labor relations consultants were required to report arrangements to draft speeches or other written materials to be delivered or disseminated to employees for the purpose of persuading them as to their right to organize and bargain collectively. Two years later, the Department revised its position to say that reporting was not required if the consultant limited his or her activity to providing the employer with materials that the employer had the right to accept or reject. In the early 1980s, the Department again reduced the reporting obligation of contractors: No reporting was required unless they had direct contact with employees. Under this interpretation, labor relations consultants to employers avoided reporting a broad category of activities undertaken with a clear object to persuade employees regarding their rights to organize or bargain collectively. In this rule, the Department revises its interpretation of the advice exemption, consistent with the Department's original interpretation of section 203, to better effectuate section 203's requirement that consultants report persuader activities. Based upon the Department's consideration of contemporary practices under the federal labor-management relations system, and the comments received on its proposal, the final rule expands reporting of persuader agreements and provides employees with information about the use of labor relations consultants by employers, both openly and behind the scenes, to shape how employees exercise their union representation and collective bargaining rights. The final rule promotes the statute's purposes while also protecting employer free speech rights and the relationship between an attorney and his or her client. Although employees may hear a strong message from their employer about how they should make choices concerning the exercise of their rights, in the absence of indirect persuader reporting requirements, they generally do not know the source of the message. By knowing that a third party—the consultant hired by their employer—is the source of the information, employees will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights. This information promotes transparency and helps employees assess the applicability of those messages and the extent to which they reflect the genuine view of their employer and supervisors about issues in their particular workplace or instead, may reflect a strategy designed by the consultant to counter union representation whenever its services are hired.

As noted above, this rule requires employers and their consultants to report not only their agreements for ''direct persuader activities,'' but also to report their agreements for ''indirect persuader activities.'' The rule takes fully into account section 203(c), which exempts from reporting ''services of [a consultant] by reason of his giving or agreeing to give advice to [an] employer.'' Based on the traditional meaning of ''advice,'' the Department believes, contrary to its prior interpretation, that section 203(c) (known as the ''advice exemption'') does not shield employers and their consultants from reporting agreements in which the consultant has no face-to-face contact with employees but nonetheless engages in activities behind the scenes (known as indirect persuader activities) where an object is to persuade employees concerning their rights to organize and bargain collectively.

This rule ensures that indirect reporter activity, as intended by Congress, is reported and disclosed to

workers and the public. Indirect persuader activity occurs when an employer hires a consultant to help defeat a union organizing campaign. The consultant has no direct contact with employees, but it directs a campaign, often formulaic in its design and implementation, for the employer to persuade employees to vote against union representation. Under this arrangement, the consultant often scripts the campaign, including drafting letters, flyers, leaflets, and emails that the employer distributes to its employees, writing speeches that management gives to employees in mandatory meetings, providing statements for supervisors to use in meetings they are required to hold with employees who report to them, often in one-on-one settings, and controlling the timing, sequence, and frequency of each of these events. Employers hire consultants to engage in this type of indirect persuasion in over 70 percent of organizing campaigns. See n. 9, 76 FR 36186.

Although the statute explicitly requires reporting of agreements involving the consultant's direct or indirect persuasion of employees, the Department's prior interpretation had the practical effect of relieving employers and labor relations consultants from reporting any persuader agreements, except those involving direct communication with employees. The Department had based its position on its interpretation of section 203(c), known as the ''advice'' exemption. The previous interpretation left workers unaware of the majority of persuader agreements. In fact, the Department only receives a small number of direct persuader reports, covering only a fraction of organizing campaigns. This lack of awareness by workers of consultant activity is reflected in many of the comments submitted on the NPRM.

It is the Department's view, based on its experience in administering and enforcing the LMRDA and its review of comments submitted in response to the proposed rule, that full disclosure of both direct and indirect persuasion activities protects employee rights to organize and bargain collectively and promotes transparency and the peaceful and stable labor-management relations sought by Congress. The disclosure required under this rule will provide employees with essential information about the underlying source of the views, materials, and policies directed at them and designed to influence how they exercise their statutory rights to union representation and collective bargaining. They will be better able to understand the role that labor relations consultants play in their employers' efforts to shape their views about union representation and collective bargaining.

As explained in the NPRM and in this preamble, the Department maintains that section 203 is better read to require employers and labor relations consultants to report activities that clearly are undertaken with an object to persuade employees, but which were viewed under the prior interpretation as the giving of ''advice'' to the employer. The prior interpretation failed to achieve the very purpose for which section 203 was enacted—to disclose to workers, the public, and the Government activities undertaken by labor relations consultants to persuade employees—directly or indirectly, as to how to exercise their rights to union representation and collective bargaining. Under this rule, exempt ''advice'' activities are now limited to those activities that meet the plain meaning of the term: An oral or written recommendation regarding a decision or course of conduct. The rule restores the traditional meaning to the term whereby an attorney or a labor relations consultant does not need to report, for example, when he counsels a business about its plans to undertake a particular action or course of action, advises the business about its legal vulnerabilities and how to minimize those vulnerabilities, identifies unsettled areas of the law, and represents the business in any disputes and negotiations that may arise. It draws a line between these activities, which do not have to be reported, and those activities that have as their object the persuasion of employees—activities that manage or direct the business's campaign to sway workers against choosing a union—that must be reported. An employer's ability to ''accept or reject'' materials provided, or other actions undertaken, by a consultant, common to the usual relationship between an employer and a consultant and central to the prior interpretation's narrow scope of reportable activity, no longer shields indirect persuader activities from disclosure.

The prior interpretation construed the advice exemption in a manner that failed to give full effect to the requirement that indirect persuasion of employees, as well as direct persuasion, triggers reporting. It did so in a manner that allowed the advice exemption to override this requirement. Upon our consideration of the comments received on the proposal and further review of the issue, we can find no policy justification, and only slender legal support, for the Department's earlier interpretation of section 203. The position effectively denied employees, the public, and the Government information about labor relations consultants that Congress had determined was necessary for employees to effectively exercise their rights to support or refrain from supporting a union as their collective bargaining representative, thereby impeding the national labor policy as established in the NLRA and the LMRDA. Under the interpretation embodied in this final rule, both the language of the advice exemption and the other components of section 203 are given effect in a manner that clearly tracks the language of section 203 more closely and better effectuates the purposes underlying the section.

The rule imposes no restrictions on what employers may say or do when faced with a union organizing campaign. Rather, the premise of the rule is that with knowledge that the source of the information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights. With this information, they will be able to better discern whether the views and specific arguments of their supervisors about the benefits and drawbacks of union representation are truly the supervisors' own, reflect their company's views, or rather reflect a scripted industrywide (or even wider) antipathy towards union representation and collective bargaining. Once they have learned that a consultant has been hired to persuade them, employees will be able to consider whether the consultant is serving as a neutral, disinterested third party, hired to guide the employer in adhering to NLRB election rules or rather as one who has been hired as a specialist in defeating union organizing campaigns. They will also be better able to consider the weight to attach to the common claim in representational campaigns that bringing a union, as a third party, into the workplace will be counterproductive to the employees' interests. In the context of an employer's reliance on a third party to assist it on a matter of central importance, it is possible that an employee may weigh differently any messages characterizing the union as a third party. In these instances, it is important for employees to know that if the employer claims that employees are family—a relationship will be impaired, if not destroyed, by

the intrusion of a third party into family matters—it has brought a third party, the consultant, into the fold to achieve its goals. Similarly, with knowledge that its employer has hired a consultant, at substantial expense, to persuade them to oppose union representation or the union's position on an economic issue, employees may weigh differently a claim that the employer has no money to deal with a union at the bargaining table.

In crafting the final rule, the Department has focused on providing workers with information about the source of persuader activities so they can make informed decisions. The Department has been careful, just as Congress was in prescribing reporting by employers and consultants, to allow unions and employers to engage in an informed debate about the advantages and disadvantages of union representation, consistent with the First Amendment and the NLRA. Neither the statute nor the final rule restrains in any way the content of an employer's message—whether delivered by itself or with the assistance, directly or indirectly of a consultant—its timing, or the means by which it is delivered on matters relating to union representation and collective bargaining. Likewise, as discussed below, the rule also does not infringe upon the attorney-client relationship. The affected employees and the public interest benefit from the exchange of competing ideas. This can best be done by requiring that employers and labor relations consultants disclose their agreement to engage in persuader activities. Both the statute and this regulation fulfill the Government's important interest in ensuring that workers and the public are informed about such agreements. Regardless of the choices made by employees on whether to support or oppose representation in their workplace, the rule will ensure that they are more informed decision makers, which will result in more stable and peaceful labor-management relations.

The Department recognizes that most employers and their consultants, like most unions, conduct their affairs in a manner consistent with federal law. The law encourages debate, imposing only broad bounds in the labor relations context, imposing sanctions only in limited circumstances and without prior restraint—where employers ''interfere with, restrain or coerce employees in the exercise of their rights guaranteed in [29 U.S.C. 157] or unions ''to restrain or coerce'' employees in the exercise of those rights. 29 U.S.C. 158(a)(1); 29 U.S.C. 158(b)(1). Congress intended the LMRDA, including the reporting requirements, to complement the NLRA, a result achieved by the final rule without abridging the right of employers and their consultants to engage in a robust debate about the advantages and disadvantages of union representation and collective bargaining. Thus, it is important to note that the Department has not attempted to regulate the content, timing, or veracity of communications by labor relations consultants or employers.

Research indicates that the number of firms engaged in persuader activities has grown substantially since the LMRDA was enacted. Recent studies show that in somewhere between 71% and 87% of employee organizing drives, the employer retains one or more consultants. See n. 9. 76 FR 36186. The size of the industry, per se, is not a concern of the Department's, but its growth exacerbates the transparency concerns: As the size has increased, employees in a substantial majority of representation campaigns are increasingly left unaware of information that may be important to them and may affect their decisions to support or oppose union representation in their workplaces. As noted in the NPRM, these studies demonstrate that employer campaigns against unions have become standardized, almost formulaic, because employers frequently turn to labor relations consultants, including law firms, to manage their efforts to oppose unionization. Those efforts utilize indirect persuasion almost exclusively. Despite the growth of this industry, historically, only a relatively small number of reports about persuader agreements and arrangements have been filed with the Department. The Department attributes this fact to the overly narrow view of the activities reportable under the prior interpretation, which essentially restricted reporting to just direct persuasion. By issuing this rule, the Department ensures that persuader activities receive the transparency that Congress intended, but was never attained under the prior rule—a need that has become more important over time as the use of consultants by employers to resist union representation has become the norm.

The rule, by revising the instructions to forms filed by employers (Form LM–10) and labor relations consultants (Form LM–20) to report persuader agreements and arrangements, helps them to comply with their reporting obligations. Reports must be filed if the labor relations consultant undertakes activities that fall within the categories described below:

Direct Persuasion

- The obligation to report direct persuasion by consultants remains. Consultants must report if they engage in any conversation or other direct communication with any employee, where the consultant has an object to persuade the employee about how he or she should exercise representation or collective bargaining rights. For example, reporting would be required if the consultant speaks directly with employees (in person or by telephone or other medium) or disseminates materials directly (such as by email or mail) that are intended to persuade. This contrasts, as it also does in indirect persuader activities, with situations in which the employer or its regular staff communicates directly with employees, a situation in which reporting is not required, as provided by 29 U.S.C. 433(e). This aspect of the rule is unchanged from the Department's prior interpretations.

Indirect Persuasion

- Planning, Directing, or Coordinating Supervisors or Managers. Reporting is required if the consultant—with an object to persuade—plans, directs, or coordinates activities undertaken by supervisors or other employer representatives. This includes both meetings and other less structured interactions with employees.
- Providing Persuader Materials. Reporting is required if the consultant provides—with an object to persuade—material or communications to the employer, in oral, electronic (including, *e.g.,* email, Internet, or video documents or images), or written form, for dissemination or distribution to employees. Reporting would be required, for example, if the consultant drafted, revised, or selected persuader materials for the employer to disseminate or distribute to employees. In revising employer-created materials, including edits, additions, and translations, a consultant must report such activities only if an ''object'' of the revisions is to enhance persuasion, as opposed to ensuring legality. The sale, rental, or other use of ''off-the-shelf'' persuader materials, such as videos or stock campaign literature, which are not created for the particular employer who is party to the agreement, will not be reportable unless the consultant helps the employer select the materials. A consultant who created literature previously, without any knowledge of the specific employer requesting the literature, including the labor union involved, industry, or employees, and has no role thereafter in disseminating

the literature for the specific employer, cannot be said to have acted, pursuant to an agreement with the employer in question, with a purpose of persuading these employees.

• Conducting a Seminar for Supervisors or Other Employer Representatives. Some labor relations consultants hold seminars on a range of labor-management relations matters, including how to persuade employees concerning their organizing and bargaining rights. Seminar agreements must be reported if the consultant develops or assists the attending employers in developing anti-union tactics and strategies for use by the employer, the employers' supervisors or other representatives. As explained below, however, employers whose representatives attend such seminars generally will have no reporting obligation. Additionally, trade associations are required to report only if they organize and conduct the seminars themselves, rather than subcontract their presentation to a law firm or other consultant. We note that not all seminars will be reportable. For example, a seminar where the consultant conducts the seminar without developing or assisting the employer-attendees in developing a plan to persuade their employees would not be reportable, nor would a seminar where a consultant merely makes a sales pitch to employers about persuader services it could provide.

• Developing or Implementing Personnel Policies or Actions. Reporting is only required if the consultant develops or implements personnel policies or actions for the employer with an object to persuade employees. For example, a consultant's identification of specific employees for disciplinary action, or reward, or other targeting based on their involvement with a union representation campaign or perceived support for the union would be reportable. As a further example, a consultant's development of a personnel policy during a union organizing campaign in which the employer issues bonuses to employees equal to the first month of union dues, would be reportable. On the other hand, a consultant's development of personnel policies and actions are not reportable merely because they improve the pay, benefits, or working conditions of employees, even where they could subtly affect or influence the attitudes or views of the employees. Rather, to be reportable, the consultant must undertake the activities with an object to persuade employees, as evidenced by the agreement, any accompanying communication, the timing, or other circumstances relevant to the undertaking.

These aspects of the rule effectuate the statute's requirement, largely negated by the Department's longstanding interpretation, that ''indirect activities'' undertaken by a labor relations consultant must be reported. The final rule, however, ensures that no reporting is required by reason of a consultant merely giving ''advice'' to the employer, such as, for example, when a consultant offers guidance on employer personnel policies and best practices, conducts a vulnerability assessment for an employer, conducts a survey of employees (other than a push survey, *i.e.,* one designed to influence participants and thus undertaken with an object to persuade), counsels employer representatives on what they may lawfully say to employees, conducts a seminar without developing or assisting the employer in developing anti-union tactics or strategies, or makes a sales pitch to undertake persuader activities. Reporting is also not required for merely representing an employer in court or during collective bargaining, or otherwise providing legal services to an employer.

As noted above, the final rule does not require employers to file a report solely by reason of their attendance at a union avoidance seminar. The Department determined that the aggregated burden associated with such reporting by large numbers of employers outweighed the marginal benefit that would be derived by requiring reports from both attendees and the firms presenting the seminars. Under the rule, the firms presenting the seminar will report essentially the same information that would have been reported by the attending employers.

To further reduce burden under the rule, the Department has determined that it is appropriate to treat trade associations somewhat differently than other entities insofar as reporting is concerned. Trade associations as a general rule will only be required to report in two situations—where the trade association's employees serve as presenters in union avoidance seminars or where they undertake persuader activities for a particular employer or employers (other than by providing off-the shelf materials to employer-members). The Department expects that trade associations typically will sponsor union avoidance seminars but rely on other consultants to actually present the seminar.

In response to comments, the Department emphasizes that the interpretation embodied in this rule does not interfere with free speech or other rights under the U.S. Constitution or free speech under section 8(c) of the National Labor Relations Act. Similarly, contrary to the view of some commenters, the Department's revised interpretation does not infringe on the common law attorney-client privilege, which is still preserved by section 204, or on an attorney's ethical duty of confidentiality. None of the information required to be reported under the revised interpretation is protected by the attorney-client privilege. To the extent the agreement provides confidential details about services other than reportable persuader/information-supplying activities, the principles of attorney-client privilege would apply and such information is not reportable absent consent of the client. We have carefully reviewed comments submitted by the American Bar Association (ABA), other associations of attorneys, law firms representing employers, and other commenters, urging the Department to adopt an interpretation that would differentiate between attorneys and other labor relations consultants and essentially exempt attorneys from reporting any activities other than those in which they communicate directly with employees. Importantly, although the ABA sought to include a provision in the bill that became the LMRDA that would have achieved this result, Congress struck that provision from what became law. The commenters' position has been rejected by the courts in cases where attorneys engaged in persuader activities unsuccessfully raised this privilege argument as a defense to their failure to report such activities. Moreover, the ABA and other commenters on this point have failed to advance any argument that attorneys who engage in the same activities as non-attorney consultants to counter union organizing campaigns—activities and circumstances significantly different from those typically involved with legal practice—should be able to avoid disclosing activities identical to those performed by their non-attorney colleagues in guiding employers through such campaigns. While some of the comments submitted in this rulemaking concern issues that may arise in connection with the Form LM–21 Receipts and Disbursements Report, such as the scope and detail of reporting about service provided to other employer clients, that report is not the subject of this rulemaking.

In the final rule, the Department has eliminated the term ''protected concerted activities'' from the definition of ''object to persuade employees,'' as

had been proposed in the NPRM. Instead, reporting is required only for agreements in which the consultant engages in activities with an object to persuade employees concerning representational and collective bargaining activities, but not ''other protected concerted activities.'' This better comports with the language of section 203, which, in contrast to the National Labor Relations Act, does not expressly refer to ''concerted activities.''

Finally, the Department has revised the forms and instructions to require more detailed reporting on persuader agreements and to make the forms and instructions more user-friendly. The final rule requires that they be filed electronically with the Department.

B. Benefits of the Rule and Estimated Compliance Costs

The qualitative benefits associated with the rule are substantial. As discussed in the preceding section and throughout the preamble, employees, unions, the public, and this Department will benefit from the disclosure associated with this rule by requiring that both direct and indirect persuader activities be reported. This disclosure will particularly benefit employees involved in a representation campaign, enabling them to better consider the role that labor relations consultants play in their employer's efforts to persuade them about how they should exercise their rights as employees to union representation and collective bargaining matters. This rule promotes the important interests of the Government and the public by ensuring that employees will be better informed and thus better able to exercise their rights under the NLRA.

The Department estimates annual totals of 4,194 Form LM–20 reports and 2,777 Form LM–10 reports under this rule (the first number compares to the 2,601 estimate in the NPRM; the second figure compares to 3,414 in the NPRM). The Form LM–20 total represents an increase of 3,807 Form LM–20 reports over the total of 387 reports estimated in the Department's most recent Information Collection Request (ICR) submission to the Office of Management and Budget (OMB). The Form LM–10 total represents a 1,820 increase over the average of 957 Form LM–10 reports estimated in the Department's most recent ICR submission to OMB. The total estimated annual burden for all reports is approximately 6,851 hours for Form LM–20 reports and 6,804 hours for Form LM–10 reports. The total annual cost for the estimated 4,194 Form LM–20 reports is $633,932.16, which is $576,743.16 greater than the $57,189 estimated for the most recent ICR submission. The total annual cost for the estimated 2,777 Form LM–10 reports/filers is $629,567.34, which is $417,003.34 greater than the $212,564 estimated for the most recent ICR submission. The average cost per Form LM–20 form is $151.14. The average annual cost per Form LM–10 filer is $226.70.

II. Authority

The legal authority for this rule is set forth in sections 203 and 208 of the LMRDA, 29 U.S.C. 432, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated her authority under the LMRDA to the Director of the Office of Labor-Management Standards and permits re-delegation of such authority. See Secretary's Order 8–2009, 74 FR 58835 (Nov. 13, 2009).

III. Statutory and Regulatory Background

A. Statutory and Regulatory Requirements for Employer and Labor Relations Consultant Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to report to the Department of Labor ''any agreement or arrangement with a labor relations consultant or other independent contractor or organization'' under which such person''undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise,'' or how to exercise, their rights to union representation and collective bargaining. 29 U.S.C. 433(a)(4).[1] ''[A]ny payment (including reimbursed expenses) pursuant to such an agreement or arrangement must also be reported. 29 U.S.C. 433(a)(5).

The report must be one ''showing in detail the date and amount of each such payment, . . . agreement, or arrangement . . . and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.'' 29 U.S.C. 433. The Department of Labor's implementing regulations require employers to file a Form LM–10 (''Employer Report'') that contains this information in a prescribed form. See 29 CFR part 405.

LMRDA section 203(b) imposes a similar reporting requirement on labor relations consultants and other persons. It provides, in part, that every person who enters into an agreement or arrangement with an employer and undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or how to exercise, their rights to union representation and collective bargaining ''shall file within thirty days after entering into such agreement or arrangement a report with the Secretary . . . containing . . . a detailed statement of the terms and conditions of such agreement or arrangement.'' 29 U.S.C. 433(b). Section 203(b) also requires persons subject to this requirement to report receipts and disbursements of any kind ''on account of labor relations advice and services.'' [2] The Department of Labor's implementing regulations require labor relations consultants and other persons who have engaged in reportable activity to file a Form LM–20 ''Agreement and Activities Report'' within 30 days of entering into the reportable agreement or arrangement, and a Form LM–21 ''Receipts and Disbursements Report'' within 90 days of the end of the consultant's fiscal year, if during that year the consultant received any receipts as a result of a reportable agreement or arrangement. See 29 CFR part 406.

LMRDA section 203(c) ensures that sections 203(a) and 203(b) are not construed to require reporting of ''advice.'' Section 203(c) provides in pertinent part that ''nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer.'' 29 U.S.C.

[1] The LMRDA defines a ''labor relations consultant'' as ''any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.'' 29 U.S.C. 402(m).

[2] Under LMRDA section 202, 29 U.S.C. 432, union officers and employees are required to report anything of value received ''directly or indirectly'' from an employer (including payments or benefits received by an official's spouse or minor child) that would present a conflict of interest with their obligation to the union. The reason for this requirement, as explained in the legislative history, is similar to the reason given for consultant reporting. See S. Rep. No. 86–187, at 38 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (1 LMRDA Leg. Hist.), at 397, 434 (''Reports are required as to matters which should be public knowledge so that their propriety can be explored in the light of known facts and conditions'').

433(c). Section 203(c) is referred, in this final rule, as the ''advice'' exemption.

Finally, LMRDA section 204 exempts from reporting attorney-client communications, which are defined as ''information which was lawfully communicated to [an] . . . attorney by any of his clients in the course of a legitimate attorney-client relationship.'' 29 U.S.C. 434.

B. History of the LMRDA's Reporting Requirements and Justification for the Final Rule

The Secretary of Labor administers and enforces the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers, labor relations consultants, and surety companies.[3]

1. Dealing With a Growing Phenomenon—1960 and Earlier

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that the public interest is served by continuing ''to protect employees' rights to organize, choose their own representatives, bargain collectively . . . that it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations,'' and that ''[this Act] will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(a), (b).

The LMRDA was the direct outgrowth of a highly-publicized investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. The committee's investigation focused on racketeering and corruption among certain unions, union officials, employers, and labor relations consultants. See generally, *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Rep. No. 85–1417 (1957). Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addressed various issues identified by the Committee through a set of integrated provisions aimed, among other areas, at shedding light on labor-management relations, governance, and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. See 29 U.S.C. 431–36, 441.

Among the concerns that prompted Congress to enact the LMRDA was conduct by some labor relations consultants retained by employers, usually undertaken behind the scenes, that Congress had found impeded the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et. seq.* See, *e.g.,* S. No. 86–187. Rep, at 6, 10–12, reprinted in 1 LMRDA Leg. Hist., at 397, 402, 406–408. Congress was concerned that some labor consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and engage in activities with the aim to undercut employee support for unions. S. Rep. No. 86–187, at 10, 1 LMRDA Leg. Hist., at 406. The Senate Report explained that under section 203 ''every person who enters into an agreement with an employer to persuade employees as regards the exercise of their right to organize and bargain collectively or to supply an employer with information concerning the activity of the employees or labor organizations in connection with a labor dispute would be required to file a detailed report.'' [4] The report explained that ''this public disclosure will accomplish the same purpose as public disclosure of conflicts of interest and other union transactions which are required to be reported'' under other sections of the bill that was to become the LMRDA. S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408. (Emphasis added).[5] Congress was clearly aware that some consultant activity designed to be reported was accomplished ''indirectly.'' See S. Rep. No. 86–187, at 10, 12; 1 LMRDA Leg. Hist., at 406–407 (there have been *direct or indirect* management involvements involving middlemen; ''[i]n *some cases* they work directly on employees or through committees to discourage'' organizing efforts). The report noted an exception from reporting: ''An attorney or consultant who confines himself to giving legal advice, taking part in collective bargaining and appearing in court or administrative proceedings would not be included among those required to file reports.'' S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408.

The reporting requirements on employers and their consultants under LMRDA section 203 resemble those prescribed for labor organizations and their officials under LMRDA sections 201 and 202, respectively. 29 U.S.C. 431, 432. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as ''such other reasonable rules and regulations . . . as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary also is authorized to bring civil actions to enforce the LMRDA's reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

A notable, contemporary account of the McClellan hearings demonstrates the breadth of the activities to be reported. Prior to becoming Attorney General and then Senator, Robert F. Kennedy served as staff director for the special committee that conducted those hearings. In his book, *The Enemy*

[3] The LMRDA and the NLRA are the two federal statutes that address generally the obligations of unions and employers to refrain from actions that interfere with the exercise by employees of their rights to union representation, collective bargaining, and union membership. While the NLRA, enforced by the NLRB, ensures compliance with these rights by investigating and prosecuting unfair labor practice complaints, the LMRDA promotes these rights by requiring unions, employers, and labor relations consultants to publicly disclose information about identified financial transactions, agreements, and arrangements. These foundational statutes are discussed in many texts and scholarly articles, too numerous to mention. To appreciate the historical significance of the statutes, see generally Philip Taft, *Organized Labor in American History* (1964), chapters 36, 44, and 51.

[4] Congress recognized that some of the persuader activities occupied a ''gray area'' between proper and improper conduct and chose to rely on disclosure rather than proscription, to ensure harmony and stability in labor-management relations. See S. Rep. No. 86–187, at 5, 12; 1 LMRDA Leg. Hist., at 401, 408.

[5] H.R. Rep. No. 86–741 (1959), at 12–13, 35–37, reprinted in 1 LMRDA Leg. Hist., at 770–771, 793–795, contained similar statements. However, it should be noted that the House bill contained a much narrower reporting requirement—reports would be required only if the persuader activity interfered with, restrained, or coerced employees in the exercise of their rights, *i.e.,* if the activity would constitute an unfair labor practice. The House bill also contained a broad provision that would have essentially exempted attorneys, serving as consultants, from any reporting. In conference, the Senate version prevailed in both instances, restoring the full disclosure provided in the Senate bill. See H. Rep. No. 86–1147 (Conference Report), at 32–33; 1 LMRDA Legis. Hist., at 936–937.

Within (1961), Kennedy discussed the activities that had been engaged in by Nathan Shefferman, who had served as labor relations consultant for several prominent companies. Kennedy's description of Shefferman's activities and those of his associates belies any notion that Congress, in later enacting the LMRDA, was limiting reporting to activities involving direct communication with employees. As described by Kennedy, Shefferman regularly hid his firm's activities in opposing union representation, preferring instead to orchestrate behind the scene an employer's actions to oppose a union. To illustrate Shefferman's advice to employers, Kennedy draws from a memorandum prepared by Shefferman for one of his clients: ''Don't dignify them. Call them bums and hoodlums. Cheap common bums. Don't argue wage differential. Don't answer it. Stay away from it. Ridicule leaders.'' *The Enemy Within,* at 218–219. Against this backdrop, it is clear that Congress intended that employers and their labor relations consultants were to report both their direct and indirect persuader activities. Moreover, as will be discussed in the next section of the preamble, the same activities that Shefferman was among the first to ''perfect'' continue to be utilized by labor relations consultants today.

2. A Disclosure Vacuum—From 1962 Until Today

With the Department's 1962 interpretation of the advice exemption to require reporting in only limited circumstances in which the employer was not free to ''accept or reject'' materials offered by the consultant, the reporting of persuader activities (activities which, by their nature, are most often ''indirect'') largely came to an end. At the same time, the consultant industry expanded as employer use of its services became increasingly common until the present day, where an employer's decision to rely solely on its own existing staff to meet a union campaign is uncommon. As a consequence, without the disclosure intended by Congress in enacting section 203, the work of consultants in helping employers oppose union representation remains undisclosed to employees.

Many employers engage consultants to conduct union avoidance or counter-organizing efforts to prevent workers from successfully organizing and bargaining collectively. In recent times, the use of law firms in particular to orchestrate such campaigns has been documented by several industrial relations scholars. John Logan, *The Union Avoidance Industry in the U.S.A.,* 44 British Journal of Industrial Relations 651, 658 (2006), *citing* Bruce E. Kaufman and Paula E. Stephan, *The Role of Management Attorneys in Union Organizing Campaigns,* 16 Journal of Labor Research 439 (1995); John Logan, Trades Union Congress, *U.S. Anti-Union Consultants: A Threat to the Rights of British Workers* 11 (2008) (hereafter ''Logan, *U.S. Anti-Union Consultants''*); 1984 Subcommittee Report, at 2; John Logan, *Consultants, Lawyers, and the 'Union Free' Movement in the U.S.A.,* 33 Industrial Relations Journal, 197, 199–212 (2002) (hereafter ''Logan, *Union Free Movement''*); Terry A. Bethel, *Profiting from Unfair Labor Practices: A Proposal to Regulate Management Representatives,* 79 Nw. U. L. Rev. 506, 519–525 (1984). As Kaufman and Stephan reported, consultants, who often are attorneys, provide employers with a range of services, and have varying degrees of involvement with employees, during union avoidance campaigns:

> Typically at the first sign of union activity at a facility management seeks the advice and counsel of one or more attorneys. In some cases the attorney's role is largely one of providing legal assistance, such as advising supervisors on what constitutes an unfair labor practice under the NLRA, with overall direction of the firm's campaign entrusted to either top management or an outside consultant. In other situations, the attorney not only provides legal counsel but also plays an important (sometimes dominant) role in developing and implementing the company's anti-union strategy and campaign tactics.

Kaufman and Stephan, at 440.[6] The literature reports a wide range of activities conducted or directed by consultants, many of which are lawful means to oppose the formation of the union (though some are not). To provide a sense of the kinds of activities engaged in by a labor relations consultant, we have compiled a list from activities mentioned in a study about union organizing and representation in the United States. The list does not differentiate between ''persuader activities'' and non-persuader activities, whether a particular activity would constitute ''direct'' or ''indirect'' persuasion,'' or whether the undertaking of a particular activity, by itself, would trigger reporting. The activities mentioned in the study include—

- Monitor NLRB daily dockets to get a jump on union activity and to offer their services to the targeted employer even before it is aware of the union's activity
- Encourage employers to write, publicize and enforce a clear policy against solicitation on a company premises by non-employees
- Inform employees that signing a union authorization card is akin to a power of attorney or blank check
- Have supervisors (falsely) state the union's campaign is going badly and that the union has been intimidating, harassing, and pressuring employees to sign union authorization cards
- Convey the false impression that support for a union is eroding by distributing sample letters to employees asking the union to return signed authorization cards
- Argue in favor of bargaining units that group together employees opposed to the union
- Argue that union advocates are supervisors, thereby removing them from voting and advocating on behalf of the union
- Tell supervisors that union representation will be ''a personal calamity'' for them by undermining their authority on the shop floor
- Warn supervisors they can be terminated for refusing to participate in the employer's anti-union campaign
- Relieve supervisors from any concern that they could be held culpable for their actions during the campaign by explaining that the NLRB holds the employer, not individual supervisors, responsible for any violation of the law
- Require supervisors to talk daily to employees on a one-to-one basis to gauge their support for the union, requiring that they report to the consultant on a daily or more frequent basis
- Organize ''vote no'' committees
- Script messages that predict violent strikes and permanent replacement of workers, highlight restrictive clauses in union constitutions, emphasize high salaries of union officials, the union's interest in obtaining dues payments from employees, and alleging union corruption
- ''[W]rite or help employers to write anti-union letters signed by senior

[6] A 1980 Congressional subcommittee report noted the increase in the use of law firms to assist employers in their union avoidance activities:

> Many lawyers no longer confine their practice to traditional services such as representing employers in administrative and judicial proceedings or advising them about the requirements of the law. They also advise employers and orchestrate the same strategies as non-lawyer consultants for union ''prevention,'' union representation election campaigns, and union decertification and de-authorization. Lawyers conduct management seminars, publish widely, and often form their own consulting organizations.

Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *Pressures in Today's Workplace* (Comm. Print 1980) (''1980 Subcommittee Report''), at 28–29.

management, which are delivered to employees on the job by supervisors in order to witness each employee's response and to 'stimulate discussion' between supervisors and employees''
- ''Utiliz[e] gimmicks such as anti-union comic books, cartoons, competitions and 'vote-no' t-shirts and buttons. Competitions typically include 'the longest Union Strike contest' (the correct answer being the greatest to three possible choices) or 'true or false' quizzes (sample question: the union president earns $150,000 per year and has a chauffeur-driven limousine') with a cash prize worth six months union dues money''
- Train employers how to conduct captive audience meetings with large and small groups of employees, taking place on the company premises on paid time

Adapted from *Logan, Union Free Movement,* at 203–205.[7]

3. Transparency Promotes Worker Rights by Creating a More Informed Electorate

Employees are often unaware that their employer has retained a third party to orchestrate a campaign against the union. See Logan, *Union Free Movement,* at 201. As described by Logan: ''[E]mployees are often blissfully unaware of the consultant's presence in the workplace because consultants use first-line supervisors to spearhead their anti-union campaigns. This allows the consultant to remain in the background, avoid becoming the focus of the union reporting requirements of the LMRDA.'' Logan, *Union Free Movement,* at 201. Quoting a lawyer-consultant about the importance of remaining anonymous: ''I don't want the union to have the political advantage. They will tell the workers, ''Look the company hired this guy from New York City.'' Id. Later, the article states; ''Management's efforts to label the union an outside influence indicates the importance of keeping the consultant, obviously an outsider, well hidden during the counter-[organizing] campaign.'' Id. at 206. Further, even if employees know that a consultant has been hired, they may be unaware that the consultant is in the business of defeating employee efforts to form, join, or assist a union, rather than only serving the employer as an advisor on legal requirements.

The purpose of this rule is disclosure—not to express a view regarding the hire of labor relations consultants, the utility of their services, the growth of the industry, nor to single out particular firms or tactics for praise or criticism. The Department agrees with comments submitted in this rulemaking suggesting diversity in the labor relations consultant arena—both in terms of the types of services offered by consultants and the reasons employers seek to retain consultants. We acknowledge that the consultants may, in fact, be hired solely to help employers adhere to the law. The disclosure of the employer's persuader agreement or arrangement with a consultant allows workers to evaluate the source of the arguments and information designed to influence the exercise of their representation and collective bargaining rights. With this information, employees can better evaluate the merits of the views expressed by the employer's supervisors and managers, allowing employees to make more informed choices regarding their protected rights.

Union avoidance efforts often utilize supervisors and other management representatives to persuade employees. The reason for this approach is that these individuals, as co-workers, are generally known and more easily trusted by the employees than would be an outside consultant. See Logan, *Union Free Movement,* at 201–203. Employees may evaluate the message and methods of their supervisors and managers differently when they have information that reveals that a consultant is coaching these supervisors, drafting talking points, and scripting their interactions with employees. Without this information, employees are unable to provide necessary context to a common employer argument that a union is a ''third party'' that employees do not need to further their interests. Id. at 201, 206.

In contrast to the limited information available to employees about consultants under the Department's prior interpretation, employees already have a great deal of information available to them concerning the union or unions seeking to represent or currently representing them, including the amount that unions spend on organizing activities and who they engage to assist them in those organizing activities.[8] This information is publicly available in reports filed by unions with OLMS pursuant to section 201 of the LMRDA. For example, a union that files the Form LM–2 annual financial report is required to identify the percentage of time that its officers and employees spend on ''Representational Activities.'' See the Instructions for Form LM–2 Labor Organization Annual Report, at 19–20. On Schedule 15 of the Form LM–2, the union provides a further accounting of its direct and indirect disbursements related to representational activities, which include organizing efforts and collective bargaining. If a disbursement of $5,000 or more was made in this category, the union is required to itemize the disbursement by identifying the full name and address, and the type, of business or individual that received the disbursement and a statement of the reason for the disbursement. Id. at 25–26. Additionally, workers may view Form LM–30 reports from union officials disclosing potential conflicts of interest, as well as the results of union audits, union officer elections and civil and criminal cases against union officials, and Office of Labor-Management Standards (OLMS) annual reports and enforcement data. See LM reports and other information on the Department's Web site at *www.dol.gov/olms*; see also S. Rep. No. 86–187, at 39–40, 1 LMRDA Leg. Hist., at 435–436, stating, in part, that ''if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who'' use consultants. This disclosure advances the goals of an informed electorate able to distinguish between well-reasoned and accurate information and campaign pressure. It is a reasonable approach to restore more transparency for workers.

Under this rule, employees, as intended by Congress in requiring the reporting of direct and indirect persuader activities, will gain considerable information about the amount of money involved in disbursements to the consultant, and many details about the nature and extent of the persuader agreement. They will benefit from publicly-available information that bears on the exercise of their rights as employees. Employers and consultants already have access to comprehensive reports filed with the Department pursuant to the LMRDA by unions and union officers that detail various financial arrangements and transactions. This rule restores the

[7] Consultants offer a complete slate of persuader services. As described by one consultant: ''[We] prepare all counter union speeches, small group meeting talks, letters to employees' homes, bulletin board posters, handouts to employee, etc., and schedules dates for each counter union communication media piece to be used. We have assembled a very large library of counter union materials, much of what is customized to a particular union.'' Logan, *Union Free Movement,* at 203.

[8] As noted by an international union in its comments on the proposed rule, it is routine for labor relations consultants to include information from Form LM–2 reports in their efforts to undermine employee support for a union.

missing piece from overall reporting requirements—by unions, union officers, employers, and labor relations consultants—established by the LMRDA.

The Department addresses comments concerning the rule's impact on employees' need for transparent information in Sections V.C.1, 3.

4. Underreporting of Persuader Agreements

The impetus for this rulemaking was the Department's recognition that, while employers routinely use consultants to orchestrate counter-organizing campaigns, most agreements or arrangements with such consultants went unreported. Underlying the paucity of reports was the Department's interpretation to essentially require consultants to report only agreements in which a consultant agrees to directly persuade employees on matters relating to union representation and collective bargaining. We recognized that despite the significant growth of the persuader industry and employers' increasing reliance on their services since the LMRDA's enactment, there had been no uptick in the number of reports received on persuader activity.[9]

As stated in the NPRM, recent studies place the contemporary consultant-utilization rate of employers who face employee organizing drives somewhere between 71% and 87%.[10] 76 FR 36186. Although there is some variation from year to year, the average number of representation cases filed with the National Mediation Board (NMB) during fiscal years 2010 to 2014 is 40; the average number of NLRB representation petitions filed during the most recent period available, 2009–2013, is 2,658.[11] Using the mean utilization rate of consultants by employers from the studies discussed above, the Department would expect that 78% of the combined NLRB and NMB representation matters would result in about 2,104 arrangements or agreements requiring a Form LM–20 consultant report annually during the same five-year period.[12] However, the Department received an average of about 545 LM–20's annually,[13] only 25.9% of those it could expect.[14] It appears clear that only a small fraction of the organizing campaigns in which consultants were utilized to manage counter-organizing campaigns resulted in the filing of a Form LM–20. When such a small proportion of persuader consulting activity is reported, employees are not receiving the information that would enable them to make an informed decision on organizing and collective bargaining.[15]

The lack of reporting of employer-consultant agreements, despite the increase in employer utilization of consultants to orchestrate anti-union campaigns and programs, stems from the interpretative decisions of the Department. The prior interpretation effectively exempts agreements for activities consisting of indirect persuasion of employees. Indeed, the prior interpretation did not properly take into account the widespread use of indirect tactics, such as directing the persuader activities of the employer's supervisors and providing persuasive materials to the employer for dissemination to employees, and thus did not result in the reporting of most persuader agreements. This conclusion has also been reached by observers of the consultant industry. See John Logan, ''*Lifting the Veil*'' *on Anti-Union Campaigns: Employer and Consultant Reporting under the LMRDA, 1959–2001,* 15 Advances in Industrial and Labor Relations 295, 297 (2007) (hereafter Logan, *Lifting the Veil*) (''As the size and sophistication of the consultant industry has grown, the effectiveness of the law on consultant disclosure and reporting has diminished.''). Indeed, the charge is that ''[e]nforcement of the consultant reporting requirements had practically ground to a halt by the mid-1980s—all during a time when, according to organized labor, employers and consultants were ever more actively, boldly, and creatively fighting unionization.'' Id. at 311.[16]

Members of the consultant industry have also cited the Department's interpretation as the cause of underreporting of persuader agreements. A former consultant, Martin Jay Levitt, observed:

> The law states that management consultants only have to file financial disclosures if they engage in certain kinds of activities, essentially attempting to persuade employees not to join a union or supplying the employer with information regarding the activities of employees or a union in connection with a labor relations matter. Of course, that is precisely what anti-union consultants do, have always done. Yet I never filed with [LMRDA] in my life, and few union busters do . . . As long as [the consultant] deals directly only with supervisors and management, [the consultant] can easily slide out from under the scrutiny of the Department of Labor, which collects the [LMRDA] reports.

Martin Jay Levitt (with Terry Conrow), *Confessions of a Union Buster,* at 41–42 (New York: Crown Publishers, Inc. 1993). Mr. Levitt describes consultant strategies that he employed to avoid reporting his activities:

> Within a couple of weeks I had identified the few supervisors who were willing to

[9] The use of consultants to orchestrate union avoidance and counter-campaigns appears to have increased tremendously since 1959. See the NPRM at 76 FR 36182, 85–86.

[10] See Kate L. Bronfenbrenner, *Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform,* in Restoring the Promise of American Labor Law 80 (Sheldon Friedman et al. eds. ILR Press 1994) (hereafter ''Bronfenbrenner, *Employer Behavior*'') (71% of employers); Logan, *Union Avoidance Industry,* at 669 (75% of employers); Kate Bronfenbrenner, Economic Policy Institute, *No Holds Barred: The Intensification of Employer Opposition to Organizing* 13 (2009) (hereafter ''Bronfenbrenner, *No Holds Barred*'') (75% of employers in period 1999–2003); Chirag Mehta and Nik Theodore, American Rights at Work, *Undermining the Right to Organize: Employer Behavior during Union Representation Campaigns* 5 (2005) (hereafter ''Mehta and Theodore, *Undermining the Right to Organize*'') (82% of employers); James Rundle, *Winning Hearts and Minds in the Era of Employee Involvement Programs,* in Organizing to Win: New Research on Union Strategies 213, 219 (Kate Bronfenbrenner, et al. eds., Cornell University Press 1998) (hereafter ''Rundle, *Winning Hearts and Minds*'') (87% of employers). See also Subcommittee on Health, Employment, Labor and Pensions, H. Comm. on Education and Labor, *The Employee Free Choice Act* (Feb. 8, 2007) (testimony by Professor Harley Shaiken, quoting an article in *Fortune,* finding that most employers hire consultants to block organizing drives).

[11] See NLRB Annual Report Data, Table 1, for FYs 2009–10 at *http://www.nlrb.gov/reports-guidance/reports/annual-reports*, as well as the NLRB Summary of Operations for FYs 2011–12 at *http://www.nlrb.gov/reports-guidance/reports/summary-operations.* See also NLRB data for FY 2013 at *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections.* See also the NMB FY 2014 Annual Report at *https://storage.googleapis.com/dakota-dev-content/NMB-2014-Annual-Report.pdf* for NMB FY 2010–2014 data.

[12] This figure may still under represent the total, as it does not take into account employers who hire multiple consultants or consultants who hire sub-consultants, each of whom would need to file separate Form LM–20 reports.

[13] Information on the number of LM reports received for FYs 2010–14 is available through the Department's Electronic Labor Organization Reporting System (e.LORS).

[14] The Department notes that it has updated the NLRB, NMB, and LM reports data used in the NPRM. The data in the final rule reflects the most recent fiscal years: 2010–14 (2009–2013 for the NLRB data), whereas the NPRM utilized a prior period: FYs 2005–09. See the Paperwork Reduction Act analysis in Section VI.G.1.

[15] See Charles B. Craver, *The Application of the LMRDA ''Labor Consultant'' Reporting Requirements to Management Attorneys: Benign Neglect Personified,* 73 Nw. U. L. Rev. 605 (1978) (reporting on survey of lawyers engaged in legal advice and persuader activities, noting pervasive noncompliance with disclosure even where activity obviously involved direct persuader activity and noting the particular problems where employees are unaware that an attorney is acting as the employer's representative).

[16] See also Assistant Secretary Hobgood's testimony, discussed supra, ''acknowledg[ing] that Department [enforcement] activity had 'declined significantly' since the first few years after the enactment of [the LMRDA].'' 1980 Subcommittee Report, at 45.

work extra hard for me . . . . Through that handful of good soldiers I set to work establishing a network of rank-and-file employees who would serve as spies, informants, and saboteurs. Those so-called loyal employees would be called upon to lobby against the union, report on union meetings, hand over union literature to their bosses, tattle on their co-workers, help spread rumors, and make general pests of themselves within the organizing drive. I rarely knew who my company plants were. . . . It was cleaner that way. Nobody could connect me to the activities, I steered clear of the reporting requirements of [the LMRDA], and the workers' 'pro-company' counter campaign was believed to be a grass-roots movement.

Id. at 181.[17]

As discussed further below, a congressional subcommittee concluded that there is significant underreporting of persuader agreements, as a result of the Department's interpretation. The 1980 Subcommittee Report characterizes the extent and effectiveness of employer and consultant reporting under the LMRDA as a ''virtual dead letter, ignored by employers and consultants and unenforced by the Department of Labor.'' 1980 Subcommittee Report, at 27. The Subcommittee concluded that the ''current interpretation of the law has enabled employers and consultants to shield their arrangements and activities[,]'' and called upon the Department to ''adopt . . . a more reasonable interpretation so the Act can reach consultants who set and control the strategy for employer anti-union efforts but who do not themselves communicate directly with employees.'' Id. at 44.

This recommendation came about, in part, as the result of testimony before the Subcommittee by Assistant Secretary of Labor for Labor-Management Relations William Hobgood, who ''acknowledged that Department [enforcement] activity had 'declined significantly' since the first few years after the enactment of [the LMRDA].'' 1980 Subcommittee Report at 45. Hobgood testified that the Department's interpretation of advice '' 'troubles' him,'' and that the Department was ''reviewing the question of where advice ends and persuasion begins to make sure the Department's position is consistent with the law and adequate to deal with the approaches to persuader activities that have evolved since the law was enacted more than 20 years ago.'' Id. at 44.

Subsequent subcommittee hearings, conducted in 1984, also addressed labor relations consultants' and employers' compliance with the LMRDA's reporting and disclosure requirements. Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (1984 Subcommittee Report). The 1984 Subcommittee admonished the Labor Department for failing to act on its recommendations from 1980 regarding the need for more vigorous enforcement of employer and consultant reporting requirements, 1984 Subcommittee Report at 4, and suggested that lack of robust enforcement of employer and consultant reporting requirements of section 203 ''frustrated Congress' intent that labor-management relations be conducted in the open.'' Id. at 18.

The Department addresses comments concerning the underreporting of persuader agreements in Section V.C.2.

5. Transparency Promotes Peaceful and Stable Labor-Management Relations, a Central Goal of the Statute

The Department views disclosure of third-party persuader agreements, as did Congress, as a key ''to protect employee rights to organize, choose their own representatives, [and] bargain collectively.'' 29 U.S.C. 401(a). The Senate Labor Committee explained why the provision that ultimately became section 203(b) of the LMRDA was necessary, stating that just as ''unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who carry on, or engage such persons to carry on, various types of activity, often surreptitious, designed to interfere with the free choice of bargaining representatives by employees and to provide the employer with information concerning the activities of employees or a union in connection with a labor dispute.'' S. Rep. No. 86–187, at 39–40, 1 LMRDA Leg. Hist., at 435–436. As this passage suggests, section 203(b) requires not only the disclosure of consultant activity that interferes with, restrains, or coerces employees in their protected rights under the NLRA, *i.e.,* constitutes an unfair labor practice, but also requires reporting of activity to persuade employees that involves conduct that is otherwise legal under the NLRA. S. Rep. No. 86–187, at 11, 12, 1 LMRDA Leg. Hist., at 406, 407.[18] Only by providing such information would the interest of workers, the public, and the government be protected. Anything less would deny employees information necessary for them to fully exercise their rights to union representation and collective bargaining.

Although the Department's primary role insofar as Title II of the Act is concerned is to prescribe, administer, and enforce regulations implementing the Act's reporting and disclosure provisions, this role also comes within the Department's charge in its organic statute ''to foster promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment,'' a role congruent with the Department's responsibility to assist in ensuring ''industrial peace.'' Act to Create the Department of Labor, Public Law 426, 37 Stat. 736 (1913), sections 1, 8 (codified as amended at 29 U.S.C. 551). As we have noted, this rule effectuates the intention of Congress to require the disclosure of persuader activity—both direct and indirect. In fashioning this rule, our target has been to achieve this purpose—not to encourage or discourage the use of labor relations consultants, nor to attribute to the industry as a whole the recognized failure by some members of the industry to adhere to responsible, lawful standards.

Insofar as questions concerning employee choice about union representation are concerned, the integrity of the union election certification process is strengthened when voters become better informed—by virtue of union disclosure, as well as by consultant and employer disclosure. Even if the votes of certain workers are not affected by the knowledge of the persuader agreement with a consultant where this information is provided to the employees, they, along with the employer and the public, can be more confident in the integrity of the election process and that the election outcomes reflect the sound and informed intent of

[17] Mr. Levitt's description of the actual practice of labor relations consultants is consistent with prior statements by other consultants. See 1980 Subcommittee Report, at 44 (quoting testimony of labor relations consultant and stating that the ''current interpretation of the law has enabled employers and consultants to shield their arrangements and activities''). See also *Unionbusting in the United States,* at 112, which states that ''most modern union busters employed a standardized three-pronged attack. Cognizant of LMRDA guidelines requiring consultants to report their activity only when engaged *directly* in persuading employees in regards to their right to bargain collectively, most consulting teams utilized supervisory personnel as 'the critical link in the communications network.''' (Italics in original.)

[18] Labor relations consultants may be held liable by the National Labor Relations Board for unfair labor practices committed on behalf of employers. See, *e.g., Blankenship and Associates, Inc.* v. *N.L.R.B.,* 999 F.2d 248 (7th Cir. 1993), enforcing 306 N.L.R.B. 994 (1992). Employers may also be held liable, based on the actions of their consultants. See, *e.g., Wire Products Manufacturing Corp.,* 326 N.L.R.B. No. 62 (1998).

the voters. Such a process for determining union representation issues creates more stable and peaceful labor-management relations. Even if a union is defeated in its efforts to gain representation, an informed workforce will be in a better position to maintain stable labor-management relations.

The need to disclose an employer's use of consultants during an organizing campaign is a pivotal theme in this rulemaking. However, such disclosure also is important where an employer has engaged the persuader services of a consultant following a union's certification while the parties are negotiating a first contract. See 29 U.S.C. 401(a) (a purpose of LMRDA is to protect employees right to bargain collectively); 29 U.S.C. 143 (under the NLRA, it is the declared policy of the United States to ''encourage[ ] the practice and procedure of collective bargaining . . . for the purpose of negotiating the terms and conditions of their employment''). As further explained in the margin, industrial relations research demonstrates that newly certified unions are much less likely to secure a first contract in cases in which the employer has hired a consultant.[19] See Logan, *Union Free Movement* at 198, citing R. Hurd, *Union Free Bargaining Strategies and First Contract Failures,* in Proceedings of the 48th Meeting of the Industrial Relations Research Ass'n 145 (P. Voos ed. IRRA 1996), and G. Pavy, *Winning NLRB Elections and Establishing Collective Bargaining Relationships,* in Restoring the Promise of American Labor Law 110 (Sheldon Friedman et al. eds. ILR Press 1994); Bronfenbrenner, *Employer Behavior,* at 84 (citing probability of winning first contract declining by 10 to 30 percent in bargaining units in which the employer utilizes a labor relations consultant). See 76 FR 36189. See also note 17 and text accompanying (describing the strategies used by a noted former consultant). Knowing that the employer has engaged the persuader services of a consultant will help employees assess the employer's position on unresolved issues and its characterization of the union's negotiating stance.

Concern about the impact of consultant activity on labor-management relations emanated from the Executive Branch as well. In March 1993, the Secretaries of Labor and Commerce announced the establishment of the U.S. Commission on the Future of Worker-Management Relations (Commission), which was charged with investigating and making recommendations regarding enhancement of workplace productivity and labor-management cooperation, among other areas. The Commission, also called the Dunlop Commission after its chairman, former Labor Secretary and Professor John T. Dunlop of Harvard University, held public hearings and took testimony on the state of labor relations in the early 1990s. The Commission issued a fact-finding report in June 1994 and a final report in December of the same year, and the reports provide further support for the need for the revision of the interpretations involving consultant reporting.

In assessing economic costs that labor and management face in the competition surrounding representation elections, the Commission found that ''[f]irms spend considerable internal resources and often hire management consulting firms to defeat unions in organizing campaigns at sizable cost.'' *Commission on the Future of Worker-Management Relations, Fact-Finding* Report, at 74 (May 1994). Indeed, the Commission concluded, the ''NLRA process of representation elections is often highly confrontational with conflictual activity for workers, unions, and firms that thereby colors labor-management relations.'' Id. at 75.

The Department concludes that, as was true in the 1950s, the *undisclosed* use of labor relations consultants by employers—even where their activities are undertaken in strict accordance with the law—impedes employees' exercise of their protected rights to organize and bargain collectively and disrupts labor-management relations.

C. History of the Department's Interpretation of Section 203(c)

The ''advice'' exemption of LMRDA section 203(c) is reflected in the Department's implementing regulations, but, historically, the regulations simply tracked the language of the statute and did not set forth the Department's interpretation of the exemption. 29 CFR 405.6(b), 406.5(b). Before this rule, the Department's interpretation of the advice exemption had been communicated primarily in documents intended to guide Department staff in administering the statute. See 76 FR 36179–82.

In 1960, one year after the passage of the Act, the Department issued its initial interpretation (sometimes referred to herein as the ''original interpretation''), which was reflected in a 1960 technical assistance publication to guide employers. In this interpretation, the Department took the position that employers were required to report any ''arrangement with a 'labor relations consultant' or other third party to draft speeches or written material to be delivered or disseminated to employees for the purpose of persuading such employees as to their right to organize and bargain collectively.'' Department of Labor, Bureau of Labor-Management Reports,[20] *Technical Assistance Aid No. 4: Guide for Employer Reporting,* at 18 (1960). The Department also took the position that a lawyer or consultant's revision of a document prepared by an employer was reportable activity. See Benjamin Naumoff, *Reporting Requirements under the Labor-Management Reporting and Disclosure Act,* in Fourteenth Annual Proceedings of the New York University Conference on Labor, at 129, 140–141 (1961).

In 1962, the Department changed its view of what must be reported. It limited reporting by construing the advice exemption more broadly, excluding from reporting the provision of materials to the employer that the employer could then ''accept or reject.'' This interpretation appeared as guidance in section 265.005 (Scope of the ''Advice'' Exemption) (1962) of the LMRDA Interpretative Manual (IM or Manual). The Manual reflects the Department's official interpretations of the LMRDA. The IM was prepared by OLMS predecessor agencies for use by staff in administering the LMRDA. OLMS maintains the IM and makes it available to the public upon request. Section 265.005 of the Manual stated:

> The question of application of the ''advice'' exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.

[19] First-contracts are crucial to newly certified unions. Under section 9(c)(3) of the NLRA, no elections may be held within one year of the election of an incumbent employee representative. 29 U.S.C. 159(c)(3). Employers understand that unions that do not show results in bargaining during that first year are more vulnerable to challenges, including decertification petitions. As a result, employers may adopt strategies, with the assistance of consultants, to stall bargaining and prevent the adoption of a first contract. One year after an election in which employees voted in favor of union representation, only 48% of bargaining units with certified representatives have executed an initial collective bargaining agreement. Bronfenbrenner, *No Holds Barred,* at 22. The Department notes that the observed effects may not be entirely attributable to the use of a consultant, as some employers may be less supportive of unionization and may choose certain tactics and strategies independent of the use of a consultant.

[20] The Bureau of Labor-Management Reports is a predecessor agency to OLMS.

[I]t is plain that the preparation of written material by a lawyer, consultant, or other independent contractor which he directly delivers or disseminates to employees for the purpose of persuading them with respect to their organizational or bargaining rights is reportable. . . .

However, it is equally plain that where an employer drafts a speech, letter or document which he intends to deliver or disseminate to his employees for the purpose of persuading them in the exercise of their rights, and asks a lawyer or other person for advice concerning its legality, the giving of such advice, whether in written or oral form, is not in itself sufficient to require a report. Furthermore, we are now of the opinion that the revision of the material by the lawyer or other person is a form of written advice given the employer which would not necessitate a report.

A more difficult problem is presented where the lawyer or middleman prepares an entire speech or document for the employer. We have concluded that such an activity can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer. Consequently, such activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. *In a situation where the employer is free to accept or reject the written material prepared for him* and there is no indication that the middleman is operating under a deceptive arrangement with the employer, *the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.*

(Italics added). In later years, the Department reiterated the 1962 position (also referred to herein as the ''accept or reject'' test, or in distinction from the position taken in this rule, the ''prior'' interpretation), sometimes expressing doubts about its soundness. See Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (statement of Richard Hunsucker, Director, Office of Labor-Management Standards Enforcement, Labor-Management Standards Administration, U.S. Department of Labor); Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *Pressures in Today's Workplace,* at 4, 5 (Comm. Print 1980) (statement of William Hobgood, Assistant Secretary of Labor for Labor-Management Relations). (The current interpretation ''when stretched to its extreme, . . . permits a consultant to prepare and orchestrate the dissemination of an entire package of persuader material while sidestepping the reporting requirement merely by using the employer's name and letterhead or avoiding direct contact with employees''). More recently, in 1989 the Department revisited the issue, stating in an internal memorandum:

[T]here is no purely mechanical test for determining whether an employer-consultant agreement is exempt from reporting under the section 203(c) advice exemption. However, a usual indication that an employer-consultant agreement is exempt is the fact that the consultant has no direct contact with employees and limits his activity to providing to the employer or his supervisors advice or materials for use in persuading employees which the employer has the right to accept or reject.

March 24, 1989 memorandum from then Acting Deputy Assistant Secretary for Labor-Management Standards Mario A. Lauro, Jr. As a result of the Lauro memorandum, the approach that limited reporting to ''direct contact'' situations, while not strictly required by the 1962 interpretation, became part of the Department's view of the advice exemption and has been generally followed since 1989 (with the exception of a brief period in early 2001).[21]

In 2001, the Department, without seeking public comment, published a revised interpretation, which expanded the scope of reportable activities, by focusing on whether an activity constitutes ''direct or indirect'' persuasion of employees, rather than categorically exempting activities in which a consultant had no direct contact with employees. See Interpretation of the ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 2782 (Jan. 11, 2001). However, later in 2001 this interpretation was rescinded, and the Department returned to its prior view. See Interpretation of the ''Advice'' Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 18864 (Apr. 11, 2001).

In its Fall 2009 Regulatory Agenda, the Department stated that it would revisit the interpretation to ensure that agreements involving persuader activities were not improperly excluded from reporting. On May 24, 2010, a public meeting was held on this issue. See 75 FR 27366. On June 21, 2011, the Department published the notice of proposed rulemaking (NPRM) on this issue. The comment period on the proposed rule closed on September 21, 2011.

IV. Revised ''Advice'' Exemption Interpretation

A. Summary of the Revised Interpretation

This final rule adopts with some modifications the interpretation of the ''advice'' exemption outlined in the NPRM. The revised interpretation gives full effect to the statutory language, which requires disclosure of consultant activities that are intended ''directly or *indirectly*'' to persuade employees concerning their organizing or collective bargaining rights. See 29 U.S.C. 433(a)(3) and (b) (emphasis added). Section 203 of the LMRDA is designed, in principal part, to shed light on the hidden activities of persuaders. Activities performed directly by consultants—such as delivering a speech to employees about why they should ''vote no'' in a union election, meeting with employees to dissuade them from joining the union, or sending a letter to employees, under his or her own signature, for the same purpose, have always triggered reporting, even under the Department's prior interpretation of the advice exemption, but that interpretation was so broad that it enabled consultants who undertook indirect persuader activities (such as writing a speech to be delivered by the employer or drafting a letter to employees for the employer's signature)

[21] The Department is aware of two instances where it took the position that indirect persuader activities triggered reporting. In 1975, the Department filed suit against a consultant who directed and coordinated supervisors in a system of gathering information on union sympathies without direct contact. The case was settled after the consultants agreed to file the reports. See Statement of Richard G. Hunsucker on Labor Department Enforcement of Consultant Reporting Provisions of Landrum-Griffin Act, DLR No. 27, G–2 (Feb. 9, 1984) (BNA). In 1981, the Department brought suit arguing that the consultant engaged in indirect persuader activity. In this case, the employer consented to the entry of a court order requiring it to file reports. Id. Additionally, the Department *may* have taken that position in *Martin* v. *Power, Inc.,* Civ. A. No. 92–385J (W.D. Pa.), 1992 WL 252264. Although the opinion on a request to stay the Secretary's enforcement action is not entirely clear on this point, the Secretary may have argued that indirect contact by the consultant, as distinct from direct contact also involved in that case, had to be reported pursuant to section 203. Notwithstanding these actions, the Department's stance since has been that a consultant incurs a reporting obligation only when it directly communicates with employees with an object to persuade them. See *International Union, United Auto., Aerospace, and Agricultural Implement Workers of America, UAW* v. *Donovan,* 577 F. Supp. 398 (D.D.C. 1983), aff'd in part, remanded in part by *International Union, United Auto., Aerospace & Agr. Implement Workers of America* v. *Dole,* 783 F.2d 237 (D.C. Cir. 1986); on remand, *International Union* v. *Secretary of Labor,* 678 F.Supp. 4 (D.D.C. 1988), rev'd, *International Union, United Auto., Aerospace & Agr. Implement Workers of America* v. *Dole,* 869 F.2d 616 (D.C. Cir. 1989). In these cases, the UAW challenged the Department's interpretation that a consultant-attorney's drafting of personnel policies to discourage unionization—an indirect persuader activity—did not trigger a reporting obligation. See *International Union, United Auto., Aerospace & Agr. Implement Workers of America* v. *Dole,* 869 F.2d at 619. These cases are discussed in later sections of the preamble. See Sections V.B.1, .2.a.

to skirt reporting, a result that contravenes the text and purpose of the LMRDA. The revised interpretation now brings to light those indirect persuader activities that have been hidden from public view. This rule adjusts how the Department construes the term ''advice,'' an interpretation that furthers the LMRDA's goals of transparency and labor-management stability. It is also consistent with the Department's initial, 1960 interpretation of the ''advice'' exemption.

Under the revised interpretation, like the prior interpretation, activities that are clearly advice do not trigger reporting. Thus, ''an oral or written recommendation regarding a decision or course of conduct''—what traditionally has been viewed as the role of a consultant or attorney in counseling a client—does not trigger reporting.[22] Agreements under which a consultant exclusively provides legal services or representation in court or in collective bargaining negotiations are not to be reported. ''Advice'' does not include persuader activities, *i.e.,* actions, conduct, or communications by a consultant on behalf of an employer that are undertaken with an object, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively. If the consultant engages in both advice and persuader activities, however, the entire agreement or arrangement must be reported.

No longer exempt from reporting are those agreements or arrangements in which the consultant engages in the indirect persuasion of employees. Such indirect persuader activities are no longer considered to be ''advice'' under LMRDA section 203(c), and, if undertaken, they now trigger reporting under sections 203(a) and (b). With this rule, the Department effectively reverses its prior interpretation of the advice exemption and will, accordingly, no longer utilize the ''accept or reject'' test. See Section III.C.

The revised instructions to the Form LM–10 Employer Report and the Form LM–20 Agreement and Activities Report provide examples of reportable and non-reportable agreements or arrangements. See Section IV.E and Appendices. The revised instructions largely implement those proposed by the Department in the NPRM, but in response to comments received there are six changes: (1) Modifications to the text and layout of the instructions to ensure clarity, such as the inclusion of examples of indirect persuader activities that are now grouped into four categories (directing and coordinating supervisors' activities; providing persuasive materials; conducting union avoidance seminars for supervisors or other employer representatives; and developing and implementing personnel policies or actions); (2) restriction of the term ''object to persuade employees'' to only organizing and collective bargaining rights, and not the larger category of ''protected concerted activity''; (3) clarification regarding the reportability of union avoidance seminars and the elimination of duplicative reporting by employer-attendees; [23] (4) distinguishing between trade associations and other labor relations consultants for some reporting purposes, including the elimination of reporting by trade associations where they merely sponsor union avoidance seminars or select ''off-the-shelf'' persuader materials for member-employers; [24] (5) elimination of reporting for employee attitude surveys and related vulnerability assessments; and (6) clarification that reporting is not triggered by the employer's mere purchase or other acquisition of ''off-the-shelf'' persuader materials from a consultant without any input by the consultant concerning the selection or dissemination of the materials.

This rule also implements changes to the employer and consultant reporting standards on the Forms LM–10 and LM–20 by expanding the reporting detail concerning reportable agreements and arrangements. The Department also modifies the layout of the LM–10 and LM–20 forms and instructions to better set forth the reporting requirements and improve the readability of the information. Finally, this rule requires that Form LM–10 and Form LM–20 reports be submitted to the Department electronically and provides a process to apply for an electronic filing exemption on the basis of specified criteria. These changes to the forms are discussed in more detail in Section IV.D.

This rule supersedes any inconsistent interpretation or other guidance issued by the Department concerning the persuader reporting requirements of the Act insofar as Forms LM–10 and LM–20 are concerned.[25]

The comments submitted on the proposed rule reflected strongly divergent views as to how the reporting requirements of section 203 should be applied, how section 203 and the proposed interpretation squares with the NLRA, whether the proposed interpretation unconstitutionally impedes the First Amendment rights of employers, and whether it is inconsistent with the principles protecting the attorney-client relationship. The Department has carefully considered the comments, which have been helpful in informing the Department's judgment. For the reasons stated in this preamble, however, the Department has concluded that the proposed and final rules correctly effectuate the purposes of section 203 and faithfully adhere to national labor policy, as articulated in the NLRA and the LMRDA, without impeding any constitutional rights of employers or interfering with the attorney-client relationship as properly understood in the context of sections 203 and 204 of the LMRDA.

B. Revised Advice Exemption Overview

This rule restores the focus of section 203 persuader reporting to whether a consultant's activities, undertaken pursuant to an agreement or arrangement with the employer, have an object to persuade employees about their union representation and collective bargaining rights. This focus forecloses an interpretation that allowed non-reporting of most activities simply by avoiding direct contact with employees. The revised instructions, consistent with the language and purpose of sections 203 and 204 of the LMRDA, provide that an agreement or arrangement is reportable if the consultant undertakes activities with an object to persuade employees, for example, by managing a union

[22] As noted, both ''agreements'' and ''arrangements'' whereby the consultant undertakes activities with an object to persuade must be reported. For simplicity, this preamble often refers only to agreements. However, the same obligations attach to arrangements to persuade. Additionally, every ''person'' who, pursuant to an agreement with an employer, undertakes persuader activities is required to report pursuant to section 203(b). For simplicity, this preamble often refers only to ''consultants'' and their obligations to report persuader agreements pursuant to the section, but the same obligations attaches to all persons who enter into such agreements.

[23] Section 406.2 of the Department's regulations, 29 CFR 406.2, has been revised, consistent with the instructions, to accommodate the adjusted filing date for reports concerning union avoidance seminars.

[24] ''Off-the-shelf'' materials refer to pre-existing material not created for the particular employer who is party to the agreement.

[25] Section 265.005 of the IM contains the Department's prior interpretation of the advice exemption, and it therefore is superseded in its entirety. Section 255.600 is inconsistent with the final rule to the extent the former provides in its third example that an indirect persuader activity is non-reportable as ''advice.'' Sections 257.100, 258.005, 260.500, 260.600 of the IM will need to be read in conjunction with the final rule insofar as reporting by a trade association is concerned. Similarly, section 262.005 will need to be read in conjunction with the final rule in addressing the timeliness of reports triggered by presenting a union avoidance seminar. OLMS intends to update these and other sections of the IM to reflect the most current reporting requirements.

avoidance or counter-organizing campaign. In practical terms, employers and consultants must report all direct and indirect activities undertaken by the consultant with an object to persuade employees, exempting only activities that come within the plain meaning of ''advice'' to the employer, as well as the employer representation services enumerated in section 203(c), other legal services for the employer, and other consultant activities that, similarly, do not have an object to persuade employees.

There are five general scenarios in which the underlying test for persuasion is to be applied, one in which the consultant engages in direct contact with employees and four in which the consultant does not engage in direct contact:

Reporting of an agreement or arrangement is triggered when:

(1) A consultant engages in *direct* contact or communication with any employee, with an object to persuade such employee; or

(2) A consultant who has no direct contact with employees undertakes the following activities with an object to persuade employees:

(a) Plans, directs, or coordinates activities undertaken by supervisors or other employer representatives, including meetings and interactions with employees;

(b) provides material or communications to the employer, in oral, written, or electronic form, for dissemination or distribution to employees;

(c) conducts a seminar for supervisors or other employer representatives; or

(d) develops or implements personnel policies, practices, or actions for the employer.[26]

The activity that triggers the consultant's requirement to file the Form LM–20 also triggers the employer's obligation to report the agreement on the Form LM–10, with the exception of union avoidance seminars, as explained below.

1. Categories of Persuasion

Direct Persuasion. Consultants must report if they engage in any conversation or other direct communication with any employee where the consultant has an object to persuade. For example, reporting would be required if the consultant speaks directly with employees (in person or by telephone or other medium) or disseminates materials directly (such as emailing or mailing) with an intent to persuade.

Indirect Persuasion: Planning, Directing, or Coordinating Supervisors or Managers. Reporting is required if the consultant, with an object to persuade, plans, directs, or coordinates activities undertaken by supervisors or other employer representatives. This includes both meetings and other less structured interactions with employees. The following nonexclusive factors are indicia of a consultant using supervisors to engage in indirect persuasion: The consultant plans, directs or coordinates which employees they meet; where they meet them; when they meet; for how long they meet; the topics discussed and the manner in which they are presented; the information gathered from the employees and how they should gather it; debriefing with the supervisor to orchestrate the next steps in the campaign; and identifying materials to disseminate to employees.

Indirect Persuasion: The Provision of Persuader Materials. Reporting is required if the consultant provides, with an object to persuade, material or communications to the employer, in oral, electronic (including, *e.g.,* email, Internet, or video documents or images), or written form, for dissemination or distribution to employees. While a lawyer who exclusively counsels an employer-client may provide examples or descriptions of statements found by the National Labor Relations Board (NLRB) to be lawful, this differs from the attorney or other consultant affirmatively drafting or otherwise providing to the employer a communication tailored to the employer's employees and intended for distribution to them. The latter is reportable; the former is not.

As to a consultant's revision of employer-created materials, including edits, additions, and translations, if an ''object'' of the revisions is to ensure legality as opposed to persuasion, then they do not trigger reporting. An object to persuade is also not present if the consultant merely corrects typographical or grammatical errors or translates the document. In contrast, if such revisions are intended to increase the persuasiveness of the material, then they trigger reporting. The principle here is that the revision of materials is no different than the initial creation of the materials: The consultant still plays a role in completing them. The only issue is whether there is an object to persuade.

As for the provision of ''off-the-shelf'' materials, as explained below, the Department has revised the application of the advice exemption in these situations. As noted, ''off-the-shelf'' materials refer to pre-existing material not created for the particular employer who is party to the agreement. Where a consultant merely provides an employer with such material selected by the employer from a library or other collection of pre-existing materials prepared by the consultant for all employer clients, then no reporting is required. The consultant may provide information concerning the materials, such as explaining their content and origin, but such guidance does not trigger reporting. As mentioned above, the provision of off-the-shelf materials, without more, is not reportable. In contrast, if the consultant plays an active role in selecting the materials for its client's employees from among pre-existing materials based on the specific circumstances faced by the employer-client, then this activity would trigger reporting, because it demonstrates the consultant's intent to influence the decisions of those employees. However, where a trade association selects off-the-shelf materials for its members, no reporting is required. See Section V.E.3, discussing trade associations.

Indirect Persuasion: Conducting a Seminar for Supervisors or Other Employer Representatives. Some labor relations consultants and attorneys hold seminars on a range of labor-management relations matters, including how to persuade employees concerning their organizing and bargaining rights. The types of services offered by the consultants to the employer representatives vary with each seminar, but often include presentations, activities, and the distribution of materials on how to contest or avoid unionization.

Seminar agreements must be reported when the consultant develops or assists the attending employers in developing anti-union tactics and strategies for use by the employers' supervisors or other representatives. In those cases, the consultant is not advising an employer as the term ''advise'' is traditionally defined and understood (*i.e.,* recommending a decision or course of action), but instead is undertaking activities that have as their object influencing that employers' employees in their representation and collective bargaining rights. In contrast, a consultant who, for example, merely

[26] In this connection, the instructions to the forms, which include these scenarios, also provide:

The consultant's development or implementation of personnel policies or actions that improve employee pay, benefits, or working conditions do not trigger reporting merely because the policies or actions could subtly affect or influence the attitudes or views of the employees; rather, to be reportable, the consultant must undertake such activities with an object to persuade employees, as evidenced by the agreement, any accompanying communications, the timing, or other circumstances relevant to the undertaking.

solicits business by recommending that the employer hire the contractor to engage in persuasive activities does not trigger reporting.

In no case, however, is the employer required to file a Form LM–10 for attendance at a multiple-employer union avoidance seminar. Additionally, see below, under ''Exempt Agreements or Arrangements,'' for specific application to trade associations.

Indirect Persuasion: Developing or Implementing Personnel Policies or Actions. Reporting is required only if the consultant develops or implements personnel policies or actions for the employer that have as an object to, directly or indirectly, persuade employees (*e.g.,* the identification of specific employees for disciplinary action, or reward, or other targeting, based on their involvement with a union representation campaign or perceived support for the union, or implementation of personnel policies or practices during a union organizing campaign). This encompasses two types of activities: (a) Creating persuasive personnel policies; and (b) identifying particular employees (or groups of employees) for personnel action, with an object to persuade employees about how they should exercise their rights to support (or not) union representation or a union's collective bargaining proposal.

As an example, if the consultant, in response to employee statements about the need for a union to protect against firings, develops a policy under which employees may arbitrate grievances, reporting would be required. On the other hand, if the grievance process was set up in response to a request by employees—without any history of a desire by them for union representation—or as a policy developed as part of a company's startup of operations, without any indication in the agreement or accompanying communications that the policy was established to avoid union representation of the employer's workforce, no reporting would be required. The key questions to ask in this situation are: Did the consultant develop the policy? If so, did the consultant develop the policy with an object to persuade employees? To reiterate, one must look at the object of the consultant, as evidenced in the agreement or arrangement, any communication accompanying the policy or action, the timing (including any labor dispute involving the employer), or other circumstances relevant to the undertaking.

For personnel actions, this rule requires reporting if the consultant identifies or assists in identifying specific employees for reward or discipline, or other targeted persuasion, because of the employees' exercise or potential exercise of organizing and collective bargaining rights or the employees' views concerning such rights. Even if another motive for a personnel action is shown, as long as an object is to persuade, then reporting is triggered. In contrast, if a lawyer merely reviews proposed employee actions presented by the employer, drafts notices, and settles any litigation, the lawyer has not triggered reporting.

As a result, the Department clarifies in this rule that the consultant's development of personnel policies and actions is not reportable merely because the consultant develops policies or implements actions that improve the pay, benefits, or working conditions of employees, even where they could subtly affect or influence the attitudes or views of the employees. To be reportable, as with the other categories of persuasion, the *consultant* must undertake the activities with an object to persuade employees, as evidenced by the agreement, any accompanying communication, the timing, or other circumstances relevant to the undertaking.

2. Exempt Agreements or Arrangements

Agreements or arrangements in which the consultant does not undertake activities with an object to persuade employees are not reportable. A lawyer or other consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, offers guidance on employer personnel policies and best practices, or provides guidance on NLRB or National Mediation Board (NMB) practice or precedent is providing ''advice.'' ''Advice'' means an oral or written recommendation regarding a decision or a course of conduct.

The revised instructions also clarify that a lawyer's review of documents, as a general rule, does not trigger the reporting requirements. For example, the revision of an employer-created persuasive document to ensure its legality does not trigger reporting. Further, a consultant explaining to the employer NLRB decisions concerning lawful and unlawful conduct would not trigger reporting. Correcting spelling or grammar mistakes in the document will also not trigger reporting. However, the creation of a speech or flyer by the consultant or revising an employer created document to further dissuade employees from supporting the union, will trigger reporting. Similarly, other services outlined in section 203(c), concerning representation of the employer before a court or similar tribunal or during collective bargaining negotiations, do not trigger reporting, as they also do not evidence an object to persuade employees. Instead, these services involve the representation of employers.

Additionally, as stated, this rule clarifies the reporting of seminars. (Seminars that are reportable are explained above and in this section; differences with the NPRM are explained in ''Changes from the NPRM,'' below, and Part V.E.1 (Seminars).) No consultant report is required for an agreement or arrangement to offer a seminar in which the consultant does not develop or assist the attending employers in developing anti-union tactics or strategies for use by the employers' supervisors or other representatives. Such seminars consist of only guidance to the employers in attendance, and therefore do not demonstrate that the consultant has an object to persuade employees. Moreover, as explained in the next section of the rule focusing on the remainder of the revised instructions, employers will not be required to file reports concerning their attendance at union avoidance seminars.

The Department has also revisited the reportability of employee attitude surveys and, in the larger context, union ''vulnerability assessments,'' in which a consultant evaluates an employer's proneness to union-related activity and offers possible courses of action. The Department concludes that agreements or arrangements for consultants to conduct these types of surveys and assessments are generally not reportable. The use of employee attitude surveys do not ordinarily evince an object to persuade employees, although they may do so in rare circumstances, such as with ''push surveys,'' which seek to persuade employees rather than gather insight into their views. Certain employee attitude surveys could nonetheless trigger reporting as an information-supplying activity, if the feedback more specifically concerns employee activities during a labor dispute. However, generally speaking, such employee attitude surveys are not reportable, as they consist of general guidance and recommendations to the employer.

Also, no reporting is required for an agreement or arrangement that exclusively includes an employer's purchase or acquisition of pre-existing or off-the-shelf persuasive materials, without coordination by the consultant concerning the selection, tailoring, or

dissemination of the materials. (However, the Department notes that this general policy on pre-existing materials applies only to persuasive communications, not information-supplying concerning the employees or union involved in a labor dispute. For example, pursuant to longstanding Departmental policy, if the employer and consultant have an agreement whereby the consultant agrees to provide information on the bargaining practices of a union in connection with a labor dispute involving the employer, the agreement must be reported unless the information is derived solely from public sources). See *Employer and Consultant Reporting, Technical Assistance Aid No. 6,* U.S. Department of Labor, Labor-Management Services Administration (1964), at 12.

Where, however, a consultant drafts for an employer, in whole or part, a persuasive speech or creates a persuasive video or any other communication intended to be disseminated to particular employees, such activity triggers reporting because the activity has an object to persuade. Similarly, if an employer contacts a consultant to coordinate the selection and purchase of pre-existing persuasive materials, or to direct or coordinate the use of the materials by the employer, then this would be evidence of an object to persuade by the consultant, and such an activity would trigger reporting of the underlying agreement or arrangement.

Finally, trade associations are not required to file a report, where by reason of their membership agreements, the associations select off-the-shelf persuader materials for their member-employers, or distribute newsletters addressed to their member-employers.[27] As explained in more depth below in Section V.E.3, there are significant practical difficulties associated with requiring trade associations to report such activities and such reporting would impose substantial burden on such associations without corresponding disclosure benefits to employees and the public. Accordingly, under the final rule trade associations as a general rule will only be required to report in two situations—where the trade association's employees serve as presenters in union avoidance seminars or where they undertake persuader activities for a particular employer or employers (other than by providing off-the shelf materials to employer-members). See Section V.E.3.

3. Changes From the NPRM

As explained in more detail in Part V of this rule, the Department has made several changes to the revised advice exemption instructions, in response to comments received.

First, the Department has made significant changes to the text and format of the instructions in order to ensure clarity. These changes include the categorizing of indirect persuasion; the determination to not infer an ''object to persuade'' from a consultant's development or implementation of personnel policies that merely improve pay, benefits, or working conditions; and other rewording and reorganization, including additional material on information-supplying and further examples in the exempt agreements or arrangements section.

Second, the Department clarifies that consultant-led seminars are reportable if the consultant develops or assists the employers in developing anti-union tactics and strategies to be utilized by their supervisors and other representatives. In this regard, the Department has also limited the reporting of union avoidance seminars sponsored by trade associations and eliminates the obligation for employers to report their attendance. Where reporting is triggered by presenting a union avoidance seminar, a report is not due until 30 days after the date of the seminar. Section 406.2(a) has been revised to reflect this change from the general rule that a report is due within 30 days after a persuader agreement is reached, rather than the date on which the activity undertaken by the agreement occurs.

Third, the Department exempts from reporting agreements or arrangements exclusively involving vulnerability assessments, including employee surveys other than the ''push'' variety. Generally these assessments are not reportable as they provide guidance on an employer's proneness to union-related activity by its employees. Surveys would only trigger reporting if they are persuasive, such as push surveys, or if they are information-supplying activities in the context of a labor dispute, such as information gained through the consultant's use of surveillance technology. See Section V.E.1 (Employee Attitude Surveys/ Employer Vulnerability Assessments).

Fourth, the Department has exempted agreements exclusively consisting of providing pre-existing or off-the-shelf materials, unless the materials were selected by the consultant. (As noted above, a trade association is not required to file a report if it selects such materials for its member-employers.)

Fifth, the Department in this rule distinguishes between trade associations and other labor relations consultants for some reporting purposes, including the elimination of reporting by trade associations where they merely sponsor union avoidance seminars or select off-the-shelf persuader materials for member-employers.

Finally, the Department has dropped the term ''protected concerted activities'' from the definition of ''object to persuade employees.'' Instead, reporting is required only for agreements in which the consultant engages in activities with an object to persuade employees concerning representational and collective bargaining activities, but not ''other protected concerted activities.'' This better comports with the language of section 203, which, in contrast to the NLRA, does not expressly refer to ''concerted activities.''

4. Reportable Information-Supplying Agreements

The final rule does not make any changes to reporting requirements for information-supplying activities, including the information-supplying checklist on Form LM–10 and LM–20. In the revised advice exemption section of the Form LM–10 and LM–20 instructions, however, the Department has added language that explains reporting in such situations, and has included a description of the term ''labor dispute'' from section 3(g) of the statute.

The amended Form LM–10 and LM–20 instructions appear in full in the appendices to this rule.

C. The Statutory Basis for the Revised Interpretation[28]

This rule reflects the language and purpose of sections 203 and 204 of the LMRDA, effectuating the intent of Congress and resolving any tension or ambiguity in those sections, consistent with the authority and discretion embodied in the statute.[29] Section 203(a) requires employers to report to

[27] Where an association publishes a newsletter for *employees* of their member-employers, the inclusion of any material with an object to persuade would trigger reporting as has always been the case under the Department's regulations. See *Master Printers of America* v. *Donovan,* 751 F.2d 700 (4th Cir. 1984) (discussed further in Sections V.E.3. G.1).

[28] This topic is discussed at greater length in Section V.B of the preamble.

[29] That the ''advice'' exemption of LMRDA section 203(c) might pose interpretive challenges was quickly clear to at least some observers. See, *e.g.,* Bureau of National Affairs, *The Labor Reform Law* 36 (1959) (''The exemption applicable to consultants who merely give advice is susceptible of several different interpretations . . . It is questionable whether the exemption would also cover payments to a consultant who drafted anti-union letters and otherwise mapped out a campaign to combat union organizing'').

the Department of Labor ''any agreement or arrangement with a labor relations consultant . . . pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees . . .'' with respect to their organizing and collective bargaining rights. 29 U.S.C. 433(a)(4). Section 203(b) imposes a similar reporting requirement on labor relations consultants and other persons who undertake such persuader activities on behalf of an employer. 29 U.S.C. 433(b).

Section 203(c) exempts any employer, labor relations consultant, or other person from filing a report under section 203(a) or (b) ''covering the services of such person by reason of his giving or agreeing to give advice to such employer.'' 29 U.S.C. 433(c). Section 203(c) makes explicit what is left implicit in section 203(a) and (b): The statute exempts an employer or its labor relations consultant from having to file the Form LM–10 or LM–20, respectively, if the activities undertaken by the consultant on behalf of the employer merely constitute ''advice.''

The Department recognizes, however, as it has in the past, that the LMRDA is ambiguous as to whether the coverage provisions in sections 203(a) and (b) or the advice exemption in section 203(c) control in situations where the consultant undertakes indirect activities to persuade employees. See *International Union* v. *Secretary of Labor,* 678 F. Supp. 4, 6 (D.D.C. 1988) (''The Secretary argues that the juxtaposition of the two provisions creates an ambiguity which he is entitled to resolve and the resolution of which the courts must respect''). This ambiguity arises, in part, because of the statute's silence with respect to the definitions of ''advice'' and ''persuade,'' creating confusion as to what indirect consultant activities can or should be categorized as nonreportable advice or reportable persuasion. A review of the legislative history confirms that Congress did not speak directly, through the statutory text or otherwise, to the application of the reporting requirements in situations involving the indirect persuasion of employees. While Congress intended a ''broad'' exemption for activities constituting the giving of advice, the legislative history confirms that Congress also did not wish to do so at the expense of reporting persuader activities. It did not, by way of example, limit reporting to just situations that constituted unfair labor practices, but, rather, required reporting for the broader category of persuader activity. See discussion herein at Section III.B.

As discussed in the NPRM, the Department originally interpreted section 203 to require reporting of all persuader activities, but it changed that interpretation in 1962 by establishing the ''accept or reject'' test, which over time essentially limited reporting to activities involving direct communication between consultants and employees. 76 FR 36180. In this rule, we have identified both direct and indirect persuader activities and distinguished these from activities that constitute non-reportable ''advice.'' ''Advice'' ordinarily is understood to mean a recommendation regarding a decision or a course of conduct. See, *e.g.,* Merriam-Webster's Collegiate Dictionary (10th ed. 2002) (defining ''advice'' as ''recommendation regarding a decision or course of conduct: counsel''); Black's Law Dictionary (online) (8th ed. 2004) (defining ''advice'' as ''guidance offered by one person, esp. a lawyer, to another''); The Oxford English Dictionary (2d ed. 1989) (defining ''advice'' as ''opinion given or offered as to action; counsel. spec. medical or legal counsel''). This common construction of ''advice'' does not rely on the employer's ability to accept or reject materials obtained from the consultant, an element viewed as significant under the prior interpretation. As noted in the NPRM, a consultant's preparation and supply of persuader materials to an employer goes beyond offering a recommendation or counsel about an issue to the employer; instead its services provide the means by which the employer communicates its views to employees in order to persuade them how to exercise their choice on matters affecting representation and collective bargaining rights. See 76 FR 36183.

The prior ''advice'' standard in section 265.005 of the IM treats as advice not only the situation in which a lawyer consultant reviews drafts of persuasive material for compliance with the NLRA—actions which under this rule continue to not trigger reporting—but also covers the preparation of persuasive material to be disseminated or distributed to employees—actions which under this rule do trigger reporting. As discussed in the NPRM, the Department views preparation of material designed to persuade employees as ''quintessential persuader activity.'' See 76 FR 36183.

Under this rule, reporting is required when, pursuant to an arrangement or agreement, the consultant does not limit its activities to advising the employer, but engages in activities, either directly or indirectly, aimed at persuading or influencing, or attempting to persuade or influence, employees as to how to exercise their union representation and collective bargaining rights. See discussion in Section V.B.

The Department notes that section 203(c) exempts from the reporting requirement a consultant's services ''*by reason of* his giving or agreeing to give advice'' (emphasis added), indicating that reporting would be required *by reason of* other consultant activities that do have an object to persuade. Further, sections 203(a) and (b) specifically require reporting when a consultant undertakes activities with an object to ''directly or indirectly'' persuade employees, indicating that indirect methods of consultant persuasion also trigger reporting. The statute also specifies that *an* object of the consultant's activity must be to persuade, not *the* object, thus further supporting the view that the coverage provision applies in the case of indirect activities.

The Department has carefully considered the comments that discussed the interpretative questions presented in this rulemaking, and we conclude that the prior interpretation of the advice exemption, while permissible, was not the best interpretation. The Department remains of the view that its revised approach is faithful to the language and purpose of the LMRDA. This approach restores a more appropriate balance between reportable persuader activities and those that are properly characterized as ''advice'' than achieved under the Department's prior interpretation. The prior interpretation largely exempted from reporting persuader agreements that exclusively involved indirect persuasion. As a consequence, despite the widespread growth of the labor relations consultant industry—and its extensive involvement in all but a small and shrinking number of campaigns to persuade employees to reject union representation—very few reports are being filed by consultants or employers. Further, the literature discussed in this preamble and the NPRM and the experiences related by many commenters indicate that this practical impact is quite large because most employers hire consultants to manage anti-union campaigns or programs, with most of these consultants using exclusively indirect persuasion. This information illustrates why the prior interpretation did not implement the full persuader-reporting regime envisioned by Congress. The prior interpretation therefore resulted in underreporting of persuader agreements, to the detriment of an informed workforce, collective bargaining rights, and stable labor relations.

D. Revised Form LM–20, LM–10, and Instructions

The Department has not revised the Form LM–20 and Form LM–10 since the republication of the forms in 1963. See 28 FR 14381. With these changes to the interpretation of the advice exemption of section 203(c), the Department revises Form LM–20 and Form LM–10 and their instructions. The Department is also revising §§ 405.5 and 405.7 of title 29 of the Code of Federal Regulations to update cross-references in those sections to the instructions.

While some of the revisions are minor stylistic and layout modifications there are four significant changes: (1) The revised interpretation of the advice exemption, including examples of activities that will trigger reporting and those that do not; (2) the mandating of electronic filing for each form, with language in each set of instructions depicting such process and guidance concerning the application for a hardship exemption from such electronic filing; (3) the addition of a detailed checklist that Form LM–20 and Form LM–10 filers must complete to disclose the scope of activities that consultants have engaged, or intend to engage, in under a reportable agreement or arrangement; (3) the changes to the Forms LM–20 and LM–10 and their instructions, including the requirement for filers to report their Employee Identification Number, as applicable, and explanations for terms ''agreement or arrangement'' and ''employer''; and (4) a revamped layout for the Form LM–10, which divides the report into four parts, each presenting aspects of the reportable transactions, agreements, and arrangements required by sections 203(a)(1)–(5) of the LMRDA, in a more user-friendly manner.

Unless otherwise noted in this preamble, each of these changes is identical to what the Department proposed in the NPRM.[30] See 76 FR 36193–96. In addition to the changes to the ''advice'' interpretation instructions, the other significant area of substantive change concerns consultants' reporting of seminars on the Form LM–20. (Note: employers are not required to report attendance at union avoidance seminars on the Form LM–10.) The Department's response to comments is discussed below, in Section V, and the complete, revised Forms LM–20 and LM–10, including instructions, are contained in the appendices to this rule.

1. Mandatory Electronic Filing for Form LM–20 and Form LM–10 Filers

This rule requires that employers and consultants file Form LM–20 and Form LM–10 reports electronically. An electronic filing option is planned for all LMRDA reports as part of an information technology enhancement. Electronic reporting contains error-checking and trapping functionality, as well as online, context-sensitive help, which improves the completeness of the reporting. Electronic filing is more efficient for reporting entities, results in more immediate availability of the reports on the agency's public disclosure Web site, and improves the efficiency of OLMS in processing the reports and in reviewing them for reporting compliance. In contrast, paper reports must be scanned and processed for data entry before they can be posted online for disclosure, which delays their availability for public review.

Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with this requirement. Like labor unions, employers and consultants have the information technology resources and capacity to file electronically. Further, OLMS has improved the technology utilized in its electronic filing process and eliminated the expenses formerly associated with such filing.

The revised forms will be completed online, signed electronically, and submitted with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic forms can be downloaded from the OLMS Web site at *www.olms.dol.gov*.

The revised Form LM–20 and Form LM–10 instructions outline a process for seeking an exemption from the electronic filing requirement that is identical to the Form LM–2 process. See Form LM–2 Instructions, Part IV: How to File, located at: *www.dol.gov/olms/regs/compliance/EFS/LM-2_InstructionsEFS.pdf*. A filer will be able to file a report in paper format only if the filer asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. The temporary hardship exemption process, which is currently in place for Form LM–2 filing,[31] will be applied to mandatory electronic filing of the Forms LM–20 and LM–10. The process is set out in full in the instructions. See Appendices.

2. Detailing the Activities Undertaken Pursuant to a Reportable Agreement or Arrangement

The prior instructions to the Form LM–20 and Form LM–10 did not provide detailed guidance to the filer concerning how to report the nature of the activities undertaken by a consultant pursuant to an agreement or arrangement to persuade. For example, the prior Form LM–20 instructions[32] for Item 11, Description of Activities, stated:

For each activity to be performed, give a detailed explanation of the following:

11a. *Nature of Activity.* Describe the nature of the activity to be performed. For example, if the object of the activity is to persuade the employees of Employer X to vote ''no'' on a representation election, so state.

Similarly, the prior Form LM–10 instructions[33] in Item 12, Circumstances of all Payments, states:

[You] must provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.

In practice, the Department received only vague descriptions of persuader or information-supplying activity, such as ''employed to give speeches to employees regarding their rights to organize and bargain collectively'' and ''presented informational meetings to company employees relative to the process of unionization, the role of the NLRB, and collective bargaining.''

As the review of the literature above has demonstrated, a wide range of activities and tactics have been utilized by employers, and employees and the public have a need to know in detail the types of activities in which consultants engage.[34] Vague and brief narrative

[30] The Department has also made minor, non-substantive changes throughout the revised Form LM–20 and Form LM–10 instructions, as compared with the proposed instructions.

[31] See *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/LM-2_Instructions4-2015_techrev.pdf*, at 2.

[32] The prior Form LM–20 form and instructions are available on the OLMS Web site at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions_3_2015.pdf*.

[33] The prior Form LM–10 form and instructions are available on the OLMS Web site at: *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10p.pdf* and *http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10_instructions_3_2015.pdf*.

[34] Various studies reflect the types of activities typically used by employers (as noted above, usually working with consultants) in response to union organizing campaigns: Between 82% and 93% of employers held ''captive audience'' meetings; between 70% and 75% of employers

descriptions and characterizations that have been permitted on the prior Form LM–20 serve little utility, and a checklist of activities is the best way to ensure more complete reporting of such persuader activities. Additionally, filers are provided an ''Other'' box on the checklist, and will be required to check this box and separately identify any other persuader or information-supplying activities that are not listed in the checklist. In the Department's view, the use of the checkboxes and the revised instructions for completing the form will make it easier for filers to comply with their reporting obligation.

3. Revised Form LM–20 and Instructions

The revised Form LM–20 and instructions (see Appendix A) largely follow the layout of the prior form and instructions, although the style has been altered. The revised form is two pages in length and contains 14 items. The first page includes the first five items, which detail contact and identifying information for the consultant: The file number (Item 1.a.) and contact information for the consultant (Item 2), including information detailing alternative locations for records (Item 3), the date the consultant's fiscal year ends (Item 4), and the type of filer (Item 5), *i.e.,* an individual, partnership, or corporation. The revised new Item 2 requires the consultant to provide, if applicable, its Employer Identification Number (EIN), which assists the Department and the public in identifying and analyzing other filings by the consultant and any individuals and entities reported on the form. The new Items 1.b. and 1.c. are for the filer to indicate if the report is filed pursuant to a hardship exemption from the electronic filing requirement or is amended, respectively. These items were not in the previous form.

Additionally, the first page includes three items describing the employer agreement: The employer's contact information, which adds the requirement to report the employer's EIN (Item 6), the date the agreement was entered into (Item 7), and the person(s) through whom the agreement was made (Item 8). Item 8 has been amended to distinguish between the employer representative through whom the reported agreement or arrangement has been made and a prime consultant through whom an indirect party entered the agreement or arrangement. As revised, an indirect party to an employer-consultant agreement or arrangement must identify in a new Item 8.b the consultant with whom he or she entered into the reportable agreement or arrangement. This specificity is added to clarify the reporting that continues to be required on the Form LM–20 when such indirect parties, or ''sub-consultants,'' are engaged by a primary consultant to assist in implementing a reportable agreement or arrangement. The primary consultant would report the employer representative in a new Item 8.a. This requirement has been included in the Form LM–20 Instructions in Part II, Who Must File, but its addition on the form itself will enable the Department, employees, and the public to more easily understand the nature of the activities conducted pursuant to the agreement or arrangement and determine if additional reports are owed.

In response to comments received on the NPRM, the revised Form LM–20 instructions also clarify, in Items 6–8, the manner in which the consultant reports agreements or arrangements concerning reportable union avoidance seminars, webinars, and conferences. The consultant is not required to file separate Form LM–20 reports for each employer attendee to a seminar. Rather, the consultant will identify each employer attendee in Item 6 by checking the box indicating that the report covers a reportable union avoidance seminar. The consultant will be able to either enter the necessary information manually, or it can import the data through a CSV file. For seminar reporting, the consultant is not required to provide the EIN for each attending employer, because there is no corresponding Form LM–10 reporting for the employers. While more employers may register for a seminar than actually attend, the consultant must identify each *attendee* to the seminar, through whatever tracking system it uses for such purposes. Further, the instructions clarify that only the seminar presenter needs to file the Form LM–20 report, not the organizer. If the presenter is a trade association, then it is not required to complete Item 8.

As proposed, the front page also includes the signature blocks for the president (Item 13) and the treasurer (Item 14), including the date signed and telephone number.

The second page provides more detail concerning the agreement. Items 9 and 10 are unchanged. Item 9 requires the filer to indicate if the agreement called for activities concerning persuading employees, supplying the employer with information concerning employees or a labor organization during a labor dispute, or both. Item 10 asks for the terms and conditions of the agreement, and requires written agreements to be attached. In response to comments received on the NPRM, information has been added to the instructions for Item 10 concerning the reporting of persuader seminars, webinars, or conferences, as well as clarification on the scope of the ''detailed explanation'' required in this item. For example, the instructions now state that filers must explain whether the consultant was hired to manage a union-avoidance campaign, to provide assistance to an employer in such a campaign through the persuader activities identified in Item 11, or conduct a union avoidance seminar. An attorney who provides legal advice and representation, in addition to persuader services, is only required to describe such portion of the agreement as the provision of ''legal services,'' without any further description.

Item 11 calls for the provision of certain details concerning any covered agreement or arrangement, and a new Item 11.a, as described above in Section IV.B, requires filers to check boxes indicating specific activities undertaken as part of the agreement or arrangement. There is also an ''Other'' box, which requires the filer to provide a narrative explanation of any other reportable activities planned or undertaken that are not specifically contained on the list.

Additionally, Items 11.b, 11.c, and 11.d, respectively, require the consultant, as before the proposed revisions, to indicate the period during which activity was performed, the extent of performance, and the name and address of the person(s) through whom the activity was performed. Item 11.d. has been revised to ask filers to specify if the person or persons performing the activities is employed by the consultant or serves as an independent contractor. In the latter scenario, the person or persons performing the activities is an indirect party to an employer-consultant agreement or arrangement, who would owe a separate Form LM–20 report. This requirement is not new, and it has been incorporated in the Form LM–20 instructions in Part II, Who Must File, but this addition on the form itself will enable the Department, employees, and

distribute leaflets in the workplace; between 76% and 98% of employers utilize supervisor one-on-one sessions; between 48% and 59% of employers promised improvements; and between 20% and 30% of employers granted unscheduled raises. See Logan, U.*S. Anti-Union Consultants,* at 5, Table 1, compiling and citing results from Bronfenbrenner, *Employer Behavior,* at 75–89; Kate Bronfenbrenner, U.S. Trade Deficit Review Commission, *Uneasy Terrain* (2000); Rundle, *Winning Hearts and Minds,* at 213–231; and Mehta and Theodore, *Undermining the Right to Organize.*

the public to more easily understand the nature of the activities conducted pursuant to the agreement or arrangement and determine if additional reports are owed. Finally, Items 12.a and 12.b require the consultant to identify the employees that are targets of the persuader activity and the labor organizations that represent or are seeking to represent them, respectively. To achieve more specificity, Item 12.a as proposed would include a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted. In response to comments received on the NPRM, information has been added to the instructions for item 12 concerning the reporting of persuader seminars, webinars, or conferences.

The revised Form LM–20 instructions are similar to the previous version, and they follow the layout of the revised form. There are five significant modifications. First, a clarification of the term ''agreement or arrangement'' has been added to Part II, Who Must File. As there stated: ''The term 'agreement or arrangement' should be construed broadly and does not need to be in writing.'' Second, as discussed above, the revised form would be submitted electronically, and the Department has made changes to the instructions describing the signature and submission process, as well as a procedure for filers to apply for an exemption from the electronic filing requirement. This procedure is modeled on the procedure for filers of the Form LM–2, Labor Organization Annual Report. Third, the revised instructions include guidance on the application of the ''advice'' exemption, in the general guidance on reporting agreements, arrangements, and activities section. The revised instructions provide examples, beyond those contained in the proposed rule, of activities that would trigger reporting requirements and those that will not. Fourth, as discussed, the revised instructions refer to the new checklist of activities undertaken pursuant to the reportable agreement or arrangement (see Item 11.a). Fifth, the instructions address new exceptions from certain reporting requirements applicable to trade associations, franchisors and franchisees, and special reporting procedures for union avoidance seminars.

Additionally, the Department has clarified in Part V (When to File) that, for reporting of union avoidance seminars, reporting is not required until 30 days after the conclusion of the seminar. Section 406.2(a) of the Department's regulations, 29 CFR 406.2(a), has been revised to reflect this change from the general rule that a report is due within 30 days after a persuader agreement is reached, rather than the date on which the activity undertaken by the agreement occurs.[35] Similarly, as explained in Section V.E.3 concerning trade association reporting, the association and its member-employers are not required to report simply by reason of the membership agreement with member-employers, but only if they engage in the limited activities that will trigger reporting by them (which must be reported within 30 days of entering into agreements to engage in the reportable persuader activities). The Department has also made other, non-substantive changes throughout the instructions to ensure clarity or consistency with the OLMS electronic reporting system.

4. Revised Form LM–10 and Instructions

The revised Form LM–10 and Instructions (see Appendix B) are significantly different in layout and style from the previous form and instructions, although the reporting requirements have been altered only in two respects: The interpretation of the ''advice'' exemption is now included, and the form now requires detailed information regarding specific activities undertaken pursuant to the agreement or arrangement.

The revised form is four pages in length and contains 19 items. It is to be filed electronically. The first page includes the first seven items (and the signature block), which provide the contact information for the employer. This information includes the file number (Item 1.a.), fiscal year covered (Item 2), contact information for the employer (Item 3), employer's president or corresponding principal officer (Item 4), any other address where records necessary to verify the report will be available for examination (Item 5), at which of the listed addresses records are kept (Item 6), and type of organization that the employer is, such as an individual, partnership, or corporation (Item 7). Item 3 is revised to require the employer to provide its EIN, which will assist the Department and public in identifying the employer and analyzing the employer's filings. Item 1.b. is for the filer to indicate if the report is filed pursuant to a hardship exemption from the proposed electronic filing requirement and Item 1.c. is for the filer to indicate whether the filing is an amended report. These items were not on the previous form. The front page also includes the signature blocks, for the president (Item 18) and the treasurer (Item 19), including the date signed and telephone number.

The remainder of the revised form is divided into four parts: Parts A, B, C, and D. This layout is designed to clarify Item 8, which had required the filer to check those box(es) (Items 8.a–8.f) that depicted the reportable transaction, arrangement, or agreement, and required in a Part B to detail the transaction, arrangement, or agreement. The Department views the steps required by Item 8 in the prior form as unnecessary and confusing. Part B in that form added to the confusion, because it applied a ''one size fits all'' approach to reporting the diverse information required by section 203(a). To remove this confusion, the Department has adopted a more convenient four-part structure to capture the required information.

Revised Part A requires employers to report payments to unions and union officials. The employer must report on the form the contact information of the recipient in Item 8. In Item 9, the employer must report detailed information concerning the payment(s), including: The date of the payment (Item 9.a), the amount of each payment (Item 9.b), the kind of payment (Item 9.c), and a full explanation for the circumstances of the payment (Item 9.d). There are no changes to the substantive reporting requirements for payments in Part A, which are required pursuant to LMRDA section 203(a)(1).

Revised Part B requires employers to report certain payments to any of their employees, or any group or committee of such employees, to cause them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing. The employer must report the contact information of the recipient of the payment in Item 10. In Item 11, the employer must report detailed information concerning the payment(s): The date of the payment (Item 11.a), the amount of each payment (Item 11.b), the kind of payment (Item 11.c), and a full explanation for the circumstances of the payment (Item 11.d). There are no changes to the substantive reporting requirements in Part B, which are required by LMRDA section 203(a)(2).

[35] In the NPRM, the Department had proposed to update and revise the authority citations to section 406.2. Since the NPRM was published, however, the Department has updated various authority citations in numerous regulations administered by the Department, including those pertaining to LMRDA reports, thereby obviating any need to revise this part of section 406.2. See Final Rule, Technical Amendments Relating to Reorganization and Delegation of Authority, 78 FR 8022, February 5, 2013.

Revised Part C requires employers to detail any agreement or arrangement with a labor relations consultant or other independent contractor or organization in which the consultant, contractor, or organization undertakes activities with the object to persuade employees or supply information regarding employees and a labor organization involved in a labor dispute. The employer must indicate whether the agreement or arrangement involves one or both of the above purposes by checking the appropriate box in Part C. Next, the employer must provide contact information for the consultant in Item 12. A revision to Item 12 requires the employer to provide the consultant's EIN, if applicable. In response to comments received, the revised instructions exempt employers from filing Form LM–10 reports for attendance at multiple-employer persuader seminars, webinars, or conferences. The date of the agreement or arrangement and a full explanation of its terms and conditions would be reported in Items 13.a and 13.b, respectively. In response to comments received on the NPRM, the instructions for Item 13.b concerning the scope of reporting required in this item have been clarified. The instructions now state that filers must explain whether the consultant was hired to manage a union-avoidance campaign or to provide assistance to an employer in such a campaign through the persuader activities identified in Item 14. An attorney who provides legal advice and representation, in addition to persuader services, is only required to describe such portion of the agreement as the provision of ''legal services,'' without any further description.

Item 14 calls for detail concerning the agreements undertaken. Item 14.a, as described above in Item 11.a. for the revised Form LM–20, requires filers to check boxes indicating specific activities undertaken or to be undertaken. There is also an ''Other'' box, which requires the filer to provide a narrative explanation for any activities not specified on the list provided on the form. Items 14.b, 14.c, and 14.d, respectively, require, as before, the employer to indicate the period during which the activity was performed, the extent of performance, and the name and address of persons through whom the activity was performed. As with Item 11.d of the revised Form LM–20, Item 14.d requires filers to specify whether the person performing the activity is employed by the consultant or works as an independent contractor. Items 14.e and 14.f require the consultant to identify the employees and any labor organization that are targets of the persuader activity. Item 14.e requires a description of the department, job classification(s), work location, and/or shift of the employees targeted. Finally, the employer must provide detailed information concerning any payment(s) made pursuant to the agreement or arrangement: The date of each payment (Item 15.a), the amount of each payment (Item 15.b), the kind of payment (Item 15.c), and a full explanation for the circumstances of the payment(s) (Item 15.d). Information reported in Part C is required by LMRDA sections 203(a)(4) and (5).

Revised Part D requires employers to report certain expenditures designed to ''interfere with, restrain, or coerce'' employees regarding their rights to organize or bargain collectively, as well as expenditures to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such an employer. The employer must indicate the object of the expenditure by checking a box. The employer must report the contact information of the recipient of the expenditure in Item 16. In Item 17, the employer must report detailed information concerning the expenditure(s): The date of each expenditure (Item 17.a), the amount of each expenditure (Item 17.b), the kind of expenditure (Item 17.c), and a full explanation for the circumstances of the expenditure (Item 17.d). There are no changes to the substantive reporting requirements in Part D, which are required by LMRDA section 203(a)(3).

The revised Form LM–10 instructions follow the layout of the revised form. Insofar as the reporting of persuader activities is concerned, the revised instructions correspond with the changes discussed above in connection with the Form LM–20.

V. Review of Comments Received

A. General Comments

The Department received approximately 9,000 comments on the proposed rule. The vast majority focused on general observations. The supportive comments came largely from labor unions, union officials, and law firms, as well as public policy organizations and Members of Congress. Commenters opposing the rule included business associations, public policy organizations, law firms and labor relations consultants, as well as numerous businesses, and a senator and congressman. General comments are discussed immediately below.

Most of the comments submitted by labor organizations, law firms representing unions, public policy organizations, and private citizens expressed general support for the proposed rule and the increased disclosure it would provide. Some of these commenters stated that the proposed changes will finally give employees the information that Congress intended. Others described the Department's proposal as a ''common-sense interpretation'' that would close the ''advice loophole'' that has led to circumvention of employer-consulting reporting requirements. One commenter stated that the rule would restore a balance to election campaigns where, in its view, companies have long held an unfair advantage. This commenter stated that employees have a right to organize unions, and that they should be given more information that would aid them in their organizing efforts. Another commenter voiced support of the proposed interpretation, which, in its view, would increase transparency in a way that would be beneficial to employees, unions, and employers. Some private citizens submitted brief statements in support of the proposal. Other commenters submitted examples of consultant-prepared materials that have been used by employers in campaigns against unions.

Many employer and trade associations, law firms representing employers, labor relations consultants, and public policy groups provided substantive comments, almost all uniformly calling for the proposed rule to be withdrawn or at least substantially modified to reduce the proposed scope of the reporting requirement and what they viewed as an undue burden. Some law firms and local and national bar associations focused their comments on what they viewed as an improper intrusion on attorney-client relationships and potential concerns that the proposed rule, if adopted, would impede employers in exercising their free speech rights under the NLRA and pose substantial First Amendment and other constitutional issues. Many commenters stated that the proposed changes would hamper job creation and result in job losses. Other commenters expressed the view that the proposed rule was too vague. The vast majority of the comments received in response to the proposed rule, however, were either templates (*e.g.,* sets composed of hundreds of identical, or nearly identical, comments from private citizens opposing the rule) or brief, individual statements expressing general opposition.

Several commenters framed their opposition in terms of their own experience with union organizing campaigns at their companies. One such commenter stated that the proposed rule tilts in favor of unions, stating that employers need a fair opportunity to educate their employees about unionization and dispel any false information disseminated by the union organizers. In this commenter's view, the proposed rule impeded this opportunity. Many other commenters opposed to the proposed rule simply expressed general anti-union and anti-regulation sentiments, others voiced general criticism of the current administration, claiming that the rule is a ''political payback'' to unions. Further, some commenters voiced concern about publicly disclosing companies' financial information. Other commenters urged that the LMRDA be abolished. Some commenters apparently confused the proposed rule with other rules proposed by NLRB or proposed or contemplated legislation, and others submitted comments consisting of general statements that were not germane to any aspect of the proposed rule.

The Department disagrees with the general points made by those opposing the proposed rule. Simply put, the commenters offered no persuasive argument that the Department's revised reporting requirements for persuader activities will hamper job growth or reduce jobs. As explained in Section VI, there is minimal burden on individual filers and the economy as a whole. Further, several commenters that supported the Department's proposal referenced the large amount of money that employers spend on consultants, which greatly exceeds the cost for employers and consultants to publicly disclose their agreements.

The Department also disagrees with the suggestion made by some commenters that the revised interpretation is motivated to advance efforts by unions to organize employees or to somehow impede the ability of employers to advance any lawful arguments designed to persuade employees in the exercise of their union representation and collective bargaining rights. Rather, this rule is an effort by the Department to fairly and effectively administer the LMRDA, a statute passed with bipartisan support in 1959, which requires reporting of both sides in labor-management relations. This rule will improve disclosure from employers and consultants. The Department plainly understands the right of employers to express, in robust fashion, their views on the advantages and disadvantages of union representation or collective bargaining issues, and to hire consultants to implement that goal. This rule does not encourage or discourage employer speech or involvement in organizing campaigns and representation elections. Apart from requiring reporting in prescribed situations, it regulates no speech or conduct.

The Department is also well aware of the primacy of the NLRB in resolving representation issues and investigating and resolving charges of unfair labor practices. This rule is in no way at odds with the statutory scheme administered by the NLRB, nor does it concern any proposed legislation. Instead, the rule effectuates the Department's limited, complementary role assigned to it by Congress in the LMRDA to provide workers with information that is helpful to them in assessing communications from their employers, provide the public information about the administration of these statutes, and provide the Government with information that will better enable it to secure compliance with these statutes. As noted in Sections I.A., III.B, and V.C of the preamble, it is critically important that workers, as recognized by Congress in crafting section 203, are provided this information.

This rule and its interpretation of section 203 advance these purposes. The Department's prior interpretation of this section effectively denied employees, as well as the public and the Government, most of the information about labor relations consultants that Congress wanted to be publicly disclosed. This rule, consistent with the intent of Congress, will make known to employees information that will allow them to more thoughtfully and effectively exercise their right to support or refrain from supporting a union as their collective bargaining representative. Under the rule, employees will learn, many for the first time, that their employer has hired a labor relations consultant to help it to persuade them how to exercise their individual and collective rights to union representation and collective bargaining. With this information, employees will be better able to assess the extent to which their employer's spokesperson is conveying the employer's own take on union representation and its ideas about what is truly best for the company and its employees, or instead making arguments that other employers have successfully used to defeat union representation; the extent to which the employee's supervisors are conveying their full and honest opinions about union representation (such as whether there is a need for an ''outsider'' to look out for employee interests) or merely following the direction of the company's own behind the scenes ''outsider.'' It will be up to each individual employee to make his or her own choice about the merit of the claims articulated by the employer (just as each must make a similar assessment about the union's claims). This rule does not restrict the claims that may be made, their timing, or the person or means by which they are made. Instead, the rule only requires employers that engage labor relations consultants in order to persuade employees about how they should exercise their workplace rights and the consultants that engage in these activities to disclose to employees, the public, and the Government the terms of their agreements. Such disclosure is required under the LMRDA and necessary to actualize the rights accorded employees under the LMRDA and the NLRA—a requirement ill served by the Department's prior interpretation of section 203.

In the sections that follow the Department summarizes and addresses comments on particular aspects of the rule: Textual analysis of the statutory language; the Department's policy justification for revised interpretation; the clarity of revised interpretation; activities that trigger persuader reporting; the asserted bias in favor of unions; particular aspects of the revised forms and instructions; asserted constitutional and statutory infirmities with the revised interpretation; and the asserted conflict between the revised interpretation and the attorney-client privilege and an attorney's duty to protect confidential information.

B. Comments on the Statutory Analysis of LMRDA Justifying the Revised ''Advice'' Exemption Interpretation

The NPRM proposed additions to the Form LM–20 and LM–10 and corresponding instructions that would implement the revised interpretation of the ''advice'' exemption. The revised interpretation focused on the plain meaning of the term ''advice'' in the statute's text, and contrasted that plain meaning with those activities undertaken by consultants that have an object, directly or indirectly, to persuade employees with respect to their statutory rights. The revised interpretation defined reportable ''persuader activities'' as all actions, conduct, or communications that have an object, directly or indirectly, to persuade employees. The Department proposed this interpretation to replace the prior interpretation. The prior interpretation distinguished between

direct and indirect contact by consultants, exempting indirect contact by consultants from triggering the reporting requirements. See 76 FR 36190–93.

1. Comments That the Revised Interpretation Is Contrary to Statute

Several commenters provided their views on whether the proposed reporting requirements were consistent with the statutory provisions. Only a relatively small number, however, addressed the interpretative issues in detail, most simply stating that the proposed interpretation properly applied the provisions or that the prior interpretation reflected the sole reasonable construction of the provisions.

The following key aspects of the Department's proposed interpretation provide context for the comments and discussion below:

- ''Advice'' means an oral or written recommendation regarding a decision or a course of conduct.
- ''Persuader activity,'' in contrast, refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively.
- Reporting is required whenever the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

See the Department's NPRM (76 FR 36192).

These aspects of the proposal have been revised in the final LM–10 and LM–20 instructions to read as follows:

An agreement or arrangement is reportable if a consultant undertakes activities with an object, directly or indirectly, to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing (hereinafter ''persuade employees''). Such ''persuader activities'' are any actions, conduct, or communications with employees that are undertaken with an object, explicitly or implicitly, directly or indirectly, to affect an employee's decisions regarding his or her representation or collective bargaining rights. Under a typical reportable agreement or arrangement, a consultant manages a campaign or program to avoid or counter a union organizing or collective bargaining effort, either jointly with the employer or separately, or conducts a union avoidance seminar.

* * * * *

No report is required covering the services of a labor relations consultant by reason of the consultant's giving or agreeing to give advice to an employer. ''Advice'' means an oral or written recommendation regarding a decision or a course of conduct. For example, a consultant who, exclusively, counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, offers guidance on employer personnel policies and best practices, or provides guidance on National Labor Relations Board (NLRB) or National Mediation Board (NMB) practice or precedent is providing ''advice.''

* * * * *

Note: If any reportable activities are undertaken, or agreed to be undertaken, pursuant to the agreement or arrangement, the exemptions do not apply and information must be reported for the entire agreement or arrangement.[36]

Commenters in favor of the revised interpretation, principally unions, endorsed the proposed rule's focus on the object of the activities performed under an agreement between a consultant and an employer. They generally viewed this approach as natural and best suited to meeting the intent of Congress. In their view, this approach is consistent with the Department's original (until 1962) and its proposed 2001 interpretations of the reporting requirements. These commenters strongly objected to the view that required persuader reporting only when a consultant directly persuaded employees on how to exercise their protected rights. Commenters supporting the rule argued that the *UAW* decision does not prevent the Department from revising its interpretation. In their view, the interplay between reportable persuader activities and exempt advice is ambiguous, and the Department's revised interpretation is a permissible and better interpretation of the reporting provisions.

Opponents of the proposed rule embraced the prior interpretation. According to them, the prior interpretation better comports with the statutory language and provides a more practical approach because it sets forth a ''bright-line'' standard for consultants and employers to understand and apply. The proposed rule, in their view, was ambiguous. Some commenters read *UAW* v. *Dole,* 869 F.2d 616 (D.C. Cir. 1989), to preclude the Department from revising its prior interpretation that only direct persuader activities are reportable under section 203.[37] Most, however, recognized that the decision did not foreclose the Department from taking a different approach so long as it is reasonable. In their view, however, the Department's proposal was unreasonable.[38] Similarly, some commenters stated that the proposal essentially ignores section 203(c) because the interpretation requires reporting where activities, properly characterized as ''advice,'' are intertwined with persuader activities. Other commenters opposed to the rule focused exclusively on the term ''advice''—some objecting to the

[36] The instructions have been modified to identify and discuss the reportability of several activities often undertaken by consultants under an agreement with an employer. The modifications address the concerns of some commenters that the instructions would benefit from greater clarity.

[37] *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America* v. *Dole,* 869 F.2d 616 (D.C. Cir. 1989) is one of four related opinions (the others include *International Union* v. *Secretary of Labor,* 678 F. Supp. 4 (D.D.C. 1988); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America* v. *Brock,* 783 F.2d 237 (1986); and *International Union* v. *Donovan,* 577 F. Supp. 398 (D.D.C. 1983)) in a suit brought by UAW to challenge two aspects of the Department's prior interpretation of section 203: (1) That a law firm and the employer that it had hired as a consultant were not required to report certain persuader activities because they involved supervisors (not direct persuasion of employees) and (2) that the employer was not required to report extra compensation it had provided supervisors for advocating the employer's position against union representation. See 678 F. Supp. 4, 7–8. The second issue is not germane to this rulemaking. On the first issue, the appeals court held only that the Department's interpretation of the advice exemption was permissible, limiting its ruling to the particular facts and the Department's ''right to shape [its] enforcement policy to the realities of limited resources and competing priorities.'' 869 F.2d at 620. Further, on the first appeal in the case, the D.C. Circuit expressly recognized that the ''Department may, of course, reverse its interpretation at some future date.'' 783. F.2d 237. The commenters failed to note that the appeals court left undisturbed the district court's conclusion that section 203 was better read to require reporting the activities at issue in that case, wherein the district court noted ''that Congress was concerned with behind-the-scenes manipulations of employees by consultants.'' In any event, these decisions do not constrain the Department from revising its interpretation. See, *e.g., Home Care Association of America* v. *Weil,* 799 F.3d 1084, 1094–1095 (D.C. Cir. 2015), petition for cert. docketed, ** U.S.L.W. *** (U.S. Nov. 24, 2015) (No. 15–683).

[38] Some commenters also argued that the Department's proposal is inconsistent with the court's observation in *UAW* v. *Dole* about section 203(e) (concerning the absence of reporting by an employer's own staff), *i.e.,* that ''the LMRDA's domain is persuader activities. No exemption is needed for activities that fall outside the Act's domain.'' 869 F.2d at 618. By analogy, the commenters argued that the ''advice'' exemption of section 203(c) must also exempt from reporting ''persuasive'' activities, and thus cannot be limited to legal advice and representation. The commenters ignore that the court there was only addressing the reportability of persuader activity engaged in by supervisors, not consultants. Id. at 620. Section 203(e), unlike section 203(c), operates to exclude a whole category of individuals from reporting (individuals employed by the employer engaged in persuader activities). In contrast, section 203(c), by exempting ''advice,'' does not eliminate the need to distinguish between ''advice'' and persuader activities, an irrelevant consideration under section 203(e).

Department's interpretation and others embracing the definition but not its application. In their view, if an employer uses the consultant-provided ''advice'' in its effort to persuade employees, then such ''advice'' would be characterized as ''persuader activity'' by the proposed rule. Thus, according to the commenters, the proposed rule eliminates the exemption. Others took the position that the Department's proposed interpretation ignores that the term ''advice'' is broader than the term ''legal advice,'' an impermissibly narrow view of ''advice'' and contrary to the language of section 203(c).

However, several commenters expressed their view that the LMRDA covers ''direct and indirect'' persuasion. They argued that the Department's prior interpretation, by limiting reporting to activities involving only ''direct contact'' with employees, is ''illogical'' because it ignores the statute's direction that ''indirect'' activities must be reported and leaves unreported activities specifically intended to persuade employees.

One international union declared that the statute, properly construed, requires that any ''affirmative act'' with an object to persuade be reported. That union stated that the common and ordinary understanding of ''advice'' provides a ''principled distinction'' between exempt advice and reportable persuasion. The union stated the proper inquiry focuses on the ''nature and object'' of the consultant's activities, not whether the employer accepts or rejects the consultant's ''work product.'' In this regard, according to the commenter, a ''recommendation regarding a decision or course of conduct'' does not have an object to persuade employees. Any ''affirmative act,'' in the commenter's view, with an object to persuade should trigger reporting. This commenter also emphasized its support for the Department's original 1960 interpretation. In its view, the Department's original interpretation, unlike the interpretation adopted in 1962, did not restrict the scope of persuader activities to narrow, direct contact situations. Rather, the original interpretation required reporting of a consultant's preparation of persuader materials as well as any other circumstance in which ''the consultant's activity went beyond the mere providing of such advice or where it was impossible to separate advice from persuader activity.''

An international union asserted that the prior interpretation allowed consultants to avoid reporting by hiding activities under the ''guise'' of ''advice.'' This union contended that activities such as creating videos, Web site content, or fully-scripted presentation materials, and planning or conducting meetings with supervisors and managers are not normally considered to be advice. Instead, it asserted that these activities are nothing less than ''pre-packaged, full-service anti-union campaigns'' designed to defeat employee efforts to organize and bargain collectively and, as such, are reportable under a correct reading of the statute. In its view, the fact that these activities may be carried out without any direct contact with employees makes them no less activities with an object to persuade; thus, these activities should trigger reporting. A federation of unions similarly contended that a consultant directing an employer's supervisor to distribute persuasive material to employees does not transform the materials or their content into advice for the employer, particularly when the underlying motive is clearly not to advise the employer but to persuade employees.

Another international union endorsed the revised interpretation because it ensured that the advice exemption did not ''swallow the rule requiring disclosure of direct and indirect persuader activity.'' Instead, in the union's view, the Department properly construed section 203(c) in a manner that effectuates the purposes of the statute. It emphasized that reporting is triggered where ''*an*'' object of the consultant's activities is to persuade employees, not ''*the*'' object or even a primary object of the activities. Otherwise, indirect persuader activities would go unreported. To further support coverage in such situations, the commenter stated that the language ''by reason of'' in section 203(c) indicates that reporting is required if a consultant engages in an activity with an object to persuade, even if the activity also relates to, or is intermingled with, an element of advice, or the agreement calls for both types of activities. As a result, according to the commenter, coverage in indirect contact situations better meets the statutory language, than enlarging the advice exemption to include ''all activity that may occur in the context of giving advice.''

In contrast to these views, multiple commenters opposed the Department's revised interpretation. Although most commenters were untroubled by the definition of ''advice,'' they were concerned that the Department's proposed rule would deny the term its broad intended reach.

Several commenters described the Department's revised interpretation as a ''catch-all,'' sweeping in all activities that are ''related'' to persuasion, including advice, thus conflating ''advice'' and ''persuasion.'' Several relied on their reading of the legislative history, as reported in judicial decisions, to support their position. In challenging the Department's analysis, some commenters argued that the Department's proposed interpretation was the opposite of the approach required by the statute. As stated by one law firm, the reporting requirements in sections 203(a) and (b) cannot be reasonably interpreted without giving full play to the broad exemption established by section 203(c). Thus, as it reads the statute, any and all advice, even advice combined with persuader activity, is within the exemption. Another law firm commented that the Department's proposed interpretation was improper because the exemption would no longer have a ''broad scope,'' as intended by Congress. Instead, in its view, the proposed interpretation was ''probably the *narrowest possible* exemption'' from reporting, rendering the exemption a ''nullity'' (italics included in comment). Another commenter explained that the Department confused (perhaps deliberately so) the term ''advice'' (recommendations) with ''conduct'' (supply of materials that can be rejected).

Several commenters stressed that a ''recommendation'' implies the ability of the employer to ''accept or reject'' the recommendations or suggestions offered (*i.e.,* no ''advice'' without a ''recommendation,'' and no ''recommendation'' without the ability of the recipient to ''accept or reject''). One commenter emphasized that ''strategy'' is included within the definition of ''advice,'' noting that lawyers strategize routinely.

Another commenter asserted that the Department was mistaken in thinking that ''advice'' could be limited to just ''yes or no,'' without also including the preparation of materials. In its view, labor law is a complicated area and that the only ''practical'' way of advising the employer is to draft materials for the employer's use. In any event, the commenter argued, the materials simply constitute ''recommendations'' for the employer to accept or reject; the material is still advice if the employer, and not the consultant, does the persuasion.

An employer association stated that ''advice'' is provided by consultants, including attorneys, trade associations, and other third parties, in a variety of forms, such as seminars, ''fully drafted documents,'' ''tactics and communications tools'' to be used in

persuading employees, and other employment-related documents. It is therefore proper to treat such activities as advice.

Some commenters suggested that the interpretation as applied would be too narrow, limiting the advice exemption to just ''legal advice.'' These comments cited the three examples provided in the first paragraph of the proposed instructions under ''Exempt Agreements''—''exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law or provides guidance on NLRB practice or precedent.'' 76 FR 36191. In their view, these examples demonstrate that the Department is misreading the intended reach of ''advice,'' which they believed extends well beyond the bounds suggested by the examples. One commenter claimed that the Department ''craftily avoids'' making explicit its position that the ''proposed rule limits advice to 'legal advice,' '' while at the same time narrowly defining and taking a ''jaundiced view'' of what may constitute such advice. In its view, the Department seeks to narrow the advice exemption to legal advice in its purest and most technical form.

Another commenter suggested that the Department's revised interpretation renders section 203(c) superfluous, because section 204 would encompass the same activities. Some commenters viewed ''legal advice'' by a consultant as not having an object to persuade, regardless of the circumstances, even if the advice was used by the employer in its persuasion of employees. As a result, ''advice'' must mean more than ''legal advice,'' the commenters assumed, or otherwise section 203(c) would be rendered meaningless. A national bar association contended that section 203(c) clearly contemplates that at least some of the advice that a lawyer provides to the employer client will be designed to help the employer to persuade employees on unionization issues. This is self-evident, in the association's view, because if all of the lawyer's advice to the employer-client was unrelated to persuader activities, it would not be covered by the statute at all, with or without an advice exemption, and no exemption would be needed.

Several commenters stated that the requirement to report in situations in which ''legal advice'' is ''intertwined'' with persuader activity misapplies the concept of attorney-client privilege under which legal advice intertwined with non-legal advice (including ''specific tactics'' and ''alternative strategies'') is privileged. In the opinion of one commenter, the Department's revised interpretation renders the exemption ''meaningless'': ''Legal advice is never given in a vacuum, but is always provided to support a client's desired goals. For example, an attorney who reviews an employer's speech to employees regarding a union organizational drive, but only comments on the legality or illegality of its content (rather than suggesting lawful means to enhance its persuasive content) may violate his/her ethical responsibilities.''

Other commenters challenged the Department's statement in the NPRM that the employer is a ''conduit for persuasive communication.'' See 76 FR 36183. In their view, it is the employer that chooses to accept, reject, or modify the advice and materials provided by the consultant. As one commenter put it, to suggest that a consultant who provides such advice and materials without any personal interaction with employees is engaged in persuader activities ''is preposterous.'' A law firm made a similar point, albeit less emphatically: ''[T]he persuasive message given by the employer is the employer's message, not the consultant's sent through a conduit or middleman. The giving of the message is the employer's 'decision or course of action' based on the 'recommendation' of the consultant—a recommendation that is plainly 'advice' within the [accepted] definitions [of the term].'' [39]

[39] This law firm stated summarily that the Department had misconstrued the term ''indirect.'' In its view, the language is intended to cover only those situations in which a ''prime'' consultant uses a third party, not affiliated with the employer, to directly persuade employees. The Department finds no merit to this contention. The pertinent language in section 203 is ''every person who . . . undertakes activities where an object thereof is, directly or indirectly, to persuade employees.'' The words ''directly or indirectly'' neither narrow nor enlarge the persons who are potentially subject to reporting. Thus, regardless of the ''directly or indirectly'' language, a third party acting pursuant to a persuader agreement, *i.e.,* ''any person,'' as well as the consultant and employer, is required to file a report if he or she undertakes an activity with an object to persuade. Therefore, ''directly or indirectly'' must have been used to describe the activities undertaken, and intended, similar to other provisions in the statute, to make plain that reporting cannot be avoided by artifice, device, or indirection. See sections 202(a)(1), (3), (4), and (6). This view of the statute better harmonizes section 203's provisions than the commenter's reading of the section, which would largely deny any effective meaning to ''indirectly persuade employees.'' Additionally, the Department notes that its view regarding the application of ''indirectly'' to the full scope of actions by consultants (not restricted to the prime consultant's use of third parties) was not questioned by any other commenters.

2. Department's Response to Comments on the Textual Analysis

a. General Response

In response to these comments, the Department first notes the ''undisputed'' requirements prescribed by sections 203 and 204 of the LMRDA:

- A report shall be filed by a labor relations consultant who has agreed with an employer that the consultant will undertake activities that have an object, directly or indirectly, to persuade employees in the exercise of their union representation or collective bargaining rights. This report must contain a statement of the terms and conditions of the agreement or arrangement and must be filed within 30 days after entering into such agreement or arrangement.
- Both the consultant and the employer shall each file, later, an annual report showing payments made and received under the agreement or arrangement (Form LM–10 by an employer; Form LM–21 by a consultant).
- Nothing in section 203 shall be construed to require a report by reason of a consultant's giving or agreeing to give advice to the employer or representing or agreeing to represent the employer in a court, administrative, or arbitration proceeding or engaging in or agreeing to engage in collective bargaining on behalf of the employer.
- Nothing in the LMRDA shall be construed to require an attorney to include in a report any information lawfully communicated to him by his clients in the course of an attorney-client relationship.

Neither the language of the statute nor the legislative history provides clear direction about where Congress intended the line to be drawn between reportable persuader activities and nonreportable advice.[40] The ambiguity

[40] The varying interpretations by the Department over the years to delineate between what is reportable and what is not underscore the statute's ambiguity. The commenters are incorrect in stating, without qualification, that the ''direct contact'' test has been around for 50 years. Although it derives from the 1962 IM interpretation, the strict formulation of the ''direct contact'' aspect of the prior interpretation stems from a statement of reasons the Department submitted in *UAW v Dole,* which the Department established as policy in 1989. Further, as a federation of unions observed, IM section 265.005 could be read to require ''indirect contact'' reporting, in certain circumstances. Indeed, the 1962 test states that, ''the question of application of the 'advice' exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental

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within section 203 has been evident since the earliest appellate decisions construing this section. See *Wirtz* v. *Fowler,* 372 F.2d 315, 330–332 (5th Cir. 1966), rev'd in part on other grounds, 412 F.2d 647 (1969); *Douglas* v. *Wirtz,* 353 F.2d 30, 32 (4th Cir. 1966). As stated in *Wirtz* v. *Fowler:*

> The exemption is not, as [the attorney-consultant] contends ''as broad as the reporting requirement itself.'' Almost consistently, the purpose of § 203(c) was explained [in the legislative history] not to carve out a broad exemption of activities which would otherwise be covered by § 203(b), but to make explicit what was already implicit in § 203(b), to guard against misconstruction of § 203(b). Generally, it was felt that the giving of legal advice was something inherently different from the exertion of persuasion on employees, and section 203(c) was inserted only to remove from the coverage of § 203(b) those grey areas where the giving of advice and participation on legal proceedings and collective bargaining could possibly be characterized as exerting indirect persuasion on employees, . . . not to remove activities which are directly persuasive, but indirectly connected to the giving of advice and representation.
>
> For the purposes of this case, it is unnecessary for us to ascertain the precise location of the line between reportable persuader activity and nonreportable advice. . . . We conclude only that not everything which a lawyer may properly, or should, do in connection with representing his client and not every activity within the scope of the legitimate practice of labor law is on the nonreportable side of the line. At least some of the [consultant-attorney's] activities . . . no matter how traditional, ethical, or commendable—were those of a persuader.

372 F.2d at 330–31 (footnotes omitted). More recently in *UAW* v. *Dole,* the court described the statute as ''silent or ambiguous,'' noting the evident tension between the Act's ''coverage provisions'' and the ''exemption for advice.'' 869 F.2d at 617–18.[41]

In proposing a revised interpretation that returns to the Department's original view about where the line separating reportable persuader activities and exempt advice is properly drawn, the Department rejects the position under the prior interpretation that a consultant's activities would be reportable only if they involved face-to-face, or other direct, contact with employees. There is nothing in the statutory language that compels this reading. While the legislative history specifically enumerates some of the types of improper actions which might be avoided if employers were required to report their persuader agreements with consultants, such as coercion, bribery, surveillance of employees, and unfair labor practices undermining employee rights, it sheds little light on what *specific* activities by a consultant should trigger reporting under the LMRDA. At the same time, however, the legislative history is clear that reporting was not to be limited to the disclosure of unlawful practices by consultants. See Section III.B.1 of the preamble to this rule.

The prior interpretation did not represent the best reading of the statute, as it left unreportable indirect persuader activities, with the attendant loss of transparency intended by Congress. Commenters supporting the prior interpretation have shed no new light on the interpretative challenges posed by the statutory language. In particular, they have failed to explain how the prior interpretation better satisfied the requirement that both indirect and direct persuader activity must be reported. Their arguments are based on threads taken from reported opinions in the case law, which have underscored the tension between reportable activities and advice. For example, while in *UAW* the court upheld the Department's prior interpretation as reasonable, it did not hold that this interpretation was compelled by the statute and did not construe the statute in a way that would caution the Department against its present view about how best to effectuate the purpose of disclosing persuader activities. Some commenters relied on observations in the *UAW* opinion (''[T]he term 'advice,' in lawyers' parlance, may encompass, *e.g.,* the preparation of a client's answers to interrogatories [or] . . ., the scripting of a closing or an annual meeting.'' 869 F.2d at 619 n. 4,). While such activities ''may encompass'' advice, as viewed under the prior interpretation, the court did not view this as the only permissible construction.

The Department disagrees with the suggestion by some commenters, relying by analogy on language in *UAW,* 869 F.2d at 618, that section 203(c) must also exempt from reporting ''persuasive'' activities. The commenters ignore that the court in *UAW* was only addressing the reportability of persuader activity engaged in by supervisors, not outside consultants. Id. at 620. Section 203(e), unlike section 203(c), operates to exclude a whole category of individuals from reporting (individuals regularly employed by the employer, even if engaged in persuader activities). In contrast, section 203(c), by exempting ''advice,'' does not exempt any person from reporting agreements with employers, but, rather, clarifies the need to distinguish between the outside consultant's provision of ''advice'' to the employer from their undertaking of ''persuader activities,'' an irrelevant consideration under section 203(e).

Further, as stated, agreements to exclusively provide advice do not trigger reporting. Thus, even where an employer, who has an agreement with a consultant for providing legal services, itself undertakes actions to persuade employees to vote against union representation, such as by delivering a speech the employer has prepared to employees, no reporting is required where the consultant has only reviewed the speech for legality and has refrained from preparing materials, scripting supervisor interaction with employees, or otherwise undertaking activities with an object to persuade.

b. How to Read Section 203(c)

Section 203(c) provides, in relevant part: ''Nothing in this section shall be construed to require any employer or other person [*e.g.,* a consultant] to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer.'' This provision stands in juxtaposition to the requirement that employers and consultants must file reports, providing detailed information relating to activities and payments under any agreement or arrangement where an object thereof is, directly or indirectly: (1) To persuade employees to exercise or not to exercise, or how to exercise, their union representation and collective bargaining rights; or (2) to supply an employer with information

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characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.'' Although not the best formulation of the statute, the flexibility of the prior rule demonstrates the breadth of permissible constructions.

[41] Several law review articles have addressed the tension between the obligation to report persuader activities and the exemption for advice, and the scope of a consultant's obligation to report other activities once it has engaged in persuader activities. See, *e.g.,* Terry A. Bethel, *Profiting From Unfair Labor Practices: A Proposal to Regulate Management Representatives,* 79 NW. U. L. Rev. 506 (1984); Jules Bernstein, *Union-Busting: From Benign Neglect to Malignant Growth,* 14 U.C. Davis L. Rev. 1 (1980); Jonathan G. Axelrod, *Common Obstacles to Organizing under the NLRA: Combatting the Southern Strategy,* 59 N.C.L. Rev. 147 (1980); James Farmer, *Keynote Address: Union Busting,* 1 Gonz. L. Rev. 3 (1980); James R. Beaird, *Some Aspects of the LMRDA Reporting Requirements,* 4 Ga. L. Rev. 696 (1970); James R. Beaird, *Reporting Requirements for Employers and Labor Relations Consultants in the Labor Management Reporting and Disclosure Act of 1959,* 53 Geo. L. J. 267 (1965). For the first impressions of the reporting obligation and the interpretative questions presented, compare the articles by two prominent commenters on labor relations matters, Russell Smith, *Labor Management Reporting and Disclosure Act,* 46 Va. L. Rev. 195 (1961)); Benjamin Aaron, *Labor Management Reporting and Disclosure Act of 1959,* 73 Harv. L. Rev. 85 (1960).

about ''the activities of employees or a labor organization in connection with a labor dispute involving such employer. . . .'' Section 203(b), 29 U.S.C. 433(b).[42] This provision establishes the consultant's reporting obligation. The equivalent obligation of the employer, who has additional reporting obligations, independent of any agreements or arrangements with consultants, is prescribed by section 203(a), 29 U.S.C. 433(a).

Section 203(c), by providing a rule of construction, serves to clarify that sections 203(a) and (b) establish which types of employer-consultant agreements are reportable and which are exempt. This language is similar to other sections of the LMRDA, which serve to make explicit what is already implicit. See section 202(c) (clarifying that union officials are not required to report unless they hold a reportable interest); 203(d) (accord for employers or ''other persons''). It also should be noted that each of these sections uses introductory language similar to that used in section 203(c) (''Nothing shall be construed to require''). However, unlike section 203(c), other LMRDA provisions use language that creates ''blanket'' exemptions from their reporting requirements for particular activities. Compare with section 202(b) (exempting from reporting by union officials their holdings in exchange-traded stock) and section 203(b) (requiring reporting of agreements in which consultants supply certain information to employers, ''except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding''). See also sections 202(a)(5) (excepting from reporting by union officials payments received as a bona fide employee and purchases or sale of goods in the regular course of business); and section 203(a)(1) (excepting from employer reporting loans and other payments made by banks).

Section 203(c) does not contain language creating a blanket exemption. Unlike the provisions just cited, section 203(c) contains language that limits the availability of the exemption to instances where a consultant acts ''*by reason of* his giving or agreeing to give advice.'' At a minimum, this language indicates that a person who gives advice is not exempt from filing a report on this basis alone; instead, by exclusively giving or agreeing to give advice, a consultant does not trigger a reporting obligation. If he or she undertakes other activities that do have an object to persuade, the exemption is unavailable.[43] Further, the statute specifically requires reporting when a consultant undertakes activities with an object to ''directly or indirectly'' persuade employees, as noted by some commenters, indicating that indirect methods of consultant persuasion also triggers reporting. Moreover, the statute specifies that *an* object of the consultant's activity must be to persuade, not *the* object, thus supporting the coverage provision in the case of indirect persuasion. See sections 203(a) and (b).

Thus, section 203(c) is best understood as making explicit what sections 203(a) and (b) make implicit: That consultant activity undertaken without an object to persuade employees, such as advisory and representative services for the employer, do not trigger reporting.[44] In the Department's view, this reading best harmonizes the tension between the ''coverage'' and ''exemption'' provisions. Moreover, this reading gives effect to the requirement that indirect persuader activities be reported, an element almost entirely missing from the prior interpretation.

In contrast, the prior interpretation framed the reporting obligation to exclude indirect persuader activities from reporting by characterizing them as ''advice,'' even where the consultant engaged in an activity with an object to persuade employees, as long as the activity had any tenuous connection with advice. As noted approvingly in a form letter opposing the Department's proposed interpretation rule, under the prior rule ''[a]s long as my company was free to accept or reject *anything* prepared by the third party, it was *considered* advice, not persuasion'' (emphasis added). Even though, for example, the consultant drafted a captive audience speech that was delivered verbatim by the employer or implemented for the employer a system whereby supervisors delivered a scripted message to employees, such activities were excluded from reporting because the employer was free to decide whether to use the consultant's materials or its directions.[45]

In contrast, as noted in both the NPRM and the final rule, the Department gives ''advice'' its ordinary meaning: ''an oral or written recommendation regarding a decision or course of conduct.'' The preparation of persuader materials is more than a recommendation to the employer that it should communicate its views to employees on matters affecting representation and their collective bargaining rights. See 76 FR 36183. Although some commenters stated that they disagreed with the Department's interpretation of the term ''advice,'' it appears that their disagreement lies primarily or entirely with the Department's proposed application, which would expand the reporting obligation beyond the direct contact trigger under the prior interpretation and would include the preparation of persuader material.

Some commenters have suggested that if an employer, not the consultant, is the ''final'' actor under the parties' agreement, the consultant has no reporting obligation. A consultant drafting persuader materials as part of an anti-union campaign for the employer is also likely providing advice to the employer (which by itself would not trigger reporting). However, by engaging in a persuader activity, the consultant has triggered a reporting

[42] Section 203(a) places ''is,'' differently, stating a report is required ''where an object thereof, directly or indirectly, is to persuade employees.'' No commenter mentioned this distinction in the statutory language and the Department attaches no significance to the varied phrasing of the declaration.

[43] In this regard, the Department disagrees with the commenters who opposed reporting in situations in which an agreement or arrangement included among multiple activities only some that constitute persuader activities. As noted in the NPRM, 76 FR 36192, n. 16, this application of the statute stems from the initial Form LM–10 and LM–20 reports issued in 1962 and is not being altered by this rule. This view flows from the statutory language which states that reporting should not be required *by reason of* the giving of advice and engaging in the other enumerated activities. See section 203(c). The Department continues this approach in this rule.

[44] The legislative history of section 203 confirms this view: ''Although this [that attorneys and other consultants that confined their activities exclusively to those described in Section 203(c) would not trigger reporting] would be the meaning of the language of Section 103(a) and (b) [what became LMRDA Section 203(a) and (b)] in any event, a proviso to Section 103(b) [what became Section 203(c)] guards against misconstruction.'' S. Rep. No. 85–1684, at 9. See also *Humphreys, Hutcheson, and Moseley* v. *Donovan,* 755 F.2d 1211 (''[T]his court agrees with the majority of courts that find the purpose of section 203(c) is to clarify what is implicit in section 203(b)—that attorneys engaged in the usual practice of labor law are not obligated to report under section 203(b)'').

[45] Some commenters asserted that ''advice'' may be defined to include a recipient's ability to ''accept or reject'' recommendations, suggestions, or opinions offered. Although the term may be used in this sense, the Department has concluded that the ability of the employer ''to accept or reject'' is not the relevant inquiry in establishing the scope of the advice exemption. In any event, even if ''advice'' is read to encompass ''an accept or reject'' element, here the issue is not whether the consultant is attempting to influence or advise the *employer* concerning the exercise of rights belonging to the employees, or the employer's own rights, but rather whether the consultant pursuant to its agreement with the employer is undertaking an activity with an object, directly or indirectly, to persuade *employees.*

obligation even though the employer, as the ''final'' actor in this scenario, actually delivers the anti-union message.

Some commenters took the view that the Department has misread section 203(c) because, in their view, it can be given effect only if persuader activities are exempted as advice. Otherwise, they assert, there would be no obligation to report and no need to provide an exemption. Thus, in their view, the prior interpretation of section 203(c) recognized that Congress intended to ''carve out'' activities that would otherwise be reportable. For this reason, they contended that the proposed rule created a ''false dichotomy'' between advice to the employer and persuasion of employees. In the commenters' view, sections 203(a) and (b) require consultants to report upon all agreements, and the proposed interpretation treats section 203(c) as mere ''surplusage.''

The Department disagrees. What the commenters overlook is that section 203(c) is still given effect as a rule of construction if it is read, as put forth in this rule, to underscore that advice *qua* advice (from a consultant to an employer) does not trigger a reporting obligation simply because it arguably concerns a potential employer action that has an object to persuade. Section 203(c) serves as a check on the outer bounds of consultant actions that are only tenuously connected to persuasion. It makes plain that a consultant has not undertaken a reportable activity by counseling an employer that a tactic is lawful under the NLRA; section 203(c) thus ensures reporting is not triggered by an activity simply because the employer's subsequent action may ultimately affect the employees' views on the need for a union. Similarly, the approach taken by the Department ensures that a consultant is not required to report an agreement to develop employer personnel policies or best practices without an object to persuade the employees. Section 203(c) continues to provide a broad exemption for numerous types of employer-consultant agreements, even those in which the employer, rather than the consultant, ultimately engages in the persuasion of its employees. See Section IV.B.2. The Department therefore disagrees that the revised rule establishes a ''false dichotomy'' between ''advice'' and ''persuasion,'' and renders section 203(c) ''superfluous.''

Section 202(c), which addresses financial reporting by union officials, serves a similar role under the statute, by emphasizing that a union official is not required to file an annual report unless he or she has engaged in a particular financial matter during the reporting period. Section 202(a) for union officials, like sections 203(a) and (b) for employers and consultants, prescribes that only particular financial payments are to be reported. Thus, section 202(c), like section 203(c), was not necessary to ''exempt'' officials from a reporting obligation. Nonetheless, its inclusion shows that the statute's drafters wanted to not only articulate reporting requirements but also to plainly demonstrate when reporting was not required.

Many commenters criticized the Department for failing to give ''advice'' the breadth that they believe the term demands. As noted, the Department does not interpret section 203(c) as a blanket exemption from reporting by a consultant. Instead, the Department reads this provision in conjunction with the general reporting requirement prescribed by sections 203(a) and (b)—to require the reporting by an employer and a consultant of any agreement or arrangement under which a consultant ''undertakes activities where an object thereof, directly or indirectly, is to persuade employees'' in their exercise of their representation and collective bargaining rights. Further, the Department only characterizes as ''advice'' those activities that meet the term's plain meaning. The Department's reading of section 203(c) gives effect to all the statute's provisions and is consistent with the common sense and interpretative canons that an exemption should not swallow the rule.

c. Legislative History

A few commenters provided arguments that the Department's revised interpretation was inconsistent with the statute's legislative history, which they read to create a broad or sweeping exemption from reporting. In this regard, they advance two separate points: first, that Congress explicitly characterized the exemption as broad; and second, that the legislative history demonstrates Congress intended that reporting would be limited to activities of the notorious-type of middlemen identified by the McClellan Committee. We here address the first argument; the second is discussed later in Section V.C.1.d.

Commenters drew on the legislative history, as discussed in a handful of cases in which persuader reporting has been an issue, including *UAW,* 869 F.2d 616; *Humphreys, Hutcheson and Mosely* v. *Donovan,* 755 F.2d 1211 (6th Cir. 1985); *Wirtz* v. *Fowler,* 372 F.2d 315 (5th Cir. 1966), rev'd in part on other grounds, *Price* v. *Wirtz,* 412 F.2d 647 (1969); *Douglas* v. *Wirtz,* 353 F.2d 30 (4th Cir. 1965). In addition, a few commenters quoted from the conference committee report on the LMRDA: ''Subsection (c) of the conference substitute grants a broad exception from the requirements of the section with respect to the giving of advice.'' H. R. Rep. No. 86–1147, at 33 (1959), reprinted in 1 Leg. History at 937. The Department agrees with this characterization, and notes that section 203(c) continues to operate as a broad exemption, leaving unreportable a wide range of agreements commonly entered into by employers and consultants. Indeed, this rule exempts from reporting agreements involving exclusively the following activities:

- Counseling on NLRB, NMB, or similar agency practices;
- legal services (as distinct from persuader activities undertaken by a lawyer);
- guidance on employer personnel policies and best practices, as well as the development of such policies and practices except where undertaken with an object to persuade (such as by introducing a particular benefit at issue in an organizing campaign or reassigning union supporters to jobs where they have less contact with co-workers);
- employee surveys (other than push surveys);
- vulnerability assessments;
- off-the-shelf material (where selected by a trade association for its member-employers or in other circumstances where selected by the employer without assistance by the consultant);
- trade association newsletters addressed to member-employers; and
- conducting a seminar for employers in which the consultant does not develop or assist the attending employers in developing anti-union tactics or strategies.

The commenters additionally relied on the following passage from the legislative history, quoting Professor Archibald Cox's testimony on the proposed legislation:

> Payments for advice are proper. If the employer acts on the advice it may influence the employees. But when an employer hires an independent firm to exert the influence, the likelihood of coercion, bribery, espionage, and other forms of interference is so great that the furnishings of a factual report showing the character of the expenditure may be fairly required. . . . Since attorneys at law and other responsible labor-relations advisers do not themselves engage in influencing or affecting employees in the exercise of their rights under the [NLRA], an attorney or other consultant who confined himself to giving advice, taking part

in collectively bargaining and appearing in court and administrative proceedings nor [sic] would such a consultant be required to report.[46]

In the Department's view, these statements and those referenced in note 46 merely reflect that attorneys and others providing advice would not be required to file reports. Indeed, under this rule no reporting is triggered by attorneys who exclusively engage in legal services, or by any consultants who merely provide recommendations or suggestions. The statements provide no support for the position that Congress intended that the particular activities, identified as reportable under this rulemaking, would be exempted from reporting as ''advice.'' The general statement that advice by ''responsible'' advisers would not be reportable is not a useful guide in distinguishing among particular activities undertaken by consultants, nor does it signal that exempt advice includes within it consultant activities that have an object to persuade. In any event, the rule recognizes that consultant activities that exclusively constitute the giving of advice do not trigger reporting.

d. ''Advice'' or ''Legal Advice''

The commenters here advanced two arguments. First, they argued, in effect, that the Department misconstrues ''advice'' by limiting it to ''legal advice,'' and, in the process, fails to properly consider section 204, which they view as providing protection for ''legal advice.'' Second, they argued that the Department arbitrarily defines ''legal advice'' in a stilted fashion, effectively ignoring both the manner in which attorneys conduct their management law practices and how they must conduct their practices as a matter of ethics.

The Department disagrees with the commenters who asserted that the revised interpretation limits the advice exemption to just legal advice. As stated, the Department defines ''advice'' by its plain meaning: ''an oral or written recommendation regarding a decision or course of conduct.'' Only those activities that fall outside that definition trigger reporting, such as those activities listed on pages 3–4 of the instructions to Form LM–20 (see Appendix A) and on page 6 of the instructions to Form LM–10 (see Appendix B). For example, a consultant is not required to report his or her activities in *recommending* that the employer retain the consultant's services to develop a union avoidance program that would include the consultant's development of persuader materials and a system whereby supervisors undertake activities to detect employees' sympathies towards union representation and how to shape such views. Reporting is triggered only when the employer and the consultant agree that the consultant should undertake such activities. Moreover, as discussed above, counseling an employer regarding personnel policies and practices will not trigger reporting.

Additionally, the commenters are also mistaken in their suggestion that the few examples they cited from the proposed instructions were intended by the Department to constitute the entire universe of activities that are within the scope of ''giving advice'' to an employer. Rather, they are merely examples illustrative of the term, and they are not meant to be exhaustive. For instance, if a consultant merely recommends that the employer conduct employee surveys or hold meetings, then no reporting is required because such recommendations are ''advice.'' On the other hand, if the consultant, after having recommended a meeting, then prepares the persuasive speeches and presentations for the employer to present at the meeting, or identifies which employees to meet with at a certain location and time (see factors in Section IV.B.1), then the consultant has gone beyond providing advice to the employer and has engaged in the indirect persuasion of employees. Reporting would then be required under this rule. In addition, certain consultant undertakings, such as conducting vulnerability assessments and revising materials for legality and grammar, are not considered persuader activities. See discussion above in Section IV.B.2. As we have explained, recommendations regarding best practices in matters of personnel management do not, by themselves, trigger reporting. Rather, the consultant must develop such best practices with an object to shape employees' views against union representation. A consultant advising businesses on personnel management practices, therefore, becomes subject to reporting only if developing such practices with that object present, hardly a likely occurrence unless the consultant has been hired to deter union representation, which is often a question of timing. Therefore, while legal advice and other services do not trigger the reporting requirements, the advice exemption is not limited to legal advice under the revised interpretation.

Furthermore, several commenters stated that the requiring of reporting in situations in which legal advice is ''intertwined'' with persuader activity misapplies the common law definition of ''advice,'' which states that legal advice intertwined with non-legal advice (including concerning ''specific tactics'' and ''alternative strategies'') is privileged under the attorney-client privilege. The Department disagrees with these comments and reiterates that all consultant activity that meets the plain definition of advice does not trigger reporting, whether legal or non-legal. Further, the advice exemption of section 203(c) determines whether or not an agreement is reportable, while section 204 states that privileged information is not required to be reported. See Section V.H. In this regard, the Department notes that—consistent with the interpretation that section 204 has received from the courts—it always has construed section 204 as roughly equivalent to the limited attorney-client privilege under the common law. The Department has never embraced the view that section 204 creates a broad, separate exemption for attorneys that supplants section 203(c). The Department proposed no change to this interpretation of section 204.

Finally, commenters are mistaken that the Department's proposal would impede a consultant's ability to provide an employer with documents that not only comply with the law but also best convey the employer's position on union and collective bargaining related materials. In support of their position, they rely on case law defining ''advice,'' or explaining an attorney's legal duties. As noted above, some also rely on *UAW* v. *Dole,* which, they asserted, is inconsistent with the Department's proposal. The Department's interpretation does not interfere in any way with an attorney-consultant's ability to provide employers with legal services that, presumably, the employers are owed by entering into their relationship with the attorney-consultant. Nor does the interpretation impede an attorney's ability to prepare and revise ''legal documents,'' such as collective bargaining agreements, or documents prepared in connection with a grievance, administrative or judicial proceeding. Under the interpretation, however, reporting is triggered by a consultant's preparation of documents, such as scripting ''captive audience speeches'' or preparing anti-union flyers

[46] *Wirtz* v. *Fowler,* 372 F.2d at 327, n. 25, quoting Testimony of Archibald Cox, *Hearing on Labor-Management Legislation,* Subcomm. on Labor and Public Welfare, 86th Cong., 1st Sess. 128 (1959). Commenters rely on two other statements in opinions discussing the legislative history—''Generally it was felt that the giving of legal advice to employers was something inherently different from the exertion of persuasion on employees . . .'' and ''Congress recognized that the ordinary practice of law does not encompass persuasive activities.'' (quoting *Humphreys,* 755 F.3d at 1216, n. 9).

for distribution to employees, or activities such as instructing supervisors and managers about how to detect their employees support for a union and steer them against the union, and so forth—documents and other activities, including the revision of documents (other than to ensure legality), that have as their purpose the persuasion of employees about how to exercise their rights to representation and collective bargaining.

In contrast, agreements that have their sole purpose to provide guidance to an employer, as distinct from having a purpose to persuade employees, do not trigger reporting. No reporting is required where the consultant has reviewed for legality a speech prepared by the employer to dissuade employees from giving their support to the union. The typical situation in which a consultant must report its activities will be where the consultant has orchestrated the employer's union opposition campaign, prepared materials designed to persuade employees or enhanced their persuasive value, scripted supervisor interaction with employees, undertaken surveillance of employees engaged in union activities, or otherwise undertaken concrete actions with an object to persuade. Neither the proposed nor final rule prevents an employer from taking actions to persuade its employees to oppose union representation or to hire a consultant for this purpose. The content, timing, and mode of the message to employees remain entirely within the control of the employer and the labor relations consultant. The rule requires only that if the consultant engages in persuader activities the consultant and the employer must file Forms LM–10 and LM–20 to disclose such activities and the underlying agreement. See further discussion of this and related points in Section V.H.

Indeed, although not limited to just legal advice and representation, the Department's interpretation preserves the exemption for activities traditionally performed by attorneys. As explained by the Fourth Circuit:

> Primarily, . . . the [disclosure] requirement is directed to labor consultants. Their work is not necessarily a lawyer's. Indeed, for a legal adviser, it would be extracurricular. True, a client may desire such extra-professional services, but, if so, the attorney must balance the benefits with the obligations incident to the undertaking.

Douglas v. *Wirtz,* 353 F.2d at 33. That today, attorneys often fill the consulting role that was performed by a balanced mix of legal and non-legal professionals does not change the meaning of ''advice'' as used in section 203(c). That some lawyers now perform roles that were once outside the traditional ''legal advice'' field and therefore subject them to additional reporting responsibilities is an issue separate from the meaning to be given ''advice'' in section 203(c). See *Price* v. *Wirtz,* 412 F.2d at 650 (''Since a principal object of the LMRDA was neutralizing the evils of persuaders, it was quite legitimate and consistent with the Act's main sanction of goldfish bowl publicity to turn the spotlight on the lawyer who wanted not only to serve clients in labor relations matters within § 203(c) but who wanted also to wander into the legislatively suspect field of a persuader''). The statute, not the business model followed by some law firms, determines whether certain activities are reportable.

C. Comments on Department's Policy Justification for Revised Interpretation

In the NPRM, the Department outlined its justification for its revised interpretation for reporting consultant agreements that provide for direct and indirect persuader activities. The policy reasons for revising the interpretation are largely restated in the preamble to this rule. In discussing the comments received on the Department's policy reasons underlying the interpretation, we follow the order used in the NPRM: The needed disclosure of persuader agreements to enable employees to make informed decisions about their representation and collective bargaining rights; the significant underreporting under the prior interpretation where only agreements involving a consultant's direct contact with employees were reported; and the deterrent impact of transparency on practices harmful to peaceful and stable labor-management relations.

1. Benefit to Workers

In the NPRM, the Department explained that many employers engage consultants to manage ''union avoidance'' or ''counter-organizing'' efforts to prevent workers from successfully organizing and bargaining collectively. See 76 FR 36187. These efforts include the dissemination of persuader material to workers, whether conveyed verbally or in written or electronic formats, as well as the development and implementation of personnel policies and actions with an object to persuade workers. The Department also explained that its proposed interpretation would require that agreements involving indirect persuasion of employees be reported, not merely those involving direct contact between consultants and employees. Reporting both types of agreements better informs employees as they choose how to exercise their protected rights to organize and bargain collectively. Such disclosure informs workers about the underlying source of the information they are receiving, helps them in assessing its content, and assists them in making decisions about union representation and collective bargaining issues.

a. Comments in Support of NPRM

Commenters that expressed support for the revised interpretation explained the need for workers to have more information concerning persuader agreements in deciding whether to support or oppose union representation. These commenters noted that workers are often unaware that employers are relying on the services of an outside consultant and that the disclosure of their involvement would allow workers to better assess the frequent position taken by employers to depict the union as an unwanted or unnecessary ''third party'' or ''outsider'' intruding between the employer and the workers.

A national union provided an example of a counter-organizing campaign where the consultant produced the employer's anti-union campaign literature and speeches, coached management on conducting ''captive audience meetings,'' and used materials and arguments that ''repeatedly and consistently'' referred to the union as an ''outsider.'' The national union supported the proposed rule, stating that requiring employers to disclose their relationships with consultants ''would allow employees to scrutinize the source of the bogus information they receive about the merits of collective bargaining and let them decide . . . which party in the organizing campaign is the true outsider: a democratic federation of their fellow workers or paid outside consultants and attorneys.'' To emphasize the importance of disclosure, the commenter quoted Justice Louis Brandeis, ''Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants.'' See Louis Brandeis, *What Can Publicity Do?,* Harper's Weekly, Dec. 20, 1913.

According to another international union, disclosure of information about consultants allows workers to know who is behind a campaign so they can ''cast an educated vote'' on union representation. Another international union noted that such disclosure provides workers with ''the opportunity to determine who is running an employer's anti-union campaign and

which messages are heartfelt expressions versus paid propaganda.'' Similarly, a senator and congressman argued that workers, in voting for or against union representation, need to know the source of information in order to evaluate its credibility, analogizing to public elections where the identity of those who paid for political advertisements must be disclosed.

Union commenters asserted that consultants routinely run anti-union campaigns for employers, through the employer's supervisors. They provided examples of some of these indirect persuader activities. A national union noted that supervisors are used as the conduit to convey the consultant's message. As a result, the commenter agreed with the Department's characterization of supervisors in the NPRM as ''the conduit for persuasive communications or material developed by an outside consultant or lawyer.'' See 76 FR 36183. Similarly, a senator and congressman stated that consultants frequently are a ''shadow management at a facility, making disciplinary decisions and drafting scripts for mid-level management to read.''

A federation of unions stated that modern campaigns rely heavily on supervisors as ''the consultant's trusted intermediaries.'' It also cited an industrial relations study that states that ''consultants typically script supervisors' conversations, train them how to read employees' verbal and non-verbal reactions, and have them ask indirect questions without explicitly asking employees how they will vote.'' Lafer, *Neither Free Nor Fair: The Subversion of Democracy Under National Labor Relations Board Elections,* American Rights at Work Report, at 3 (July 2007). The commenter also quoted Martin Jay Levitt, a former persuader consultant, who asserted: ''The entire campaign . . . will be run through your foremen. I'll be their mentor, their coach. I'll teach them what to say and make sure they say it. But I'll stay in the background.'' Levitt, *Confessions of a Union Buster,* at 10. Similarly, a public policy organization presented two examples of such practice, a ''confidential memorandum'' from an employer instructing managers to attend a mandatory meeting involving a labor attorney who would address ''preventive labor relations''; and a manual produced by a law firm to be used by the employer to counter an organizing effort. As quoted by the commenter, the manual states: ''As a supervisor or manager, your role in an organizing attempt is a key one. You are in the best position to communicate the message to employees that unionization is not in the best interest of the individual employees, the organization, or the community.'' An international union stated that management attorneys often will attend ''captive audience'' meetings with the employer's representatives, avoiding direct contact with employees but prompting the employer's spokesperson as he or she addresses the employees. The union described persuader services advertised on law firm Web sites, where the firms portrayed themselves as experts in developing ''comprehensive and strategic union avoidance tactics,'' and boasted about their ''extensive union avoidance practice'' and the availability of their ''union avoidance attorneys'' to represent employers ''who wish to establish and/or maintain a union-free workplace.'' The commenter noted that these law firms publicize services to provide ''supervisory union avoidance training,'' ''develop[ing] strategies for election campaigns,'' and ''inform[ing] employees'' about the company's positions. Further, the law firm touted that it has ''a proven record of success in running campaigns and winning elections.''

One commenter reported its experience that the written and video materials used in these campaigns employ anti-union rhetoric, warning employees not to sign union authorization cards, asserting the union is a ''third party,'' describing the union as a business (out to make a profit, not serve its members), and warning about strikes. The commenter stated that although the consultant was careful not to trigger a reporting requirement under the current interpretation of the advice exemption by meeting with employees face-to-face, employees see unidentified strangers meeting with management officials and first-line supervisors during anti-union campaigns. An international union argued that Congress intended for workers to know that the source of persuader messages is a ''paid agent'' hired to persuade them. In its view, Congress knew and wanted employees to know that these agents may coach employers on the ''spontaneous'' formation of employee committees and design tests to identify pro-union workers. Disclosure of these tactics, according to the commenter, provides workers with information ''important to assessing the credibility and motivations behind what they are seeing and hearing and thereby facilitates informed decision making.''

A national union presented examples of indirect persuasion by consultants during several recent union representation elections. The consultants created persuader handbills, posters, videos, and other materials. Literature was placed in ''strategic places'' such as employee changing rooms, the time clock area, and hallways that workers pass through when going to the polling area. Workers were often required to view videos portraying unions in a negative light and, like other messaging, encouraging employees, explicitly, to vote against the union. Another national union provided examples of indirect persuader activity from four separate campaigns. It explained that the consultants in those instances issued a manual for supervisors and trained them in conducting one-on-one and group meetings with employees designed to persuade them against supporting the union, and drafted emails, letters, and other literature for distribution by management.

A law firm representing unions submitted documents used by consultants to influence employee choice. It included campaign literature, a document outlining campaign strategies to defeat union representation, ''captive audience'' and other speeches opposing union representation, and training materials for supervisors.

A public policy organization provided several examples of consultant activities. It stated that a law firm had managers call workers at home and ''turned supposed training seminars into anti-union captive audience meetings.'' The commenter stated that another consultant developed anti-union literature that was circulated to employees, along with a calendar of anti-union events. The commenter described a law firm's extensive activities in directing and scheduling the employer's first four weeks of a campaign: sending nine letters to employees' homes; placing four notices on bulletin boards; passing out six leaflets to employees in the workplace; making three anti-union speeches in mandatory all staff meetings; holding one vote demonstration; and conducting five days of small group meetings where immediate supervisors tell employees that unions are bad. According to the commenter, another consultant encourages its clients to hold a '' 'Vote No' saturation carnival,'' which involves all supervisors wearing ''Vote No'' buttons, shirts, etc., and handing them out to employees. According to the commenter, these consultant-driven messages often use the following types of ''selling points'': ''Give the employer another chance; the union will take you out on strike; unions charge dues, fines, and assessments; unions cannot guarantee anything; the union is a third party that interferes in the employment

relationship; unions need your money to survive; and the employer will never agree to union demands.'' Quoting Mehta, Chirag & Theodore, Nik, *Undermining the Right to Organize: Employer Behavior During Union Representation* Campaigns, Washington, DC: American Rights at Work (2005).

Local labor union officials also provided examples of ''formulaic'' campaigns managed by law firms. For example, a commenter discussed the mailing of 12 letters to employees that appealed to employees as a ''family,'' while characterizing unions as ''third-parties'' or ''outsiders.'' The letters also included a ''give us another chance'' theme, followed by letters ''explaining'' the law, and stating that unions operated on a ''blank slate'' and could promise nearly anything. The letters progressed to include a more negative anti-union tone, with direct references to ''union corruption'' and crime. The commenter noted that these would be followed by letters about the salaries of union officers, the amount of dues, and potential penalties against members for violating union bylaws. The final letter, the commenter described, would combine themes and ''invariably'' predict a strike.

Multiple commenters suggested that workers would benefit from knowing how much money employers spent on third-party consultants. A public policy organization cited a study estimating that the union avoidance industry was a $1 billion industry, with employers hiring individuals at, for example, $500 per hour to run a counter-organizing campaign, with one employer taking out a $100,000 loan to fund the campaign.

A senator and congressman stated that employees would be stunned at the amount of money employers pay anti-union consultants, especially when bombarded with anti-union rhetoric that a company lacks resources to offer raises, or that unionization may drive the company into bankruptcy. As an example, the commenters pointed to litigation documents revealing that a company paid a prominent law firm $2.7 million in fees to prevent employees from unionizing. They explained that this kind of information is of particular interest to employees whose motivation to unionize is ''because they feel that management is denying them a fair share of the profits of their labor.'' Further, the commenters stated that workers would ''surely be interested'' in knowing that management is ''paying lavish fees for consultants to run'' a counter-organizing campaign. The commenters concluded that the revised interpretation will ''finally bring transparency to labor-management relations and will help ensure that employees are fully informed when they make a decision to exercise or not to exercise their rights. Another commenter suggested that such disclosure might also affect decision making by employers when faced with union representation or collective bargaining issues. The commenter stated that employers would have the ability to compare the costs of offering benefits and/or raises to their workers against the high fees charged by law firms to defeat union representation. In its view, if provided with this information, some employers, particularly smaller employers, might decide to negotiate in good faith rather than to pay law firms that have a strong interest in opposing unions, suggesting that ''the harder law firms fight the union, the more they earn.''

b. Comments in Opposition to NPRM

The comments opposing the proposed rule put forth several policy arguments against the disclosure of indirect persuader agreements. First, the commenters contended that the source of persuader activities was not relevant in indirect persuasion situations. Second, the commenters maintained that Congress intended for the disclosure of ''middlemen,'' who, in the commenters' view, did not include indirect persuaders. Third, the commenters rejected the analogy between persuader disclosure and other public disclosure regimes. Finally, the commenters argued that the proposed reporting would not timely apprise employee voters about the source of the persuader materials. These comments are addressed in the following sections.

c. Comments on the Disclosure of the Source of Persuader Communications

Despite disagreeing with the Department on the need for workers to have information concerning persuader agreements involving indirect persuasion by consultants, many commenters suggested or acknowledged that workers should have ''accurate'' and ''balanced'' information available to them when exercising their rights. For example, one commenter asserted its primary concern was to meet its ''employees' interest in and right to [receive] full and complete information from both the union and the employer, in order to have an opportunity to understand and make a meaningful choice about representation.''

A congressman that opposed the Department's proposal stated that once employers disseminate a speech or deliver a speech, employees ''know the employer stands by the material,'' and the source of the material is ''irrelevant.'' In one commenter's view, the success of the employer's ''campaign'' relies upon its ''reputation, demeanor, and actions.'' According to the commenter, employees would have no reason to ''care'' about any influence a consultant or other third party exerted on the message, as it will not affect the ''credibility'' assigned by the employees to the employer and its representatives delivering the message. In another commenter's view, the reporting of agreements involving exclusively indirect persuasion would ''mislead'' workers as to the employer's intentions.

These commenters suggested that reporting should focus on the person who delivers the message, and not the person who drafts the remarks. A law firm and a trade association disagreed with the NPRM's purported assumption that positions expressed in the consultant-created persuader materials are not those of the employer. One trade association commenter disagreed with the notion that the consultant is a third party, since, in its view, the only ''parties'' to a collective bargaining agreement are the employer, the employees, and the union. Another trade association similarly rejected the Department's view.

In responding to these comments, both those in support of the proposed rule and those opposed to its adoption, it is the Department's view that workers need to know the source of information that is conveyed to them either directly by consultants—such as in ''face-to-face encounters,'' where the consultant openly acknowledges its role in opposing union representation—or indirectly, where the employer is delivering the message, without acknowledgment of the consultant's role in preparing the persuader materials.

The Department disagrees with the commenters who contend that workers do not need to know the source of the persuader materials directed at them in *indirect* persuasion situations. Workers should be informed that the employer, who has stated its opposition to employees organizing or joining a union (often portrayed by the employer as an ''outsider'' or ''third-party interloper)'' has itself hired a consultant to persuade them how to exercise their representation and collective bargaining rights. The employer's relationship with the consultant and the associated fee arrangement have bearing on the workers' analysis of both the content and merit of the message being delivered to them.

Knowledge that the consultant may not be on the scene to help them understand their legal rights under the

NLRA, but has been hired by the employer to persuade employees against supporting the union, may also affect how employees assess the ''credibility'' of the employer, or its ''reputation, demeanor, or actions,'' as workers may react differently if they know that the employer engaged in a campaign against the union, through a third party. Indeed, Congress observed that ''middlemen have acted in fact if not in law as agents of management,'' a situation whereby workers would naturally assume that their employer has adopted the views disseminated directly or indirectly by the consultant. S. Rep. No. 86–187, at 10, 1 LMRDA Leg. Hist., at 406. Knowledge of the background of the third party allows employees to evaluate not just whether their interests vis-à-vis the union align with those of the employer, but also how, if at all, the self-interests of the consultant align with either those of the employer or employees.[47] Such information is relevant to both direct and indirect persuader situations.

Indeed, at least one commenter who opposed the revised reporting requirements recognized that, like advertising, workers must similarly ''consider the source'' when making a decision on exercising their rights. The commenter asserted that, in evaluating the source, workers can make an independent decision and assume that ''pro-union'' arguments are ''bias[ed]'' in favor of unionization and vice versa. The Department disagrees with this conclusion because it conflates perspective with actual knowledge of the source of the information. The issue is not whether workers will understand the perspective of the message, but whether they should know the source of the message, *i.e.,* whether it is formulated by the employer's management officials or an outside source. For example, if an employer tells employees that they should oppose unionization because it will make the company less competitive, employees know that the employer opposes unionization regardless of whether they know that that message was scripted by a consultant. If employees know, however, that the message was scripted by a consultant, they may then question the employer's intent in making the statement—to convey a genuine concern about the consequences of unionization or to advance a strategy supplied by a consultant as the most expedient or effective argument against unionization, regardless of the employer's actual belief in the verity of the statement. This knowledge will assist workers in determining the extent to which the message directed at them reflects the genuine views of their employer, of the employees, or of the consultant.

A law firm representing employers acknowledged that many employers who have ''consulted outside experts'' inform their employees about their use of consultants, and noted that unions will often publicize an employer's use of consultants to shape an employer's anti-union message so that workers can weigh that fact in considering the employer's message. This comment underscores the value of such information to all workers. Further, even if the employer discloses that it has retained an outside party, without knowing the identity of the outside party and the terms of its agreement with the employer, employees may be deceived into thinking that the consultant has been retained merely to advise the employer on its legal obligations—and not to persuade them against supporting the union. Some employers may be open about their use of consultants; employees or unions, on their own, may become aware (or at least suspect or assume) that the employer has sought the assistance of a consultant in waging its campaign against union representation. However, the suggestion that employees typically possess such knowledge is belied by the rulemaking record, which indicates that employees are *unaware* that:

- The employer had hired a labor relations consultant to manage its campaign against the union
- the consultant had scripted the speeches, letters, and leaflets used to deliver the employer's message during the campaign
- the consultant had instructed supervisors that they must address questions in a particular way without regard to whether that view reflected the supervisor's actual beliefs or the employer's independent views about particular questions that arise during representation or collective bargaining, and
- the employer used a formulaic message typical of that crafted by labor relations consultants, espousing a view antithetical to representation by a union, rather than one that appeared to have been drafted to respond to workplace-specific issues that had arisen during the campaign.

Many of the commenters supporting the rule submitted comments making these and similar points. We have credited those comments in fashioning this rule. OLMS also relies on its experience in generally administering the LMRDA. Union officers and union members, who have interacted with OLMS investigators, have expressed an interest in learning about consultant activities and agreements. At compliance assistance sessions conducted by OLMS in which attendees receive training on how to access and use the OLMS online public disclosure room (where reports filed by unions, union officers, employers, and consultants are available for viewing), attendees often raise questions about ''missing reports,'' referring to the absence of reports filed by employers and consultants. According to the attendees, they are aware of situations in which known and unknown third parties are involved in the employers' counter-organizing efforts, but no reports have been filed. Explanations from OLMS investigators on the ''direct contact'' rule did not satisfy their curiosity. Nor did it reduce their interest in seeing reports about the use of third-party consultants by employers.

Disclosure of indirect persuader agreements allows workers to know the actual source of the persuasive information provided to them by their supervisors, individuals that the workers may find more credible than higher-level management officials. As stated by some commenters, consultants utilize supervisors to disseminate the consultant-prepared persuader message. Thus disclosure will allow workers to better evaluate comments made by their supervisors (as the supervisor's own, or scripted, view about union representation) and other forms of communication.

When a consultant is used to indirectly persuade employees and such use is not disclosed to employees, that, per se, deprives the employees of being fully informed about all the circumstances regarding their decision on representation. In making this assessment, the Department is not questioning employers' intentions or making a judgment about employers' use of consultants, nor does it take a position on employers' exercise of their rights under the NLRA. The Department

[47] In the situations discussed in the text at Sections III.B.1 and Section V.C.1.c, employees would have been better able to exercise their protected rights if they had known of the consultant's role in crafting the employer's message to them. Although the commenters appear to criticize at least some of the activities as deceptive and/or improper, the Department has not made a judgment on the propriety of these actions. It is not the role of this Department to make such determination. It is also not the role of this Department to comment on the tactics of organizing and counter-organizing campaigns, their legality under the NLRA, or the content of the messages conveyed in those campaigns. This Department's interest is solely to implement the command of section 203 to require appropriate disclosure where consultants undertake persuader activities, both direct and indirect.

is simply stating its position that employers and consultants should publicly disclose their arrangement so workers can know the source of persuader materials in order to better evaluate them.

Furthermore, the nature of the persuader arrangement is relevant. The persuader represents the employer, and never the employees whose decision to decide on union representation is the focus of the parties' concern. Where the consultant is involved in persuading employees about how they exercise this right, it has differentiated itself from the employer insofar as section 203 is concerned. By virtue of section 203(e), no reporting is required if the employer itself undertakes persuader activities. In such situation, workers may assume, correctly, that its employer, through its representatives, drafted the material. Workers are thus able to evaluate the employer's message on its face. In the absence of persuader reporting, workers have no independent means of determining whether the message truly derives from the employer or from a third-party source, and any assumptions they make about the source and its credibility may be incorrect.

In sum, as further discussed below, the issue is not just the activity itself (*e.g.,* drafting a persuasive document), but the source of material and the agreement pursuant to which it was drafted: If the employer is the author, it is not generally reportable; if a third party drafts the material, it is reportable.

d. Comments on the Term ''Middlemen'' in the Legislative History

Multiple commenters stated that the Department's focus should be on deceptive ''middlemen'' employed to spy on employees or otherwise ''unlawfully and deceptively'' interfere with their rights and defeat their organizing efforts. They suggested that Congress did not intend that labor relations consultants, as a general matter, would have to report what to these commenters are routine activities—whether done openly or not—but only to require ''middlemen,'' as unique-outliers among consultants, to report agreements to engage in ''nefarious conduct.'' They rely on the LMRDA's legislative history to advance their contention that the proposed rule does not address what they see as the congressional intent for section 203 to apply only to these types of middlemen who interacted directly and deceptively with employees. Further, these comments imply that such middlemen are an historical anomaly and, accordingly, the proposed rule addresses a problem that no longer exists.

Many of the commenters argued that the LMRDA's legislative history clearly evinces that reporting is only required in instances where a labor relations consultant is interacting directly with employees as a middleman for the employer. These commenters contended that it was the sole intent of Congress to curb abuses of unscrupulous middlemen, as opposed to the work of legitimate consultants and attorneys. One commenter noted that the evidence presented before the McClellan Committee was ''largely focused'' on the deceptive practices of Nathan W. Shefferman and his labor consulting firm. The commenter quoted the following excerpt from the Senate Report on the bill that became the LMRDA: ''These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor practices. The middlemen have acted, in fact if not in law, as agents of management.'' See S. Rep. No. 86–187, at 10, 1 LMRDA Leg. Hist., at 406. Another commenter noted that the practices targeted in the legislative history centered on the hiring of middlemen to spy on employee organizing activity, induce employees to join company unions, negotiate sweetheart contracts, and commit acts of bribery and corruption. The commenter claimed that the LMRDA has effectively eliminated these practices.

Other commenters contended that section 203 was never intended to regulate situations involving the indirect persuasion of employees, such as where ''an employer accepts advice and materials prepared for them, applies that advice it received on its own behalf, adopts that advice and materials as its own, and itself delivers the message to its employees.'' Another commenter, a public interest organization, stated that the term ''middlemen'' means ''persons acting in the *middle, i.e.,* between the employer and its employees, such as through faux employee committees.'' Therefore, the organization argued, attorneys who do not interface with employees cannot be considered middlemen.

Likewise, a trade association commented that Congress sought to expose labor consultants acting as middlemen who engaged in the direct persuasion of employees without revealing their true connection to the employer, essentially acting as ''fronts for the employer's anti-union activity.'' The trade association stated that the Department, in the NPRM, had failed to identify any legislative history to show that Congress intended to target consultants who merely advised employers on ways in which the ''*employers themselves*'' could campaign against union organizing. Several of the commenters also recited the following testimony from Professor Archibald Cox before the Senate Subcommittee that discussed the bill prior to the LMRDA's passage:

> Payments for advice are proper. If the employer acts on the advice it may influence the employees. But when an employer hires an independent firm to exert the influence, the likelihood of coercion, bribery, espionage, and other forms of interference is so great that the furnishing of a factual report showing the character of the expenditure may fairly be required.

See Hearings before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on Labor-Management Legislation, 86th Cong., 1st Sess., at 128 (1959). The commenters construed this testimony as an indication that reporting should be required only when an employer hires a consultant to directly ''exert the influence'' on employees. According to another commenter, the legislative history confirms that Congress wanted only for employees to know whether a middleman was acting on behalf of the employer, and not whether the employer had consulted with a labor relations consultant or lawyer.

The Department accepts that some of the legislative history focuses on the deceptive and surreptitious activities of ''middlemen'' such as Shefferman. The Department disagrees, however, with the suggestion that Congress intended for the persuader reporting provisions of section 203 to be limited to persuasion that amounted to unlawful conduct by middlemen. Instead, section 203 is worded broadly to require both employers and consultants to report consultant activities where an object thereof, directly or indirectly, is to persuade employees, as well as the attendant details regarding their agreements or arrangements. The activities of individuals like Shefferman and his ilk provided the most blatant examples of the conduct to be regulated through reporting and disclosure, but nowhere in the legislative history was it suggested that Congress intended to exempt or exclude from reporting those persuader activities that do not rise to the level engaged in by Shefferman and his consulting firm.[48] Indeed, as

[48] See IM Section 263.005 (Purposes of Arrangement) (1960): ''The purpose which would make an arrangement subject to the reporting requirements of section 203(a)(4) and 203(b)(1) need not be unfair labor practices or otherwise in violation of law. These suggestions speak of

discussed earlier in the preamble, at Section III.B.1, Congress recognized that reporting of both direct and indirect persuader activity by consultants is necessary and desirable to promote transparency without regard to whether the persuader activity is illegal or not.

As explained further in Section V.C.3, the LMRDA is designed, in large part, to rely on reporting and disclosure in order to promote lawful, constructive activities that bring stability and harmony to labor-management relations. Disclosure promotes the full exercise by individuals of their rights as employees and union members and discourages improper financial arrangements between unions, their officials, and employers (as provided by the NLRA and the various titles of the LMRDA). In its crafting of section 203, there is nothing to indicate that Congress sought to exclude from disclosure any agreements between an employer and a consultant under which a consultant agrees to undertake *any* activity, lawful or otherwise, with an object to persuade employees regarding their organizing and collective bargaining rights. Although many commenters opposed to the rule have argued that Congress only intended that reports be filed in situations with conduct that is patently corrupt, they have provided no evidence of such intent. Narrow language could have been easily drafted to accomplish this result if that was the intent of Congress, yet Congress instead chose the expansive language contained in section 203.

In *Humphreys, Hutcheson and Moseley,* 755 F.2d 1211, 1215 (6th Cir. 1985), the Sixth Circuit explained that Congress ''did not distinguish between disclosed and undisclosed persuaders or between legitimate and illegitimate activities. Rather, Congress determined that persuader activities were impeding the exercise of employee rights and that disclosure and reporting might be sufficient to redress this problem. In that case, the law firm whose activities were at issue argued that section 203(b) was inapplicable to the firm because it did not engage in ''covert'' activities. The firm essentially made the same argument raised by many commenters in response to the NPRM; as stated by the appeals court: ''[The firm] contends that the LMRDA is aimed at covert management middlemen who engage in activities such as spying, bribery and influence peddling rather than at persuaders who openly engage in 'legitimate' persuasive activities such as the speeches given by the partners of the firm who were disclosed persuaders.'' Id. The court disagreed with this argument, finding instead that ''the fact that the attorneys identified themselves to the . . . employees did not remove them from the ambit of LMRDA section 203(b).'' Id.

The Department disagrees with the contention that Congress intended for section 203 to apply only to middlemen who *directly* persuade employees. The Department agrees with the assertion by a trade association opposing the proposed rule that there is no data showing that employers who hire consultants to engage in direct persuasion (and file LM reports under the prior rule) are more or less likely to interfere with employee rights than employers who hire consultants to engage in indirect activities. As explained in this section of the preamble, Congress focused on ''surreptitious'' activities designed to influence employees, thus requiring reporting and disclosure to workers of the source of persuasive communications or policies. Concerning direct persuasion, as one commenter stated, the source of the material in such situations is often ''patently obvious,'' in contrast to where the consultant's actions are indirect and thus hidden behind the employer's role as ''spokesperson.'' Without required disclosure, employees may assume that the employer, not a consultant whose profit depends on persuading employees against the union, is voicing its own, unscripted position on union representation.

An employer association contended that the Department's conclusion that the reporting of both direct and indirect persuasion will further employees' ability to make informed choices concerning their bargaining rights is a policy judgment to be made by Congress, not the Department. Further, the commenter argued that such reporting provides no benefit to workers and interferes with employer rights. A law firm similarly asserted that ''true persuaders'' are currently required to report, and the NLRB's rules adequately protect employee rights in organizing campaigns.

The Department rejects these assertions. As discussed above, the legislative history and the wording of section 203 support the Department's interpretation that both lawful unlawful persuader activities are reportable and that such reporting is beneficial to employees. This rule furthers Congress's intent that section 203 supplement the NLRA in protecting the representation and collective bargaining rights of employees. See *Humphreys,* 755 F.2d at 1222 (disclosure of third-party persuader agreements ''enable[s] employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.''); see also testimony of an attorney for the NLRB before the McClellan Committee (''[The NLRA] is not adequate to deal with such activities.'' S. Rep. 86–187, at 10, 1 LMRDA Leg. Hist., at 406.

Furthermore, nothing in the legislative history supports the commenters' view that section 203 was enacted to apply only to middlemen interacting directly with employees. As stated above, the broad language of section 203 suggests otherwise. Moreover, regardless of the broad or narrow scope of the term ''middlemen,'' the Department notes that the term ''middlemen'' is not mentioned in the text of the LMRDA and that no specific persuader activities are identified in the text. Section 203(a)(4) uses the phrase ''labor relations consultant or other independent contractor or organization,'' a phrase more inclusive than ''middlemen.'' Section 203(b), rather than identifying particular reportable activities, simply states that ''[e]very person'' who engages in persuader activities through an agreement or arrangement with an employer must report. 29 U.S.C. 433. Further, many of the activities cited in the legislative history are not strictly examples of ''direct'' persuasion, such as efforts to induce employees to form or join company unions through such devices as ''spontaneous'' employee committees, essentially fronts for the employer's anti-union activity. S. Rep No. 85–1417, at 255–300 (1958). The ''middlemen'' also engaged in other activities discussed in the legislative history, involving direct or indirect contact with employees, including organizing ''vote no'' committees during union campaigns and designing psychometric employee tests designed to weed out pro-union workers. Id.; see also S. Rep. No. 86–1139, at 871 (1960). Indeed, the legislative history discusses

activities to ''persuade'' employees in the exercise of their collective bargaining rights, in significant contrast with section 203(a)(3) which requires reporting by employers of expenditures where the object is ''to interfere with, restrain, or coerce employees'' in the exercise of these rights. The legislative history supports this conclusion. The provision corresponding to section 203(a)(4) in the House Bill as reported (section 203(a)(4) of H.R. 8342) would have required reporting only in the case of an agreement to provide an employer with the services of a person or firm engaged in the business of ''interfering with, restraining, or coercing employees in the exercise of rights guaranteed'' by the Reporting Act, the National Labor Relations Act, or the Railway Labor Act. This provision was replaced by the present section 203(a)(4) with its test of persuasion.''

none of the activities typically viewed as reportable under the prior interpretation, such as a consultant delivering a persuasive speech to employees or disseminating a persuasive letter to employees on the consultant's own letterhead. The Department also notes that it has historically viewed consultants, whether acting directly or indirectly, as ''middlemen.'' [49]

e. Comments on Comparisons of Persuader Disclosure to Other Disclosure Regimes

Drawing upon the disclosure requirements applicable to unions under the LMRDA and various individuals and entities in other settings, several commenters objected to the need to identify the consultant as the source of persuader materials, arguing that such disclosure provides little or no benefit to workers. First, as a general matter, commenters argued that disclosure should focus on the person who delivers the message, and not the person who drafts the remarks. Referring to presidential speeches and regulatory documents as examples, one commenter asserted that it is the ''oratory or signatory'' who ''owns'' the words delivered, even if others assist in drafting or reviewing. This commenter argued that if an employer delivers remarks prepared by a consultant, the employer has adopted the remarks as his own and that the drafter thus, in effect, serves only an inconsequential role insofar as employees are concerned.

Other commenters disagreed that employer-consultant reporting is similar to union reporting, stating that union reporting was required to show how a union maintained their finances, a rationale unrelated to the reasoning underlying the Department's proposed rule. Another commenter suggested that the rule is not necessary to ''even the playing field'' between labor and management, as unions have won the majority of elections in recent years. An employer association suggested that the Department sought, without authority, to ''redress the balance of 'contemporary labor relations.' ''

A trade association, citing *Buckley* v. *Valeo,* 424 U.S. 1 (1976), criticized the Department's comparison of employer-consultant reporting to reporting under Federal election campaign law. The commenter acknowledged that an analogy is appropriate between campaign disclosure laws and reporting of *direct* persuasion, as reporting will provide employees with knowledge of ''whose behalf the middleman is acting and the true source of the message being relayed.'' In contrast, the commenter contended, this risk is not present where the employer delivers the message, as ''there is no danger that the employees are being deceived with regard to the interests of the messenger or the risk that the messenger is somehow beholden to an undisclosed interest.''

The Department disagrees with these commenters. Initially, we disagree with the idea that whether an employer or its spokesperson delivers a persuader message prepared by a consultant—thereby, in the commenter's view, ''owning'' its content—is material to the question whether the consultant's involvement must be reported. By creating the message to be given by the employer, the consultant has engaged in indirect persuasion, which, as the statute requires, must be reported. Putting aside this statutory requirement, it remains our view, as expressed throughout the preamble, that workers benefit by knowing that a message is being scripted by a third party. For example, when the issue in a union election context is whether the workers want a representative, often portrayed as an unwanted ''outsider'' by the employer, then it is relevant that the employer's message opposing the union is crafted by an outsider. When, unknown to employees, a supervisor's day-to-day interactions and comments with the employees he or she supervises are scripted to defeat union representation, employees may view the message differently. If employees are unaware that a labor relations consultant has been hired to persuade them to oppose unionization, they may never learn that their supervisors may not be sharing their own, usually trusted, views about matters in the workplace. Thus, without disclosure, there is an unacceptable risk that employees may alter their decision concerning the exercise of their rights based upon the scripted message of ''trusted'' supervisors or those managers with whom the employees regularly interact—one part of a professional persuader's campaign strategy. See Part III.B.3 and V.C.1.c of the preamble.

With regard to the suggestion that the Department's proposed persuader rules have no analog in the Act's provisions relating to union reporting, the Department notes that the general disclosure principles are roughly analogous for section 201 and section 203 reporting, even if not all of the specific reporting goals or requirements are identical. Indeed, the Senate Committee that drafted what became section 203 indicated its belief that ''if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who carry on, or engage such persons to carry on, various types of activity, often surreptitious.'' S. Rep. 187 at 39–40, 1 LMRDA Leg. Hist., at 435–436. Thus, the Department's goal in this rule is not to take sides in labor-management disputes, or promote ''parity,'' but, rather, to advance the interests of Congress in labor-management disclosure that benefits workers choosing to exercise their protected rights. As such, union success rates are not relevant. Further, the fact that the primary rationale for union disclosure does not apply strictly to employer and consultant disclosure has no bearing on the underlying merits of such disclosure. Disclosing this information, as stated, provides beneficial information to workers.

With regard to the comments that there are important differences between the disclosure proposed by the Department and the disclosure rules applicable to public elections, the Department recognizes such distinctions. However, the Department disagrees with these commenters to the extent they suggest there is no analogy between the benefit derived by voters under campaign disclosure laws and the benefits derived by workers from the disclosure provided by this rule. See *Humphreys,* 755 F.2d at 1222 (disclosure of third-party persuader agreements ''enable[s] employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.'')

To illustrate, while voters are selecting among various candidates for office in the larger, political context, workers are choosing whether to be represented by a union, or they are choosing from among rival unions seeking their support. Although the dynamics differ, in each situation, outside parties use persuasive

[49] See IM section 265.005, which states in relevant part: ''A more difficult problem is presented where the lawyer or *middleman* prepares an entire speech or document for the employer. We have concluded that such an activity can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer. Consequently, such activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the *middleman* is operating under a deceptive arrangement with the employer, the fact that the *middleman* drafts the material in its entirety will not in itself generally be sufficient to require a report.'' (Emphasis added.)

communications in an attempt to influence the process in support of a particular candidate or choice. Knowledge about those outside parties helps individuals assess the merits of the arguments and make effective decisions. While employers are not strictly candidates in representation elections, they have a stake in election outcomes, and they have a right under the NLRA to put forth their views. Indeed, many of the opposing comments emphasize the fundamental role that management should play in the representation election process, with one law firm stating that ''the NLRB election process is an example of workplace democracy and, as a microcosm of our democracy, it is sometimes messy.''

Thus, in the Department's view, analogizing between the source of an employer's position and the sources that fund candidates' campaigns, and their related political action committees, is justified. Just as knowledge of special interests and campaign donors helps voters formulate opinions on candidates' positions, knowledge of employer reliance on outside parties can assist workers in evaluating the merit of employer positions. The benefit of knowing the source of persuader materials and other activities is apparent for either direct or indirect persuasion. Under the other reporting regimes, the contribution of money from an individual or entity may influence the candidate's position on an issue—and thereby affect a citizen's evaluation of the candidate—thus animating the need for disclosure. This contrasts with the situation that arises under the LMRDA; here, it is the contractual arrangement between the employer and the consultant to undertake persuader activities—without any apparent divergence of views between the consultant as agent and the employer, as principal—that would be significant to an employee. In the political sphere, a candidate's position on an important issue may be ''bought'' by a donation. In the union election context, an employer's general views about the union may be shaped and made coherent by a professional consultant. In each instance, however, the purpose served by disclosure is to provide information that allows the public (under the campaign analog) and the employees (under the LMRDA's) to exercise important governance duties (exercising their franchise and related ''oversight'' duties). In each situation, it is the risk that actions by third parties may impede voting rights if they are not disclosed that makes disclosure important. Although the political spheres and the nature of the relationship between donors and candidates, on the one hand, and consultants and employers, on the other, are different, Congress decided that disclosure is necessary to ensure that individuals can fully exercise their rights in an informed manner.

Finally, one law firm also objected to the Department's reference in the NPRM to ''laboratory conditions'' that the NRLB promotes in its representation elections, a test which ensures that employees have full and accurate information during campaigns. See *General Shoe Corp.,* 77 NLRB 124 (1948); 76 FR 36189. The commenter asserted that the proposed rule incorrectly stated that the NLRB seeks to ''police the truth or falsity of campaign communications'' by parties involved in representation elections. The commenter also asserted that workers know that their interests and employers diverge at times, and that they are capable of assessing information and evaluating the merits before making decisions. The Department disagrees with the comments. This rule is not concerned with monitoring the ''accuracy'' of communications, which is left to the parties. Further, the Department also acknowledges the ability of workers to make decisions and evaluations, but in doing so they need to know the source of the information designed to persuade them about how they should exercise their protected rights.

f. Comments on the Timeliness of Disclosure

Several commenters suggested that workers could not benefit from this increased disclosure, because the statutory deadlines for reporting are later than the 38-day median timeframe between the filing of an NLRB petition and the ensuing election (additionally noting that 90% of the elections are held within 56 days). Further, much of the information from submitted reports would be available only 90 days after the conclusion of the filer's fiscal year. Additionally, some commenters stated that if the NLRB expedites representation elections, it will be even less likely that workers will actually benefit from the Department's proposed changes.

The Department rejects these contentions. The Department recognizes that the NLRB in December 2014 issued a final rule amending its representation case procedures. See 79 FR 74307. Critics of that rule argue that the time between the filing of a certification petition and the holding of the representation election will be significantly reduced. In the Department's view if this result is achieved, the rule will remain highly beneficial to employees and the public; it in fact makes the need for transparency even more compelling. Initially, the Department notes that section 203(b) requires consultants to file Form LM–20 reports within 30 days of entering into the persuader *agreement or arrangement,* not 30 days from the union's filing the petition. Thus, since the rulemaking record suggests that employers engage consultants at the first signs of union organizing, *i.e., before* a petition is filed, the commenters' concerns about the timing of disclosure are unwarranted. Moreover, even apart from when the information is actually received by employees, workers and the public will have the additional benefit of information about a particular consultant from its past Form LM–20 reports, which would complement the information available to them in the Form LM–20 for the present employer.[50]

2. Underreporting of Persuader Agreements and Research Studies

As stated in the NPRM, while most employers utilize consultants to conduct counter-organizing campaigns, most persuader agreements are unreported because most consultants engage only in indirect—not direct—persuasion. This lack of reporting has persisted, despite the growth of the persuader industry and its widespread use by employers since the enactment of the LMRDA. See 76 FR 36185–87. As stated in the NPRM, the Department estimated that 75% of employers utilize labor relations consultants to manage union avoidance campaigns. 76 FR 36186. The widespread use of consultants to indirectly persuade employees has been documented in congressional hearings, executive branch commission reports, and industrial and labor-management relations research. Id. The NPRM also cited these sources to illustrate the practical effect of the prior interpretation and to demonstrate that it did not lead to the full reporting necessary for workers to effectively exercise their representation and collective bargaining rights as intended by Congress. 76 FR 36190.

[50] See *Humphreys,* 755 F.2d at 1222 (''Requiring disclosure, even after the fact, will inhibit and expose illegal and unethical actions by persuaders that hamper employees in the exercise of their rights guaranteed by the NLRA. . . . Past reports that disclose the interests of persuaders serve as a valuable source of information in current elections'').

a. Review of Comments Received

Many commenters opposed to the revised interpretation criticized the Department's use of industrial relations research to support its position that the prior interpretation failed to provide the reporting intended by Congress. In response, the Department emphasizes that the proposed interpretation, embodied in this rule, is rooted in the statutory language and congressional intent. To reiterate points earlier made in this preamble, the text of section 203 is better read to require reporting of employer agreements with consultants who engage in both direct *and* indirect persuasion of employees. This view of the statutory language better promotes the public interest than the prior interpretation, by achieving greater transparency of such agreements and activities, thereby allowing workers to make better informed decisions about their union representation and collective bargaining rights. This, in turn, promotes public confidence that election outcomes reflect the informed choice of the workers. The Department's use of independent studies illustrates the practical benefits that would be served by increased transparency. More specifically, the research studies describe employers routinely engaging in anti-union campaigns through their mid-level managers and supervisors, supported at large costs by outside consultants without the knowledge of the employees, while employers simultaneously argue that the union is an unwanted ''third party.''

Notwithstanding their criticism of the research cited in the NPRM, these commenters did not controvert the fundamental propositions concerning indirect consultant activity made in the NPRM. The commenters did not contest the Department's basic description of how employers routinely rely upon labor relations consultants, including lawyers, who work behind the scenes (engaging in legal and non-legal services) with supervisors and other employer representatives, who then directly persuaded employees. The commenters did not contradict the contention that workers are generally unaware of the extent to which consultants are involved in the ''indirect activities'' designed to affect how they make their choices about matters involving union representation and collective bargaining. Moreover, many of the commenters who supported the proposed rule concurred with the researchers' observations and the Department's determinations regarding the growth of the consultant industry and employers' routine reliance on consultants in persuading employees about how they should exercise their representation and collective bargaining rights. And, none contested that indirect persuader activities have gone unreported.

b. Comments on Research Studies

Several commenters voiced support of the research studies cited in the NPRM. Many more commenters (all opposed to the proposed rule) took issue with the studies cited, variously criticizing the research as outdated, unreliable, lacking credible analysis, flawed, and arbitrary. Other commenters criticized the research as having a pro-union bias and lacking objectivity. One commenter argued that the cited research does not address the problems identified by Congress in the enactment of the LMRDA. Another commenter called the studies cited in the NPRM ''discredited,'' and stated that they have been refuted by counter-studies (citing U.S. Chamber of Commerce, *Responding to Union Rhetoric: The Reality of the American Workplace—Union Studies on Employer Coercion Lack Credibility and Integrity* (U.S. Chamber of Commerce White Paper 2009).

Multiple commenters specifically criticized Bronfenbrenner's *No Holds Barred* study, arguing that it was flawed because it was based on interviews and surveys of union organizers and lacked objectivity. Another commenter criticized Bronfenbrenner's failure to obtain data from employees or employers, even anonymously. Further, a trade association commenter stated that the study is based on allegations of unfair labor practices by union organizers, a far less meaningful data source than one involving actual findings that the allegations had merit.

Other commenters criticized the studies by John Logan, stating that they are based on qualitative analyses and interviews with union officials and union avoidance consultants, and that they lack credibility because Logan did not distinguish between legal and illegal campaign tactics when describing employers' consultant use. Another commenter took issue with Logan's *The Union Avoidance Industry in the USA* and criticized the study as ''one-sided.'' The same commenter countered Logan's assertions about consultants' ''extreme language'' with examples of union rhetoric, suggesting that both consultants and unions employ rhetoric to suit their respective purposes.

A law firm criticized Bronfenbrenner and Logan for not fairly portraying changes in union strategies for conducting representation campaigns. An employer association stated that labor unions and certain academic professionals believe that employers should refrain from playing any role in response to union organizing efforts, or at least that any employer actions should be subject to stringent regulation.

Further, a law firm stated that the Department should have provided its own evidence in support of its policy justification for the proposed rule, or, at a minimum, verified the authenticity or reliability of the data from the research cited in the NPRM. Another commenter urged the Department to conduct its own research and hold hearings to obtain stakeholder input and assess the need to change the current interpretation. The commenter argued that a ''thorough, non-partisan review of the labor relations climate will demonstrate that labor relations consultants are in most, if not all, cases assisting employers in a lawful manner to respond to potentially devastating economic attacks by unions.''

In addressing these comments, the Department first wants to make clear that the foundation for this rule is the statutory language chosen by Congress to require the disclosure and reporting of agreements between employers and labor relations consultant to persuade employees about the exercise of their union representation and collective bargaining rights. Thus, we are not relying on research findings to establish whether it is appropriate to require reporting—Congress has answered the question in the affirmative. The chief value in the research findings, as discussed in the preambles to the NPRM and this final rule, is to show that the conduct that Congress intended to address by requiring disclosure and reporting persists.

In response to those commenters that stated the Department should have conducted its own research, the Department, as discussed below, had no basis to question the soundness of the research cited. While some may argue about some of the specific findings and recommendations in the studies cited, the studies firmly establish that labor relations consultants are heavily relied upon by employers in contesting union representation efforts, that consultants are heavily involved in persuader activities, and that many of these activities have had a negative impact on labor-management relations. Further, with regard to the criticism that the Department should have relied on its own data, its review of Form LM–10 and Form LM–20 reports would have revealed no useful information about the extent of indirect persuader activities because, under the prior

interpretation, only *direct* persuader activities triggered the filing of information about persuader agreements. Review of the reports would not yield information that would allow useful inferences about the extent of *indirect* persuader activities, which is the area this rule principally addresses.

Despite these criticisms, no commenter introduced a single academic study that offered any reliable evidence that meaningfully controverted the Department-cited studies' conclusions regarding the labor relations consultant industry. While the commenters rely on a review of the literature prepared by an employer association that challenges some of the studies cited by the Department, this review presented no new data or peer-reviewed studies to refute those cited by the Department in the NPRM. Nor did the comments cite data more contemporaneous than the post-2001 studies in the NPRM.[51] Furthermore, the criticism that the research cited in the NPRM is not objective, reflects a pro-union bias, and is funded by unions does not withstand scrutiny, because the cited research is peer reviewed and often published in respected academic journals.

Regarding the assertion that the NPRM failed to take into account the tactics of unions, the Department disagrees with this contention, as this rule concerns reporting for persuader agreements between employers and their consultants pursuant to section 203. Reporting and disclosure requirements for labor unions and their officials are covered by sections 201 and 202, and provide for much more comprehensive and detailed reporting. The Department also considers the reaction of employers and consultants to union tactics to be irrelevant to section 203 reporting, as the focus of this rule is on the agreements and activities that trigger employer-consultant reporting, and the purposes served by such disclosure.

In response to the commenters who criticized Bronfenbrenner's *No Holds Barred* study and took issue with her presentation of evidence obtained from surveys of union organizers, the Department notes Bronfenbrenner also relied on extensive NLRB case documentation. With respect to the comments on the research of John Logan, the Department notes that Logan's articles include a review of the available academic literature and cited works by other well-regarded industrial relations scholars. See Section III.B.2. The Department also conducted a thorough search of relevant literature before proposing the revised interpretation and remains of the view that the cited studies best reflect the existing research. Furthermore, in proposing the revised interpretation, the Department additionally relied on two House Subcommittee Reports (1980 and 1984), and the published work of the joint labor-management U.S. Commission on the Future of Worker-Management Relations chaired by Harvard Professor (and former Labor Secretary) John Dunlop, along with union, management, government representatives, and several industrial relations scholars.

Commenters criticized John Logan's research on the grounds that it failed to distinguish between legal and illegal conduct. Logan's listing of both lawful and unlawful tactics, however, fails to undermine the soundness of his reasoning in the article, the clear purpose of which, as stated by the author, is ''to provide[] a qualitative analysis of the services that the consultants have offered employers and an account of the campaign tactics of several superstars of the union free movement.'' See John Logan, *Consultants, Lawyers, and the ''Union Free'' Movement,* 33 Industrial Relations Journal, at 198 (2002). Moreover, as stated, Congress intended for persuader reporting regardless of whether the consultant's activity constituted unlawful conduct. Even conceding for purposes of argument that the commenters' criticism is valid, it remains incontrovertible that labor relations consultants continue to be engaged by employers to conduct campaigns to oppose union representation, largely behind the scenes and without public disclosure, as had been the case, on a smaller scale, when the LMRDA became law. There is nothing in the rulemaking record to suggest that the use of consultants is an isolated activity or a historical phenomenon that is absent from contemporary labor-management relations and thus undeserving of regulation.[52]

In response to commenters arguing that the Department has not independently verified the authenticity or reliability of data and methodology used in the studies cited in the NPRM, the Department again notes it has now, and had then, no reason to question the soundness of the data and methodologies used by the academic researchers. In fact, additional studies referenced by commenters in opposition to the rule utilized the very methodologies that the commenters had previously criticized. Several commenters referenced the Chamber of Commerce's white paper that leveled criticism at Bronfenbrenner and Logan's respective bodies of research. Yet, the Chamber of Commerce did not conduct its own research, publish its article in an academic journal, or produce any alternate research data that meaningfully contradicted that of Bronfenbrenner and Logan. In attempting to refute Bronfenbrenner's and Logan's research, it used many of the same methodologies as those researchers. Moreover, the document was not published in an academic journal, which further diminishes its analytical strength. Commenters' critique of a lack of data in fact only makes a stronger case for the need for the rule; because the advice exemption has in effect swallowed the reporting requirements, a neutral government source of information that all parties might access is entirely lacking. The studies that exist are the only possible source of information—the opposite of what the statute intended.

c. Comments on the Underreporting of Persuader Agreements

Multiple commenters agreed with the Department's determination that persuader activities were relatively underreported despite a substantial growth in the labor relations consultant industry. These comments were from local and international unions, a law firm representing unions, Congressional leaders, and a public policy organization.

A law firm representing unions stated that the majority of organizing efforts

[51] John Logan, *The Union Avoidance Industry in the U.S.A.,* 44 British Journal of Industrial Relations 651 (2006); Kate Bronfenbrenner, Economic Policy Institute, *No Holds Barred: The Intensification of Employer Opposition to Organizing* (2009); Chirag Mehta and Nik Theodore, American Rights at Work, *Undermining the Right to Organize: Employer Behavior during Union Representation Campaigns* (2005); John Logan, *Consultants, Lawyers, and the* '*Union Free' Movement,* 33 Industrial Relations Journal 197 (2002); John Logan, *'Lifting the Veil' on Anti-Union Campaigns: Employer and Consultant Reporting under the LMRDA, 1959–2001,* 15 Advances in Industrial and Labor Relations (2007).

[52] A trade association questioned the NPRM's reference of two memoirs written by former labor relations consultants (Nathan W. Shefferman, *The Man in the Middle* (New York: Doubleday 1961) and Levitt, *Confessions of a Union Buster*), and argued that these two consultants ''do not represent the majority of law abiding lawyers and consultants.'' See 76 FR 36184, 36187. The Department did not claim, nor intend to suggest, that these books provide an accurate portrayal of a typical labor relations consultant. The books, however, do identify some indirect activities that are typically undertaken by consultants during a campaign to contest a union's efforts to represent a company's employees. It is for that limited purpose that we cited to the books in the NPRM and in the preamble to this rule.

involve indirect persuader activities. This commenter stated that the number of Form LM–20 reports filed each year is disproportionately small compared to the number of representation matters in which consultants are involved. Further, the commenter pointed out that, since many union organizing efforts are stopped after consultants' initial involvement, no NLRB or NMB election petitions would be filed, apparently suggesting that underreporting may be even greater than estimated in the NPRM.

Two international unions concurred with the Department's assessment that underreporting is a significant problem. The unions stated that, by limiting reporting to direct persuader activities, the prior interpretation has led to the increased retention of attorneys and other consultants to provide union avoidance services. A public policy organization concurred with the Department's underreporting estimates in the NPRM, and also provided examples (from its own research) of indirect persuader activities that were not reported.

Multiple commenters disagreed with the Department's claim that the underreporting of employer-consultant reports provides any justification for the proposed rule. A large employer association disagreed with the Department's claim of an underreporting problem, on the grounds that such claim is based on the views of pro-union academics who describe and criticize activities beyond the purview of the proposed rule.

Similarly, a trade association argued that an underreporting problem cannot exist, since, if consultants' activities do not by law have to be reported, then they do not qualify as reportable activities. Other commenters echoed the theme that employer-consultant reports are not being underreported since reports, which are being submitted under the current (not proposed) ''advice'' interpretation, are being filed exactly as they should be. Another commenter refuted the NPRM's underreporting claim on the grounds that it is based on what the commenter calls a ''false connection'' between the number of consultants and the number of reports that they should be filing.

Several commenters questioned the Department's determination that the prior interpretation has led to significant underreporting. A consulting firm argued that the Department has simply created the new category of ''indirect'' persuasion activity, which is considered ''advice'' under the prior interpretation. Another commenter stated that, even if consultants are hired in a majority of union organizing campaigns, the consultants are not necessarily hired for the purpose of engaging in persuader activity at all. Instead, they may be engaged in activities that the Department would concede would be exempt as advice. A public policy organization stated that the Department failed to justify its claim that the number of reports filed is 7.4% of those expected, and indicated that it is just as likely that most consultants have complied with the law and only provided advice, which is exempt from reporting. The commenter characterized the Department's reporting expectations as ''grossly inflated.''

Multiple commenters stated that the Department did not provide adequate evidence that persuader activity is underreported. One law firm commenter argued that the underreporting claims were based on anecdotal evidence from biased sources. A trade association commenter disagreed with the Department's analysis of NLRB/NMB representation cases and levels of LM–20 reporting (76 FR 36186), and stated that the NPRM's analysis failed to prove the existence of an underreporting problem.

A law firm stated that the Department did not explain why it only looked at NMB and NLRB representation cases from 2005 through 2009, and questioned the Department's estimate of how many Form LM–20s should have been filed, based on that NMB and NLRB data. It asserted that there is no evidence that those consultants engaged in persuader activity, and also stated that there is no evidence that the Department's reporting expectations are reasonable and realistic.

One commenter argued that the cited studies did not substantiate that the 75% figure is an accurate estimate for elections conducted by the NMB in the airline and railroad industries. The commenter states that airline and railroad industries already have high unionization rates, so labor relations consultants are not hired as often, and employers in these industries respond differently to organizing campaigns.

In the Department's view, as reflected in the NPRM and reiterated here, the LMRDA, properly interpreted, requires the reporting of consultants' direct *and* indirect persuasion of employees. Both the data used and the cited research illustrate the extent to which indirect persuasion, several decades after the enactment of section 203, continues to be relied upon by consultants to influence employees about how they should exercise their union representation and collective bargaining rights. The Department has separately demonstrated, as a matter of textual analysis, congressional intent, and public policy, that indirect persuasion should be reported to the same extent as direct persuasion. As such, the vast scope of indirect persuader activity by consultants supports the expansion of reporting beyond merely direct persuasion, in order to ensure the full reporting of persuader agreements envisioned by Congress, and to ensure adequate transparency.

The Department also notes that this rule does not establish retroactive obligations or penalties. Further, the Department has not created a new category of persuader activity. Rather, indirect persuasion activities (including orchestration of counter-organizing campaigns through the use of employer representatives or supervisors), practiced by consultants in the name of ''advice,'' come within the plainly-described category of activities reportable under section 203. Employees need to know about persuader activities in order to make informed decisions on whether to organize and collectively bargain.

In response to the comments stating that the NPRM did not provide sufficient evidence or analysis to justify its claims of underreporting, the Department notes that it did not purport to specify an exact reporting (or underreporting) rate. Rather, the Department, first, sought to develop an estimate of the underreporting of persuader agreements by generating a hypothesis from industrial relations research. The Department reiterates that such research is based on sound methodology and provides a solid basis for the Department's estimate that 75% of employers retain consultants to manage counter-organizing campaigns.

Second, the Department analyzed NLRB and NMB data to determine the number of election petitions filed.[53] Data for the most recent five-year period available (2005–2009) was used in order to reduce the effect of single-year spikes in the number of elections.[54] Data for earlier years is less reliable, and could

[53] The 75% estimate is based on available research that did not distinguish between NLRA and Railway Labor Act union organizing campaigns, so the Department is not able to separately calculate the estimated number of reports for counter-organizing campaigns in the railroad and airline industries. The Department utilized data from both agencies in an effort to be comprehensive in scope. The Department also notes that this rule utilizes the the mean rate (78%) of employer utilization of persuaders, rather than the median rate (75%) used in the NPRM, for the purpose of statistical consistency.

[54] As discussed in Sections VI.G, the Department has relied on updated data for FYs 10–14 (09–13 for the NLRB) to assess the burden associated with this rule.

potentially skew the average, because both agencies experienced significant decreases in the number of representation elections.

Third, the Department developed its estimate for the number of reports covering consultants managing counter-organizing campaigns by applying the 75% percentage figure to the number of NLRB and NMB election petitions filed. The Department also took into account the number of reports received by OLMS in recent years in arriving at this estimate. This data supported the conclusions reached in congressional hearings, executive branch commission reports, and labor-management relations research—that information Congress intended to be reported has not been reported.

The commenters actually did not dispute the underlying factual premises of the Department's conclusion. That is, they did not reject the assertion that approximately 75% of employers' counter-organizing campaigns involve the use of outside consultants engaging largely in indirect activities. Rather, they disputed the Department's conclusion that indirect activity undertaken by consultants should be reportable. The Department emphasizes that the cited research characterized the consultants' activities as constituting the management or direction of the employer campaigns, and that many of the comments supporting the proposed rule concurred with that reading of the research and the conclusions of the studies.

Finally, multiple commenters suggested that the Department need only increase its enforcement initiatives and compliance assistance efforts under the current ''advice'' interpretation to achieve an increase in reporting rates. A consulting firm stated that the Department has not adequately demonstrated why simply following current reporting rules could not solve the underreporting problem. A law firm argued that if there is currently underreporting, there is no reason to assume that those who do not report would suddenly do so if the Department broadened the scope of reportable persuader activity. This commenter argued that the proposed changes would adversely impact employers who are not underreporting, and who are already in compliance with the LMRDA. This commenter also asserted that the Department underestimated the potential effectiveness of the prior interpretation, and argued that the current rules would allow for investigation and enforcement of some of the examples described in the NPRM. The commenter suggested attempting to apply the prior interpretative standards before rejecting them in favor of new ones.

In response to these comments, the Department acknowledges the importance of strengthening enforcement in all provisions of the LMRDA. However, increased enforcement alone would not be a sufficient substitute for the Department's revised interpretation of the reporting requirements. Limiting enforcement initiatives to those that address employer-consultant reporting under the prior interpretation would fail to secure reporting of indirect persuader activities (which predominate the persuader services provided by consultants). As a result, the ''underreporting'' referred to in the NPRM exists in relation to the reporting necessary to achieve the aims envisioned by Congress in enacting the LMRDA, not in relation to the full reporting of only direct persuasion. Although the Department received several comments anecdotally suggesting that some direct persuasion was going unreported, there is little support in the rulemaking record that non-compliance by consultants with regard to direct persuasion in some way indicates that they should be relieved from an obligation to disclose their indirect persuasion.

The Department remains committed to providing effective compliance assistance for employers, consultants, and unions subject to LMRDA reporting requirements, and will continue to do so with this rule. Further, the Department notes that ''failure to file'' situations would be handled by various enforcement mechanisms, similar to those routinely used to enforce labor unions' reporting obligations. The Department's robust reporting regime that has long been in place for labor unions has yielded ''best practices'' that will be helpful in establishing enforcement methods in the employer-consultant reporting realm.

d. Comments on Consultant Industry Growth

As stated above, several commenters supported the Department's conclusions regarding the underreporting of persuader activities despite the growth of the persuader industry. Comments from several international unions and one public policy organization reported that hiring labor relations consultants has become a prevalent practice whenever an employer faces a representation election.

Multiple commenters argued that the Department had insufficient justification for its claim of growth in the labor relations consulting industry. One law firm commenter stated that the various studies citing percentages of consultant use over the years did not provide adequate evidence of significant industry growth. This commenter argued that the cited studies did not provide evidence of the number of consultants who actually engaged in reportable persuader activities, and did not provide data on the number of consultants or consulting firms in the United States.

A law firm stated that the supposed increase in consultant use does not sufficiently justify the proposed rule, and argued that if no reporting is now occurring the Department has no way to measure an increase in the use of union avoidance consultants. Further, a trade association stated that the Department claimed that the current ''advice'' interpretation itself has led to an increase in the union avoidance consulting industry. Another commenter claimed that the Department's goal is to reduce the number of consultants, regardless of their conduct, and argued that the fact that a majority of employers hire consultants during organizing campaigns is not germane to the Department's analysis. A trade association offered the interpretation that employers' increased use of consultants may simply mean that employers are working harder to ensure that they do not violate the Labor Management Relations Act (LMRA).

In response to these comments, the Department repeats its earlier statements in this preamble that the purpose of this rule is not to criticize the use of labor relations consultants or in any way to curtail or interfere with their use by employers.[55] In fact

[55] Some commenters have suggested that the issuance of this rule will lead to a reduction in the number of firms in the industry because the required reporting will lead to employers opting to refrain from hiring consultants or consultants choosing to no longer offer their services. As we discuss further in section V.G.1 of the preamble, the Department is highly skeptical of such claims. Indeed, no commenter submitted any persuasive argument in support of that prediction. We think it more likely that, as an incidental result of the reporting, there may be greater competition within the industry, with some winners and losers, as employers review the reports to see which consultants are ''leaders'' within a particular business segment and the variety and the range of costs for services offered by the consultants. Given the prevalent and increasing use of consultants in representation campaigns over time and the significance that most employers attach to opposing union representation, it seems improbable that this rule will have even a marginal impact on the well-established practice whereby employers routinely seek the services of consultants when facing the prospect that the company's employees may choose union representation.

consultants that limit their actions to providing legal services, distinct from persuader activities, incur no reporting obligation under this rule. This rule does not posit the growth of the labor relations consultant industry as justification for the proposed rule. In issuing this rule the Department is unconcerned about the outcome of particular elections or the overall number or rate of wins and losses. Our concern is that employees are provided the information that they need, as prescribed by Congress, in making choices about union representation and collective bargaining matters. With this information, it is up to the employees to sort through and resolve the competing positions of unions and employers in representation campaigns. As mentioned previously, the contemporary, prevalent use of labor relations consultants demonstrates the continuing need to ensure compliance with the reporting requirements prescribed by Congress. The size of the industry provides a useful backdrop to underscore the relative paucity of persuader reports filed with the Department. Since section 203 requires disclosure of employer-consultant agreements or arrangements whereby the consultants undertake activities with an object to persuade employees concerning their rights to organize and bargain collectively, the low Form LM–20 reporting levels are especially striking when viewed in the context of consultant industry growth. It is this disparity that underscores the course taken by this rule, and the path earlier taken by the Department that failed to ensure the disclosure of persuader activities undertaken by labor relations consultants, behind the scenes, to influence employees in the exercise of their protected rights. Clarifying the ''advice'' exemption will allow the Department to more effectively and accurately administer and enforce section 203, and to secure the type of disclosure that Congress intended.

On a more particular point, several commenters expressed confusion about the NPRM's discussion of the number and size of consulting firms. See 76 FR 36204–36206. In response to these comments, the Department notes that it was required to analyze financial burdens to covered employers and consultants in order to comply with the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* Executive Order 13272, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and the PRA's implementing regulations, 5 CFR part 1320. Accordingly, the Department used quantitative methods to conduct its analysis, which was subsequently used to assess the rule's impact on small entities for the purposes of RFA compliance. In making this assessment, the Department presented an analysis of data from the U.S. Census Bureau's North American Industry Classification System Codes (NAICS) for ''Human Resources Consulting Services,'' which includes ''Labor Relations Consulting Services,'' to determine the number of labor relations consultants and similar entities that can be classified as ''small entities'' affected by the Form LM–20 portion of the proposed rule.[56] Additionally, the Department utilized the Small Business Administration's (SBA) ''small business'' standard of $7 million in average annual receipts for ''Human Resources Consulting Services,'' NAICS code 541612.[57]

e. Comments on Election Outcomes

A law firm stated that the Department is suggesting that unions would win more elections if more Form LM–20s were filed, and then argued that historical union success rates in representation elections contradict that point, since union success rates have been higher in the past decade than at any time since the 1970s. This commenter stated that the NPRM did not explain why unions' success rates in representation elections would be increasing during a time of growth in employers' hiring of consultants. Characterizing the NPRM as asserting that employers' increased use of consultants has an impact on the success of union organizing efforts, this commenter stated that the Department has not adequately shown how increasing employer-consultant reporting requirements would produce a change in representation election outcomes.

One labor relations consulting firm questioned why the Department cited studies that suggest that losses by unions in representation elections are the result of anti-union tactics by consultants, given that ''unions win nearly 70% of contested elections each year.'' A law firm representing employers noted an increase in union win rates, stating that ''unions won 48% of NLRB elections in 1996 and nearly 68% in 2010.'' A trade association stated that the Department has not provided sufficient evidence that current employer-consultant reporting levels have any correlation to decreased unionization rates, noting that unions won 67.6% of elections in 2010. *Number of NLRB Elections Held in 2010 Increased Substantially from Previous Year,* Daily Labor Report (BNA), No. 85, at B–1, May 3, 2011. This commenter stated that the proposed changes are not supported by union election success rates.

Further, a labor relations consulting firm argued that ''union tactics as a group play a greater role in explaining election outcome than any other group of variables, including employer characteristics and tactics.'' Additionally, a construction-related trade association commented that the unionization in the construction industry has declined because of union failures, and noted that there is no evidence to show that consultants' LMRDA violations are responsible for the decline. Finally, another trade association asserted that the proposed rule fails to specify the types of persuader activities that have increased and that have resulted in union election losses.

Contrary to some commenters' assertions, the Department did not claim in the NPRM that the increasing usage of consultants has had a specific impact on unions' organizing success rates. Moreover, the issuance of this rule does not have an object to tilt the balance in favor of unions or against employers in representation matters. The object of the rule is to provide information that employees need, as intended by Congress, to be able to consider the extent to which an employer's choice to hire a labor relations consultant to manage the employer's campaign should affect their choice to accept or question the arguments presented in opposition to union representation. It seems beyond dispute that upon receipt of this information, workers will be better able to exercise their representation and collective bargaining rights, a particular benefit to them and a general benefit to the public.

In response to the commenters that stated that the Department did not adequately explain how unions could have increased success rates in representation elections during a time of growth in employers' use of consultants, the Department reiterates that election outcome is not germane to this rule. The Department concurs with commenters stating that consultants are hired by

[56] See Statistics of U.S. Businesses: 2012: NAICS 541612—Human resources & executive search consulting services, United States, accessed at: *www.census.gov/econ/susb/.*

[57] The NPRM referred to the U.S. Small Business Administration's Table of Small Business Size Standards Matched to the North American Industry Classification System Codes (2007). As discussed later in the text, the 2012 NAICS shows $14 million in average annual receipts for ''Human Resources Consulting Services,'' accessed at: *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (at p. 32).

employers for purposes beyond counter-organizing persuader activities. As previously mentioned, consultants can be hired for a variety of purposes beyond orchestration of counter-organizing campaigns (*e.g.,* to provide strictly legal advice or general management consultation, vulnerability assessments, or to provide services related to general union avoidance, first-contract avoidance services, or decertification).

3. Disclosure as a Benefit to Harmonious Labor Relations

In the NPRM, the Department, referring to several research studies, expressed its view that there is strong evidence that the undisclosed activities of some labor relations consultants are interfering with workers' protected rights and that this interference is disruptive to effective and harmonious labor relations. The research included findings that some consultants counsel their employer-clients to fire union activists for pretextual reasons other than their union activity, or engage in other unfair labor practices, particularly because the penalties for unlawful conduct are typically delayed and may be insignificant, from the employer's viewpoint, compared to the longer-term obligation to deal with employee representatives. See 76 FR 36189–90 and Section III.B.1 of the preamble to this rule. This is not a new phenomenon. It is not the Department's intent in referring to this research to suggest that the increased use of consultants is the cause of, or an accelerator to, unlawful conduct by employers during organizational campaigns. At the same time, however, it cannot be ignored that Congress was concerned about and reacted to what it considered to be conduct by some consultants that, even if lawful, was viewed as disruptive to stable and harmonious labor relations. The Department recognizes, as we presume Congress did, that in most instances employers and labor relations consultants will adhere to the requirements of the NLRA and other laws.

After a review of the pertinent comments, the Department continues to believe that its revised interpretation of consultant persuader activities will have a positive impact on labor relations.

A number of commenters applauded the proposed rule as a long-needed response to what they viewed as the disruptive effect consultants have on labor-management relations, especially during representation campaigns. Several commenters viewed consultants as their chief antagonists in attempting to secure employee rights and appeared to view consultants as the root cause of most unlawful conduct by employers. Many of these commenters supported the rule, and several provided examples of the consultant activities they have witnessed. Other commenters, however, were critical of the Department's assessment of consultant and employer practices, arguing that the studies cited were inadequate to make such an assessment. Two commenters also argued that the rule is superfluous, contending that unlawful consultant activities are already governed by the NLRA and enforced by the NLRB.

Several commenters opposing the revised interpretation disputed the idea that consultants have a harmful impact on labor relations. Many of these commenters challenged the research referenced in the NPRM and maintained that the Department has not provided sufficient evidence to justify this rule. For instance, the Department received a comment from an individual with more than thirty years of experience as a human resource and labor relations professional. This person stated that he had never intentionally committed an unfair labor practice, advised anyone to do so, nor received advice to do so from a labor relations consultant or attorney.

Two associations representing small businesses stated that their members do not have any interest in deceiving employees or committing unfair labor practices. A trade association for manufacturers contended that the NPRM contained no ''substantial evidence'' to support a change in the Department's prior interpretation and that the Department failed to provide any evidence that contemporary consultants engage in the types of activities to which the LMRDA was intended to deter.

Another trade association asserted that the NPRM, if implemented, would actually result in more election interference charges, despite the Department's stated goal of reducing improper conduct in representation elections. The association criticized the NPRM's reliance on the research of Kate Bronfenbrenner, Chirag Mehta, and John Logan. While the association admitted that certain consultants and lawyers engage in ''shady'' activities, it did not think the cited studies presented any evidence that ''all, most, or even many'' consultants engage in unlawful or unethical conduct.

Many commenters appear to have misunderstood the Department's position. Several commenters read the Department's proposal to reflect a finding *by the Department* that labor relations consultants as a class, or the growth of their industry, have caused an increase in unfair labor practices by employers, that labor relations consultants, not employers, are chiefly responsible for such unfair labor practices, that labor relations consultants are disreputable, or that the reporting of indirect persuader activities will have a substantial or direct effect on deterring employers from undertaking actions that constitute unfair labor practices or other unlawful conduct. The Department did not adopt these observations of researchers as its own. The Department's conclusion was narrower. As stated in the NPRM: ''The Department concludes that, as was true in in the 1950s, the undisclosed use of labor relations consultants by employers interferes with employees' exercise of their protected rights to organize and bargain collectively and disrupts labor-management relations. The current state of affairs is clearly contrary to Congressional intent in enacting section 203 of the LMRDA.'' 76 FR at 36190. That is the key finding to this rulemaking.

As we have reiterated throughout the rule, its purpose is to provide information to employees, consistent with section 203, where an employer has hired a consultant to engage in persuader activities, including those indirect, behind-the-scenes activities, that are currently left unreported. With this information, the employees can better assess the message they are receiving, including its content and tone, and the extent to which the message accurately reflects the employer's (or its supervisors') actual, concrete beliefs. Employees are entitled to receive this information under section 203 and this rule effectuates that provision without regard to whether the consultant, as we expect will be the norm, is fully compliant with the law.

Some commenters stated that many consultants have never employed any unlawful or unethical tactics. Although these specific commenters, like most other labor relations consultants and employers, may have never engaged in these types of tactics, there are some consultants that are less scrupulous and whose actions unfairly tarnish the reputation of others. In addition, the Department cannot ignore the research that establishes that a significant number of tactics used in union avoidance and counter-organizing campaigns, whether lawful or unlawful, are disruptive of harmonious labor relations when not fully disclosed, as many commenters attested. For example, an international union commented that some consultants operate behind the scenes by coaching

employers on how to facilitate the ''spontaneous'' formation of employee committees, which are used as fronts for the employer's anti-union activity. Other consultants, according to this commenter, design tests and surveys to help in identifying pro-union workers.

Several commenters recounted their experiences with consultants during union organizing campaigns, noting particular activities they had observed and noting that these activities had been left unreported. One commenter recounted his past experience with a law firm's tactics to oppose representation, explaining that the consultants conducted face-to-face and group meetings with employees where literature, clearly not authored by the employer, was distributed. Another commenter described a consultant's effort to contest the union's efforts to organize a nonprofit health provider. He described the consultant's emphasis on indirect persuasion by educating managers about their role in the organizing campaign and training supervisors and coordinating their efforts to prevent unionization. The commenter stated that the consultant told managers to pull nurses from their patient-care duties to attend mandatory union avoidance meetings.

A counsel for a labor organization stated that in the ''hundreds'' of organizing campaigns he has observed, consultants go far beyond merely advising employers. As he explained, consultants have undertaken the following activities: engaging in direct contact with employees in captive audience speeches and one-on-one meetings; routinely drafting and disseminating anti-union propaganda documents; interrogating employees about union sympathies; conducting polling and surveillance of employees; helping employers identify and fire union supporters; and bribing employees to vote the union down.

A law firm representing unions stated that in its 50-plus years in existence it has seen how the LMRDA reporting requirements have been largely ignored because of the prior interpretation of reportable activities. The firm listed numerous indirect persuader activities that it has observed over the years. In addition, the firm stated that managers and supervisors are taught many other activities and tactics, some of which are unlawful under the NLRA and others which are not. The firm noted, however, that virtually none of these activities is reported.

The Department recognizes that these comments in support of the NPRM, like the ones in opposition, are largely anecdotal. Nonetheless, the Department believes that these experiences from union members, organizers, and attorneys serve to confirm and buttress the research discussed in the NPRM and the preamble to this rule. Moreover, many of the commenters' experiences are akin to those heard before the Senate Subcommittee on Labor-Management Relations in 1980. The Subcommittee described as ''distressing'' a consultant's activities during a hospital organizing campaign, including the use of a captive audience meeting and staff changes, caused a decline in the quality of patient care. See 1980 Subcommittee Report at 42. The comment above concerning the recent efforts of a nonprofit health care provider to discourage its nurses from unionizing involved similar circumstances. This comment lends support to the Department's position that many consultant activities, hidden from employee view, which prompted the need for section 203, continue to be problematic in more contemporary times.

In addition, the Department finds unpersuasive the criticism leveled by some commenters that the revised interpretation will actually result in more interference charges before the NLRB. A consultant merely engaging in legal services does not trigger reporting, so the Department is not persuaded that this rule will reduce the ability of employers to receive legal counsel. See Sections V.G and H discussing the rule's potential impact on free speech and the attorney-client privilege. Without any supporting data or analysis, the theory that this rule would lead to an increase in unfair labor practice charges is purely speculative and conclusory.

Other commenters opposing the rule also challenged the Department's premise, as stated in the NPRM, that there is some correlation between ''the proliferation of employers' use of labor relations consultants'' and ''the substantial utilization of anti-union tactics that are unlawful under the NLRA.'' 76 FR 36190. A trade association for the construction industry contended that this premise is not supported by any empirical data. According to the commenter, the fact that employers are engaging legal counsel more frequently does not indicate a desire to act unlawfully, but rather, is merely a means for them to maximize their right to educate and inform employees.

Likewise, a law firm submitted comments disputing the view that the use of consultants is the cause of unfair labor practices or objections filed in NLRB-conducted elections. The firm pointed to the NLRB's well-established policy of requiring that elections be conducted under ''laboratory conditions.'' The firm then noted that objections are filed by parties in only approximately 5% of all NLRB elections, and of the cases in which objections are filed, the NLRB has found that 50% have no basis in fact or law. The firm also noted the low number of ''test of certification'' cases filed with the NLRB, which, in its view, is at odds with the Department's perception that a new interpretation was needed. In contrast, a national labor union commented that the available evidence shows a strong correlation between the hiring of a consultant and unlawful behavior by supervisors, thereby undercutting the assertion by some commenters that consultants are merely instructing supervisors on how to comply with the law.

As previously discussed, the Department finds no persuasive reason to doubt the studies cited in the NPRM, insofar as they conclude that the proliferation of employers' use of labor relations consultants has been accompanied by the substantial utilization of unlawful tactics. The Department clarifies, however, that it did not intend to conclude that a causal relationship exists between the use of consultants and unlawful activity. The Department also concurs with the comment by the trade association opposing the proposed rule, who asserted that there is no data showing that employers who hire consultants to engage in direct persuasion (and file LM reports under the prior rule) are more or less likely to interfere with employee rights than employers who hire consultants to engage in indirect activities.

The Department also does not find the NLRB statistics cited by the law firm above to be persuasive. Many unknown variables may factor into a union's decision to file an election petition, withdraw that petition prior to an election, or file or not file an election objection. That objections were filed in only about 5% of all NLRB elections has very little, if any, correlation with the number of improper activities undertaken by many consultants on behalf of employers. The rate of ''test of certification'' cases are even less related to the number of improper activities, as many of those cases challenge NLRB decisions on which persons can or cannot vote in an election.

Finally, a labor consulting company argued that the revised interpretation of the advice exemption would not address the Department's concerns about improper consultant activities. A significant number of identical or nearly

identical comments came from other companies, organizations, and individuals using this labor consulting company's form letter. According to the commenters, alleged improper conduct by labor relations consultants (*e.g.,* bribing employees, firing organizers, or spying on workers) are more properly investigated and enforced by the NLRB. A different commenter similarly stated that the NLRA already contains ample remedies for addressing unfair labor practices and that it is not the Department's role to address lawful labor practices that it finds ''offensive.'' As such, these commenters argued that new reporting requirements under the LMRDA would do nothing to reduce unlawful or egregious activities discussed in the NPRM.

The Department rejects the contention that because unfair labor practices are already illegal under the NLRA and enforced by the NLRB, that this rule is unnecessary. The LMRDA is a companion statute to the NLRA. Disclosure helps employees understand the source of the information that is distributed. This type of exposure also discourages potential unlawful acts and reduces the appearance of impropriety. Id. at 708.

That the NLRA works toward those same goals by offering procedures to remedy unfair labor practices does not diminish the Department's responsibility or ability to fulfill its congressional mandate under the LMRDA. The LMRDA requires the reporting of direct and indirect consultant persuasion of employees without regard to whether these activities are unfair labor practices. ''When enacting the LMRDA, Congress did not distinguish between disclosed and undisclosed persuaders or between legitimate and other types of persuader activities. Rather, Congress determined that persuasion itself was a suspect activity and concluded that the possible evil could best be remedied through disclosure.'' *Humphreys, Hutcheson and Moseley,* 755 F.2d at 1215.

D. Comments on Clarity of Revised Interpretation

Multiple commenters contended that the revised interpretation is ''subjective'' and ''vague,'' unlike the ''clear,'' ''objective,'' and ''bright-line'' test described in the prior interpretation. They advocated retaining the prior interpretation, which focused on whether the employer could accept or reject advice or materials offered by the consultant. Under the prior interpretation, reporting was required only if the consultant had ''direct contact'' with employees.

One commenter contended that the proposed rule would inject ''subjectivity'' and would create ''inconsistent and arbitrary outcomes.'' Another commenter argued that the Department is ignoring the complexity of today's workplaces, in which the line between ''union avoidance'' and ''positive employee relations'' has been blurred, as employers may have one or both purposes attached to a single activity, making it difficult to determine the underlying purpose. A consultant expressed concern that the proposed rule would require employers and consultants to always look at the ''intent behind consultant or attorney activities,'' adding unwarranted complexity and cost to reporting. Another commenter, a trade association, argued that the ''arbitrariness'' of the proposal was exemplified by the requirement that persuasive communication submitted orally to the employer would not trigger reporting, but written ones would. This commenter also inquired into what the ''evidentiary standard'' would be for determining the intent of a consultant's activity, suggesting that the standard would unfairly impose a ''strict liability'' test.

The Department disagrees with the assertion that this rule exchanges a clear, bright-line test for one that is subjective and vague. Contrary to commenters' assertions, reporting under both the prior interpretation and this rule rests upon whether the consultant undertakes activities with an object to persuade employees, which is determined, generally, by viewing the content of the communication and the underlying agreement with the employer.[58] Indeed, at least one commenter who opposed the proposed rule acknowledged that the ''object to persuade'' test is identical under both reporting regimes. What differs with this rule is the context in which this test is applied. The prior rule administratively limited the application of the underlying test to direct, employee-contact situations; this rule requires that indirect persuader activities also be reported.

In response to the commenters' concerns that the indirect persuasion category is too amorphous, the Department notes that the term ''persuade'' is not ambiguous, uncertain, or vague. The Fourth Circuit in *Master Printers of America,* in construing section 203(b), stated that a statute is not vague if ''it conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.'' 751 F.2d at 711 (citing *United States* v. *Petrillo,* 332 U.S. 1 (1947)). The court determined that the term ''persuade,'' based on its common meaning and as used within the context of the LMRDA, is neither ambiguous nor confusing. Id. Further, in an effort to provide greater clarity, this rule groups the list of indirect persuader activities from the NPRM into four specific categories: The directing or coordinating of supervisors and other employer representatives; the preparation of persuader materials; presenting a union avoidance seminar; and the development and implementation of personnel policies and actions. Thus, not only is the underlying test (considering the object of the consultant's activity) consistent with the statute and the prior interpretation, it is also easily articulated and applied.

Further, the test is not ''subjective,'' as has been suggested. To determine reportability of an employer-consultant agreement or arrangement, the consultant must engage in or agree to engage in direct or indirect persuasion of employees. The analysis has two parts: (a) Did the consultant engage in the direct and indirect contact activities identified in the instructions; and (b) did the consultant do so with an object to persuade employees? The latter does not require a review of all the actions undertaken for the employer. What is required is a consideration of specific, objective facts: [59] The content of any communication created or provided by the consultant; the context in which a policy is established or action occurs; the labor relations environment (*e.g.,* if there is an organizing effort ongoing, election pending, or other labor dispute); [60] and the explicit and implicit

[58] See IM section 265.005, which states, in relevant part, ''it is plain that the preparation of written material by a lawyer, consultant, or other independent contractor which he directly delivers or disseminates to employees *for the purposes of persuading them* with respect to their organizational or bargaining rights is reportable.'' (emphasis added).

[59] A mental state, such as ''object to persuade,'' is an objective fact. The ''state of a man's mind is as much a fact as the state of his digestion.'' *Merck & Co., Inc.* v. *Reynolds,* 130 S. Ct. 1784, 1796 (2010) (quoting from *Edgington* v. *Fitzmaurice,* 29 Ch. Div. 459, 483 (1885)).

[60] The presence of a labor dispute is not a necessary condition to trigger the reporting of a persuader agreement; however, its existence can be an important fact to consider when evaluating the content of a communication and determining a consultant's objective in undertaking an activity. See IM section 261.005 (Existence of Labor Dispute) (1961), which states, in pertinent part, ''Agreements with an employer to persuade his employees as to their rights to bargain collectively should be reported irrespective of whether there is a labor dispute.'' Moreover, section 203(c) explicitly

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terms of the agreement or arrangement pursuant to which the consultant activities are undertaken. Application of the underlying test in ''indirect'' situations is no different than with ''direct'' situations.[61]

The ''object to persuade'' analysis focuses on whether the communication, explicitly or implicitly, disparaged unions, sought to demonstrate that a union is not needed, provided ways to defeat or remove a union, explained promises or threats made or benefits provided to the employees in connection with the exercise of their rights, or otherwise sought to affect employees' exercise of their rights. One would also look to see if the communication provided the employer's views, argument, or opinion concerning the exercise of employee rights to organize and bargain collectively, which would demonstrate persuasive-content. See IM 263.100 (Speech by Consultant).

In such cases, every communication from the consultant to the employer would not be analyzed; rather, only communications created by the consultant and intended for dissemination or distribution to employees. Similarly, where a consultant directs or coordinates the supervisors' activities, the object is inferred from the content of the supervisors' communications and actions. Further, as explained in more detail in Section IV.B and Section V.E.1.e, the Department has made clear that personnel polices developed by the consultant will not trigger reporting merely because they improve employee pay, benefits, or working conditions, absent evidence of an object to persuade employees in the agreement, accompanying communication, timing, or other circumstances relevant to the undertaking.

Regarding the commenter's inquiry concerning the ''evidentiary standards'' imposed by this rule, the commenter appears to be improperly conflating two principles: The reporting trigger created by section 203 and the criminal liability standard in section 209. Reporting is triggered by section 203(a)(4) and (b) by a showing that an employer and a consultant have entered into a persuader agreement or arrangement. Such an agreement involves the third-party undertaking activities with an object to persuade. This is the triggering mechanism for reporting, not a standard for civil or criminal liability. Section 209 imposes criminal liability if the employer or the third party willfully violates the statute. As a result, the consultant would not incur any criminal liability unless it willfully fails to report or otherwise willfully violates the Act. In either case, there is no ''strict liability'' standard.

E. Comments on Scope of Persuader Activities and Other Provisions of Section 203

1. Comments on Specific Persuader Activities and Changes Made to Proposed Advice Exemption Instructions

In this section of the preamble, the Department further responds to comments concerning specific consultant activities and whether such activities trigger reporting. In response to these comments and to simplify reporting, the Department has revised the instructions to separately address direct and indirect persuader activities and to differentiate them from other activities undertaken by consultants that do not trigger reporting. To better address concerns about activities engaged in by consultants with an object, *indirectly,* to persuade employees, the instructions group such activities into four categories, illustrating those that will trigger reporting and those that will not. An in-depth overview of each of the persuasion categories (direct and indirect), as well a discussion of non-reportable activities appears earlier in the preamble at Section IV.B. In that section, the Department also explains other changes made to the proposed advice exemption instructions.

a. Direct Interaction by Consultant With Employees

Reporting is required, as it had been under the prior interpretation, whenever a consultant meets face-to-face with an employee or employees, or directly communicates with them in some manner in order to influence them concerning how they exercise their representation and collective bargaining rights. Reporting is also required where the consultant engages the services of a third party to directly communicate with an employee or employees.

b. Planning, Directing, or Coordinating Supervisors and Other Employer Representatives

Reporting is triggered when the consultant directs the employer representatives' meetings with employees or the consultant plans or coordinates such meetings. If the consultant establishes or facilitates employee committees (groups of bargaining unit or potential bargaining unit employees that advocate a particular position concerning organizing and collective bargaining), either directly or indirectly through the directing or coordinating of supervisors and similar employer representatives, reporting is triggered. If the consultant trains the supervisor to engage in union avoidance (lawfully or otherwise), reporting is triggered. As stated more fully in Section IV.B, consultants must report if they plan, direct, or coordinate activities undertaken by supervisors or other employer representatives with an object to persuade, including their meetings and interactions with employees. Merely advising supervisors or other employer representatives to comply with the NLRA or other laws, however, does not itself trigger reporting.

The Department disagrees with the suggestion that the NPRM focused on the persuasion of supervisors as opposed to employees. The Department clearly stated, at 76 FR 36191, and repeats here, that reporting is triggered by indirect persuasion of *employees* through the planning, direction, or coordination of the supervisors or other employer representatives. Commenters inquired into potential reporting stemming from materials, such as those contained in a newsletter, provided to train supervisors or other representatives of their member organizations on how to improve their communication with employees. The mere provision of such material to employer-members does not trigger reporting. However, the Department cautions that any tailoring of existing training material by a consultant for a particular employer triggers reporting, as does a selection by a consultant of training material designed to instruct supervisors in the persuasion of employees about their representation and collective bargaining rights. Training or other directing of supervisors to persuade triggers

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provides that a consultant does not incur a reporting obligation by representing an employer in collective bargaining. Drafting a collective bargaining agreement does not indicate an object to persuade and thus, by itself, is no indication that a consultant has engaged in other activities that would be reportable.

[61] Even to the extent that the test, in its application, presents some borderline situations does not render it vague and subjective. Indeed, even the 1962 interpretation states that, ''the question of application of the 'advice' exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.'' This rule provides a firm basis for making this evaluation, consistent with the text and intent of the statute.

reporting regardless of the format (oral, written, electronic, or otherwise).

For purposes of clarity, in the final rule the Department has modified the checkbox item, ''Planning or conducting individual or group employee meetings,'' by separating this activity into two items: ''planning or conducting individual employee meetings'' and ''planning or conducting group employee meetings.''

c. Providing and Revising Materials

The provision of materials includes—drafting, revising, or providing persuasive speeches, written material, Web site, audiovisual or multimedia content for presentation, dissemination, or distribution to employees, directly or indirectly (including the sale of generic or off-the shelf materials where the consultant assists the employer in the selection of materials). Obviously, the same information may be conveyed orally; to ensure consistent reporting, the Department requires reporting regardless of how the consultant chooses to convey the material.

Many of these activities were listed in the instructions to the proposed rule and were addressed in comments. See 76 FR 36225. They are also addressed in the instructions published as part of this rule. See Appendices.[62]

Counseling an employer's representatives on what they can lawfully say to employees does not trigger reporting because it is ''advice.'' A consultant may provide services to an employer in any manner contemplated by their agreement; this rule imposes no restrictions on any such activities. This rule only affects whether certain activities undertaken by the consultant will trigger reporting. So long as the consultant engages only in advice, no reporting is triggered. Typical advice situations would include—providing the client with an overview of NLRB case law relating to the right of employees to organize and bargain collectively, including a recitation of examples of communication that has been found to be lawful and unlawful by the NLRB or other body; and reviewing and revising—to ensure legality or to correct typographical or grammatical errors—employer-prepared speeches, flyers, leaflets, posters, employee letters, or other materials to be used in presenting the employer's position on union representation or collective bargaining issues.[63] In contrast, adding to or revising the document to make it more persuasive, or providing or selecting persuasive communications for use by the employer, intended for distribution to employees, triggers reporting by the consultant, whether provided to the employer in oral, written, or electronic form.

One law firm questioned the reportability of communications in connection with the collective bargaining process. The Department emphasizes that the presence of a labor dispute is not a prerequisite for reporting of persuader agreements, although it may provide important context to determine if the consultant engaged in persuader activities. Section 203 exempts from reporting activities involved in negotiating an agreement, or resolving any questions arising from the agreement. An activity, however, that involves the persuasion of employees would be reportable. For example, a communication for employees, drafted by the consultant, about the parties' progress in negotiations, arguing the union's proposals are unacceptable to the employer, encouraging employees to participate in a union ratification vote or support the union committee's recommendations, or concerning the possible ramifications of striking, would trigger reporting.

This rule, as described above in Section IV.B, makes clear that the provision of pre-existing, ''off-the-shelf'' materials does not evidence a consultant's object to persuade employees, therefore is not itself reportable, without any communication between the employer and consultant. However, the Department cautions that any tailoring of existing persuasive documents by the consultant for a particular employer triggers reporting, as does the consultant's communication with the employer to select the appropriate persuasive materials for that employer. However, as noted below, trade associations are not required to file a report by reason of their membership agreements, or by reason of selecting off-the-shelf persuader materials for individual member-employers.

On a different point, some commenters inquired about the reportability of communications, prepared by consultants or other persons, which do not have an object to persuade an employer's employees, such as those directed at vendors or customers of an employer that have engaged the consultant's services, or members of the public. Such communications would not trigger reporting because they do not involve the persuasion of employees. In contrast, for example, newspaper, Internet, or similar advertisements created by a consultant and targeted for employees will trigger reporting because they have an object to persuade. See IM Section 255.600 (Newspaper Ads of Employers' Views) (1960, rev. 1962), Example 4.

d. Seminars

In the NPRM, seminars for supervisors or other employer representatives undertaken with an object to persuade employees are listed among the reportable activities identified on the proposed Forms LM–10 and LM–20. See 76 FR 36208, 36218. The preamble to the NPRM stated that such seminars, as well as webinars, conferences, and similar events offered by lawyers and consultants to multiple employer attendees concerning labor relations services, are reportable, to the extent that they involve a consultant undertaking activities with an object to persuade employees. See 76 FR 36191.

Commenters opposed the reporting of seminars, arguing that they should be exempt as ''advice'' and that, even if not exempt, such reporting would be overly burdensome. One law firm stressed that, in many cases, there was no ''agreement or arrangement'' in place for the presenter at the seminar. This law firm also inquired into whether it mattered if the consultant trained the employer attendees on what materials to disseminate to employees, or presented a ''campaign in a can,'' as opposed to a consultant reviewing materials communicated by employers in past campaigns. The comment also discussed the consultant's difficulty in determining whether it must report the seminar, particularly if the consultant merely volunteered to be a presenter at

[62] The proposed instructions stated that the following activities would trigger reporting: ''Drafting, revising, or *providing* a persuader speech, written material, Web site content, audiovisual or multimedia presentation, or other material or communication *of any sort,* to an employer for presentation, dissemination, or distribution to employees, *directly or indirectly.''* 76 FR 36211 (emphasis added). The italicized language was intended to broadly encompass persuasive communications provided by the consultant to the employer orally or in writing, as well as communications intended to be disseminated to the employees orally or in writing. To avoid the perception that persuader activities communicated orally are exempt from reporting, the final rule has been clarified on this point. The instructions now state that reporting is triggered if the consultant, with an object to persuade, ''provides material or communications to the employer, *in oral, written, or electronic form,* for dissemination or distribution to employees.'' See Revised Form LM–20 Instructions in the Appendix to this rule (emphasis added).

[63] It is the agreement to undertake or provide persuader activities that triggers reporting. A consultant who merely solicits business from an employer by offering to provide the employer with persuader services or merely provides off-the-shelf materials requested by the employer, does not trigger reporting.

the seminar, and expressed uncertainty about how to report employers who may have attended the seminars if a roll of attendees is not maintained. This comment suggested that the Department should either remove multi-employer seminars from reportability, or state that they would only be reportable if there is a ''specific 'arrangement or agreement' '' in place. A business association stated that seminar providers do not know what the attendees will do with the information offered. Another commenter argued that the reporting of such activities ''essentially imposes a penalty on the employer for attending such a session, because the employer must then devote additional staff time to understanding, completing, and filing the Form LM–10.''

Several commenters noted that presenters may lack some information about the employer attendees at a union avoidance seminar. One policy group stated that, ''absent mind reading skills, it will be impossible for a law firm, consulting firm, . . . or other entity to comply with the rule unless they report all attendees to their events and the fees that they paid.'' This requirement, stated the commenter, constitutes a grave violation of privacy and a tremendous administrative burden on providers and will reduce the number of informational programs and will increase their cost. It added that the proposed rule will lead to a less informed business and inevitably result in less, not more, compliance with the law. Additionally, a commenter stated that there is no textual or historical support to assert such coverage, and that the requirements could apply even where the instructor of the seminar has no familiarity with any individual employer and no knowledge of the employees. Further, it stated there is no evidence that programs of this type are sponsored with the promoters' advance knowledge that any materials or messages are being distributed specifically to any set of employees.

In response to comments received, the Department has modified and clarified the reporting of such union avoidance seminars. Initially, a trade association must report a seminar only if its own officials or staff members actually make a presentation at the event that includes employee persuasion as an object, as distinct from merely sponsoring or hosting the event. Further, in no case would an employer attending the seminar be required to file a Form LM–10 for attendance at a seminar. See Sections IV.B and D for more guidance concerning the reporting of seminars.

The Department acknowledges that seminars presented by labor relations consultants may provide guidance and recommendations to the employer attendees on a variety of labor relations topics, including the persuading of employees. Thus, some seminars may exclusively involve advice to employers, without the consultant intending any persuasion, direct or indirect, of employees. However, if the consultant develops or assists the employer with developing anti-union tactics and strategies to be used by the employers' supervisors or other representatives, such activity triggers reporting. In such cases, the consultant clearly has the goal of indirectly persuading similarly situated employees by helping their employers to direct or coordinate their supervisors and other representatives to engage in tactics designed to prevent union organizing. Such activities clearly involve more than merely providing recommendations to the employers, but, rather, are intended to assist the employers in persuading their employees.

Additionally, the Department shares the commenters' concerns about the potential reporting burden on the seminar organizer and presenter, as well as on the employer attendees. However, the Department disagrees with the suggestion by one commenter that requiring seminars to be reported is intended or operates as a penalty for attendance. Initially, the Department notes that only union avoidance seminars trigger reporting. Such seminars typically involve the development of persuader tactics that the employer and its supervisors and other representatives can use to persuade employees. These seminars do not include those focusing exclusively on maintaining a legally compliant workplace, one that is better for workers, more productive, efficient, tolerant, or diverse—nor do they include efforts to merely solicit business by recommending persuader services. Thus, this rule will not require reporting from lawyers and consultants who offer seminars that provide guidance to employers on labor law and practices. Further, this rule exempts employers from filing reports for agreements concerning attendance at union avoidance seminars, thus reducing burden for the thousands of employer representatives that commenters suggested attend such events. Moreover, trade associations will not need to report if they merely organize the seminar, and those entities that do file will only need to file one report for each seminar, listing employer attendees, as described in Section IV.E.

While these changes depart from the general approach that all parties to the agreement or arrangement must report persuader activities, the change, in the Department's view, is appropriate due to the unique characteristics of trade associations and the nature of seminars attended by multiple employers. Because an agreement arising from the seminar will be identical for all employers, there is little utility served by requiring separate reports for each employer attending the seminar, and any benefit from requiring each employer to file a report in such circumstances (potentially affecting thousands of employers in the view of some commenters) would be outweighed by the cumulative burden on employers. With regard to seminars that are sponsored or hosted by trade associations, requiring them to require reports would largely duplicate the information that will be reported by presenters. Importantly, this information will include the names of employer attendees, ensuring that this important information will be disclosed to employees and the public, as well as a description of the seminar. Furthermore, requiring the presenter to file the single Form LM–20 report, rather than the organizer, ensures that the most comprehensive information concerning the seminar is disclosed, such as which employees of the consultant made the presentation. See Form LM–20 Item 11.d in Appendix A.

Because persuader agreements stemming from attendance at seminars will arise when an employer registers for the seminar, thereby under the general rule triggering the 30-day deadline for filing a Form LM–20 upon entering into a persuader agreement, consultants could be faced with having to file a series of forms, a potentially significant burden. To ameliorate such burden, the instructions and § 406.2 of the Department's regulations, 29 CFR 406.2, have been amended so that a single Form LM–20, compiling information related to the employers that attend the seminar, may be filed. Such filing is due within 30 days after the date of the seminar.

Finally, the Department notes that the seminar presenter(s) would be required to report as indirect parties to the agreement, regardless of whether they volunteer or receive compensation for their services. In this regard, they incur the same obligation as they would in any circumstance in which they agree to provide persuader services.

e. Personnel Policies

Several commenters expressed a concern that under the proposed rule any personnel practice proposed by a consultant would be reportable. A consultant firm stated that ''virtually any positive employee relations practice'' could be reportable; even ''facially neutral'' activities could still trigger reporting if their ''intent is to reduce the likelihood'' of unionization. A trade association expressed concern that any communication from an attorney or consultant to the employer-client, which ''could have any influence'' on employer's communication with employees, would be reportable. A commenter expressed concern that even a seminar offered by a bar association on the drafting of employee handbooks would have to be reported.

A trade association expressed its view that under the Department's proposal a lawyer would be required to file a report if he or she drafted an employee handbook that contains policies supportive of the right of employees to choose whether or not to join a union through NLRB-conducted secret ballot elections. Another commenter expressed concern that under the proposal a report would be required whenever a consultant drafted a handbook that contained an open-door policy or other ''employee-friendly'' policies that encourage positive and lawful labor-management relations. The same commenter also thought that reporting would be required if a consultant made an audio-visual presentation for use in training employees about the employer's anti-discrimination or harassment policies. A law firm similarly expressed concern about the potential reporting requirements for employee handbooks, acknowledging that consultants often draft or revise such handbooks with the intent to cast the employer in a positive light and thus ''persuade'' employees. Another commenter stated that, on occasion, an employer asks a consultant to draft a ''union-free'' statement expressing the employer's policy against unions.

A law firm suggested that the proposed rule would require reporting from anyone whose work ''affects employees,'' including any communications between a lawyer and an employer, which could be viewed as an ''indirect attempt'' to persuade employees. It offered examples from the human relations industry, such as ''benchmarking'' best practices and other measures designed to ensure employee satisfaction, as well as the drafting of legally-compliant documents that meet the client's business purposes. The commenter also posed a number of hypothetical questions, which it proffered to illustrate the alleged compliance difficulties posed under the Department's proposal. Another law firm and a public policy organization also presented multiple hypothetical situations.[64]

As stated in Section IV.B, reporting is not required merely because a consultant develops policies that improve the pay, benefits, or working conditions of employees, even where the policies or actions may subtly influence or affect the decisions of employees. However, reporting is triggered if the consultant undertakes the development of such policies with an object to persuade, as evidenced by the agreement, any accompanying communication, the timing, or other circumstances relevant to the undertaking.

For example, reporting is required if the consultant determines that a monthly bonus to employees should be the equivalent of one month's dues payments of the union involved in an election. Further, even outside of an organizing drive reportable events can occur if the consultant enters into a union avoidance agreement with the employer and then develops a policy in which employees can come to management to grieve certain matters, or otherwise establishes an ''open door'' policy. In this situation, the open door policy was implemented to dissuade employees from exercising their rights to seek a union, and thereby secure, through collective bargaining, a grievance procedure. It is not determinative if the consultant develops a personnel policy proactively or in response to employee complaints. The inquiry will focus on whether or not the consultant developed the policy with an object to persuade employees.

This position is consistent with prior Departmental policy. In IM section 261.120 (Management Consulting Service) (1959), the Department advised: ''While the fact that a management consulting service is engaged in the development of 'Company Policy Manuals' and 'Job Evaluation and Classification' and 'Wage Administration Plans' intended to improve employee-employer relations does not, alone and in itself, bring that service within the reporting requirements of section 203(b), if the purpose of the service were in fact, directly or indirectly, to persuade employees in relation to collective bargaining, then it would [be reportable].'' Similarly, the fact that a management consulting service is engaged in the development of policies intended to improve workplace productivity or efficiency does not, alone and in itself, bring that service within the reporting requirements.

A consultant who develops a series of pay or benefit increases would not, merely because of this activity, trigger the reporting requirements, without some evidence that this was intended by the consultant to show the employees that a union is unnecessary. Communications explaining the reasons for the increase, drafted by the consultant, would not trigger reporting, unless circumstances indicated that the object was to persuade employees, such as how they should vote in an upcoming election. Merely providing advice on industry pay, FLSA classifications, NLRB posters, the use of surveillance cameras, or any other matter does not trigger reporting, as it is not undertaken with an object to persuade employees about their protected rights. For the same reason, if a consultant-lawyer's activities are limited to advice—such as reviewing personnel actions by the employer to ensure legal compliance, drafting documents unintended to influence the exercise of employee rights, or handling litigation or grievances—then the lawyer's activities will not trigger reporting. If the consultant-attorney, instead, identifies employees for targeted personnel actions as part of the strategy to defeat the union, then reporting is required.

If the consultant develops or revises a policy on the employer's use of social media or solicitation or distribution in the workplace—without doing so in a manner designed to influence employee decisions concerning union representation—then reporting would not be required. However, if there is evidence in the underlying agreement or accompanying communications that the policies were not established neutrally, but instead to affect the rights of employees to organize, then reporting would be required. That such a policy may potentially violate the NLRA is not relevant; it would trigger reporting because it was undertaken with an object to persuade.

[64] The Department has addressed herein numerous inquiries about particular activities that may or may not trigger reporting. This preamble, however, cannot respond to all, hypothetical situations that could arise under agreements between consultants and employers. In implementing this rule, the Department will provide compliance assistance and additional guidance as questions arise. Such assistance and guidance will benefit from inquiries that are based on more complete and concrete facts than provided by hypothetical situations presented by some commenters.

Merely drafting an employee handbook without some evidence in the handbook or any accompanying communication of an object to persuade, such as language that explicitly or implicitly disparages unions, will not trigger reporting.[65] For example, if the handbook includes statements such as—the employer's business model does not allow for union representation (regardless of how cleverly phrased), discussion among co-workers (or with ''outsiders'') with problems in the workplace is disapproved, or an employee must alert the employer if approached by a person advocating for a union, especially if the handbook is created or revised during an organizing campaign—then the consultant's development of such a handbook would trigger reporting. On the other hand, the development by consultants of personnel policies concerning plant moves, relocations, or closures, as well as workforce reductions, outsourcing, and subcontracting, do not, per se, trigger reporting, absent evidence showing an object to persuade employees.

Similarly, in response to a hypothetical posed by one commenter, an employer who hires an interior decorator to improve the working conditions at its facilities would not trigger a reporting requirement, per se, merely because a possible effect of such workplace change could be the subtle influencing of employees concerning their right to organize. Rather, to trigger reporting the interior decorator, like any third party, must undertake its activities with that object in mind. That such a scenario would be reportable is highly unlikely. That an agreement between the parties would call for the design of a workplace –layout, furnishings, wall coverings, lighting, fixtures, and so forth—to create an anti-union ambience seems a remote prospect.

With regard to personnel actions, the key to the analysis, to be made in the first instance by the consultant and employer, is whether the employer and consultant have agreed that the consultant will undertake an activity or activities with an object to persuade employees about how they should exercise their union representation and collective bargaining rights. Timing, content, and context will be important factors in making this determination. As mentioned previously, it is unlikely that a particular task, by itself, will be the sole consideration in making this determination. Reporting, however, would be triggered where a consultant identifies a specific employee or group of employees for reward or discipline, or other targeted persuasion, because of the exercise or potential exercise of organizing and collective bargaining rights or his or her views concerning such rights. In assessing a complaint that a consultant or employer has engaged in persuader activity but failed to file the required reports, OLMS will consider the nature of the agreement between the consultant and employer, any accompanying documents or communications, the timing, such as whether the hire occurred in connection with a labor dispute, and any statements by persons with firsthand knowledge about the allegations in the complaint.

For purposes of clarity, the Department has modified the two personnel policies and actions checkbox items. In the NPRM, the proposed checklist included: ''Developing personnel policies or practices'' and ''Deciding which employees to target for persuader activity or disciplinary action.'' The checklist in this rule modifies these to read: ''Developing employer personnel policies or practices'' and ''Identifying employees for disciplinary action, reward, or other targeting.''

f. Employee Attitude Surveys/Employer Vulnerability Assessments

Multiple commenters opposed to the NPRM expressed concern that employee attitude surveys are routine products offered by consultants to employers, products that seek to gain general insight in employee attitudes on compensation, benefits, and other employee concerns and complaints, without necessarily seeking to persuade employees or gather information on employee attitudes to unions. These surveys often do not mention unions, and the consultant may not be aware of the employer's interests concerning possible unionization.

One trade association asserted that given a concept as vague as ''union . . . proneness,'' almost any kind of survey could be characterized as persuasion. The proposal would deter employers from conducting employee surveys intended to improve working conditions and other initiatives related to positive employee relations (for example, opinions on benefits). Employers regularly survey their employees to assess overall job satisfaction, perceived effectiveness of management, and employees' attitudes toward current and potential new benefits.

In response to comments, the Department has removed this item from the list of persuader activities. The Department concurs with the comments stating that such surveys do not generally evidence an object to persuade, and therefore should not be separately listed. Further, the Department has added language to the revised instructions stating that, more broadly, vulnerability assessments conducted by the consultant are not reportable persuader agreements, as the consultant is merely providing advice concerning the employer's proneness to organizing, and possible recommended courses of conduct, but is not engaging in persuader activities. They may evidence such an object, however, if they are ''push surveys'' with leading questions designed to influence the views of the survey taker rather than ascertain the employees' views, or otherwise are intended to persuade employees. In such a case, the consultant (and employer) would check the appropriate box for the provision of persuasive materials.[66]

2. Comments on the Scope of Employee Labor Rights Included in Section 203

In describing the reporting threshold in the NPRM, the Department stated that reporting would be required if a consultant, pursuant to an agreement or arrangement with an employer, ''engages in activities that have as a direct or indirect object, explicitly or implicitly, to *influence the decisions of* employees *with respect to forming, joining or assisting a union, collective bargaining, or any protected concerted activity* (such as a strike) in the workplace.'' 76 FR 36192 (emphasis added). The Department discusses

[65] As for a seminar offered by a bar association on the drafting of employee handbooks, such an event would not trigger reporting unless it was part of a union avoidance seminar (in which the consultant develops or assists the attending employers in developing anti-union tactics and strategies for use by the employers' supervisors or other representatives). Moreover, as discussed above, it is unlikely that in such setting there would be an object to persuade employees in their exercise of their protected rights. See later discussion in the text for more guidance on seminars.

[66] Some surveys, however, may trigger reporting of an information-supplying agreement, if the information gathered concerns the activities of employees or unions in connection with a labor dispute involving the employer. See IM Section 264.006 (Employee Survey). Section 264.006 states: ''During an effort by a union to organize his employees, an employer hired an 'Employee Opinion Survey' firm to take a survey of his employees. Each employee was asked one question: 'Do you feel a union here would help or harm you?' 'Why?' Employees did not put their names on the forms. After the forms were returned, the survey firm tabulated the results. After tabulation, the forms were destroyed by one of the employees of the survey firm. The results were then turned over to management.'' It continues; ''Since these activities were designed to gather information and to supply it to the employer for use in connection with a labor dispute, the survey organization must file reports under the provisions of section 203(b)(2).''

below comments that address specifically the italicized language.

Numerous commenters argued that section 203 should not be read to require reporting unless consultant activities relate to union representation and collective bargaining rights of employees, not other employee rights to engage in ''any protected concerted activity.'' These commenters noted that unlike section 7 of the NLRA, section 203 does not refer to ''concerted activity.''

The Department concurs with the views expressed by these commenters. Section 203 requires reporting when consultants, pursuant to an agreement or arrangement with employers, undertake activities with an object to ''persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.'' Thus, to be reportable, the persuasion must be keyed to organizing and collective bargaining, specifically, and not the larger ''bundle'' of employee rights protected by section 7 of the NLRA. As a result, the Department has revised the instructions in this rule by removing the ''protected concerted activity'' language. To avoid any ambiguity on this point, the Department also has deleted the language ''forming, joining, or assisting'' a union, terms which more closely resemble the text of section 7 of the NLRA.

The Department stresses, however, that the rights expressly protected by section 203 that trigger reporting—relating to union representation and collective bargaining—are not to be narrowly construed and would include, for example, actions regarding strikes over representation issues. Moreover, the reporting obligations imposed by section 203 are not limited to activities involving employers covered by the NLRA, but extend to activities undertaken by a consultant to persuade employees about their union representation and collective bargaining rights under the Railway Labor Act (RLA), or another statute that protects the rights of private sector employees to organize and bargain collectively.

Regarding the use of the term ''influence,'' the Department did not use that term in the proposed instructions based on its connection with the larger universe of NLRA section 7 rights that had been proposed for inclusion in the LMRDA, but was not enacted as part of the statute. Rather, its use was intended to further explain the term ''persuade.'' Moreover, the Department notes that reporting is triggered when the consultant undertakes activities *with an object* to persuade or influence, not merely undertakes activities that could influence employees. Thus, as explained, the Department has clarified that not all personnel policies developed by the consultant would trigger reporting. Rather, only those that were developed with an object to persuade employees.

3. Comments on the Scope of ''Agreement or Arrangement''

A law firm suggested that the proposed rule was overbroad in describing the scope of the terms ''agreement or arrangement'' and ''undertakes activities.'' It cited to the proposed instructions, which state that the term agreement or arrangement ''should be construed broadly and does not need to be in writing'' and that ''a person undertakes activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.''

The Department declines to narrow the scope of the terms ''agreement or arrangement'' or ''undertakes activities.'' In this respect, the proposed instructions repeated the existing interpretation regarding the application of the term to oral agreements or arrangements. See prior Form LM–20 Instructions, Part X—Completing the Form LM–20, Item 10 (Terms and Conditions). The use of ''agreement or arrangement'' in the statute, without any limiting language, rather than the use of ''contract,'' or any other arguably less inclusive term, suggests that Congress intended the term to be broadly construed, including any informal understanding between the parties, and regardless of whether the agreement or arrangement is in writing. This broad construct of the term is consistent with the Department's longstanding reading of the statute. See IM Section 260.500 (Written Agreement Not Necessary) (1962) [67] and 261.300 (Oral or Supplementary Agreement or Arrangement) (1961).[68]

Regarding the term ''undertakes,'' the prior instructions also state that the term includes both the actual performance of the activity and the agreement to perform it. See the prior Form LM–20 Instructions, Part II—Who Must File. This is consistent with the concept that reporting is based upon the agreement itself. Moreover, a narrower construction would enable persuaders to delay reporting the agreement or arrangement, beyond the statutory 30-day period, thus thwarting the statute's goal of transparency for workers. See response to comments on issue of timing in Section V.C.1.f.

Multiple commenters inquired about the reporting obligations of employer and trade associations and similar membership organizations composed of employers. In such organizations, employers pay annual dues and receive a variety of services, including persuader services; as well as employee relations videos, webinars and seminars; and materials and newsletters intended to advise member companies how to improve employee relations and lawfully respond to union organizing. Similarly, a human resources association inquired into the coverage of franchisors that provide persuader and similar services as described above for their franchisees.

In response, the Department clarifies that because these organizations agree to provide persuader services to their members, an employer's membership in those organizations constitutes an ''agreement or arrangement.'' The association provides services by virtue of the membership agreement, even if no fee is charged.[69] The Department,

[67] IM Section 260.500 states: ''It is not necessary that an agreement or arrangement be formal or in writing in order to be within the scope of section 203(b). There may be no more than an understanding between an employer and an employer council that reportable services will be performed as necessary by the council. For example, both parties may understand perfectly that if an attempt is made to organize the employees of the employer, the council will provide material assistance (beyond the mere giving of advice) in persuading employees as to the manner of exercising their collective bargaining rights. Where such an understanding exists, both parties are required to report the terms of their arrangement or agreement, the employer's report being required by section 203(a)(4) of the Act. If periodic membership dues are paid by the employer to the association, annual reports would be required from each party for as long as the understanding continued to exist.''

[68] IM Section 261.300 states: ''Any decision or mutual accord between a firm and its attorney that the attorney was to render services which are described by section 203(b) of the Act would be reportable. Such an arrangement may be oral and may supplement a previous arrangement establishing the attorney's relationship with his client.''

[69] See IM Section 260.600 (Associations as Consultants), which states: ''Reports must be filed by an employers council which provides, as a regular service to its members, discussion meetings with the employees of the member employers which are intended to persuade such employees in the exercise of their bargaining rights. A report must be submitted by the council within 30 days after each employer entered into membership with the council, since the discussion meeting service is part of the membership agreements of the council. In addition the council would have to file an annual financial report within 90 days after the end of the council's fiscal year. The employers who are members of the council would also be required to report the arrangement under section 203(a).'' See also *Master Printers of America* v. *Donovan,* 751 F.2d 700 (4th Cir. 1984) (holding that employer association that distributed persuasive newsletters

Continued

however, emphasizes that under the final rule reporting is triggered only where the association engages in persuader activities, not by virtue of the membership agreement itself. This point is specifically included in the instructions to the reporting forms. Further, as discussed earlier in this preamble, the Department has clarified the instructions to address three other points affecting reporting by trade associations. First, the mere distribution of a newsletter addressed to its member-employers does not trigger reporting. Second, sponsoring or hosting a union avoidance seminar will not trigger a reporting obligation for the association. Third, the Department has exempted trade associations from the general requirement that reporting is required by the selection of pre-existing, off-the-shelf persuader materials for an employer. See Section X of the instructions, in Appendix A. However, trade associations that, in whole or part, manage union avoidance or counter-organizing campaigns for member-employers, by engaging in other persuader activities, will be required to report. Therefore, meaningful transparency is ensured while reducing unnecessary burden.

If engaged in reportable persuader activities for an employer, the trade association must file a separate report for each agreement that it enters into with a member-employer to engage in such persuader activities, with the employer filing a separate Form LM–10.

Additionally, in response to comments received, this rule modifies the Form LM–20 and LM–10 instructions to limit reporting for franchisor-franchisee arrangements. Although such franchise relationships would constitute an agreement or arrangement between separate legal entities, the Department considers that this relationship is substantially the same as would exist within a single corporate hierarchy (for which, generally, no reporting would be required for ''in-house'' activities by virtue of section 202(e)). In the Department's view, there would be limited utility in requiring disclosure of these activities by the franchisor, franchisee, or both. Employees and the public would generally know of the relationship between the parties, and they would naturally assume that the franchisee will follow the franchisor's approach to employment matters, including its views on union representation and collective bargaining matters. Limiting reporting in such fashion would therefore reduce burden on employers while not frustrating needed transparency. The Department cautions that this limitation does not affect the obligation of franchisors and franchisees (or their outside consultants) to report persuader agreements or arrangements with such consultants.

4. Comments on the Scope of ''Labor Relations'' Consultant and the Perception by Some Commenters That the Proposed Rule Favors Unions

The consultant reporting requirements of section 203(b) cover ''every person'' who enters into a reportable agreement, and the Department did not propose any changes affecting this coverage. Some commenters, however, suggested that the Department's proposal could be read to require reporting by an employer's in-house labor relations specialists. Others expressed the view that the Department also should have required labor relations consultants who provide ''persuader services'' to unions to report their activities on behalf of the union. Other commenters expressed the view that certain industries would be particularly burdened by the reporting requirements, as proposed, stating that circumstances in these industries demonstrated a central flaw in the proposal. Additionally, other commenters addressed coverage of the reporting requirements to consultants engaging with employers covered by the RLA, as well as those employers and consultants who engage in activities outside of the U.S.

a. Reporting by Employer's ''In-House'' Labor Relations Staff

As stated in Section V.E.4 of this rule, the Department did not propose any substantive changes to the Form LM–10 reporting requirements prescribed by sections 203(a)(1)–(3), and this rule does not implement any changes. The changes concerning those sections relate only to the layout of the form and instructions. Nevertheless, the Department received comments regarding reporting pursuant to section 203(a)(2), expressing concern that employers would have to report certain payments made to their own employees related to persuader activities. In response, the Department clarifies that the changes in this rule do not affect the reporting requirements pursuant to section 203(a)(2), or Part B of the revised Form LM–10, and that employers are not required to file a report covering expenditures made to any regular officer, supervisor, or employee of the employer as compensation for service as a regular officer, supervisor, or employee of such employer. See section 203(e). See also IM section 254.300 (Industrial Relations Counselor) (1960), which states in part, ''an employer will not be required to report in those parts payments made to an industrial relations counselor in his capacity as full-time director of industrial relations.'' Rather, this rule implements changes to the employer reporting requirements pursuant to sections 203(a)(4) and (5), where employers must report on Part C of the revised Form LM–10 concerning agreements or arrangements with consultants and other third-party independent contractors or organizations. The Department also has retained language in the instructions to Form LM–20 to make clear that in-house employer representatives, who qualify as regular officers, supervisors, or employees of the employer, are not required to complete the Form LM–20 report in connection with services rendered to such employer. See LMRDA section 203(e), 29 U.S.C. 433(e).

b. Industry-Specific Reporting Requirements

Several commenters highlighted particular facets of certain industries, such as construction, healthcare, and higher education, as evidence of the particularly burdensome nature of the proposed rule. The Department is unpersuaded that the rule will unreasonably burden any particular industry. With the limited exception of some requirements applicable to trade associations and franchisees, the Department does not see any factual, legal, or policy reason why particular businesses or industries should be treated differently than the norm. See Section V.E.3, concerning trade associations and franchises.

c. Perceived Bias Between Reporting Requirements for Employers and Those for Unions

Several commenters expressed the view that the proposed rule demonstrates that the Department applies the LMRDA more stringently to employers and consultants than to unions. In this regard, commenters expressed two principal arguments. First, the commenters asserted that the proposed rule fails to require consultants that advise unions on representation and collective bargaining matters (or, presumably, to persuade employees on such matters) to report such activities on the Form LM–10 and LM–20, even though unions may be employers and should be required, they assert, to file the same reports required

to employees of member employers must submit consultant reports).

of other employers and consultants. Second, the commenters argued that the proposed rule requires employers on the Form LM–10 to disclose how they conduct their strategy relating to union representation and collective bargaining, while unions are excepted from reporting such information on the labor organization Form LM–2 report due to a confidentiality exception. See the Instructions for the Form LM–2 Labor Organization Annual Report, concerning Procedures for Completing Schedules 14–19.

Regarding the first point, several commenters suggested that the employer-consultant reporting requirements would cover labor organizations that qualify as ''employers'' under the statute. According to these commenters, because unions are often employers, they and their consultants should also be covered by the section 203 reporting requirements. One law firm cited the Department's recent Form LM–30 rulemaking that exempted reporting by union officials for certain payments from unions as similarly contrary to the plain language and structure of the LMRDA. The commenter argued that the Department's justification for persuader reporting, *i.e.,* that it provides employees with essential information, applies equally to unions. A public policy organization similarly argued that the proposed rule should apply to unions and provided examples of union use of consultants from an international union's publicly-disclosed Form LM–2 report. One labor organization concurred with the Department's view in IM section 260.005 (Consultant for Labor Organization) (1961) that labor organizations and their consultants are not covered by section 203, and requested that the Department reiterate this view in this rule.

The Department has previously determined that the term ''employer'' in section 203(a)(1) does not include a ''labor organization,'' and this rule confirms this understanding with respect to the other subsections of 203. See 76 FR 66465–66. Section 260.005 of the IM provides that no report is required for activities performed by an attorney on behalf of a union (distinct from activities performed for an employer), even though the attorney meets the definition of ''labor relations consultants'' under section 3(m), because the only section of the Act which requires reports from labor relations consultants is section 203(b), which provides for reports from every person who has an agreement with an *employer* for certain purposes. In this rule, the Department confirms the interpretation in IM section 260.005, and notes that this position also reduces redundancy in the reporting requirements and burden on unions, as payments from labor organizations to third parties, including consultants, are reportable on the Form LM–2.

Although unions are not required to file the Form LM–10 and their consultants incur no Form LM–20 obligation for providing union representation and collective bargaining services to the union, union members and the public receive information relating to such activities. The Form LM–2, filed by unions that have $250,000 or more in total annual receipts, provides detailed and itemized information, including separately identified disbursements of $5,000 or more, as well as all disbursements to any person or entity receiving a total of $5,000 or more from that union in that fiscal year. Such itemized disclosure reveals the amount and nature of the disbursement, the name and contact information of the recipient, as well as the purpose of the disbursement, in a variety of categories, including representational activities. See Form LM–2 Instructions, Schedules 14 through 19. This information reveals disbursements of $5,000 or more, or totaling more than $5,000 within a year to any person or entity, and the nature and purpose of the payments in a variety of categories, including representational activities. These disbursements would thus include payments to consultants hired by the union.

Additionally, unions must report all disbursements to their own internal staff on the Form LM–2, and they must provide functional reporting that details the percentage of time devoted to a variety of tasks, including organizing and representational activities. See Form LM–2 Instructions, Schedules 11–12 (All Officers and Disbursements to Officers; Disbursements to Employees). Furthermore, union members, for just cause, may view the Form LM–2 report's underlying documents. See section 201(c); 29 U.S.C. 431(c). Employers do not have to provide this level of detail, particularly concerning their internal staff, in this rule or the previous rule, nor are they required to disclose underlying documents.

Regarding the second point, that the confidentiality exception in the Form LM–2 allows union filers to avoid itemized disclosure of certain payments and information that would be required on the Form LM–10, the Department disagrees with the contention that its reporting requirements for persuader agreements should provide a similar exception. In contrast to section 201, which is silent on the question whether Congress intended that unions would have to specifically identify financial expenditures relating to their organizational efforts, the language of section 203 specifically targets reporting by employers and labor relations consultants of their efforts to persuade employees about their representation and collective bargaining rights. Notwithstanding this clear mandate to require such reporting, the Department has fashioned this rule in a manner consistent with the overall intent of Congress to balance the twin goals of labor-management transparency and the prevention of unnecessary intrusion into labor relations. See 74 FR 52405–06. Indeed, as explained further below, the exemptions in sections 203(c), 203(e), and 204 serve largely the same purpose and effect as the confidentiality exception in the Form LM–2 Instructions, with labor organizations reporting much of the same information concerning consultants as do employers. Further, in many cases, labor organizations report greater information than do employers, such as information concerning payments to their in-house staff. For example, unions are mandated to file initial and annual reports by virtue of their status as labor organizations, which disclose almost all payments of $5,000 or more, while employers and consultants are only required to file as a result of entering into particular agreements or arrangements or, for employers, making certain payments or entering into certain transactions. Compare sections 201 and 203.

More specifically, this rule protects the exemptions that promote employer free speech, the attorney-client relationship, and the role of management in labor relations. In the preamble to the 2003 rule that expanded the reporting required on the Form LM–2 report, the Department responded to comments that it was imposing more stringent reporting requirements on unions than for employers by stating: ''[U]nlike the situation with regard to labor organizations, for over 40 years employers and their consultants have been statutorily required (29 U.S.C. 433(a) and (b)) to include particular 'persuader' information in their annual reports, while labor organizations have not. Implementation of this statutory scheme by the Department cannot be considered as evidence of either antiunion or anti-employer bias, and the suggestion of a double standard is unwarranted.'' See 68 FR 58397.

Under the Form LM–2, unions can avoid itemized reporting of certain

confidential information, such as information that would expose the reporting union's prospective organizing strategy. This exception ensures that the reporting requirements do not impair workers' rights to organize and bargain collectively or otherwise ''weaken unions in their role as the bargaining representatives of employees.'' Similarly, too stringent reporting requirements—such as requiring that a report be filed whenever a labor relations consultant enters into an agreement with an employer to provide any services if the agreement is entered into during a union organizing campaign (on the presumption that the agreement had persuasion as an object)—could restrict employer speech or weaken the attorney-client relationship. However, the statute and this rule, as stated, protects against these dangers, while ensuring the protection of workers' rights by providing them with information that enables them to effectively exercise their rights to union representation and collective bargaining. Through these provisions, a generally analogous exemption is maintained. Thus, employers are not required to report agreements with consultants in which the consultant provides a vulnerability assessment or other services, such as employee surveys designed to inform the employer about employee attitudes about workplace issues (as distinct from trying to influence employees against union representation), or a consultant's sales pitch, in anticipation of a union organizing effort, employer counter-organizing, or other union avoidance efforts by the employer.[70] Moreover, other provisions of the Form LM–2 confidentiality exception provide for similar protections as does the LMRDA employer-consultant reporting provisions. For example, section 203(c) provides an exception for representation, while the Form LM–2 protects against itemization of payments that would provide a tactical advantage to certain parties in negotiations; and section 204's exception concerning attorney-client communications is similar to the Form LM–2 exception regarding information pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing.

Further, unions can avoid itemized reporting of information in those situations where disclosure would endanger the health or safety of an individual. This provision is in the Form LM–2 instructions because commenters to the proposed changes to the form in 2002 indicated such itemization in certain cases could endanger the lives of foreign labor activists supported by the union. In response, the Department agreed that in ''the extremely rare situation where disclosure would endanger the health or safety of an individual, the information need only be reported in the'' aggregate, not itemized. 68 FR 58387. Concerning this rule, there is no indication in the rulemaking record that the lives of employer or consultant representatives may be endangered. As in all cases, however, individuals with questions or concerns about filing procedures or matters to be reported, including health and safety issues, should contact OLMS for assistance.

d. Railway Labor Act

One commenter expressed the view that the rule is focused only on labor relations governed by the NLRA, as opposed to the RLA or other statutes. The Department rejects this contention, as the text of section 203's reporting obligations concerning the persuading of employees regarding their collective bargaining rights is not limited to the NLRA. Rather, it is written broadly to include, without qualification, the ''right to organize and bargain collectively. . . .'' As such, these collective bargaining rights include the RLA and any other statutes concerning these rights for private-sector employees.

e. Extraterritorial Application

One commenter, an international law firm, contended that persuader activities undertaken outside of the territorial United States need not be reported. The firm cited to *EEOC* v. *Arabian American Oil Co.,* 499 U.S. 244 (1991) for the principle that federal laws do not have extraterritorial effect unless Congress expresses an intention for them to apply to activities occurring outside the U.S. The firm noted that many of the persuader activities addressed in the NPRM can be and are often performed outside the U.S. According to the firm, it is important to consider where the employer and consultant execute their agreement or arrangement, where the consultant performs the persuader activities, and where payment for such activity occurs. Therefore, the firm suggested that the Department state in the LM–10 and LM–20 forms and instructions that the LMRDA's reporting requirements do not apply to activities that take place outside of the U.S. or its territories. The firm provided several hypothetical extraterritorial scenarios in which it believed reporting should not be required.

The Department recognizes the general presumption against reading a statute to have extraterritorial effect, absent congressional intent, as described in *Arabian American Oil Co.* This principle is consistent with the Department's long-standing position with respect to labor organization and union officer reporting under the LMRDA to not regulate the activities of foreign labor organizations carried on under the laws of countries in which they are domiciled or maintain their principal place of business. 29 CFR 451.6(a); IM section 030.670 (Foreign Locals) (1959). The Department, however, does not agree that this principle necessarily extends to the hypothetical factual scenarios posed by the above law firm in its comments. Instead, the Department finds instructive its position with regard to reporting for union officers based outside the U.S.:

> While the Department takes the position that the reporting provisions of the LMRDA are limited to ''activities of persons or organizations within the territorial jurisdiction of the United States,'' its application in any particular case will depend on whether there is a substantial relationship between the transactions in question and United States property or interests which are the objects of the Act's protection.
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> * * * * *
>
> In other words, each case would require evaluation of the substantiality of the official's contacts with the United States and of the impact on United States interests.

IM section 240.200 (Union Officers Based Outside the United States) (1966). The Department believes that a case-by-case evaluation is the better approach in determining the extraterritorial application of section 203's reporting requirements for employers and consultants. This approach more closely aligns with the spirit of the LMRDA's transparency goals while adhering to the presumption against extraterritorial effect. As a result, the Department declines to add specific language to the LM–10 and LM–20 forms and instructions concerning persuader activities performed outside of the U.S.

F. Comments on Revised Forms and Instructions

The Department proposed revisions to the layout and structure of the Form LM–20 and instructions, as well as the Form LM–10 and instructions. See 76 FR 36193–96 and Appendices. As described in Section IV.D of this rule,

[70] If the consultant and an employer reach an agreement by which the consultant will undertake activities with an object to persuade, then that agreement, however, will be reportable.

the Department has largely adopted its proposed revisions to the forms and instructions, unless otherwise noted within that section and the description in Section IV.B of the ''advice'' exemption instructions.

Commenters supportive of this rule, as well as commenters opposed to it, provided feedback and offered suggestions on the proposed LM–20 and LM–10 forms and instructions. Multiple commenters voiced strong support of the revisions to Forms LM–20 and LM–10.

One international union commenter stated that the proposed changes to the Form LM–20 will improve both the quantity of reports received and the quality of the reports that are filed. An additional international union commenter urged the Department to make the Form LM–20 reports available online as soon as possible, so that workers can have the information when it will be relevant to them (*i.e.,* before the conclusion of an organizing campaign).

More specific comments are addressed below:

1. Proposed Form LM–20/Form LM–10, Part C

a. Contact and Identifying Information

In the NPRM, the Department proposed to require employers and consultants to identify their employer identification number (EIN) and that of the other party, if applicable. Several commenters supported the requirement, stating that the EIN will help the Department and the public determine whether employers are complying with their own filing obligations. The Department concurs with these comments and retains this requirement in this rule.

Additionally, the Department proposed that under Item 8 of the Form LM–20 (Person(s) Through Whom Agreement or Arrangement Made) filers would identify the ''prime consultant,'' if the filer is a ''sub-consultant'' who entered into the agreement with the employer as an indirect party. Several commenters offered support for the requirement that the primary consultant be identified on the Form LM–20, stating that it will aid the Department in determining whether additional reports must be filed. One commenter added that disclosure of the primary consultant helps employees better understand the persuader activities at play. The Department concurs with these comments and adopts this proposal in the final rule.

b. Hardship Exemption

In the NPRM, the Department proposed mandatory electronic filing for Form LM–20 and LM–10 filers, with a hardship exemption process modeled after the existing requirement for Form LM–2 labor organization filers. Several international union commenters supported the electronic filing requirement for employer-consultant reporting, stating that it will improve efficiency, facilitate more timely public disclosure, and provide a simpler filing method. One of these international union commenters urged the Department to limit electronic filing hardship exemptions, and stated that the proposed exemption language lacks adequate explanation of the required elements for demonstrating hardship. The commenter suggested that the Department not excuse electronic filing without a ''compelling demonstration of serious technical difficulty, burden, or expense.''

After considering this suggestion regarding filing hardship exemptions, the Department has determined to retain the originally proposed language in order to maintain consistency with other the Form LM–2 hardship exemption guidelines, which have worked well in practice. The Department also notes that Forms LM–20 and LM–10 filers will benefit greatly from OLMS's new, web-based, and free Electronic Forms System (EFS), which, based upon Form LM–2 experience, will greatly ease burdens on filers and reduce hardship applications and exemptions. As such, the Department will not grant a continuing hardship exemption without a ''compelling demonstration of serious technical difficulty, burden, or expense,'' and under no circumstances would the exemption equal or exceed one year. Thus, all filers must file an electronic report via EFS, even if, under this stringent standard, they are granted a continuing hardship exemption of less than one year.

c. Reporting the Terms and Conditions of the Agreement or Arrangement

As with the prior Forms LM–20 and LM–10, the Department proposed that filers must provide a detailed statement concerning the terms and conditions of the persuader agreement or arrangement, including attaching a copy of any written agreement. A law firm representing unions concurred with this requirement, commenting that workers are entitled to know how much consultants charge for the activities they perform.

Some commenters raised questions about the reportability of particular arrangements. For example, a consulting firm raised questions about how to report the drafting of a ''union free'' statement in an employer handbook and how to report the fee associated with the reportable activity when drafting the ''union free'' paragraph may have required comparatively little time. A law firm provided a hypothetical example of an attorney who was primarily retained to represent an employer in an NLRB hearing, but also spent 15 minutes drafting a letter that the Department subsequently determined to be reportable because it was prepared with an object to persuade employees. The commenter queried how the fee for representing the employer in the NLRB hearing should be reported, and if the filer would need to report (in Item 10 of Form LM–20) the terms and conditions of the arrangement to represent the employer in both the hearing and the campaign. The commenter asked if the filer would need to select under Item 11.a all of the services performed for the NLRB hearing, or just the 15 minutes spent drafting the letter for the employer. The commenter also remarked that the form seems to be drafted for labor relations consultants who are retained to perform persuader services, and not for attorneys who provide primarily legal services for the employer. Further, the consulting firm questioned how fees should be reported since the firm does not track the billable hours worked by its attorneys and human resources advisers. The firm also asked if actual monthly membership dues paid by the firm's member companies to the firm would need to be calculated.

The Department reiterates in this rule that filers must provide a detailed explanation, in Item 10 of the Form LM–20 and Item 13.b in the Form LM–10, of the fee arrangement of the agreement or arrangement, as well as all other terms and conditions of the agreement. If the agreement or arrangement provided that the consultant would engage in persuader services, among other services, the filer must explain the full fee arrangement for all services required by the agreement or arrangement and describe fully the persuader services, regardless of the duration or extent of the persuader services in relation to other services provided. Regarding membership organizations, if they and their member-employers are required to file reports, then the membership organizations must explain all fee arrangements such as the details of membership dues. The explanation

must fully describe the nature of the persuader services provided. For example, a filer must plainly state if it was hired to manage a counter-organizing or union-avoidance campaign, to conduct a union avoidance seminar, or to provide assistance to an employer in such a campaign through the persuader activities identified in Form LM–20, Item 11.a or Form LM–10, Item 14.a. The Department added language in the Instructions to clarify this point.

Insofar as non-persuader services are concerned, the filer need provide only a brief, general description of the non-persuader services in Form LM–20, Item 10 or Form LM–10, Item 13.b; a description, such as ''legal services were also provided,'' will suffice.[71] In all cases, however, a copy of any written agreement should be submitted as an attachment to the form. For a reportable union avoidance seminar, this includes a single copy of the registration form and a description of the seminar provided to attendees.

Concerning reporting by business associations and similar employer membership organizations, in response to comments received and as explained in Section V.E.3 of this rule, trade associations are not required to file a report by reason of their membership agreements, or by reason of selecting off-the-shelf persuader materials for employers, or for distributing an employer newsletter to member-employers. Trade associations as a general rule will only be required to report in two situations—where the trade association's employees serve as presenters in union avoidance seminars or where they undertake persuader activities for a particular employer or employers (other than by providing off-the shelf materials to employer-members).

d. Identifying Persuader Activities

In the NPRM, the Department proposed to simplify reporting by allowing filers to describe reportable activities by using a checklist of common persuader and information-supplying activities. Filers are required to identify other persuader activities not appearing on the checklist by providing a narrative description. See proposed Form LM–20, Item 11, and proposed Form LM–10 Item 14, 76 FR 36207–36230.

Several commenters supported the checklist approach on Forms LM–20 and LM–10. These commenters stated that the checklist will allow for more ''detailed'' and ''accurate'' disclosure of persuader activities, and that the checklist will assist filers in accurately completing the forms. Commenters stated that the current forms allow filers to provide only vague descriptions of their activities that are unhelpful to employees who seek information about consultants' participation in counter-organizing campaigns. Another union commenter mentioned firsthand experience with the persuader reporting ''loophole'' used by consultants, and supports the form revisions because filers will be required to identify specific persuader and information-supplying activities, as opposed to only providing general information lacking details on a consultant's actions.

Other commenters voiced opposition to the proposed changes to Forms LM–20 and LM–10, describing them as ''burdensome'' and needing additional clarification. One commenter objected to the new questions about specific types of persuader activities, and, for example, described requiring specific information concerning employees identified for persuasion as ''intrusive.'' Several commenters opposed the addition of the checklist on Forms LM–20 and LM–10. One commenter criticized the list as being ''specifically non-exhaustive.'' Another commenter did not oppose the checklist concept, but suggested that the checklist be limited to items that are currently considered to be persuader activities under the prior interpretation.

One law firm took issue with the checklist item 14.a on Form LM–10, expressing concern that every time an employer revises work rules, the employer would need to guess whether the drafting consultant recommended a course of action for business reasons or to prevent employees from discussing collective bargaining. This commenter also took issue with the fact that the checklists on the proposed forms (Item 11.a on Form LM–20 Item and 14.a on Form LM–10) do not include a reference to the advice exemption. The commenter stated that an employer or consultant might provide ''unnecessary and/or misleading information'' without clarification that the activities need not be reported if they involved advice, as opposed to persuasion. Similarly, the commenter suggested that the information-supplying exemption (regarding information used solely in conjunction with an administrative, arbitral, or judicial proceeding) be added to Items 11.a and 14.a of Forms LM–20 and LM–10, respectively.

In response to these comments on the checklist, the Department retains the checklist format in the final rule, with some modifications of the checklist items, as explained in Section V.E.3. The checklist items were intended to cover the most common categories of persuader activity—not to represent an exhaustive list of all possible persuader services. Further, the checklist is specifically designed to include both direct and indirect persuader activities—not merely direct persuader services. To limit the checklist items to activities that are currently considered persuader activities—namely, only direct persuader activities—would defeat the purpose of this rule. Moreover, the Department disagrees with the suggestion that the list is burdensome or intrusive. Rather, it is less demanding than a narrative description and only focuses on persuader and information-supplying activities (as opposed to advice or other activities). The Department has also clarified in this rule what triggers reporting and how to determine if the consultant undertook activities with the object to persuade employees. See Section IV.B. In particular, the Department has explained the four sub-categories of indirect persuasion; the non-exhaustive list of persuader activities all fit within these four sub-categories or the category of direct persuasion. If an activity fits within those categories and is not on the list, then the filer must check ''Other'' and identify the activity. Filers will also have an opportunity to more fully explain a checked item in a narrative format, if they so choose.

In response to the commenter who suggested that the checklist include a reference to the ''advice'' exemption (and that the information-supplying exemption be added to Items 11.a and 14.a of Forms LM–20 and LM–10, respectively), an activity is not reportable unless it is undertaken by the consultant with an object to persuade employees or supply information to the employer. As such, persuader activities do not overlap with tasks that may constitute advice to the employer. The instructions to each form explain this point clearly, and the forms themselves alert filers that they should ''read the instructions carefully before completing the form.'' See Appendices.

A law firm suggested deleting the phrase ''their right to engage in any protected concerted activity in the workplace'' from Item 11.a in Form LM–20 and Item 14.a in Form LM–10. The

[71] In the example provided by the commenter, the law firm would have to fully report in Form LM–20, Item 10 the details of the agreement to assist the employer in its anti-union efforts by drafting the persuader letter. Regarding the representation at the NLRB hearing, the firm would provide a brief description stating that ''legal services were also provided.'' The firm would also have to report the full details concerning the actual amount paid for all services.

commenter argued that, since this phrase is not in the LMRDA, the Department is unable to require reporting on such activities. As explained in Section V.E.2, the Department has deleted the phrase ''their right to engage in any protected concerted activity in the workplace'' from Item 11.a in Form LM–20 and Item 14.a in Form LM–10.

e. Identifying Information-Supplying Activities

Several commenters offered support for the Department's revisions to the form concerning reporting of information-supplying activities by consultants, with several union commenters offering examples of such activity. One union stated that an attorney-consultant posed as a union member and asked questions of workers. Another union stated that consultants secretly took photos of individuals attending a union meeting attended by potential members. Another union stated that during a union organizing drive the consultant provided ''significant research for management,'' publicized union staff salaries, prepared persuader letters to be sent to employees, and conducted meetings with the employer's staff.

Several commenters contended that the Department's proposal expanded, without explanation, the Department's historical interpretation of the reporting obligations for ''information supplying activities.'' A commenter asserted that the Department's ''silence'' concerning the ''intended scope'' of this reporting area suggests that it is limited to past statements on ''direct surveillance and spying'' by outside consultants. One commenter argued that the Department proposed to expand the reporting requirements beyond exposing ''labor spies'' and surveillance of union activities, meetings, and communications.[72] The commenter suggested that the proposed rule expands such reporting to include ''research from publicly available sources,'' as well as ''general research services, including research within publicly available sources and databases.'' This increased reporting, it contended, is not supported by the statute or its legislative history.

One commenter requested that the Department amend the proposed instructions to make clear that there is no reporting for ''information that is generally available to the public,'' such as ''newspaper clippings, law review articles, LM–2 reports, etc.'' Thus, according to the commenter, it should not be reportable for the consultant to copy such material and supply it to the employer, pursuant to the Form LM–20 or Part C of the Form LM–10, nor should it be reportable on Part D of the Form LM–10 by the employer if it acquires such materials itself.

These commenters have mischaracterized the proposed rule. The revised forms merely provide a format to report consultant activities that have an object to supply information to the employer concerning the activities of employees or a labor organization in connection with a labor dispute. The format requires filers to check boxes indicating if the consultant supplied information obtained from the source categories: (1) Research or investigation concerning employees or labor organizations; (2) supervisors or employer representatives; (3) employees, employee representatives, or union meetings; (4) surveillance of employees or union representatives (video, audio, internet, or in-person). Filers can also check the ''Other'' box and provide information concerning any other information-supplying activity engaged in by the consultant.[73] Contrary to the commenters' conclusions, these categories are consistent with the legislative history and existing Department policy, which are not as limited as suggested by the commenters.

The first category concerns any information about employees or the union involved obtained through research or investigation. In this rule, the Department clarifies that this category would not include the mere provision of public documents, such as publicly-available collective bargaining agreements or LM reports. This is consistent with existing Department policy. See *Employer and Consultant Reporting, Technical Assistance Aid No. 6,* at 12 (1964) where non-reportable activities are discussed (''obtain[ing] copies of a public document and transmit[ting] it to the employer'').[74] While the Department has in the past exempted the provision of such public documents, and continues to do so in this rule, this exemption does not preclude reporting of the provision of private documents or information obtained from private sources. In contrast, expenditures for ''inside'' information concerning the bargaining demands of a union involved in a labor dispute with the employer are reportable. Id. at 8.

The second category concerns information that the consultant helped to acquire, indirectly, through the employer's supervisors and other representatives. For example, the category includes situations where the consultant has coached the supervisors in methods of acquiring information via informal conversations with employees, or undertaken efforts to convince employees to provide the information to the supervisors. Such reporting is consistent with past Department policy, which requires the reporting of agreements in which the consultant handles ''all phases of labor-management relations,'' if such agreements include activities whereby the consultant furnishes the employer, ''*directly or indirectly*'' (italics included in the original), information concerning employees or the union. Id. at 9. Another reportable example, derived from the legislative history, would include designing psychometric employee tests designed to weed out pro-union workers. S. Rep. No. 85–1417, at 255–300 (1958).

The final two categories generally encompass the types of surveillance mentioned by the commenters, as well as other activities that the Department has long considered reportable, such as any attempt to get information directly from the employees or their representatives or through a survey.[75] See IM section 264.006 (Employee Survey); see also *Technical Assistance Aid No. 6,* at 12 (The consultant must report if it convinces ''an employee to report to [the consultant] on the bargaining tactics of a union in the employer's plant''). Thus, the Department did not expand or otherwise alter the existing reporting requirements in this area.

[72] The comment cited IM sections 256.100 (Labor Spying), 257.205 (Example of Consultant ''Spying''), and 257.210 (Surveillance in Connection with Labor Dispute) (1963).

[73] The Department also notes that Form LM–10 filers completing Part D must note the method of obtaining such information in Item 17.d (''Explain fully the circumstances of the expenditure(s).'').

[74] A law firm suggested that ''Research in public or other sources outside the employer concerning the employees or labor organizations'' should be added to the checklist as an ''information-supplying activity.'' As noted in the text, reporting of public documents is not required. With regard to the checklist suggestion, the Department believes that the existing checklist language under the ''Information-Supplying Activities'' heading (''Research or investigation concerning employees or labor organizations'') provides sufficient disclosure for workers and the public.

[75] While the Department has explained in this rule that employee surveys generally do not trigger reporting as persuader activities, see Section IV.B and Section V.E.1.f, these surveys do trigger reporting as information-supplying activities if designed or implemented by consultants to supply information to the employer about a union or employees in conjunction with a labor dispute. Surveys that gather information about the proneness of employees to an organizing effort as part of a vulnerability assessment, entirely outside of a labor dispute, would not trigger reporting.

Of particular concern to one commenter was its utilization of closed circuit television surveillance cameras for customer safety purposes and to detect and stop theft and other types of crimes in grocery stores, warehouses and outside premises. The commenter noted that the surveillance tapes invariably include video footage of employees at work including some who are union members. The commenter suggested that employers who utilize this or similar technology, such as computers, point-of-sale equipment, and the internet, to monitor for this or similar purposes, such as productivity and job performance, should not have to report those types of activities.

In response to these comments, the Department notes first, that neither these commenters nor others have made a persuasive showing for any industry-specific exceptions to the reporting requirements. Further, the installation or use of surveillance technology would not, by itself, be viewed as an information-supplying activity pursuant to the revised Form LM–20 or Part C or D of the revised Form LM–10. To be reportable, the installation or use must have an *object* of supplying or obtaining information about the activities of the employer's employees or a labor organization.[76] Such an object could be discerned from the agreement or arrangement with the consultant, as well as the context surrounding the use of the technology, such as the proximity of its installation to the onset of the labor dispute, the location of the technology in relation to where the employees work or congregate, and whether information concerning the activities of the employees or union is used. However, the installation of additional cameras, as well as the use of camera surveillance or similar technology by a retail store, prior to the onset of a labor dispute, would be a reportable information-supplying activity if the employer or consultant had the object to supply or obtain information about the activities of the employees or labor union and the information was supplied or obtained during a labor dispute.

For purposes of clarity, the Department modified the checklist item to state that the surveillance of employees or union representatives can either be ''electronically or in person,'' rather than ''video, audio, internet, or in person,'' as provided in the NPRM.

[76] See IM section 264.200 (Surveillance ''In Connection'' with Labor Dispute'') (1963).

f. Identifying Targeted Employees

Several commenters stated that filers should not have to provide detailed information about employees that consultants have targeted for persuasion, as proposed in Item 12.a on the Form LM–20, and in Item 14.e. on the Form LM–10. Filers are instructed to identify, by department, job classification(s), work location, and/or shift(s) of the employee(s) who are to be persuaded or concerning whose activities information is to be supplied to the employer. Filers should not identify targeted employees by name.

One commenter asserted that the LMRDA does not authorize the Department to require disclosure of this type of information, and added that the statute only requires filers to identify the persuader agreement and the financial arrangement and payments that were made. The commenter stated that requiring disclosure of information about employees, job titles, and shifts creates privacy and confidentiality concerns. Another commenter asserted that disclosing details about subject employees would reveal privileged information. Another commenter noted that the current Form LM–10 does not require this information, and that the current Form LM–20 only asks the filer to ''identify subject groups of employees.'' Asserting that the Department did not explain why this additional information on subject employees is being requested and that the employers and consultants who file these forms might not know the identity of the targeted employees, the commenter suggested that the Forms LM–20 and LM–10 should be left unchanged. The commenter also inquired into whether another report would be required if a different group of subject employees is identified after the initial report is filed.

In response to these comments, the Department notes that the current Form LM–20 (Item 12.a) already requires filers to identify subject employees. The new form promulgated by this rule simply asks for more detail concerning the department, job classification(s), work location, and/or shift(s) of the employees targeted. See Section IV.D. Section 203(b) requires a ''detailed statement of the terms and conditions of such agreement or arrangement.'' The Secretary has the authority to determine how to capture such a detailed statement on Forms LM–20 and LM–10. Under section 208 of the LMRDA, 29 U.S.C. 438, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions.

The information required by the proposal includes details concerning the job classifications of employees targeted for persuasion, so that employees can identify persuader activities that affect them in the workplace. Therefore, the commenter's concern about intruding upon worker's privacy is misplaced. Further, as explained in the burden analysis in Section VI of this rule, filers typically will know the category or type of targeted employees, whether or not this includes all employees in a potential bargaining unit. Additionally, as explained in Section IV.D of this rule, the Department has revised the instructions to simplify the reporting of this information for union avoidance seminars.

Finally, in response to the comment concerning amended reports, an amended report is only required if the information in the submitted report is incorrect, although new reports are required for any agreement or arrangement that has been modified.

2. Comments Received on Other Aspects of Form LM–10

The Department did not propose any substantive changes to the Form LM–10 reporting requirements pursuant to sections 203(a)(1)–(3); and this rule, like the NPRM, only affects the layout of the form and instructions that concern those reporting provisions. The Department, however, received comments expressing concern that under the proposal employers would have to report certain payments made to their own employees related to persuader activities. In response, the Department explicitly states that employers are not required to file a report covering expenditures made to any regular officer, supervisor, or employee of the employer as compensation for service as a regular officer, supervisor, or employee of such employer. See section 203(e), 29 U.S.C. 433(e). See also IM section 254.300 (Industrial Relations Counselor), which states in part, ''an employer will not be required to report in those parts payments made to an industrial relations counselor in his capacity as full-time director of industrial relations.'' Rather, this rule implements changes to the employer reporting requirements pursuant to sections 203(a)(4) and (5), where employers must report on Part C of the revised Form LM–10 concerning agreements or arrangements with consultants and other third-party independent contractors or organizations.

The Department also received comments concerning reporting of expenditures pursuant to section 203(a)(3) on Part D of the revised Form

LM–10. One commenter argued that ''virtually none'' of the expenditures used to commit unfair labor practices committed under the NLRA are currently reported, as can be illustrated by the number of reported cases and settlements by the NLRB concerning such conduct and the lack of reporting with the Department of expenditures for such activity. The commenter praised the design of the revised form for its ease in aiding compliance in this regard, and it also encouraged the Department to coordinate with the NLRB in ensuring reporting pursuant to section 203(a)(3).

A law firm suggested that Part D (Item 17.d) of the proposed Form LM–10 should require a statement of how the expenditure had the object ''to interfere with, restrain or coerce employees in the right to organize and bargain collectively through representatives of their own choosing.'' The commenter stated that requiring the purpose of the expenditure to be reported would create more meaningful disclosure. The commenter also suggested replacing ''and'' with ''and/or,'' to read as follows: ''. . . in the right to organize *and/or* bargain collectively through representatives of their own choosing.'' (Emphasis added.)

Upon consideration of this suggestion, the Department has decided to not modify the proposed Part D of the Form LM–10 instructions. In the Department's view, the language in Part D, Item 17.d of the form and instructions requires filers to fully explain the circumstances of the expenditure, which includes how the expenditure had as an object ''to interfere with, restrain or coerce employees in the right to organize and bargain collectively through representatives of their own choosing.'' More specifically, the form states, ''Explain fully the circumstances of the expenditure(s), including the terms of any oral agreement or understanding pursuant to which they were made.'' The instructions for Item 17.d, further provides that, in part, ''Your explanation must clearly indicate why you must report the expenditure.'' Additionally, the phrase ''organize and bargain collectively'' will be retained without modification, as it derives from the statute. See LMRDA section 203(a)(3), 29 U.S.C. 433(a)(3).

G. Comments Asserting Constitutional Infirmities With Revised Interpretation, Including First Amendment Concerns, and Alleged Inconsistency With Employer Free Speech Rights Under NLRA

The Department received numerous comments contending that the proposed interpretation of the advice exemption would violate employers' free speech rights guaranteed under the First Amendment of the U.S. Constitution or, by extension, section 8(c) of the National Labor Relations Act (NLRA). Many of these comments stated that the proposed reporting requirements would have a ''chilling effect'' on employers' ability to exercise their free speech rights.[77] Several commenters asserted that this chilling effect extends to employees by effectively denying them balanced information on unionization. Some commenters that supported the proposed rule expressed the view that the reporting requirements would not impermissibly burden employer speech, nor conflict with the NLRA. These and related comments are discussed below.

1. Comments Involving First Amendment Concerns

The Department received numerous comments asserting that the Department's proposed rule was constitutionally infirm. Many of these commenters attempted to distinguish the instant rule, with its focus on the required disclosure of indirect persuader activity, from the longstanding interpretation requiring only the reporting of direct persuader activities, an interpretation that has survived constitutional challenges. We discuss below the comments addressing this issue and the judicial precedent that upheld the constitutionality of the Department's interpretation. In short, it is the Department's position that the principles established or applied in those cases provide a firm constitutional basis for this rule, even though they dealt with direct persuader activity. Commenters opposing the rule also took issue with the Department's reliance, as support for the rule, on analogous disclosure regimes under other statutes that have withstood attack on First Amendment grounds. These commenters have failed to persuade the Department that its reliance on these disclosure statutes and precedent was mistaken. Similarly, the Department has not been persuaded by the argument, seemingly without regard to whether the LMRDA requires the disclosure mandated by the rule, that the Government's interest in requiring disclosure is insufficient to survive constitutional scrutiny.

In the NPRM and earlier in the preamble to this rule, the Department explained the legal and policy bases for the rule, and the Department's intent to remedy its longstanding failure to effectuate the purpose of section 203 of the LMRDA—whereby it allowed consultants and employers to withhold information about consultant persuader activities from employees. Such information if known to employees may have affected their assessment of the employer's campaign message against representation and their choice whether to support or oppose representation. Based on the comments received on the NPRM, consistent with the Department's own experience, this information is a necessary component to national labor policy that aims to achieve stability and harmony among employees, employers, and unions. See Sections V.C.1.a, b, c. We have pointed out that employees often are unaware that their employer has hired a consultant to manage its campaign, including scripting the employer's message in speeches, letters, and other documents, and that the consultant is directing the employer's supervisors to provide a uniform position in opposition to representation—which may be contrary to the actual views of individual supervisors—denying the employees information that would reasonably affect their assessment of the employer's message. In this regard, we pointed out the situations in which this information would be particularly important to employees—where a central theme of a company's anti-union message is that the company's supervisors, managers, and employees have functioned as a harmonious family, a relationship that is put in jeopardy by bringing in a union, an outside third-party, or where an employer, while claiming the need for fiscal responsibility, is spending what to some employees may seem like an exorbitant sum to hire a consultant to sway the employees against representation. As we discuss below, the need to provide employees with this essential information, a need met by this rule, demonstrates the compelling governmental interest served by this rule.

Notwithstanding the large number of commenters that hold a contrary view, the Department remains convinced that its interpretation of the Act's reporting requirements, both as proposed and modified in this rule, fully satisfies constitutional requirements.

[77] The Department received a few comments concerning the impact of this rule on the consultants' reporting requirements on the Form LM–21, Receipts and Disbursements Report. According to these commenters, the free speech issues are compounded because an LM–20 filer must also file the annual LM–21, which requires the reporting and public disclosure of clients and fees on account of any labor relations advice or services, even if unrelated to persuader activity. Similar comments were raised in connection with the proposal's impact on attorney-client relationships. See Section V.H.

It is important to emphasize at the outset of the constitutional discussion the purposes served by the disclosure required by the rule, combined with the *absence* from the rule of any constraints on the content, timing, or methods that consultants use in their efforts to shape how employees exercise their rights to union representation and collective bargaining. The Department is obliged under section 203 to require the disclosure of persuader agreements between employers and labor relations consultants whenever the agreement provides for direct or indirect persuader activities to be undertaken by the consultant. In enacting the LMRDA's disclosure requirements, Congress determined that in order to ensure a properly functioning labor-management relations system, employees must be informed if their employer chooses to hire a labor relations consultant to assist it in persuading them about how to exercise their rights under the NLRA.

In the NLRA, Congress chose to regulate directly the conduct of employers and unions by establishing duties upon both and sanctions (for engaging in unfair labor practices). In contrast, under the LMRDA generally, and section 203 specifically, Congress simply chose to require disclosure. This rule implements this congressional disclosure regime mandate. Under the final rule, the Department does not regulate in *any way* the content of any communications by the consultant or the employer, the nature of such communications, or their timing. The Department emphasizes that nothing in this final rule or in section 203 requires employers to file disclosure reports merely by virtue of engaging in speech, or by engaging the services of an attorney or outside consultant. Thus, the rule in no way regulates speech, and, apart from requiring reporting in prescribed situations, it does not regulate conduct at all. Under the proposed rule, as before, a labor relations consultant remains in control of whether he or she engages in persuader activities and thus whether, as a consequence, a report must be filed.

With that factual understanding in place, the constitutional validity of the proposed rule is independently supported by two related lines of First Amendment precedent: Cases sustaining the validity of the direct persuader rule and cases sustaining the validity of disclosure requirements under other statutes against First Amendment attack. We address both here.

a. First Amendment Precedent Sustaining the Direct Persuader Rule

Section 203's reporting requirement has uniformly withstood First Amendment challenges in court.[78] The reporting and disclosure requirements meet the ''exacting scrutiny'' standard applied under governing Supreme Court precedent in those cases because they are tailored to effectuate the purposes of the LMRDA and bear a ''substantial relation'' to ''sufficiently important'' governmental interests. See *Doe* v. *Reed,* 130 S. Ct. 2811, 2818 (2010) (holding that signatory disclosure requirements in state referendum petitions are not unconstitutional because the State has an interest in preserving the integrity of the electoral process). Similarly, these requirements have survived First Amendment associational challenges in federal appellate cases involving LMRDA reporting requirements (discussed below) under the ''deterrent effect'' standard articulated in *Buckley* v. *Valeo,* 424 U.S. 1, 64–74 (1976) (involving disclosure requirements under the Federal Election Campaign Act, in which the court opined that exacting scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure) (citing to *NAACP* v. *Alabama,* 357 U.S. 449, 464–65 (1958), in which the court concluded that the State of Alabama failed to show a controlling justification for the deterrent effect that would result from a statute requiring disclosure of the NAACP membership lists).

In *Donovan* v. *Master Printers Association* 532 F. Supp. 1140, 1148, 1150 (N.D. Ill. 1981), aff'd 699.F2d 370, 371 (7th Cir. 1983) (adopting district court's opinion), cert. denied, 464 U.S. 1040 (1984), the court held that the statute survived both the ''deterrent effect'' and the ''exacting scrutiny'' standards articulated by the Supreme Court in *Buckley* v. *Valeo.* With respect to the deterrent effect standard, the court concluded that the associational claims amounted to nothing more than employers ''fear[ing] criticism of . . . dealing with a labor relations consultant and possible economic harm.'' These failed to ''make out a claim under the first amendment'' because they ''fall far short'' of the concrete harm required by *NAACP* v. *Alabama.* Id. at 1148 & n. 11. Examining both the legislative history of section 203 and the similarities between political and workplace elections, the court concluded that the required disclosure furthers the goals of the statute by exposing the suspect activities of persuaders to the ''disinfectant'' effects of sunlight, id. at 1149 (quoting *Buckley,* 424 U.S. at 67), and by ensuring proper enforcement of the statute, id. at 1150. ''The disclosure permits employees in a labor setting, like voters in an election, to understand the sources of the information being distributed.'' Id.

Similarly, the Fourth Circuit in *Master Printers of America* determined that the challenger had not met its burden of showing that the section 203 disclosures had exposed its members to economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility directed at specific individuals necessary to establish a ''deterrent effect'' under *Buckley* v. *Valeo* and *NAACP* v. *Alabama.* 751 F.2d at 704–705. The Fourth Circuit considered both the legislative history of section 203 and the overall goals of the LMRDA, and noted the similarity between union certification and political elections. Based on that analysis, the court concluded that the Department had demonstrated the disclosure required by section 203 served the governmental interest to deter unlawful conduct and to facilitate its interest in securing compliance with federal labor laws. 751 F.2d at 707. The court also identified a third governmental interest in the section 203 disclosure requirement, to maintain ''antiseptic conditions in the labor relations context.'' Id. at n. 8. The Fourth Circuit not only held that the statute serve these important government interests, it acknowledged ''the precision with which section 203(b) has been tailored to serve its purpose.'' Id. at 709.

In *Humphreys,* the Sixth Circuit also rejected First Amendment challenges to the prior interpretation of the disclosure obligation under section 203. The court concluded that the persuader law firm had failed to meet the ''deterrent effect'' standard for demonstrating an unconstitutional violation of its right to freely associate. 755 F. 2d at 1220–1222. The court rejected the persuader's free speech claim, ruling instead that the disclosures ''are unquestionably 'substantially' related to the

[78] See *Humphreys, Hutcheson and Mosely* v. *Donovan,* 755 F. 2d 1211 (6th 1985); *Master Printers of America* v. *Donovan,* 751 F.2d 700 (4th Cir. 1984); *Master Printers Association* v. *Donovan,* 699 F.2d 370, 371 (7th Cir. 1983)), cert. denied, 464 U.S. 1040 (1984) (adopting district court's opinion, 532 F. Supp. 1140 (N.D. Ill. 1981)). See also *Marshall* v. *Stevens People and Friends for Freedom,* 669 F.2d 171, 176–177 (4th Cir. 1981), cert dismissed sub. nom. *J.P. Stevens Employees Education Committee* v. *Donovan,* 455 U.S. 930 (1982), cert. denied sub. nom. *Ramsey* v. *Donovan,* 455 U.S. 940 (1982).

government's compelling interest'' in preventing improper activities in labor-management relations. 755 F. 2d at 1222. In support of that conclusion, the court observed that the required disclosures would help employees exercise their right to support or not support a union, ''enabl[ing] employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.'' Id.

These cases support the validity of this rule concerning indirect disclosure requirements. While as many commenters have emphasized, these cases involved direct persuader activities by consultants, this difference does not render that precedent inapplicable to the indirect persuader disclosure requirement. As discussed above, like the disclosure requirement for direct persuader activities, the requirement at issue here provides information to employees about the source of statements relevant to a decision about how to vote in a union election. This rule addresses the need to understand the true source of messages that might otherwise appear to have been crafted by an employer's representative (like a supervisor), which, for the reasons stated above, will materially affect the statement's credibility and the context in which it is placed. The Department's final rule provides clear instruction to employers and consultants about the kinds of activities that must be reported and, most importantly, better aligns the reporting obligation with the essential governmental interest to establish an effective and fair national system of labor-management relations. This final proposed rule does not present any circumstance that would alter the constitutional analysis in those precedential cases, which rejected the argument that such reporting was constitutionally infirm.

b. First Amendment Precedent Sustaining Disclosure of the Source of Speech

The constitutional validity of this rule is independently supported by the U.S. Supreme Court's case law sustaining analogous disclosure requirements from other statutory contexts against First Amendment attack. The Department remains of this view after carefully reviewing the comments that have argued otherwise.

In the NPRM, the Department explained that the LMRDA's provisions requiring the disclosure of consultant participation in representation elections have close analogs in Federal election campaign law. 76 FR 36188. The Department cited to *Buckley* v. *Valeo,* 424 U.S. 1, 60–84 (1976), in which the Supreme Court found ''no constitutional infirmities'' in the reporting and disclosure requirements under the Federal Election Campaign Act (FECA). The FECA imposed reporting obligations on political action committees and candidates receiving contributions or making expenditures over a certain threshold. Id. at 62. As the Department explained in the NPRM, 76 FR 36188, *Buckley,* in assessing whether these disclosure requirements served a substantial government interest, noted that FECA's disclosure requirements:

> provide[ ] the electorate with information ''as to where political campaign money comes from and how it is spent by the candidate'' in order to aid the voters in evaluating those who seek Federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Id. at 66–67, quoting H.R.Rep. No. 92–564, p. 4 (1971). This governmental interest, the Court held, was substantial, and the disclosure requirements were constitutional. Id. at 68.

The NPRM also referenced the recent Supreme Court opinion in *Citizens United* v. *Federal Election Commission,* 558 U.S. 310, 371 (2010), for the proposition that ''disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'' 76 FR 36188. *Citizens United,* in upholding the disclosure requirements of the statute there at issue, discussed *Buckley* and the Court's later opinion in *McConnell* v. *Federal Election Commission,* 540 U.S. 93 (2003) and instructed that: ''Disclaimer and disclosure requirements may burden the ability to speak, but they . . . ''do not prevent anyone from speaking''; they help citizens to ''make informed choices in the political marketplace.'' 558 U.S. at 367 (internal citations and quotations omitted). The interests served by requiring labor relations consultants to report on persuader services are also congruent with those interests served by disclosure provisions in federal and state laws regulating lobbyists.[79]

As discussed earlier in the preamble, at Section V.C.1.e., the Department acknowledges that the campaign financing and lobbying disclosure regimes differ in some respects from the LMRDA's reporting system. Under the Supreme Court's decisions, it is the source of the speech (the lobbyists or donors) that is important for the public to know in evaluating candidates for public office.

Understood in this regard, the fit between the Court's campaign finance disclosure cases and the speech analysis governing the required disclosures here is sound. Just as the Court in *Citizens United* v. *Federal Election Commission,* 558 U.S. 310, 371 (2010), recognized that ''disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages''—and therefore required that the identity of the donor be disclosed—in the indirect persuader context, the ''voter'' may find it highly material to know who besides the employer is actually speaking by developing the script, the strategy, and other tools of persuasion, and that is why the rule is constitutionally valid.

The Department has fully considered that, in the context of union representation campaigns, one might argue that the consultant's arrangement with the employer is of less interest to

[79] See *United States* v. *Harriss,* 347 U.S. 612, 625–626 (1954) (holding that ''those who for hire attempt to influence legislation'' may be required to disclose the sources and amounts of the funds they receive to undertake lobbying activities); accord, *e.g., Florida League of Prof'l Lobbyists, Inc.* v. *Meggs,* 87 F.3d 457, 460 (11th Cir. 1996) (upholding state lobbyist disclosure statutes in light of state interest in helping citizens ''apprais[e] the integrity and performance of officeholders and candidates, in view of the pressures they face''). See also *National Ass'n of Mfrs.* v. *Taylor,* 582 F.3d 1, 9–10 (D.C. Cir. 2009) (upholding requirement that registered lobbyists disclose the identity of organizations that made monetary contributions and actively participated in or controlled the registrant's lobbying activities); *Kimbell* v. *Hooper,* 164 Vt. 80, 85–88, 665 A.2d 44 (1995) (upholding state lobbying statute against First Amendment challenge); *Gmerek* v. *State Ethics Commission,* 569 Pa. 579, 595, n. 1, 807 A.2d 812, 822 (2002) (dissent) (collects cases in which state lobbying disclosure laws upheld against First Amendment and other challenges). *Harriss,* which serves as a touchstone for later Supreme Court precedent on the constitutionality of disclosure requirements, involved a challenge to a statute that required disclosure by ''any person . . . who by himself, or through any agent, or other person in any manner whatsoever, *directly or indirectly,* solicits, collects, or receives money . . . to be used . . . to influence *directly or indirectly,* the passage or defeat or any legislation.'' (emphasis added). 347 U.S. at 619 (quoting section 307 of the Federal Regulation of Lobbying Act, 60 Stat. 812).

an employee who is evaluating whether to support or oppose a union as his or her representative or to consider the employer's stance in negotiations with a union. The thought might be that the consultant is only operationalizing the employer's position against representation and, whether the consultant is directing the campaign and crafting the message, it remains the employer's message. However, as the legislative history to the LMRDA, certain persuasive comments submitted, and this Department's experience in administering and enforcing the LMRDA make clear, the hiring of a labor relations consultant by an employer, and the consultant's role in the representation campaign, are important factors to be considered by employees as they weigh their choice for or against union representation. In particular, knowledge of the consultant's role will enable employees to more accurately assess the credibility, and put into the proper context, statements that might be made by representatives of the employer. Though the financial and lobbying disclosure statutes occupy a different political sphere than the LMRDA, each seeks to provide pertinent information to voters as they make their choices.

Commenters have raised a variety of related points, none of which the Department finds persuasive. A public policy organization's comments criticized the analogy to campaign disclosure laws; it explained that the Federal Election Campaign Act (FECA) grew out of concerns over voter inequality and the undue influence of special interests. A trade association similarly criticized the Department's position, as, in its view, there is no potential ''influence-peddling'' concerning employer agreements with consultants as there could be with election contributions. In contrast, the interests of the employer and the consultants are ''coterminous and obvious,'' and do not highlight to the employee an outside party that may have divergent interests from the employer. The commenter argued further that FECA involves donations to candidates and not attorney-client relationships. Similarly, a law firm argued that campaign disclosure rules and the LMRDA's reporting requirements would be analogous if there was a requirement for political candidates to disclose the public relations or law firms that they hire. The commenter stated that there is no ''public interest'' in such disclosure because these persons ''are not running for office.''

The Department disagrees with these contentions. First, the benefits to workers, as voters in a representation election, from disclosure about persuader communications are analogous to the benefits from campaign disclosure laws to voters in a political election. And the governmental interest in disclosure in the campaign finance context was recently upheld by the Supreme Court in *Citizens United* against First Amendment attack on the grounds that it ''can provide shareholders and citizens with the *information needed* to hold corporations and elected officials *accountable for their positions* and supporters. This transparency enables the electorate to make *informed decisions and give proper weight to different speakers and message . . .*'' 130 S. Ct. at 916 (emphasis added). Second, while the precise nature of the disclosure and election dynamics are different in this context from the campaign finance context, the fundamental point that transparency facilitates informed decisionmaking does not depend on the particular political setting. In this case, the dynamics of union elections make the use of third parties relevant to the ultimate issue of whether or not employees choose a representative for purposes of collective bargaining. Ultimately, while the dynamics and structures of elections differ, the use of third-party persuaders, whether using direct or indirect contact, is relevant to decisionmaking in union elections.

Other federal statutes center their regulatory focus on reporting and disclosure. The reporting and disclosure requirements in the LMRDA closely resemble those in other statutes, which similarly seek to create a more informed electorate. As discussed in greater detail in Section V.G.1.a and c, courts that have addressed challenges by attorney-consultants that refused altogether to report direct persuader activities or to provide only limited disclosure of other activities after engaging in direct persuasion have pointed out the congruent purposes served by the LMRDA and federal statutes regulating campaign financing and lobbying activities. While direct and indirect persuader activity differ, in that the former involves face-to-face contact between the consultant and the worker while the latter does not, disclosure in both instances serves the same core compelling governmental purpose: Disclosing to workers the source of the persuader campaign and communications, which serves to ''[empower] voters so that they use their vote effectively,'' thus increasing voter competence. See Garrett, Elizabeth, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress,* 27 Okla. City U.L. Rev. 665, 675 (2002). ''Just as disclosure in the corporate realm improves confidence in the economic system and demonstrates values undergirding the economy, disclosure can serve the same function in the political realm.'' Id. at 691.

c. Addressing Additional Commenter Points

In *Master Printers of America* and *Humphreys,* the Courts of Appeals for the Fourth and Sixth Circuits focused on four factors in determining whether section 203(b) of the LMRDA violated the respective appellants' free speech rights: (1) The degree of infringement on free speech; (2) the importance of the governmental interest protected by the LMRDA; (3) whether a ''substantial relation'' exists between the governmental interest and the information required to be disclosed; and (4) the closeness of the fit between the LMRDA and the governmental interest it purports to further. *Master Printers of America,* 751 F.2d at 704; *Humphreys,* 755 F.2d at 1220.[80]

With respect to the first factor examined in *Master Printers of America* and *Humphreys,* the degree of infringement on free speech, the Department concludes that any potential reduction in employer speech that might result from the rule, as raised in the comments, is speculative and not of the sort that amounts to a substantial chill on free speech. Commenters have argued that the proposed rule will have a chilling effect on employers and consultants. As several commenters noted, this argument has been raised before—under the LMRDA as well as in analogous contexts—and rejected by all the federal courts of appeals to have decided this question.

Many of the commenters contended that the rule would infringe on First Amendment rights by severely limiting the ability of employers to retain qualified labor attorneys and

[80] The ''outlier'' among the courts of appeal to have considered constitutional issues posed by persuader reporting, *Donovan* v. *Rose Law Firm,* 768 F.2d 964, 975 (8th Cir. 1985), did not concern the obligation of a labor relations consultant to report persuader activities in which the consultant had engaged. Instead, its focus was on whether a consultant that had engaged in persuader activities was required, by virtue of that activity, to disclose information about non-persuader labor relations services provided to other employer clients. The court, concluding that Congress did not intend that consultants would have to report such non-persuader services performed for other clients, did not reach the constitutional issue.

consultants to provide the guidance necessary to lawfully navigate the federal laws on union organizing campaigns. They claimed that the revised interpretation of the advice exemption would lead many labor law firms to cease providing advice to employers due to the new disclosure requirements. As a result, they claimed, employers would be forced to either remain silent or risk inadvertently violating complicated labor laws if they attempt to navigate the organizing effort without adequate guidance. These commenters contended that the rule would essentially deprive employers of their right to counsel with regard to labor relations matters. Some of the commenters asserted that, in effect, employers' ability to communicate with their employees would be impaired, thereby depriving employees of information to balance out the pro-unionization message. For instance, one local chamber of commerce commented that employers, lacking access to legal advice, would inadvertently make statements or engage in conduct that results in unfair labor practices, which in turn may result in intervention by the NLRB to compel recognition of and bargaining with the labor union. Other commenters, including a law firm and a trade association, argued that employers cannot be expected to know and understand the complexities involved in labor relations laws. Therefore, according to several commenters, this rule would result in more costly re-run elections, NLRB investigations, hearings, bargaining orders, delays, interference charges, and litigation.

The Department is not persuaded by these arguments. The Supreme Court rejected a similar contention under the federal lobbying act, holding that it would not strike down a statute based on speculative arguments, particularly those relating to assertions that amount to ''self-censorship.'' The Court stated:

> Hypothetical borderline situations are conjured up in which such persons choose to remain silent because of fear of possible prosecution for failure to comply with the Act. Our narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint. But, even assuming some such deterrent effect, the restraint is at most an indirect one resulting from self-censorship, comparable in many ways to the restraint resulting from criminal libel laws. The hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest.

United States v. *Harriss,* 347 U.S. 612, 626 (1954). Moreover, the courts in *Master Printers of America* and *Humphreys* determined that a showing of threats, harassment, or reprisals to specific individuals must be shown to prove that government regulation will substantially chill free speech. *Master Printers of America,* 751 F.2d at 704; *Humphreys,* 755 F.2d at 1220. The courts were able to weigh proffered evidence in reaching their conclusions. Neither the Department nor the commenters, of course, have at this stage of the final rule the benefit of any actual evidence to review the effects of requiring the disclosure of indirect persuader activities.

Earlier in the preamble, at Section V.C.2.d, we discussed our strong skepticism about the claims that this rule would discourage employers from continuing to rely on labor relations consultants in contesting union representation efforts or that it would drive some consultants out of the industry because they would have to report indirect persuader activities. In our view, given the importance that most employers attach to defeating union representation, the use of labor relations consultants will remain prevalent. Thus, we do not foresee a decline in industry business. While, as noted, an incidental effect of disclosure may be to increase competition within the consultant industry—as the particular persuader activities of consultants, along with the cost of their services, become better known, this informational gain can hardly be characterized as chilling. Further, while we recognize that the predictive value of information about experience under the Department's Form LM–2, required by the Department's LMRDA regulations—where unions are required to report particular information on their payments of $5,000 or more per year to attorneys, consultants, and others—has some limitations, the Department has seen no drop off in the reported amounts expended by unions on such matters between 2005 (the first year in which unions had to report such payments) and 2014 (the most recent complete year for which such reports are available). Nor has the Department received complaints that such disclosure has hampered unions in obtaining the services of attorneys or others. See 68 FR 58374, 58391 (Oct. 8, 2003) (noting that a union must report the recipient's name and address, the nature of its business, the purpose or reason for making the disbursement, the amount of the disbursement, and its date).

The principles provided in *Harriss, Master Printers of America,* and *Humphreys* lead the Department to conclude that the commenters' contentions are too speculative to set aside or substantially modify the proposed reporting requirements. See also *Donovan* v. *Master Printers Association,* 532 F. Supp. at 1148–49. Indeed, in some respects, the commenters have bootstrapped their argument on the Department's mistaken view that section 203 could be effectuated without requiring reporting by employers and consultants where the consultant agreed to stay behind the scenes. Their position at bottom is that the disclosure prescribed by Congress in enacting the LMRDA, which the Department proposed in the NPRM and requires under the final rule, will impose a filing burden on them and, perhaps, make their jobs a little more difficult because the consultant's role in persuading employees will become publicly known. But their position—from a constitutional vantage—is no stronger under the final rule than it was under the prior interpretation. The information to be reported—the agreement and the particular persuader activities to be undertaken—are materially the same, whether the agreement provides for direct communication by the consultant with the employees or the consultant conducts the organizing campaign behind the scenes.

The Department is not persuaded that the revised interpretation will substantially chill employers from retaining counsel. As stated earlier, reporting is only triggered when a law firm chooses to perform a persuader activity. Thus, a law firm exclusively providing advice, representation or other legal services is under no obligation to file a report, eliminating any concerns that the law firm or the employer may have with regard to disclosing their relationship. The Department rejects the contention that the revised interpretation, or the statute itself, limits the ability of an employer to retain counsel. Moreover, the rule provides guidance that further clarifies the kinds of direct and indirect activities that trigger reporting, minimizing the possibility that reporting will be triggered by an inadvertent action by the lawyer or vague boundaries between reportable and non-reportable activities. See Section IV.B and Section V.E.1. Law firms will know the test for determining when reporting is triggered and when to apply it, and that legal services themselves do not trigger reporting. Thus, as stated, there is no limitation on the ability of an attorney to provide persuader services in addition to legal services, by virtue of the statute or this

rule, because an attorney is not required to disclose any privileged communication nor is the attorney encumbered by any ethical restrictions that prevent disclosure. See Section V.H.

The commenters have not provided any substantive indication that all, some, or even any law firms would cease representing clients as a result of the broadened reporting requirements under the final rule, or even that they would cease to provide persuader services in addition to legal services. Even assuming that some labor law firms might decline to offer persuader services, in addition to advising or representing certain employers, due to required disclosure, the commenters do not adequately explain why employers would be unable to retain competing firms that offer persuader services.

Indeed, one law firm pointed out in its comments that an employer must weigh a number of different factors in deciding whether or not to communicate with its employees regarding unionization. Which factors are assessed and how much weight to be given to each are entirely speculative because these considerations will surely vary depending on the circumstances. As the Supreme Court concluded, the possibility of significant self-restraint, as the commenters maintained is the case here, is simply too remote for the Department to justify rejecting the proposed rule, especially given the important purposes served by disclosure. See *Harriss,* 347 U.S. at 626.

On the present rulemaking record, we see no reasonable probability that the fears raised by commenters will be realized. If questions arise about perceived infringement of an employer's rights, the Department will answer these queries on a case-by-case basis through interpretive letters or other compliance assistance activities.[81]

In addition, the potential effects on expressive activity discussed in the comments do not constitute the sort of threat of physical harm and loss of employment that would give rise to a finding of a substantial chill on free speech. See *Master Printers of America,* 751 F.2d. at 704 (citing *NAACP* v. *Alabama,* 357 U.S. 449, 462–63 (1958)). In *Humphreys,* for example, the Sixth Circuit reviewed the evidence provided by the plaintiff-appellant law firm to determine whether the alleged infringement on First Amendment rights would result in ''threats, harassment, or reprisals.'' In an affidavit, the appellant had claimed that if it were compelled to report the required information, the firm's disclosed clients would suffer reprisals and retaliation from private parties and government officials. The appellant claimed that a labor union would use the information to embarrass the firm's clients, to compile an ''enemies list,'' and to urge its members to boycott the publicly-disclosed firms. The appellant also asserted that the Department of Labor might harass the disclosed clients. The Court of Appeals, however, found these allegations to be speculative and held that the reporting requirements in section 203(b) do not substantially burden the appellant's First Amendment rights. *Humphreys,* 755 F.2d at 1220–21; see also *Citizens United,* 558 U.S. at 370 (''Citizens United, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation'').

The types of infringement speculated upon by the commenters, such as the rule's effect on the ability of employers to retain counsel and the potential for employers to ''muzzle'' or ''gag'' themselves, do not constitute the sort of infringement that would result in physical threats, harassment, or reprisals that are necessary for a finding of an impermissible chilling effect. For example, a local chamber of commerce submitted comments contending that employers, fearing the risk of committing unfair labor practices, would alternatively simply remain neutral during a union organizing campaign. A few commenters stated that union organizers would use the financial information required to be disclosed under the revised LM–10, LM–20, and LM–21 forms as more ammunition in their organizing campaigns. Even assuming this holds true, however, such tactics would not rise to the level of unconstitutional infringement.

Similarly, as mentioned above, some commenters suggested that the rule effectively deprives employees of balanced information, denying them the full exercise of their speech rights under the NLRA. The Department disagrees with this position, considering that a primary purpose of this rule is to provide employees with more information regarding the role of consultants in anti-union campaigns, without chilling the speech of employers. Moreover, as set out in *Master Printers of America,* 751 F.2d at 710, disclosure laws unlike other types of restrictive laws actually promote speech by making more information available to the public, thereby bolstering the ''marketplace of ideas.'' The court in *Humphreys* similarly determined that the ''disclosure requirements aid employees in understanding the source of the information they receive.'' 755 F.2d at 1222.

The second factor examined in *Master Printers of America* and *Humphreys* involves the importance of the governmental interest protected by the LMRDA. See Sections III.B.2 and V.C (Policy Justification for Revised Interpretation). The governmental interests that were considered in *Humphreys* and *Master Printers of America* as constitutionally appropriate bases for persuader reporting continue to undergird the interpretation embodied in this final rule. In *Humphreys,* 755 F.2d at 1221–22, the Sixth Circuit, focusing on the government's compelling interest in maintaining harmonious labor relations, determined that this interest justified the burden on the appellant's exercise of its First Amendment rights. The court explained that reporting persuader activities ''aid[s] employees in understanding the source of the information they receive,'' and that this information would ''enable employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.'' Id. at 1222. In *Master Printers of America,* 751 F.2d at 707, the Court of Appeals, after an extensive review of the LMRDA's legislative history, acknowledged that section 203 was enacted to serve two compelling governmental interests: To deter actual corruption in the labor management field and to bolster the government's ability to investigate in order to act and protect its legitimate and vital interests in maintaining sound and harmonious labor relations. As explained earlier in the preamble, the final rule, by increasing transparency and fairness during the organizing process, promotes the government's compelling interest in ensuring that employees receive information about persuader activities

[81] The Department declines in this final rule to respond specifically to comments that pose hypothetical situations in an attempt to illustrate how application of the final rule would violate employers' free speech rights. The Department is guided by the *Harriss* decision, in which the Supreme Court discounted hypothetical borderline situations as the basis upon which to evaluate a general challenge to a statute's constitutionality. Id. The Eleventh Circuit answered a similar question in *Meggs,* 87 F.3d at 461. Citing to *Harriss,* the *Meggs* court established that it was unwilling to accept the appellant's hypothesized, fact-specific worst-case scenarios. 87 F.3d 461. See *Center for Competitive Politics* v. *Harris,* 784 F.3d 1307, 1317 (9th Cir. 2015), petition for cert. docketed, 84 U.S.L.W. 3080 (U.S. Aug. 3, 2015) (No. 15–152).

that is necessary for them to assess anti-union messages directed at them so they may make informed decisions about union representation and collective bargaining, and in bolstering the government's investigative ability, and maintaining stable and harmonious labor relations. See Sections III B.3–.5, and V.C. The position taken in this final rule is fully justified. It is supported not only by the language of section 203 and its legislative history, but also the lessons drawn by the Department from its own administration of the LMRDA and the substantial research findings on the widespread, contemporary use of labor relations consultants to influence employees in the exercise of their representation and collective bargaining rights. See *National Association of Manufacturers* v. *Taylor,* 582 F.3d 1, 16 (D.C. Cir. 2009) (state and federal disclosure laws may be justified upon a legislative determination that good government requires transparency, no empirical showing is required); see also *Edwards* v. *District of Columbia,* 755 F.3d 996, 1005 (D.C. Cir. 2014) (noting that unlike the regulation there at issue, a constitutional challenge will fail where the regulation is supported by a legislative record and contemporary accounts that explain ''the ills at which the law was aimed'').

With respect to the third factor—whether there is a substantial relationship between the governmental interests and the information to be disclosed—the *Master Printers of America* court understood that disclosure requirements are an effective means of protecting employee rights under the NLRA. The court further reasoned that the LMRDA's scheme ensures that the Department has the means to gather data and detect violations. In *Humphreys,* the Sixth Circuit also concluded that the requirements in section 203 are substantially related to compelling governmental interests: To assist employees in understanding the source of the information they receive, to discourage unlawful labor practices, reduce the appearance of impropriety, and supply information to the Department that will aid in detecting violations. In contrast to the court's findings, one commenter claimed that most of the information required to be reported under the final rule is unlikely to have any relation to persuader activity, resulting in a false and misleading picture of employers' practices and intentions with respect to labor relations. The Department disagrees. The final rule will help employees better understand the source of information that is designed to persuade them in exercising their union representation and collective bargaining rights, as it will reveal that the source of the persuader materials is an anti-union campaign managed by an outsider. See *Evergreen Association, Inc.* v. *City of New York,* 740 F.3d 233, 247–248 (2d Cir. 2014), cert. denied, *Pregnancy Care Center of New York* v. *City of New York,* 135 S. Ct. 435 (U.S. 2014) (the government has a strong ''interest in informing consumers and combating misinformation'').[82] Further, the Department's experience administering the persuader reporting requirements indicates that the amended Forms LM–10 and LM–20 will provide more information to employees. The Form LM–10 and LM–20 provide transparency as to the terms of the agreement between the employer and the consultant. A properly completed form will include the fees the employer will pay the consultant and the services the consultant will perform. In many senses, this data is neutral. Depending on the worker reading the report, the disclosures may benefit a union attempting to organize or, on the other hand, it may benefit an employer seeking to avoid a union. Despite the uncertainty of predicting how the worker will interpret and react to the disclosed information, the information is generally the type that an involved worker will consider relevant.

A worker who is weighing the pros and cons of unionization, for example, will be interested in knowing the depth of his or her employer's attitude toward union representation. One employer may hire a consultant for $85,000 per year. Another may choose to pay as little as $25 an hour. It will, of course, already be clear to the employee that both employers oppose unionization. But the amount of money an employer actually invests in the endeavor is nevertheless informative. The axiom that actions speak louder than words applies here. One worker may reasonably conclude that an employer willing to commit substantial sums to avoid a union, will enter into a bargaining relationship with greater reluctance and prove to be a more intransigent negotiator. That worker may deem unionization too difficult a path for him or her to support. Conversely, a different worker, one who believes that collective bargaining is a zero sum game, may infer that the employer correctly understands that it might have to make major concessions at the bargaining table. This worker may conclude that union representation has potential for substantial increases in compensation and benefits. Whichever conclusion is reached, both workers will consider the information valuable in making their determination.

The increased transparency, by requiring that both direct and indirect activities be reported, will also serve a prophylactic effect, discouraging and preventing corruption and other improprieties in the midst of organizing campaigns or collective bargaining controversy. Moreover, given that the proposed rule, adopted with some modification in the final rule, better effectuates the statute's mandate that both direct and indirect persuader activity be reported, there is no merit to the suggestion that the link between the purposes served by disclosure and the particular information to be disclosed is less strong than the link approved in *Humphreys* and *Master Printers of America.*[83]

The fourth factor examined in *Master Printers of America* and *Humphreys* involves the closeness of the fit between section 203 and the governmental interest it purports to further. One commenter, a law firm association, averred that the statute must be narrowly construed because it places a burden on free expression. A law firm commenter stated that the Department's proposed interpretation is not narrowly tailored to a compelling purpose. The firm analogized the Department's rulemaking with what the City of Chicago attempted to accomplish in *Police Dep't of City of Chicago* v. *Moseley,* 408 U.S. 92 (1972), where the city enacted an ordinance that prohibited certain types of picketing or demonstrating within 150 feet of a secondary school. The firm also cited to the Supreme Court's decision in *Sorrell* v. *IMS Health, Inc.,* 131 S. Ct. 2653 (2011). The circumstances in those cases are distinct from those posed by this rule. While the law firm suggests, in effect, that the Department cannot require employer consultants to disclose activities without requiring the same for consultants providing similar assistance

[82] In that case, the court of appeals upheld a state law requiring that a pregnancy services center publicly disclose, by postings and otherwise, whether it had a licensed medical provider, information which the state deemed important for consumers to know upfront when considering whether to use the provider's services.

[83] Following the Court's opinions in *Buckley* and *Citizens United* upholding disclosure requirements of the statutes there at issue, litigants have continued to assert, without success, in various statutory contexts, that disclosure provisions impede the exercise of their First Amendment rights. See cases cited in this section of the preamble. These decisions indicate that the tests applied in *Masters Printers of America* and *Humphreys,* and the results reached there, fully accord with more recent precedent.

to labor unions, the law firm ignores that the LMRDA contains separate reporting requirements for consultants, employers, and unions and that the proposed regulation conforms to these statutory requirements. Even assuming that the regulation affects consultant free speech rights, it does so in a way that permissibly advances a substantial government interest—a critical factor which the Supreme Court found wanting in *Moseley* and *Sorrell.*

The analysis in *Master Printers of America* is more analogous to the present circumstances than the cases relied upon by the commenters. In examining whether section 203 of the LMRDA is carefully tailored to achieve its purpose, the Fourth Circuit emphasized that Congress foresaw that full disclosure of persuader activities was needed to achieve the Act's purposes. *Master Printers of America,* 751 F.2d at 708. In the court's view, full financial disclosure is appropriate. The court also noted that it was Congress's intent to require the disclosure of a wide-ranging number of employers and activities, even if it meant reporting activities that were not improper. Id. With these legislative aims in mind, the court determined that section 203(b) is tailored with ''precision'' to serve its purpose. The revised interpretation of the advice exemption indeed broadens the scope of reporting in sections 203(a)(4) and 203(b), but the broadened disclosure requirements are still within the confines of Congress's goals when it enacted the LMRDA. The Department believes that the final rule more closely aligns section 203 with the legislative aim of full, detailed exposure of persuader activities, direct or indirect. It ensures that workers know the source of all materials provided by outside parties and generally promotes the various harmonious aspects of labor-management relations, not just the limited circumstances involving direct persuasion by consultants. The Department thus finds no reason to believe that revising the interpretation of the advice exemption, even though it broadens the scope of what was previously required to be reported, in any way renders section 203 overbroad. Congress established a comprehensive scheme to ensure transparency in the field of labor-management relations; it created various reporting and disclosure requirements on the parties engaged in union representation campaigns and collective bargaining, including the disclosure of agreements between employers and labor relations consultants, in the limited situations where the consultant agrees to undertake persuader activities.

The Department's final rule is the least restrictive means by which this important governmental interest can be achieved. Indeed, commenters have failed to articulate an alternative approach that would effectuate the congressional determination that an effective and fair labor-management relations system requires the reporting of both direct and indirect persuader activities. Cf. *Dole* v. *Shenandoah Baptist Church,* 899 F.2d 1389, 1398 (4th Cir. 1990) (recognizing that even restrictions on conduct that impair the exercise of religion may constitutionally be imposed where necessary to establish uniform requirements under the Fair Labor Standards Act). In sum, the Department believes section 203, as interpreted in this final rule, is narrowly and constitutionally tailored to achieve its purpose and will not unlawfully infringe on employers' or consultants' free speech rights under the First Amendment.[84]

2. Comments on Revised Interpretation's Impact on NLRA Section 8(c)

Many of the commenters contended that the Department's proposed interpretation of the advice exemption violates employers' free speech rights under section 8(c) of the NLRA. This provision guarantees that the ''expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of [the NLRA], if such expression contains no threat of reprisal or force or promise of benefit.'' 29 U.S.C. 158(c).

In support of their argument, the commenters cited primarily to three Supreme Court cases: *Chamber of Commerce* v. *Brown,* 554 U.S. 60 (2008); *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575 (1969); and *Linn* v. *United Plant Guard Workers of America, Local 114,* 383 U.S. 53 (1966). These cases are referenced for the proposition that the enactment of section 8(c) manifested a congressional intent to encourage free debate and a policy judgment ''favoring uninhibited, robust, and wide-open debate in labor disputes.'' *Brown,* 554 U.S. at 67–68. In essence, the commenters asserted that the proposed rule either violates section 8(c) outright or runs counter to its purpose by limiting the opportunity for uninhibited, robust debate, or both. Implementation of the proposed rule would, according to one local chamber of commerce, eviscerate section 8(c) by virtually eliminating the reasonable opportunity for employers to communicate with their employees about union organizing campaign issues. Another commenter, a national law firm, posed the question of how an employer's section 8(c) rights can even be exercised when the employer is restricted from accessing competent legal counsel to ensure it does not inadvertently make statements deemed to be a threat or promise.[85] The Department disagrees with these challenges to the proposed rule; the disclosure required by this rule in no way inhibits ''robust and wide-open debate'' over union representation and collective bargaining issues. Both the proposed and final rules expressly state that a consultant's guidance about whether a statement constitutes a threat or promise does not trigger reporting.

The Department notes first that section 203(f) states that ''[n]othing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended.'' 29 U.S.C. 433(f). One law firm commented that section 203(f) of the LMRDA obligates the Department to uphold employers' section 8(c) rights. Notwithstanding our obligations under section 203(f), the Department believes that the commenters' reliance on section 8(c) in this context is misplaced. Since 1963, the Department, through its regulations, has unequivocally stated that while nothing contained in section 203 of the LMRDA shall be construed to amend or modify the rights protected by section 8(c) of the NLRA, activities protected by section 8(c) are not exempted from the

[84] In addition to raising the free speech concerns, a few commenters objected on the grounds that the rule violates employers' freedom of association guaranteed under the First Amendment. The Department disagrees that the revised interpretation of the advice exemption infringes on employers' associational rights. The courts in *Buckley,* 424 U.S. at 657, *Master Printers of America,* 751 F.2d at 704, and *Humphreys,* 755 F.2d at 1219, addressed both free speech and associational rights using the same principles and analytical framework. Therefore, for the same reasons articulated above with respect to the free speech issue, the Department concludes that the rule does not infringe on employers' First Amendment associational rights.

[85] In contrast, one labor organization submitted comments pointing out that employers' section 8(c) free speech rights must be balanced against employees' section 7 rights to associate freely. The labor organization cited to the Supreme Court's reasoning in *Gissel Packing Co.,* 395 U.S. at 617, that any balancing of these rights ''must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.'' Neither the proposed nor final rule alters the balance struck under the NLRA.

reporting requirements of section 203(a) of the LMRDA, and, if otherwise subject to such reporting requirements, are required to be reported. 29 CFR 405.7. With respect to the reporting obligations of labor relations consultants, the Department's regulations are also unequivocal. Although nothing contained in section 203 of the LMRDA shall be construed to amend or modify the rights protected by section 8(c) of the NLRA, activities protected by section 8(c) are not for that reason exempted from the reporting requirements of the LMRDA, and, if otherwise subject to those reporting requirements, are required to be reported. Therefore, information required to be included in Forms LM–20 and 21 must be reported regardless of whether that information relates to activities which are protected by section 8(c) of the NLRA. See 29 CFR 405.7; 29 CFR 406.6.

Sections 405.7 and 406.6 make clear that persuader activities, even if they constitute protected speech under section 8(c) of the NLRA, are nevertheless subject to the reporting and disclosure requirements of sections 203(a)(4) and 203(b) of the LMRDA. Moreover, the Department in this rule does not encourage workers to take any position concerning the exercise of their rights to organize and bargain collectively, nor does it take any position concerning whether or how an employer should exercise its rights under section 8(c). Rather, as stated, the Department contends that this rule promotes peaceful and stable labor relations, in part through disclosure to workers of information that assists them in making decisions regarding their rights, while simultaneously protecting the section 8(c) rights of employers. The Department thus concludes that this final rule, which merely interprets section 203 of the LMRDA and imposes broader reporting and disclosure requirements, does not violate employers' rights of expression under section 8(c) of the NLRA.

3. Comments Alleging Vagueness of Revised Interpretation

The Department received a few comments contending that the final rule would render section 203 impermissibly vague, especially in light of the possibility for criminal penalties. For example, one trade association claimed that the rule would sacrifice the clarity of the previous interpretation of the advice exemption in favor of an unworkable redefinition. Another commenter argued that the proposal is unconstitutionally vague because the disclosure requirements are not carefully tailored under any reasonable definition of ''persuasion activity.'' The commenters relied on several federal cases in support of their argument that the final rule is too vague. However, almost all of these commenters cited to the Supreme Court opinion in *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972), which addresses this issue as follows:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut(s) upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of (those) freedoms.' Uncertain meanings inevitably lead citizens to '' 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked.' ''

Id. at 108–09 (citations omitted).

As discussed below, the final rule provides clear guidance to filers about their reporting obligations, easily meeting the *Grayned* standard for statutes and regulations. Essentially, the commenters' vagueness argument—that is, the apparent difficulty in categorizing an activity as nonreportable advice or reportable persuasion—boils down to their claimed confusion regarding when and how to apply the rule in indirect persuasion situations. However, as the Department explained above, reporting is triggered when a consultant enters into an agreement with an employer under which the consultant undertakes activities that have an object to persuade employees about whether and how they should exercise their representation and collective bargaining rights. See Section IV.B and Section V.E.1. While the scope of reporting under the proposed and final rule is broader than under the Department's prior interpretation, the trigger for reporting remains the same—the object for which the activity is undertaken. Further, contrary to the view of some commenters, the Department believes that the term ''persuade'' has an easy to understand meaning, and the term ''object,'' like similar terms such as ''intent'' or ''purpose,'' is measured by objective factors that consultants and employers can take into account in guiding their actions. See *Master Printers of America,* 751 F.2d at 710–12; see also *Yamada* v. *Snipes,* 786 F.3d 1182, 1187–1188 (9th Cir. 2015), petition for cert. docketed, 84 U.S.L.W. 3092 (U.S. Aug. 18, 2015) (No. 15–215) (ambiguity should not be allowed to chill protected speech, but ''perfect clarity and precise guidance'' are not required for a disclosure requirement to survive scrutiny). The proposed rule included checklists and examples to assist filers in identifying reportable activities, and the final rule provides additional clarity by grouping the list of indirect persuader activities from the NPRM into four specific categories: the directing or coordinating of supervisors and other employer representatives; the preparation of persuader materials; the conducting of union avoidance seminars; and the development and implementation of personnel policies and actions. See discussion above at Section IV.B. In short, the final rule adopts clear reporting requirements, eliminating any of the concerns articulated in *Grayned.*

H. Comments Alleging Conflict Between Revised Interpretation and Attorney-Client Privilege and Attorney's Duty To Protect Confidential Information

1. Comments Involving the Attorney-Client Privilege and LMRDA Section 204

In the NPRM, the Department stated that section 204 of the LMRDA exempts attorneys from reporting any information protected by the attorney-client privilege. 76 FR 36192. By this provision, Congress intended to afford to attorneys the same protection as that provided in the common-law attorney-client privilege, which protects from disclosure communications made in confidence between a client seeking legal counsel and an attorney. The Department explained that as a general rule information such as the fact of legal consultation, clients' identities, attorney's fees, and the scope and nature of the employment are not deemed privileged. The Department further explained that the section 204 privilege is operative only after the attorney has engaged in persuader activity. Therefore, attorneys who engage in persuader activity must file the Form LM–20, which requires information about the fact of the persuader agreement with an employer-client (including the parties' fee arrangements), the client's identity, and the scope and nature of the

employment.[86] The Department further noted, consistent with its prior interpretation, that, to the extent that an attorney must report his or her agreement or arrangement with an employer, any privileged communications are protected from disclosure. Id. In support of its position, the Department cited to the Sixth Circuit's opinion in *Humphreys, Hutcheson and Moseley* v. *Donovan,* 755 F.2d 1211, 1216 (6th Cir. 1985) and the Restatement (Third) of the Law Governing Lawyers section 69. Id.

Several commenters rejected the analysis in the NPRM, maintaining that the proposed rule was inconsistent with section 204 by requiring the disclosure of confidential client information protected by the attorney-client privilege. The American Bar Association (ABA) stated its view that ''[b]y requiring lawyers to file detailed reports with the Department, stating the identity of their employer clients, the nature of the representation and the types of legal tasks performed, and the receipt and disbursement of legal fees whenever the lawyers provide advice or legal services relating to the clients' '' persuader activities, the proposed rule would ''seriously undermine the confidential client-lawyer relationship.'' Characterizing these reporting requirements as ''unfair reporting burdens,'' the ABA stated that the rule could discourage employers ''from seeking the expert legal representation that they need, thereby chilling their ability to obtain counsel.'' [87] Another commenter, a trade organization for the construction industry, stated that the rule would require employers and their clients to reveal, for public dissemination, information long considered to be privileged, such as information concerning the existence of the relationship, the terms and conditions of the engagement (including written agreements), the nature of the advice provided, payments made, receipts from all clients, and disbursements made by the firm in connection with labor relations advice or services rendered, among other things. Similarly, a law firm commented that information that has for decades been treated as privileged now risks being disclosed.

On the other hand, a number of commenters, including two labor organizations, supported the Department's revised interpretation of the advice exemption. The commenters believed that the rule, as proposed, would not violate the attorney-client privilege. In part, they relied upon the court's observations in *Humphreys* and various authorities rejecting the defense of attorney-client privilege and attorney-client confidentiality where disclosure of information is required by law.

Before responding to the comments, the Department notes the limited information required to be reported under this rule:

- A copy of the persuader agreement between the employer and consultant (including attorneys);
- the identity of the persons and employers that are parties to the agreement;
- a description of the terms and conditions of the agreement;
- the nature of the persuader and information-supplying activities, direct or indirect, undertaken or to be undertaken pursuant to the agreement—information provided by simply selecting from a checklist of activities;
- a description of any reportable persuader and information-supplying activities: the period during which the activities were performed, and the extent to which the activities have been performed as of the date of the report's submission; and
- the name(s) of the person(s) who performed the persuader or information-supplying activities; and the dates, amounts, and purposes of payments made under the agreement.

After a review of the comments submitted and based on the following reasons, the Department affirms its position in the NPRM that the revised interpretation of section 203(c) does not infringe upon the common law attorney-client privilege, which is still preserved by section 204, nor an attorney's ethical duty of confidentiality. Although the ABA and the other commenters expressed strong opposition to any reporting as a matter of principle, notably lacking from the submissions is any discussion of the types of activities that labor relations consultants, including attorneys, routinely engage in while providing their services to employer-clients seeking to avoid representation. Similarly lacking is any persuasive argument that the ''soup to nuts'' persuader services offered by attorneys should be shielded from employees and the public while the very same activities would be reported by their non-attorney colleagues in the union avoidance industry. See discussion at Section III.B of this preamble. As noted earlier, law firms have engaged in the same kinds of activities as other consultant firms, providing services similar to practices advocated by Nathan Shefferman, the face of the ''middlemen,'' mentioned in the McClellan hearings and the LMRDA's legislative history. Logan, *The Union Avoidance Industry in the United States,* at 658–661. In the Department's view, none of the information required to be reported under the revised interpretation is protected as a general rule by the attorney-client privilege. Only copies of or details about persuader aspects of the agreement are reportable. To the extent the agreement provides confidential details about services other than reportable persuader/information supplying activities, the principles of attorney-client privilege would apply and such information is not reportable. While some of the comments submitted in response to the NPRM concern issues that may arise in connection with the Form LM–21, such as the scope and detail of reporting about service provided to other employer clients, that report is not the subject of this rulemaking.[88] The Department has publicly stated its intention to revisit these requirements in rulemaking. While it would be premature to address the form that such rulemaking may take, the Department briefly summarizes and discusses those comments at the close of this section.

As noted above, several commenters claimed that the revised interpretation infringes upon the common law attorney-client privilege and attorneys' ethical duty of confidentiality. Although several commenters acknowledged that these principles are separate, others did not differentiate between the two. As explained by the ABA in its Model Rules of Professional Conduct:

> The evidentiary attorney-client privilege is closely related to the ethical duty of confidentiality. They are so closely related that the terms ''privileged'' and ''confidential'' are often used interchangeably. But the two are entirely separate concepts, applicable under different sets of circumstances. The ethical duty, on the one hand, is extremely broad: it protects from disclosure all ''information relating to the representation of a client,'' and applies at all times. The attorney-client privilege, on the other hand, is more limited: it protects

[86] The Form LM–21 requires the attorney-consultant to provide additional information about the financial arrangements concerning the persuader agreement, including the recipient and purpose of any disbursement, *e.g.,* payment to Quickprint, Inc. for printing ''vote no'' pamphlets for distribution to Acme's employees. See discussion later in the text.

[87] The assertion that the rule could chill employers' ability to obtain counsel is discussed in greater detail near the end of this section and in Section V.G.

[88] The agenda for the Form LM–21 rulemaking is set out in the Department's *Semiannual Unified Agenda and Regulatory Plan,* viewable at *www.reginfo.gov.* The Department currently estimates that a proposed rule on the Form LM–21 will be published in September 2016.

from disclosure the substance of a lawyer-client communication made for the purpose of obtaining or imparting legal advice or assistance, and applies only in the context of a legal proceeding. See Model Rule 1. 6, cmt. [3]; Restatement (Third) of the Law Governing Lawyers §§ 68–86 (2000).

Annotated Model Rules of Professional Conduct, Seventh Edition Annotated Model Rules of Professional Conduct (7th ed. 2011), available on Westlaw at ABA–AMRPC S 1.6. To a large extent, the policy reasons under each principle are similar—to facilitate the relationship between the attorney and client by allowing the client to freely communicate matters relating to the legal issue for which the attorney's service has been engaged. However, both principles recognize that this general non-disclosure policy is subject to various exceptions and that ''external law'' controls over the profession's preference for non-disclosure.

Indeed, the tension between disclosure of persuader agreements and the general attorney non-disclosure principle is largely illusory because this principle recognizes many exceptions that directly apply to the reporting required by this rule. Further, attorneys who restrict their activities to legal services are not required to file any report; only those attorneys who engage in persuader services are required to file a report. The information that would be disclosed in filing the LM–20 report, principally the identity of the employer-client, the amount to be paid for the persuader activity, and a general description of the services, are not ordinarily protected by the attorney-client privilege. While this information could not be released as a matter of course under codes requiring the preservation of client confidences, such information is routinely disclosed where sought by subpoena or required by law. The LMRDA and the Department's rule requiring disclosure stands in the same stead. Moreover, the Department's rule recognizes that there may be rare occasions when some information should not be disclosed, *e.g.,* where disclosure would reveal confidential client information unrelated to persuader activity. Thus, commenters are mistaken in suggesting that particularly sensitive client information will be disclosed.

The Department agrees with those commenters who stated that the attorney-client privilege does not protect from disclosure ''the fact of legal consultation or employment, clients' identities, attorneys' fees, and the scope and nature of employment.'' *Humphreys,* 755 F.2d at 1219. At issue in *Humphreys* was whether a consultant-law firm had to file a report disclosing receipts and disbursements relating to labor relations advice and services because it had engaged in persuader activities. There were no particular documents discussed.

The court noted that the ABA had sought a broader disclosure exemption from Congress than that provided by section 204. This broader exemption would have barred the disclosure:

> of any matter which has traditionally been considered as confidential between a client and his attorney, including but not limited to the existence of the relationship of attorney and client, the financial details thereof, and any advice or activities of the attorney on behalf of his client which fall within the scope of the legitimate practice of law.

Id. at 1218 (internal quotations omitted). The court rejected the law firm's argument that Congress intended to provide a broad disclosure exemption such as that sought by the ABA, holding instead that Congress, in enacting section 204, intended to provide the same protection against disclosure as the traditional attorney-client privilege. The court recognized that Congress rejected such an approach during its consideration of competing legislative proposals concerning the breadth of the reporting exception for attorneys. Id. at 1216, 1218.

The court further explained that ''the attorney-client privilege does not envelope everything arising from the existence of an attorney-client relationship,'' emphasizing that ''the attorney-client privilege is an exception carved from the rule requiring full disclosure, and, as an exception, should not be extended to accomplish more than its purpose.'' Id. at 1219. (internal quotations omitted). The court made the additional points:

- ''The attorney-client privilege only precludes disclosure of *communications* between attorney and client and does not protect against disclosure of the facts underlying the communication.''
- ''[I]n general, the fact of legal consultation or employment, clients' identities, attorney's fees, and the scope and nature of employment are not deemed privileged.''
- ''[T]he amount of money paid or owed by a client to his attorney is not privileged except in exceptional circumstances [not present in the LMRDA context].''

Id. (italics in original). The court continued:

> We conclude that none of the information that LMRDA section 203(b) requires to be reported runs counter to the common-law attorney-client privilege. Any other interpretation of the privilege created by section 204 would render section 203(b) nugatory as to persuader lawyers.

Id. at 1219. The conclusions reached by the *Humphreys* court are consistent with the earlier rulings in *Wirtz* v. *Fowler,* 372 F.2d 315, 332 (5th Cir. 1966), overruled in part on other grounds, *Price* v. *Wirtz,* 412 F.2d 647 (1969) (en banc). There, the court considered the particular information required to be reported on the Form LM–21, in light of section 204, concluding:

- ''[A]ny such reports to be meaningful must include as a bare minimum the name of the client, the terms of the arrangements, and the fees.''
- ''[The consultant-attorneys] must report [the] names and the fees received for any persuader arrangements.''
- ''They must also describe the general nature of the activities they undertook pursuant to such arrangements.''
- ''The terms of the agreement or arrangement, without more, might well be considered a ''privileged communication'' from the client to the attorney. But where, as here, the agreement has been executed, partially or completely, the nature of the activities actually performed by the attorney can hardly be characterized as a ''communication'' from his client.''

372 F.2d at 332. The court in *Humphreys* examined the legislative history of section 204 in reaching its conclusion. 755 F.2d at 1216–19. Tellingly, it discussed the rejection by Congress of the position that the ABA had taken on the proposed legislation:

> *Resolved,* That the American Bar Association urges that in any proposed legislation in the labor management field, the traditional confidential relationship between attorney and client be preserved, and that no such legislation should require report or disclosure, by either attorney or client, of any matter which has traditionally been considered as confidential between a client and his attorney, *including but not limited to the existence of the relationship of attorney and client, the financial details thereof, and any advice or activities of the attorney on behalf of his client which fall within the scope of the legitimate practice of law.* . . .

(emphasis added). The court explained that the version of section 204 reported in the House bill contained an attorney-client exclusion almost identical to the ABA proposal, as quoted above. Id. at 1218. The court noted that the report accompanying H.R. 8342 stated ''[t]he purpose of this section is to protect the traditional confidential relationship between attorney and client from any infringement or encroachment under the reporting provisions of the committee bill.'' Id. (quoting H.R. Rep. No. 741, 86th Cong., 2d Sess. 37 (1959), U.S. Code Cong. & Admin. News 1959, 2459).

The Court of Appeals found it significant that Congress ultimately rejected the broader House version,

which would have protected from disclosure such information as the existence of the attorney-client relationship, attorneys' fees, and the scope and nature of the representation. The Department finds significant that the ABA's comments about the Department's proposed interpretation reflect the same position, in essence, that was rejected in *Humphreys.*

The commenters who were critical of the proposed rule did not present any argument or authority that would cause the Department to question the *Humphreys* court's construction of section 204. One law firm, though, found *Humphreys* to be inapposite with regard to the proposed rule's impact on the attorney-client privilege. The firm noted that *Humphreys* involved attorneys who had communicated *directly* with employees, in contrast to the Department's proposal that would also include *indirect* communications with employees. The commenter is mistaken. The distinction it makes ignores that the question before the court was not *what triggers* reporting under section 203, but rather, *what information* is protected from disclosure once reporting has already been triggered. Indeed, pursuant to this rule, the information required to be reported on a Form LM–20 for a consultant who drafts a persuasive speech and directly delivers it to employees is identical to that of the consultant who drafts such a speech and provides it to the employer or its representatives for dissemination to the employees.[89]

A legal trade association asserted that in virtually every other context, attorneys are not required to disclose to the public the identity of their clients and how much they are paid for what kinds of work performed. The association, though, disregards the fact that attorneys who engage in direct persuader activities pursuant to an agreement with an employer have, since the inception of the LMRDA, been compelled to report information concerning such agreements, as was the case in *Humphreys.* The association also overlooks that attorneys must file the Form LM–10 in certain circumstances where they make payments to unions and union officials. See *Warshauer* v. *Solis,* 577 F.3d 1330 (11th Cir. 2009) (upholding application of section 203(a)(1) reporting, which requires designated legal counsel of certain labor organizations to report non-exempt payments to such unions and their officials). Similarly, the commenter overlooks that unions who file the Form LM–2 Labor Organization Annual Report must report payments to law firms (as well as other vendors and service providers) of $5,000 or greater during a reporting year. See Form LM–2 Instructions, at pages 21–22; see also the 2003 final rule making revisions to the Form LM–2, 68 FR 58388, which discussed such reporting of payments to law firms, and the non-privileged nature of such payments and related purpose. As stated in the 2003 Form LM–2 rule: ''The Department disagrees with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This privilege does not generally extend to the fact of consultation or employment, including the payment and amount of fees. *See McCormick on Evidence,* § 90, (5th ed. 1999, updated 2003).'' 68 FR at 58388. The Forms LM–2, LM–10, and LM–20 share the LMRDA's general purpose to add transparency to the national labor-management relations system, providing employees and the Government with information necessary for them to exercise their rights under the system. Although the specific purposes served by these forms may differ from each other (*e.g.,* the Form LM–2 has its focus the overall financial affairs of the union, whereas the Forms LM–10 and LM–20 focus on particular kinds of payments and agreements), it is notable that legal matters must be disclosed where necessary to achieve the purposes served by the forms.

Other commenters who supported the Department's proposal described two analogous arenas where attorneys or consultants would have to disclose client information similar to that required by the proposal. A labor organization stated that the Lobbying Disclosure Act requires attorneys with a legislative practice to disclose much more information than what is mandated under this rule. The organization noted that the required content of a lobbying registration under 2 U.S.C. 1603(b) and a quarterly lobbying report under 2 U.S.C. 1604(b) includes not only the activities undertaken on behalf of a client, but also information about non-client parties and the legal or equitable interests these parties may hold in the client. Another commenter referenced the reporting and disclosure requirements in IRS Form 8300, noting that courts have rejected challenges that the Form 8300 violates the attorney-client privilege.

A few commenters acknowledged the general rule that the underlying facts of an attorney-client communication, including the existence of the attorney-client relationship, the client's identity, fee arrangements, and the scope and nature of the agreement, are not protected by the federal common-law attorney-client privilege. Nonetheless, the commenters maintained that disclosure of this information might reveal the client's motive in seeking representation, the advice sought, or the specific nature of the services provided, all of which are privileged. For example, one law firm noted that, in practice, agreements between attorneys and clients often extend beyond persuader activities and may include privileged information. According to the commenter, disclosure of the reasons and purposes behind such legal engagements would make public business decisions, sensitive strategic planning information, and other private employer information. Similarly, another law firm provided hypothetical scenarios to illustrate how requiring an attorney to disclose the identity of clients would reveal not only the existence of the relationship, but also the client's motives or the advice sought, which the client may not want to disclose.

Some commenters also asserted that it would be improper for law firms to disclose documents that would reveal clients' motives regarding legal representation or the legal advice sought because these documents would be privileged information under section 204. The Department agrees that such information, as distinct from other information in a document, ordinarily would be privileged but notes that this information is an exception to the general rule favoring disclosure. See, *e.g., Humphreys,* 755 F.2d at 1219 (''[T]he attorney-client privilege does not protect the identity of a client except in very limited circumstances . . . [T]he amount of money paid or owed by a client to his attorney is not privileged except in exceptional circumstances not present in the instant case''); *Avgoustis* v. *Shinseki,* 639 F.3d 1340, 1345 (Fed. Cir. 2011) (''[R]equiring such disclosures does not violate the attorney-client privilege absent unusual circumstances''); and *In re Grand Jury Subpoenas (Anderson),*

[89] Pursuant to the revised Form LM–20, the information required to be reported would be identical for both types of filers, the direct persuader and the indirect persuader. Concerning the checklist in Item 11.a, both filers would need to check the box indicating that they had drafted, revised, or provided a speech for presentation to employees. The direct persuader would also need to check the box indicating that he had planned or conducted the individual or group employee meeting in which it presented the speech, as would the indirect persuader, if it also planned such meeting.

906 F.2d 1485, 1488 (10th Cir. 1990) (''It is well recognized in every circuit, including our own, that the identity of an attorney's client and the source of payment for legal fees are not normally protected by the attorney client privilege'') (citations omitted). Further, as discussed below, only information pertinent to the persuader activities would be reportable and therefore information that is material to other motives for engaging a consultant's services is not reportable under the rule.[90]

The final rule does not require the disclosure of any particular documents, apart from the persuader agreement. While receipt and disbursement information must be disclosed under the rule, the rule does not require that the billing, voucher, or other documents that includes this information be publicly disclosed. Further, the only other information that is to be reported identifies only the specific persuader activity or activities provided to the employer by the lawyer or other labor relations consultant, activities that must be reported under section 203 of the Act. The court in *Humphreys* recites the general rule that the existence of the attorney-client relationship, the client's identity, fee arrangements, and the scope and nature of the agreement are not protected by the federal common-law attorney-client privilege. Indeed, even the cases cited by many of the commenters opposed to the rule recognize that the underlying facts of an attorney-client communication are not privileged. In issuing this final rule today, the Department maintains that the information required to be reported and disclosed on Form LM–20 is consistent with the weight of authority.

At the same time, the Department acknowledges that there may be exceptional circumstances where the disclosure of some information would be privileged from disclosure. For this reason, in the NPRM, the Department stated that to the extent an attorney's report about his or her agreement or arrangement with an employer may disclose privileged communications, the privileged matters are protected from disclosure. 76 FR 36192. If the written agreement that is required to be included as part of the Form LM–20 filing contains sensitive, privileged client information, wholly unrelated to the persuader activities, direct or indirect, such information may be redacted. Thus, information that may reveal client motives regarding exclusively legal advice or representation sought would generally be redactable, but information concerning client motives related to the persuasion of employees is not privileged and would remain reportable. The Department, however, disagrees with those commenters who simply recommend that the Department withdraw its proposed interpretation because of the possibility that, in certain limited circumstances, the information required to be disclosed might reveal employers' motivations, business strategies, the advice sought, or the specific nature of the legal services provided.[91] For the Department to decline to issue this rule on that basis would be tantamount to allowing the rule's exception to consume the rule itself.

Furthermore, the Department brings attention to three principles found in *Humphreys* and other cases cited by the commenters. First, as emphasized in *Humphreys,* 755 F.2d at 1219, the attorney-client privilege is '' 'an exception carved from the rule requiring full disclosure, and as an exception, should not be extended to accomplish more than its purpose.' '' [92] Accordingly, the attorney-client privilege, as embodied in section 204, should be narrowly construed. Id. Second, blanket assertions of the attorney-client privilege are disfavored by the courts. Instead, the privilege must be proven as to each item sought to be protected from disclosure. *Clarke,* 974 F.2d at 129 (citing to *In re Grand Jury Witness (Salas and Waxman),* 695 F.2d 359, 362 (9th Cir. 1982) and *United States* v. *Hodgson,* 492 F.2d 1175, 1177 (10th Cir. 1974)). And finally, the burden of establishing that the attorney-client privilege applies to the specific documents or items in question rests with the party asserting the privilege. Id. These principles provide additional reasons for the Department to proceed with this final rule. By criticizing this rule because of the possibility that the required disclosures might infringe on the attorney-client privilege, the commenters would have the Department absolve them of their burden to establish that the privilege even applies. The Department, however, declines to do so.

[90] One commenter cited to a number of federal cases to support its contention that normally non-privileged information may be deemed to be privileged if its disclosure reveals a client's motives in seeking representation, advice sought, or the specific nature of the services provided. These cases, however, do not conflict with *Humphreys* nor do they diminish the Department's position with regard to the applicability of the attorney-client privilege recognized in section 204. These cases, instead, stand for the unremarkable proposition that the disclosure of particular documents, without appropriate redaction, would reveal privileged information.

[91] The Department has not been persuaded that the limited reporting required under the rule will require a lawyer who becomes subject to the reporting requirement by engaging in a persuader activity to confront a true dilemma in considering whether reporting such information violates any ethical obligations to his or her client. If there are instances where such question arises, the consultant should seek compliance assistance from OLMS. The Department notes that it has taken this approach with Form LM–10 filers. See, *e.g.,* Form LM–10 FAQ 3(A) and 24 at *www.dol.gov/olms/regs/compliance/LM10_FAQ.htm.* Form LM–10 FAQ 24 states:

There is no exemption for confidentiality clauses in the LMRDA. The only confidentiality recognized by the LMRDA is that of attorney-client privilege, contained in Section 204 of the LMRDA, which states that ''nothing contained in this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.'' 29 U.S.C. 434. If an employer believes that completing Form LM–10 will result in the disclosure of sensitive, confidential or proprietary information that could cause substantial harm to the employer's business interests, the issue should be discussed with OLMS prior to the filing of the report.

[92] See the Restatement (Third) of the Law Governing Lawyers section 69, Attorney-Client Privilege—''Communication'' (comment):

g. Client identity, the fact of consultation, fee payment, and similar matters. Courts have sometimes asserted that the attorney-client privilege categorically does not apply to such matters as the following: The identity of a client; the fact that the client consulted the lawyer and the general subject matter of the consultation; the identity of a nonclient who retained or paid the lawyer to represent the client; the details of any retainer agreement; the amount of the agreed-upon fee; and the client's whereabouts. Testimony about such matters normally does not reveal the content of communications from the client. However, admissibility of such testimony should be based on the extent to which it reveals the content of a privileged communication. The privilege applies if the testimony directly or by reasonable inference would reveal the content of a confidential communication. But the privilege does not protect clients or lawyers against revealing a lawyer's knowledge about a client solely on the ground that doing so would incriminate the client or otherwise prejudice the client's interests.

See also ABA Rule 1.6. (comment):

[B]illing information and fee agreements are generally not protected by the evidentiary attorney-client privilege unless disclosure would reveal the substance of confidential communications between a lawyer and a client. See, *e.g., Chaudry* v. *Gallerizzo,* 174 F.3d 394 (4th Cir. 1999) (bills that revealed identity of statutes researched were privileged); *Clarke* v. *Am. Commerce Nat'l Bank,* 974 F.2d 127 (9th Cir. 1992) (privilege did not protect billing statements containing client identity and fee amount, but would protect ''correspondence, bills, ledgers, statements, and time records which also reveal the motive of client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law''); *Mordesovitch* v. *Westfield Ins. Co.,* 244 F. Supp. 2d 636 (S.D.W.Va. 2003) (fee information and engagement letters not protected by attorney-client privilege); *Hewes* v. *Langston,* 853 So. 2d 1237 (Miss. 2003) (simple invoice normally not protected by attorney-client privilege, but ''itemized legal bills necessarily reveal confidential information and thus fall within the privilege'').

The Department also received a number of comments contending that specific items in Form LM–20 compel disclosure of privileged client information. For instance, one company asserted that the information required to be disclosed in proposed Item 10 ''Terms and conditions'' of Form LM–20 is protected by the attorney-client privilege. The company argued that this requires disclosure of the reason for the agreement or arrangement between employer and client, which is protected communications. The Department disagrees. With respect to Item 10, the proposed instructions state as follows:

> Provide a detailed explanation of the terms and conditions of the agreement or arrangement. . . . If any agreement or arrangement is in whole or in part contained in a written contract, memorandum, letter, or other written instrument, or has been wholly or partially reduced to writing, you must refer to that document and attach a copy of it to this report . . .

76 FR 36213. Thus, Item 10 requires the disclosure of the terms and conditions, typically reduced to writing in a contract, of an agreement or arrangement for the consultant to undertake persuader activities. As explained above, the terms of a fee agreement and the details regarding the scope and nature of the relationship between employer and consultant, required to be reported under this rule, are not subject to the attorney-client privilege. The Department, therefore, disagrees with the contention that Item 10 of Form LM–20 requires the disclosure of privileged attorney-client communications. Accordingly, the Department is adopting these proposed instructions to Item 10 in the final rule.

Other commenters claimed that the level of detail required to be reported on the revised Form LM–20 would call for the disclosure of privileged information. A law firm contended that requiring attorneys to indicate whether they have engaged in communications with the purpose of persuading employees conflicts with case law, which, in its view, uphold the proposition that the ''motivation of the client in seeking representation'' and descriptions of the ''specific nature of the services provided'' are protected by the attorney-client privilege. Furthermore, the commenter objected to the requirement in Form LM–20 to identify any ''subject employees'' about whom the attorney ''counseled'' the employer, arguing that such information is privileged. Another law firm identified the following checklist categories in Item 11.a as being too specific, in violation of the attorney-client privilege:

- Drafting, revising, or providing written materials [or speech] for presentation, dissemination, or distribution to employees
- Training supervisors or employer representatives to conduct individual or group employee meetings
- Developing personnel policies or practices.

The Department disagrees that these checklist items or, generally, the level of detail required to be reported on Form LM–20 would result in the disclosure of privileged information. As explained above, the Department recognizes that, in certain limited circumstances, otherwise non-privileged information, such as the nature and scope of the attorney-client relationship, might be deemed privileged if it reveals the client's motivations or the specific nature of the services provided. The Department stresses, however, that in such cases the information that would be revealed relates to a client's motivations in seeking *legal* representation or the specific nature of the *legal* services provided. The reporting requirements in Form LM–20, including the details of the agreement or arrangement in Item 10 and the checklist categories in Item 11.a, are designed to identify the specific *persuader* activities undertaken, not the legal advice provided. In other words, if an employer retains a law firm with the purpose to persuade, directly or indirectly, its employees not to unionize, that retention is not privileged because it is not done with a purpose of obtaining a legal opinion, legal services, or assistance in a legal proceeding. The check-box items in Form LM–20 refer *only* to the persuader activities performed (*e.g.,* the drafting or revising of speeches, the training of supervisors, and the development of personnel policies), regardless of whether an employer's motivation in retaining a law firm is for the firm to undertake *both* persuader activities and legal representation or other legal services. As the Sixth and Fourth Circuits concluded, Congress recognized that the ordinary practice of labor law does not encompass persuader activities. *Humphreys,* 755 F.2d at 1216 (citing to *Douglas* v. *Wirtz,* 353 F.2d 30, 33 (4th Cir. 1965)). Through the filing of a Form LM–20, the client's motivations in seeking legal representation remain privileged and undisclosed (*e.g.,* compliance with NLRB regulations); only its persuader activities are disclosed. Likewise, while the Form LM–20 requires the filer in Item 10 to identify the scope of the agreement or arrangement, the items in Form LM–20 do not reveal the specific nature of or any detail concerning the legal services provided. Instead, these items, notably the checklist in Item 11.a, are specific as to persuader activities only.

Some observers may nevertheless argue that the items in Form LM–20 reveal, by implication, the client's motivations in seeking legal representation or the specific nature of the legal advice provided. The Department is not persuaded by such an argument. The same argument can be made for many other disclosure laws. For example, in the tax context, one can argue that the filing of an IRS Form 8300 reveals, by implication, a client's motivation to ensure that it complies with tax laws or that the client had sought legal counsel because it received a single payment of cash in excess of $10,000. Similarly, in the context of lobbying disclosure, one can argue that disclosure reveals the motivation of the company or individual for whom the lobbying was provided. As discussed in the legal authorities cited above, a lawyer must be able to demonstrate more than the mere possibility that client motivations or the specific nature of the legal services provided might be revealed through inferences. See also comment to Annotated Model Rules of Professional Conduct, Seventh Edition Annotated Model Rules of Professional Conduct (7th ed. 2011), Rule 1.6(b)(6), Confidentiality of Information, available in Westlaw at ABA–AMRPC S 1.6 (Disclosure required by IRS Form 8300 ''has consistently been upheld against attacks based upon confidentiality and privilege'').

The Department received numerous comments that apparently misconstrue the type of information that must be reported under both the prior interpretation and the proposed rule. For example, several commenters objected to the presumed requirement that they provide copies of any documents prepared by or reviewed by them in providing services to their client, including, for example, memoranda or other documents outlining campaign strategy, a speech to be delivered by the employer, or literature prepared for distribution to employees. According to the commenters, these consultant-prepared materials are privileged from disclosure even if the client ultimately presents the final versions to its employees. One commenter suggested that the training and directing of supervisors, and associated materials, necessarily involves privileged communications. As stated above, the Department has not required a consultant-attorney to disclose any particular documents or to otherwise reveal the details of any

services provided to clients (other than as may be shown by the persuader agreement, which itself, may be redacted where needed to protect truly privileged communications). It bears repeating that a consultant, by engaging in direct or indirect persuader activity, merely triggers the obligation to provide the limited information required by the LM–10 (by employers) and the LM–20 (by consultants). As explained above, the information required under these reports (*e.g.,* the terms and conditions of agreements and the checklist activities) is not privileged.

In a similar vein, a company submitted comments stating that the attorney-client privilege applies whenever legal advice is provided in confidence by an attorney to a client. The commenter emphasized that the privilege covers not only the legal advice in a privileged communication, but also any unprivileged statements that accompany it. Another commenter, a trade association, argued that the proposed rule's interpretation of ''advice'' conflicts with the common law definition of legal advice as applied to the attorney-client privilege. The association cited to a number of federal cases for the proposition that legal advice ''intertwined'' with persuader activity is still protected from disclosure under the attorney-client privilege. These commenters, too, have misconstrued what is required to be disclosed under the final rule. The revised Form LM–20 does not require the disclosure of any communication other than any written persuader agreement between the parties.

Other commenters maintained that, once the rule becomes effective, any ensuing investigations conducted by the Department would lead to violations of the attorney-client privilege. One commenter theorized that the Department would be required to thoroughly investigate not only the attorney-client relationship, but also the attorney's communications with the client. The client or the attorney, according to the commenter, would likely be compelled to disclose otherwise privileged communications to prove the nature and object of the communications or in possible defense of criminal charges. Another commenter claimed that, at least in California, even *in camera* disclosures of attorney-client communications during investigatory enforcements of the final rule would result in violations of the attorney-client privilege.

In this rulemaking, the Department declines to comment on the applicability of the attorney-client privilege to hypothetical questions concerning investigations of potential reporting violations. Issues pertaining to the interplay between the attorney-client privilege and any ensuing investigations under section 203 are more appropriately resolved upon enforcement of the final rule once it becomes effective. See, *e.g., In re Grand Jury Subpoenas (Anderson)* (drug charges); *Holifield* v. *United States,* 909 F.2d 201, 203–04 (7th Cir. 1990) (tax); and *In re: Motion for Protective Order for Subpoena Issued to the Stein Law Firm,* No. MC 05–0033 JB, 2006 WL 1305041 (D. N. Mex. Feb. 9, 2006) (SEC investigation). See also *Marshall* v. *Stevens People and Friends for Freedom,* 669 F.2d 171, 177 (4th Cir. 1981) (reviewing district court rulings concerning information sought by Department of Labor in investigating alleged LMRDA reporting violations). The Department, however, emphasizes that it will protect information relating to the attorney-client relationship to the full extent possible in its investigations.

2. Confidential Information and Attorneys' Ethical Obligations

A few commenters acknowledged that the proposed rule, if implemented, would not infringe on the attorney-client privilege. Regardless of that fact, however, they and other commenters argued that the rule would result in the disclosure of confidential, even if not privileged, communications between attorney and client. While most of these commenters claimed that the disclosure of confidential information conflicts with attorneys' ethical obligations to maintain client confidences, a few argued that section 204 should be read to encompass even non-privileged, confidential information, such as a client's identity.

In support of this contention, a trade organization commented that the word ''privilege'' does not appear in section 204, which, to the organization, suggests strongly that the provision provides a broad, over-arching protection from disclosure of both privileged and confidential information. In a similar vein, two commenters, a higher education association and a public-interest organization, stressed that section 204 is broadly worded such that it exempts ''any information'' that was lawfully communicated in the course of a legitimate attorney-client relationship.

In response to these assertions, the Department notes that the Sixth Circuit, in *Humphreys,* has already ruled on this very issue. 755 F.2d at 1216. The appellants in that case, like the commenters here, contended that the privilege embodied in section 204 is broader than the traditional attorney-client privilege. The court, after a thorough review of the legislative history behind section 204, rejected the appellants' claim, concluding that in drafting section 204 Congress intended to accord the same protection as that provided by the federal common-law attorney-client privilege. Id. at 1219. See also *Wirtz* v. *Fowler,* 372 F.2d 315, 332–33 (5th Cir. 1966) (after finding that section 204 ''roughly parallel[s] the common-law attorney-client privilege,'' the court rejected the argument that information about the persuader agreement was protected from disclosure under section 204); *Douglas* v. *Wirtz,* 353 F.2d 30, 33 (4th Cir. 1966) (treating section 204 as equivalent to the attorney-client privilege). One of the commenters disagreed with the Sixth Circuit's holding in *Humphreys,* reasoning that the court failed to give effect to the plain language of section 204. The Department, however, agrees with the reading of section 204, as analyzed in *Humphreys,* and rejects those commenters' contention that section 204 broadly protects from disclosure any information, confidential or otherwise, that is not covered by the traditional attorney-client privilege.

According to other commenters, however, the disclosure of confidential client information would be a violation of attorneys' ethical obligations under various state bar rules. One law firm averred that many state bar associations have deemed certain types of client information, such as the identity of the client, the fact of representation, and the fees paid as part of that representation, to be confidential information prohibited from disclosure. Many of the commenters referenced Rule 1.6 of the ABA's Model Rules of Professional Conduct. As one law firm pointed out, 49 states and the District of Columbia have adopted some variation of Rule 1.6. In relevant part, ABA Model Rule 1.6, Confidentiality of Information, states as follow:

> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
>
> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
>
> . . .
>
> (6) to comply with other law or a court order.

The Department notes first, as discussed below, that section 204 of the LMRDA, as a federal law, controls over any conflicting state ethics rules modeled after ABA Rule 1.6.

Humphreys, 755 F.2d at 1219, n. 12. This issue has frequently arisen in tax reporting cases. For instance, in *United States* v. *Goldberger & Dubin, P.C.,* 935 F.2d 501, 504–05 (2d Cir. 1991), a law firm returned incomplete 8300 Forms to the IRS. Instead of reporting the required information, it informed the IRS that disclosure of the required client information would violate the New York state law of attorney-client privileges. The Court of Appeals rejected the firm's position, stating that ''in actions such as the instant one, which involve violations of federal law, it is the federal common law of privilege that applies'' (citations omitted). In *United States* v. *Blackman,* 72 F.3d 1418, 1424 (9th Cir. 1995), the attorney who resisted providing the information to the IRS argued that the issue was not just one of privilege, but also of duty. The attorney contended that Oregon's law on client confidentiality not only codifies the attorney-client privilege, but also imposes an affirmative duty upon the attorney to avoid disclosure of client confidences and secrets. The Ninth Circuit, however, found the argument to be ''specious.'' The court reasoned that the Oregon law's explicit spelling out of this duty did not create an exception to the federal common-law attorney-client privilege because such a duty is already implicit in the privilege. The court then concluded that ''Congress cannot have intended to allow local rules of professional ethics to carve out fifty different privileged exemptions to the reporting requirements'' in IRS Form 8300. Id. (citing *United States* v. *Sindel,* 53 F.3d 874, 877 (8th Cir. 1995)). The Department finds these cases instructive. Contrary to some commenters' assertions, Rule 1.6 and the various state ethics rules do not necessarily go beyond the traditional attorney-client privilege as recognized in section 204. Even if some commenters believe ethical conflicts will arise as a result of this final rule, the Department posits that sections 203 and 204, as federal law, must prevail over any conflicting state rules governing legal ethics.

In addition, as a few commenters noted, Rule 1.6(b)(6) allows for the disclosure of client information to comply with ''other law,'' which would include the LMRDA. Comment 12 to ABA Rule 1.6 states as follow: ''Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.'' Annotated Model Rules of Professional Conduct (7th ed. 2011), Rule 1.6 Confidentiality of Information, available in Westlaw at ABA–AMRPC S 1.6. In this respect, the model rule and the corresponding state rules do not conflict with sections 203 and 204. As discussed in the preceding paragraph, even in the case of a conflict with a state ethics requirement, the Department believes that section 203 and this rule supersede Rule 1.6 and any particular state equivalent. The Department notes further that the employer-client is also required by law to report identical information as the attorney-persuader. One commenter even acknowledged that the rules of conduct allow for disclosure required by other law or a court order. The commenter, however, contended that the ''strong language'' in section 204 indicates that the LMRDA was never intended to be interpreted in such a sweeping manner. The Department disagrees. As explained above, the court in *Humphreys,* 755 F.2d at 1216, concluded that Congress intended for section 204 to reflect the traditional federal attorney-client privilege, which controls over state rules on client confidentiality.

The ABA also acknowledged that a federal statute, such as the LMRDA, would constitute an exception to Rule 1.6, but it offered only a conclusory statement that ''nothing in the LMRDA expressly or implicitly requires lawyers to reveal client confidences to the government.'' Section 203(b), however, expressly requires that persuader consultants ''file a report with the Secretary . . . containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement.'' 29 U.S.C. 433(b). Section 208 authorizes the Department to ''issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title.'' 29 U.S.C. 438. Further, to ensure that sections 203 and 204 are given full effect (with section 203 determining when and who must report, and section 204 limiting what must be reported), attorneys cannot be entirely excluded, as this would conflict with the statutory language, legislative intent, and history of section 203's application. Indeed, if attorneys engaging in direct persuasion must disclose information concerning the entire agreement or arrangement with the employer it logically follows that indirect persuaders, including attorneys, should disclose the same information.

Several commenters, however, maintained that, should conflicts arise, attorneys may be faced with the untenable position of choosing between their ethical duties to their clients and their reporting obligations under the LMRDA. One of these commenters illustrated this conundrum by explaining that an attorney who discloses confidential information without client consent would risk professional discipline under state ethics rules. On the other hand, the commenter stated, the attorney risks imprisonment and a fine for willful failure to file if he or she decides not to file the appropriate LM form.

As detailed above, however, the Department does not believe that the disclosure required by this rule poses a general or significant impediment for attorneys seeking to maintain client confidences, because the LMRDA constitutes ''other law,'' which under the ethical rules authorizes attorneys to disclose otherwise confidential client information. Thus, an ethical conflict would likely occur in only rare circumstances, such as where the disclosure of information would implicate the client in crimes or other illegal activities. Even there, however, it is by no means clear that the information should be withheld. As discussed above, courts have narrowly construed exceptions to disclosure of information required by federal law even in circumstances where there exists a reasonable argument that disclosure may entail some risk of criminal prosecution. The Department is not insensitive to such possibilities, but it does not believe those types of rare situations should dictate the decision to issue this final rule.[93] Instead, the Department can address those concerns on a case-by-case basis if and as they may arise.

Moreover, the Department recommends that labor relations attorneys and consultants who engage in direct or indirect persuader activity

[93] As discussed in the text, the Department disagrees with the suggestion that this rule will pose an ethical dilemma for attorneys. As with all aspects of legal practice, however, attorneys who have an ethical reservation about their obligations under the rule to report information about their clients always have the option to choose to decline to provide persuader services to clients who refuse to provide express consent to disclose the required information, and limit services to legal services, which do not trigger reporting in any event.

make proactive efforts to minimize the possibility for conflicts before this rule becomes effective. The Department notes that, under ABA Rule 1.6(a), attorneys are permitted to disclose confidential client information should the client give informed consent to do so after consultation. Accordingly, attorneys may want to inform their current and prospective clients about the disclosure provisions in section 203, which apply to both parties of the persuader agreement, the employer-client and attorney-persuader. As stated, when disclosure of information relating to the representation appears to be required by other law, as is the case with section 203, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. Attorneys who engage in persuasion of employees may also want to review their usual persuader agreements with clients, and consider modifying in the unusual circumstance that disclosure may inadvertently disclose privileged client information when they include these agreements as part of their LM–20 filings.

3. ''Chilling'' the Ability To Obtain Attorneys

In addition to the issues surrounding the attorney-client privilege and confidentiality, many of the commenters alleged that the proposed rule would chill employers' ability to obtain competent attorneys. The ABA, for instance, argued that by requiring lawyers to file detailed reports containing confidential client information, the proposed rule would chill and seriously undermine the confidential client-lawyer relationship. Characterizing these requirements as ''unfair reporting burdens,'' the ABA believed the rule could discourage employers ''from seeking the expert legal representation that they need, thereby effectively denying them their fundamental right to counsel.'' Several commenters suggested that if the proposed rule were implemented, many law firms would cease to provide advice to employers due to the new disclosure requirements. According to one of the commenters, this would make it much more difficult for employers to obtain counsel during organizing campaigns. Another commenter, a law firm, contended that employers' ignorance of the law would more likely result in violations of complex rules about permissible and impermissible conduct in the union organizing and collective bargaining contexts. Similarly, a law firm commented that the rule could well cause employers to act without the guidance of counsel, thereby adding to the likelihood of unfair labor practices, re-run elections, and further instability in labor relations. A comment from a small business public policy association posed a scenario where employers, due to the chill on the ability to obtain counsel, would be forced to either ''go it alone'' or find a lawyer willing to overlook the ethical obligations involved with filing as a persuader. Other commenters theorized that employers would simply remain silent during organizing campaigns, effectively ''muzzling'' or ''gagging'' themselves.

The Department finds that these arguments, in essence, present the same concerns raised by other commenters regarding the rule's potential chilling effect on employer free speech, which is addressed in Section V.G. As explained in that section, these concerns are unfounded because neither the proposed rule nor this rule requires the reporting of services provided by a consultant-attorney unless he or she engages in persuader activities. Even then, only limited information is required to be reported. Further, as explained in Section V.G, this rule establishes a clear test for attorneys and others to know what activities will trigger reporting and thereby avoid such activities if their goal is to avoid even the limited reporting required under this rule. Thus, under a proper understanding of the requirements and limits of this rule, the asserted chill on the ability of employers to retain counsel seems nothing more than unsubstantiated speculation. As such, this argument provides no basis for rejecting the rule.

In addition, as discussed above, the information required to be reported on the revised Form LM–20 is generally not protected by either the federal common law attorney-client privilege or prohibited from disclosure by state bar rules on client confidences. Because the final rule does not infringe on these protections, any corresponding chilling effect would come solely as a result of employers' or attorneys' choice to avoid reporting non-privileged, non-confidential information. In this respect, the Department is guided by the Ninth Circuit's observation in *Tornay* v. *United States,* 840 F.2d 1424, 1428–29 (9th Cir. 1988):

> We do not believe that clients, knowing that their attorneys may be compelled to testify about the amount, date, and form of fees paid, would be inhibited from disclosing fully information needed for an effective representation. Nor do we accept a generalization that clients feel less free to disclose once it becomes apparent that their attorney's testimony may cause adverse results. . . . Some prospective clients, arguably, may decide not to retain counsel for legal services if they could be implicated by expenditures for those services. This is not, however, a sufficient justification to invoke the [attorney-client] privilege.

In a similar vein, the Department does not believe the attorney-client privilege or state ethics rules should or can be used to shield employers and their attorneys from the LMRDA's reporting requirements once persuader activities are undertaken. The Department is not persuaded that employers, as a result of this rule, would be inhibited from seeking legal advice and sharing non-privileged, non-confidential information with their attorneys, nor will they be less able to retain attorneys, including persuader-attorneys, as a result of the rule.

4. Comments on Form LM–21 and Client Confidentiality

The Department also received several comments, including those from the ABA, concerning the impact of this rule on consultants' reporting requirements on the Form LM–21, Receipts and Disbursements Report.[94] These commenters expressed concern with the scope of information required to be reported because the Form LM–21 requires consultants to disclose receipts and disbursements from employers on account of any ''labor relations advice or services,'' not just those receipts and disbursements related to persuader activities.

The Form LM–21 implements the reporting requirements prescribed by section 203(b). That section, in relevant part, requires every person who engaged in persuader activities to file annually a report with the Secretary containing a statement of ''its receipts of any kind from employers *on account of labor relations advice or services,* designating the sources thereof,'' and a statement of its disbursements of any kind, in connection with those services and their purposes. (Emphasis added). See also 29 CFR 406.3 (LM–21 requirements). Section 203(b) requires that the reports

[94] The ABA made the following point: ''There is no reasonable nexus (no rational governmental purpose served by) between a lawyer's obligation to report persuader activities for a client and the resulting obligation under the rule that the lawyer report all receipts from and disbursements on behalf of any employer client for whom the lawyer provided labor relations advice or services.'' In making this point, the ABA relies on dicta in *Donovan* v. *Rose Law Firm,* 768 F.2d 964, 975 (8th Cir. 1985) (it is ''extraordinarily unlikely that Congress intended to require the *content* of reports by persuaders . . . to be so broad as to encompass dealings with employers who are not required to make any report whatsoever''). As discussed previously in the text, other courts have expressed a contrary view. See *Humphreys; Master Printers Association; Price* v. *Wirtz; Douglas* v. *Wirtz.*

are to be made ''with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement.'' Thus, unlike the Forms LM–10 and LM–20, the Form LM–21 requires consultants who have engaged in persuader activities to report all receipts from employers in connection with labor relations advice or services regardless of the purpose of the advice or services. For this requirement, the filer must also report in the aggregate the total amount of the disbursements made from such receipts, with a breakdown by office and administrative expenses, publicity, fees for professional service, loans, and other disbursement categories. For persuader and information-supplying activities only, the filer must additionally itemize each disbursement, the recipient of the disbursement, and the purpose of the disbursement.

The ABA, in particular, argued that the scope of this requirement compels the disclosure of a ''great deal'' of confidential client information that has ''no reasonable nexus'' to the persuader activities at issue in the NPRM and this rule. The ABA urged the Department to narrow the scope of the information that must be disclosed in Form LM–21 so that disclosure is required only for those receipts and disbursements pertaining to clients for whom persuader activities were undertaken.

While some commenters did acknowledge the scope of the NPRM, the ABA and multiple other commenters failed to note that this rulemaking focuses exclusively on the Form LM–20, not the Form LM–21. In this rulemaking, the Department proposed no changes to nor invited public comment on any aspect of the LM–21 form. Therefore, issues arising from the reporting requirements of the LM–21 are not appropriate for consideration under this rule. The Department has expressed its intent to address issues surrounding the Form LM–21 in a separate rulemaking in the future.[95]

VI. Regulatory Procedures

A. Executive Orders 13563 and 12866

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

In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the rule will result in a total annual recurring burden on employers, labor relations consultants, and other persons required to file Form LM–20 and Form LM–10 reports of approximately $1,263,499.50. Additionally, in the Regulatory Flexibility Analysis (RFA) below, the Department estimates that the total first-year burden on non-filing entities affected by this rule is approximately $7,270,822, with a recurring, annual burden of $3,634,578. See Section VI.H.4 below. Thus, the burden is less than $100 million annually and is therefore not economically significant within the meaning of Executive Order 12866.

The Department received comments that the proposed rule failed to assess all costs and benefits of available regulatory alternatives and that the rule would be significantly more burdensome than the current rule. An employer coalition argued that the proposed rule also violated the executive orders and should therefore be withdrawn, because it did not allow for adequate public participation, failed to promote predictability or reduce uncertainty, and was not written in plain language. Some commenters estimated that the total impact of the rule would easily exceed $100 million annually.

The Department disagrees with these comments. First, the Department has fully considered alternatives to the approach proposed and is adopting the proposed rule with some modification based on these alternatives. See discussion in Section V of the preamble to this rule. Second, the Department has provided estimated costs associated with the reporting requirements, adjusted in response to comments received on the proposed rule, in a manner that fully comports with requirements prescribed for regulations that are not economically significant. Third, the public was provided a full opportunity to express their views on the approach proposed, as evinced both by the public stakeholder meeting that preceded the proposal and the large number of comments submitted on the proposal. Fourth, the rule is written in a straightforward, easy to understand manner, with examples and checklists that simplify reporting. In response to comments received on the proposal, the Department has addressed various concerns about particular requirements and added additional clarity where appropriate. The Department has also responded to specific comments on its burden estimates below in the PRA and RFA sections, discussed the basis for such estimates, and refuted the assertions that the rule would result in an annual economic impact of greater than $100 million. As stated, the rule provides an objective, clear basis to determine reportability and certainty, and the Department will provide compliance assistance to filers and prospective filers to reduce any additional uncertainty or burden. The Department has also demonstrated in the preamble the sound basis for the rule in the language of the statute, legislative history, and public policy.

The following is a summary of the need for and objectives of the rule. A more complete discussion of various aspects of the rule is found elsewhere in the preamble to this rule and the NPRM.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and their members, and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations, employers, labor relations consultants, and others as set forth in Title II of the Act. See 29 U.S.C. 431–36, 441.

The revised rule amends the form, instructions, and reporting requirements for the Form LM–10, Employer Report, and the Form LM–20, Agreements and Activities Report, both of which are filed pursuant to section 203 of the LMRDA, 29 U.S.C. 433. Section 203 establishes reporting and disclosure requirements for employers and persons, including labor relations consultants, who enter into any agreement or arrangement whereby the consultant (or other person) undertakes activities to persuade employees as to their rights to organize and bargain collectively or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. Each party must also disclose payments made pursuant to such agreement or arrangement. An employer, additionally, must disclose certain other

[95] See note 88.

payments, including payments to its own employees, to persuade employees as to their bargaining rights and to obtain certain information in connection with a labor dispute. Employers report such information on the Form LM–10, which is an annual report due 90 days after the end of the employer's fiscal year. Consultants file the Form LM–20, which is due 30 days after entering into each agreement or arrangement with an employer to persuade.

In this final rule, the Department has revised its interpretation of the ''advice'' exemption of section 203(c) of the LMRDA, which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. Under previous policy, as articulated in the LMRDA Interpretative Manual and in a **Federal Register** notice published on April 11, 2001 (66 FR 18864), this so-called ''advice'' exemption has been broadly interpreted to exclude from reporting any agreement under which a consultant engages in activities on behalf of the employer to persuade employees concerning their bargaining rights but has no direct contact with employees, even where the consultant is managing a campaign to defeat a union organizing effort.

The Department proposed to narrow the scope of the advice exemption to more closely reflect the employer and consultant reporting intended by Congress in enacting the LMRDA, which includes disclosure of agreements involving direct and indirect persuasion by employees. Strong evidence indicates that since the enactment of the LMRDA in 1959, the use of such consultants by employers to contest union organizing efforts has proliferated, with most employers hiring consultants to persuade employees through indirect methods. Nevertheless, since it began administering the statute in 1960 the Department has consistently received a small quantity of LM–20 reports relative to the greatly increased employer use of the labor relations consultant industry, which suggests substantial underreporting by employers and consultants. Moreover, evidence indicates that the Department's broad interpretation of the advice exemption has contributed to this underreporting.

As discussed in the preambles to both the proposed and final rule, the Department's prior interpretation failed to advance Congressional objectives concerning labor-management transparency to promote worker rights and harmonious labor relations. Considerable evidence suggests that regulatory action to revise the advice exemption interpretation is needed to provide labor-management transparency for the public, and to provide workers with information critical to their effective participation in the workplace.

Congress intended that employees would be timely informed of their employer's decision to engage the services of consultants in order to persuade them how to exercise their rights. Congress intended that this information, including ''a detailed statement of the terms and conditions'' of the agreement or arrangement would be publicly available no later than 30 days after the employer and consultant entered into such relationship. 29 U.S.C. 433(b)(2). With such information, employees are better able to assess the actions of the employer and the employer's message to them as they are considering whether or not to vote in favor of a union or exercise other aspects of their rights to engage in or refrain from engaging in collective bargaining.

Where persuader activities are not reported, employees may be less able to effectively exercise their rights under Section 7 of the NLRA and, in some instances, the lack of information will affect their individual and collective choices on whether or not to select a union as the exclusive bargaining representative or how to vote in contract ratification or strike authorization votes. The public disclosure benefit to the employees and to the public at large cannot reasonably be ascertained due to the uncertainty in knowing whether employees would have participated or not in a representation election or cast their ballots differently if they had timely known of the consultant's persuader activities. The real value of the LMRDA public disclosure of information is in its availability to workers and the public in accordance with Congressional intent. Such information gives employees the knowledge of the underlying source of the information directed at them, aids them in evaluating its merit and motivation, and assists them in developing independent and well-informed conclusions regarding union representation.

The Department also revises the Form LM–10, the Form LM–20, and the corresponding instructions. These changes include modifications of the layout of the forms and instructions to better outline the reporting requirements and improve the readability of the information. The revised forms also require greater detail about the activities conducted by consultants pursuant to agreements and arrangements with employers.

Finally, this rule requires that Form LM–10 and LM–20 filers must submit reports electronically, but also has provided a process for a continuing hardship exemption, whereby filers may apply to submit hardcopy forms on a temporary basis. Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report have been required by regulation since 2004 to file electronically, and there has been good compliance with this submission requirement. Employers and consultants likely have the information technology resources and capacity to file electronically, as well. Moreover, electronic Web-based filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot now be electronically filed, such as the Form LM–10 and Form LM–20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms. No commenters challenged this proposed addition of mandatory electronic filing, and several comments explicitly offered support.

Published at the end of this rule are the revised Forms LM–10 and LM–20 and instructions. The revised Forms LM–10 and LM–20 and instructions also will be made available via the Internet. The information collection requirements contained in this rule have been submitted to OMB for approval.

B. Unfunded Mandates Reform

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more annually, or in increased expenditures by the private sector of $100 million or more. As discussed throughout this part of the preamble, the compliance costs associated with this rule are far less than the above thresholds.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

The Department received comments suggesting that it did not properly

justify this conclusion in the NPRM. In this regard, commenters primarily argued that the Department only focused on the burdens on Form LM–10 and LM–20 filers estimated in the PRA analysis, and not the broader impact on labor relations and the economy. In this regard, a commenter emphasized its view that the proposed rule would deny employers legal advice and lead to violations of labor law and therefore impose additional costs on employers. The Department explained in the preamble the objective nature of the test to determine reportability of employer-consultant agreements, and the minimal impact, if any, on the rights of employers and consultants. The rule has no impact on whether an employer can enter into an agreement. The Department also stated that consultants, who provided only legal services, or any other advisory services or representation in the enumerated areas, would have no reporting obligation. Thus, the Department does not believe that the rule will operate to deny employers advice, and, as a result, it is not persuaded that there would be increase in violations of the law.

D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

One commenter questioned why the NPRM did not, pursuant to Section 5 of E.O. 13175, contain a tribal impact summary statement or indicate whether it had consulted with any tribes prior to issuing the NPRM. In response, the Department states that it provided the public, including Indian tribal governments, the opportunity to comment during the proposed rule's comment period. No Indian tribal government commented on the proposal. Further, the rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' See E.O. 13175, Section 1.a. Indeed, the commenter identified no specific actual impact on any Indian tribe and, in the Department's view, it is not clear that the rule will have *any* direct effect on *any* Indian tribe. Should an issue arise concerning such effect, the Department will carefully and appropriately consider the status of the tribe and its relationship with the Federal Government in resolving the issue.

F. General Overview of Paperwork Reduction Act and Regulatory Flexibility Act Sections

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and the PRA's implementing regulations, 5 CFR part 1320, the Department has undertaken an analysis of the financial burdens to covered employers, labor relations consultants, and others associated with complying with the requirements contained in this rule. The focus of the RFA is to ensure that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].'' Executive Order 13272, Sec. 1. The more specific focus of the PRA is to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government. 5 CFR 1320.1.

Compliance with the requirements of this rule involves information recordkeeping and information reporting tasks. Therefore, the overall impact to covered employers, labor relations consultants, and other persons, and in particular, to small employers and other organizations that are the focus of the RFA, is largely equivalent to the financial impact to such entities assessed for the purposes of the PRA. As a result, the Department's assessment of the compliance costs to covered entities for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. Additionally, in response to comments received, the Department has also addressed under the RFA the impact on those entities that must review the reporting requirements to determine that filing is not required. The Department's analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented first. The conclusions regarding compliance costs in the PRA analysis regarding Form LM–10 and Form LM–20 files are then employed, along with estimated burden costs on non-filers, to assess the impact on small entities for the purposes of the RFA, which follows immediately after it.

With the information newly provided as a result of this rule, employees will be better able to understand the role that labor relations consultants play in their employer's efforts to persuade them concerning how they should exercise their rights as employees to union representation and collective bargaining matters. Better informed employees will promote more stable and harmonious labor-management relations.

This rule also requires that employers and consultants file Form LM–20 and Form LM–10 reports electronically. Electronic reporting contains error-checking and trapping functionality, as well as online, context-sensitive help, which improves the completeness of the reporting. Electronic filing is more efficient for reporting entities, results in more immediate availability of the reports on the agency's public disclosure Web site, and improves the efficiency of OLMS in processing the reports and in reviewing them for reporting compliance.

G. Paperwork Reduction Act

This statement is prepared in accordance with the PRA, 44 U.S.C. 3501. As discussed in the preamble, this rule would implement an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to employees, employers, labor relations consultants, and other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on employers, labor relations consultants, and other persons who must provide the information, including small entities; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting entities; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of employers, labor relations consultants, and other persons who must comply with them; (6) this preamble informs reporting entities of the reasons that the information will be collected, the way

in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' 5 CFR 1320.9; see also 44 U.S.C. 3506(c).

This rule establishes revised Form LM–10 and LM–20 reporting forms, which constitute a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520]. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number assigned by the Office of Management and Budget (OMB). The Department submitted an information collection request to OMB in association with this rule on February 25, 2016, after considering all public comments on the information collections in the proposed rule. That review is pending. The Department will publish an additional notice in the **Federal Register** to announce OMB's decision on the request.

The Department is in the process of extending the OMB authorization, as part of its effort to require mandatory electronic filing for labor organizations that file the Form LM–3 and LM–4 Labor Organization Annual Report. See the related Notice published in the **Federal Register** on May 20, 2015 (80 FR 29096).

In the analysis that follows, the Department estimates the recordkeeping and reporting costs of the rule on labor relations consultants and employers. To arrive at these estimates, the Department made the following assumptions:

- NLRB and NMB representation elections are a proxy for organizing campaigns. A mean consultant utilization rate of 78% by employers during organizing campaigns is used to arrive at the number of Form LM–20 reports and filers;
- An employer will hire only one consultant when faced with an organizing drive, as opposed to multiple consultants;
- The total number of Form LM–20 reports consists of reports for union avoidance seminars as well as targeted activities (non-seminar reports);
- The total of number of Form LM–20 filers are based on existing reporting data (only applied for non-seminar reports) and includes all consultants, including law firms;
- For the number of seminar reports, each ''business association'' entity (NAICS 813910, which includes trade associations and chambers of commerce) that operates year-round with 20 or more employees is estimated to sponsor a seminar annually and to contract with a consultant firm to conduct the seminar. The consultants hired to conduct these seminars will also independently hold an equal number of seminars. The consultants will file all seminar reports (half sponsored by business associations and half independently held by them).
- The total number of Form LM–10 reports is based off of the estimated number of non-seminar Form LM–20 reports, plus the existing reporting data on non-persuader Form LM–10 reports. The Department assumes that each Form LM–10 report submitted will involve either persuader or non-persuader activity, although in practice there may be some overlap. For the cost estimates, however, it is assumed that a filer will complete all parts of the Form LM–10, for both persuader and non-persuader transactions;
- Estimates for the recordkeeping and reporting hours derive largely from the Form LM–30 Labor Organization Officer and Employee Report final rule from October 2011 (see 76 FR 66441);
- Consultants and employers already keep business records necessary for reporting, such as agreements and seminar attendance sheets;
- Attorneys will file reports on behalf of consultants and employers. The estimated recordkeeping and reporting costs are based on BLS data of the average hourly wage of an attorney, including benefits;
- Non-filing entities are estimated to spend one hour total reading instructions (10 minutes) and determining that the rule does not apply to them or their clients (50 minutes). Non-filing entities are comprised of those labor and employment law firms, human resource consultant firms, and business associations that are not otherwise estimated to be filing. Not every employer, human resources firm, or law firm is impacted, only those that enter into labor relations agreements.
- No ''initial familiarization'' costs. Employers and consultants are unique filers each year, and costs associated with ''familiarization'' are therefore included within the estimated costs, as is the case with Form LM–30 filers;
- For the RFA analysis, all affected entities are assumed to be small business entities.

1. Overview and Response to Comments Received

In the notice of proposed rulemaking (NPRM), the Department estimated an annual total of 2,601 Form LM–20 filers and 3,414 Form LM–10 filers resulting from the proposed rule. 76 FR 36198–200. To estimate the number of Form LM–20 filers, the Department first identified the average number of representation elections. Representation elections permit employees to vote whether they wish to be represented by a particular labor union. Representation elections may be contested by employers who spend resources and hire management consulting firms to defeat unions at the ballot box. Id. at 36185. The Department calculated the representation cases filed with National Mediation Board during fiscal years 2005–2009 (which equaled 38.8 annually) and added that figure to the average number of National Labor Relations Board representation cases filed during the same period (which equaled 3,429.2), for an annual total of 3,468 representation elections. Next, the Department reviewed the research literature and determined that the median utilization rate of consultants by employers was approximately 75%. As a result, the Department concluded that there would be 2,601 ($3,468 \times .75 = 2,601$) elections in which employers would hire consultants to persuade employees with regard to their right to organize and bargain collectively, triggering thereby the requirements that employers file Form LM–10 and consultants file Form LM–20 reports.

To determine the increase in filing caused by the proposed rule, as compared to the existing rule, the number of estimated new Form LM–20 reports (2,601) was reduced by the average number of reports already being filed (191), resulting in an expected increase of 2,410 ($2,601 - 191 = 2,410$) Form LM–20 reports. Although the numbers could be increased by assuming that an employer might enter into multiple agreements during a single union organizing campaign or consultants may hire subcontractors, the Department made no such assumptions,

instead seeking comment on this issue. 76 FR 36199–200.

Having derived an estimate for Form LM–20 submissions, the Department then calculated the annual number of expected Form LM–10 filings. See 76 FR 36199. It estimated 3,414 Form LM–10 filers. This constituted an estimated increase of 2,484 over the existing average of 930 Form LM–10 reports. The analysis began with the 2,601 NLRB and NMB elections, discussed above, where 75% of involved employers were projected to hire consultants to persuade employees with regard to their right to organize and bargain collectively (3,468 × .75 = 2,601). The existing Form LM–10 reporting history was reviewed, revealing an annual average of 930 Form LM–10 reports filed, consisting of 117 reports of activities to persuade employees about their rights to organize and bargain collectively and about 813 reporting conduct unrelated to such activities. The 2,601 agreements to persuade were added to the average number (813) of Form LM–10 non-persuader reports. This resulted in a total of 3,414 annual Form LM–10 reports (2,601 persuader reports and 813 reports of financial activity unrelated to persuading) (2,601 + 813 = 3,414). Under the Form LM–10, and unlike the Form LM–20, multiple agreements and subcontracts are not relevant as they do not require additional reports.

In this rule, the Department estimates that it will receive approximately 4,194 Form LM–20 reports. Of this figure, 2,104 are associated with representation elections. The difference between the 2,601 reports arising from representation election projected in the NPRM and the 2,104 projected here is the use of current data (as explained below, the NRPM relied on NLRB and NMB data from FYs 2005–09, while the final rule uses data from FYs 2009–13 for NLRB data and data from FYs 2010–2014 for NMB data). Reports arising from union avoidance seminars account for an additional 2,090 Form LM–20 reports not projected in the NPRM. As further explained below, the Department assumes that 358 unique entities will file these reports. This is the number of estimated consultants, including law firms, which will be filing LM–20 reports.

This rule does not alter the method of calculating Form LM–10 reports. The Department estimates 2,777 Form LM–10 reports, which represents a decrease from the 3,414 estimate in the NPRM. The adjustment is the result of updated data made available by the NLRB and NMB, as well as accessible from the OLMS reporting records. The increase in Form LM–20's as a result of the union seminar rules will not increase the number of Form LM–10 reports because under the rule employers are not required to report their attendance at union avoidance seminars.

The Department received multiple comments in response to its PRA analysis and estimated burden numbers. These comments focused upon three areas: The number of filers and reports; the hours per filer; and the cost per filer.

Many of the comments focused on the number of potential reports. One business association criticized the Department's estimates, but noted that the NPRM's analysis ''does a better job than most'' in presenting its cost analysis. One employer association challenged the estimate of the number of submitted reports for the revised forms as too low, since the estimate focused only on organizing efforts thus ignoring the burdens associated with reporting activities related to ''positive workplace polices'' and matters such as voluntary recognition and corporate campaigns. Other commenters presented similar concerns, although none provided data or data sources to quantify such activities. Further, the Department's estimate, in the employer association's view, did not take into account the large number of seminars held for management or the broad scope of the term ''protected concerted activities,'' which would also trigger reporting if there was an object to persuade employees. Other commenters expressed similar concerns, with one consultant firm indicating that such seminars are offered by HR firms, chambers of commerce, trade associations, and law firms, with tens of thousands of attendees annually. This firm also estimated that employee opinion surveys would trigger hundreds of thousands of reports. One trade association asserted that the Department only provided an estimate for the number of employers required to file the forms (2,601) but not law firms or consultant firms.[96] A public policy organization argued that the Department's estimate incorrectly assumed that a Form LM–20 filer would submit a single report, while the Department's database suggests that Form LM–20 filers often submit multiple reports. A consultant firm also argued that consultants would enter into multiple reportable agreements annually.[97]

The Department believes that the basic approach to estimate the number of reports utilized in the Department's initial analysis is sound, and we replicate it here. As the commenters recognized, and as the Department noted both in the proposed and final rule, the Department has used NLRB and NMB election activities as a proxy for estimating the number of reports that will be filed under the rule. The Department again has calculated a five-year average of representation petitions from NLRB and NMB data, and then employed the mean rate (78%) of employer utilization of consultants to manage an anti-union campaign when faced with an organizing effort.[98] Please note that the Department previously used the median utilization rate, but is now using the mean for a more consistent statistical analysis. While many reports will be triggered by persuader activities related to the filing of representation petitions, others will result from activities related to collective bargaining and other union avoidance efforts outside of representation petitions, such as organizing efforts that do not result in the filing of a representation petition. Yet, as noted by the Department in the NPRM and in the comments received, there is no reliable basis for the Department to estimate reports received in many areas outside of representation petitions.[99] 76 FR 36199.

[96] This commenter was incorrect. The estimate of 2,601 was the number of Form LM–20 reports that the Department would receive as a result of the proposed rule, while the Department estimated 3,414 Form LM–10 filers.

[97] Some commenters argued that they would have been able to provide better estimates of the burden associated with the proposed rule if the comment period on the proposal had been extended. In the Department's view, the 90-day comment period provided adequate time for commenters to respond to the Department's estimates, as well as the rest of its proposal. This view is supported by the breadth of comments received on the Department's estimated burden and other aspects of the proposal. The Department also extended the initial 60-day comment period to 90 days, in response to comments received. See 76 FR 45480. The Department responded separately to these requests for an extension of the comment period.

[98] As also explained within the PRA analysis, the Department has updated this estimate based on more recent data from the NLRB and NMB: Data from FYs 2009–13 for NLRB data and data from FYs 2010–2014 for NMB data rather than FYs 2005–09 relied upon in the NPRM.

[99] An employer association noted that it is not aware of any ''reliable database'' to determine the number of such agreements concerning persuader activity that occurs outside of an NLRB or NMB representation petitions or otherwise outside of a labor dispute, including card check recognition or corporate campaigns, beyond the estimates provided. The Department concurs with this observation. While the Department's estimate is therefore necessarily imprecise, it is supported by the record and comments, and little substantiated or quantified data was proffered to contradict it. In applying to OMB for a continuation of the information request, the Department will update its

In one respect, the comments have persuaded the Department to refine its analysis in estimating the total number of LM–20 reports that will be filed under the rule. As discussed below, in addition to the number of persuader agreements connected with representation petitions, the Department has provided an estimate of the number of reports that will be filed in connection with union avoidance seminars. This activity was not specifically considered in the initial burden analysis. Its inclusion substantially increases the overall estimate of Form LM–20 reports. To summarize, the Department has estimated that it will receive 4,194 Form LM–20 reports pursuant to this rule, with 2,104 associated with representation elections and 2,090 with union avoidance seminars.

Additionally, the Department concurs with the commenter that asserted the Department should provide an estimate for the number of Form LM–20 *filers,* separately from the number of reports. In response to comments received, the Department provides an estimate of the number of Form LM–20 filers: 358.[100] This revision takes into account, as noted by some commenters, that Form LM–20 ''filers'' or ''respondents'' may submit multiple ''responses'' or reports under the rule.

The Department estimates from its existing data of submitted Form LM–20 reports that consultants, including law firms, file an annual average of approximately 5.875 reports a year. We assume this ratio will continue under this final rule for non-seminar reports. Accordingly, as we have estimated 2,104 reports will arise from representation elections, and that 5.875 of each will be submitted by a single filer, there will be approximately 358 unique filing entities (2,104/5.875 = 358). Because we conclude that the pool of consultants who engage in persuader activities during representation elections are the same group who engage in persuader activities in the context of union avoidance seminars, we do not estimate any further increase in filers when estimating the number of union avoidance seminar reports. Instead, the Department assumes that these 358 filers will conduct each of the union avoidance seminars covered by this rule.

Regarding the estimate for union avoidance seminars, in the absence of any data reflecting a precise number of seminars or conferences that would trigger reporting, to estimate the number of reportable seminars the Department begins with the number of business associations that appear most likely to organize such seminars (1,045). How the Department arrived at this number is discussed below.

To determine the number of Form LM–20 reports submitted by reason of consultants conducting union avoidance seminars, the Department utilized the reporting data for ''business associations'' from the U.S. Census Bureau's North American Industry Classification System Codes (NAICS), NAICS 813910, which includes trade associations and chambers of commerce.[101] Of the 15,808 total entities in this category, the Department assumes that each of the 1,045 business associations that operate year round and have 20 or more employees will sponsor, on average, one union avoidance seminar for employers.[102] The Department assumes that each association, on average, will offer one such seminar annually, most likely at the association's annual, general conference.

Additionally, the Department assumes, for purposes of estimating burden, that all of the 1,045 identified business associations will contract with a law or consultant firm to conduct that seminar, because these firms have expertise in the union avoidance area and will generally be willing to provide such service as a means to generate new clients. Further, the Department assumes that such seminars will be conducted by firms within the estimated group of 358 consultant firms, including law firms (that file the non-seminar Form LM–20 reports).

Furthermore, while the Department assumes that such firms will, as a matter of mutual benefit, generally utilize the existing seminar arrangements offered by the trade associations (given the potential savings of time and resources in recruitment, event planning and related expenses, which are typically absorbed by the trade association and given the potential exposure to members of that association which these firms might not otherwise have), the Department also considers it likely that many of the estimated 358 consultants, including law firms will also hold their own, independently facilitated union avoidance seminars. While the Department is not aware of any authoritative or comprehensive source that could provide accurate data concerning the number of such seminars that consultants would independently provide, and the comments are silent on this point, the Department assumes that such firms, in the aggregate, will offer at least as many annual seminars independently as would trade associations. Thus, for purposes of the instant analysis, the Department estimates that annually a total of 2,090 Form LM–20 reports will be filed in connection with union avoidance seminars. Half of these seminars (1,045) will be sponsored by a business association and half (1,045) will be unsponsored (1,045 + 1,045 = 2,090).

The Department assumes that, on average, each of the 358 estimated law/consultant firms will present and therefore report for each of these seminars. As a result, the Department estimates that such firms will present a total of approximately six seminars per year (2,090/358 is 5.838). This does not mean that each reporting consultant will file six Form LM–20 seminar reports per year; we expect there will be considerable variation in filing for union avoidance seminars around this average, as would be expected in a normal distribution. Some consultants may not have conducted a seminar, so they accordingly will not file a seminar-related Form LM–20 at all. Other consultants, for example, may only conduct one seminar annually while others may conduct one per month (or 12 annually). Thus, the Department believes that an average of approximately six is reasonable. These 2,090 seminar reports are in addition to the estimated 2,104 non-seminars reports, for a total of 4,194 Form LM–20 reports. Although, as discussed in note 102, there may be other entities required to submit reports, the

estimate based upon the reporting experience under the rule.

[100] The Department assumes that these 358 filers are consultants, including law firms, because the rulemaking record indicates that these entities manage counter-organizing efforts in connection with representation elections, as well as conduct union avoidance seminars. Additionally, in practice, other ''persons'' may enter into persuader agreements and business associations may engage in other reportable persuader activities, but no quantifiable data was provided on these persons or their activities. The Department also assumes that these 358 entities will file the estimated 2,104 non-seminar reports (as adjusted from the NPRM as a result of more recent OLMS, NLRB, and NMB data), as well as the additional 2,090 seminar reports estimated in this rule.

[101] See U.S. Census Bureau, Statistics of U.S. Businesses: 2012: Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, NAICS 813910—Business Associations, United States, released on 1/23/15, accessed at: *http://www.census.gov/econ/susb/.*

[102] The Department has used 20 employees as a threshold due to the logistics of planning a seminar. In particular, an organizer must plan the agenda, recruit and arrange persuaders to present, engage in public relations and event management, and arrange event space, meals, lodging, and audio/visual technology. The assumption that each entity with 20 or more employees organizes a persuader seminar is likely an overestimate, as not every entity capable of organizing a seminar will do so in practice.

comments suggest that number to be small relative to the estimated 358 entities.

The Department has not otherwise revised its estimates concerning the use by employers of consultants to persuade in circumstances in which employees are not currently seeking a union. First, the Department clarified, in Section IV.B of the preamble, that the consultant's development of personnel policies does not trigger reporting merely because they may subtly influence employee decisions. Rather, reporting is triggered only if they are undertaken with an object to persuade employees. Personnel policies are unlikely therefore to trigger a report, at least in circumstances other than what the Department has based its estimates (representation elections and union avoidance seminars). Second, the Department has removed the term ''protected concerted activities'' from the reporting obligation, which is now limited to persuader activities affecting the representation and collective bargaining rights of employees. Third, the final rule removes employee attitude surveys and vulnerability assessments from the list of persuader activities. Furthermore, the Department has revised its estimate, in response to comments received, to account for union avoidance seminars. Indeed, the rulemaking record does not suggest any further basis to estimate additional persuader reports.[103]

As the Department explained in the NPRM and in this preamble, the Department's past experience regarding the number of Form LM–10 (insofar as they may reflect persuader activities) and Form LM–20 filings provides limited utility in estimating the number of anticipated filings under the proposed or final rule. As discussed above, the Department's LMRDA reporting forms must be reviewed by the Department and approved by OMB at least every three years. Filing experience under the final rule will enable the Department to more accurately estimate the number of filers and burden associated with the rule and this experience will guide the Department in its future submissions to OMB justifying recertification of this information collection.

Several commenters criticized the Department's estimates concerning the hours required to complete the forms and the hourly wage rate used to calculate the total cost. No commenters provided any specific alternative methodologies, data sources, or estimates for reporting and recordkeeping burden, besides general statements criticizing the NPRM's estimates as too low and references to the purported ''vagueness'' of the proposed rule.[104]

In terms of burden hours required to read the Forms LM–10 and LM–20 instructions, an employer association contended that the 20-minute Form LM–10 estimate and 10-minute Form LM–20 estimate for reading each set of instructions, respectively, was ''arbitrary'' as it is not based upon any empirical study, and does not include time needed to read the preamble to the rule. A business association argued that the estimates to read the instructions were too low, and that employers would need to familiarize themselves with the LMRDA, its regulations, Department-issued guidance, as well as the forms, and then collect the information necessary to complete the form. Similarly, a law firm stated that underestimated numbers derive from the Department's lack of recognition of the broad scope of its new interpretation of persuader activities, particularly concerning personnel policies, which would require employers to analyze each of their employees' actions for evidence of a ''persuader act.'' A trade association argued that the estimates for the Form LM–10 were inaccurate, as they failed to take into account the complexities of various organizations, with ''unrealistic and seemingly arbitrary assumptions,'' and would ''clearly'' require more than two hours to complete. The employer association also stated that the NPRM did not take into account communication needed between the employer and consultant; the consultant's need to ''guess'' at the employer's intent; the need to institute new contracts, business practices, and records systems; and to monitor activities to ensure compliance. A consultant firm stated that the total burden must take into account the ''new, subjective definition of 'persuasion,' '' to determine if reporting is even required. Doing so would result in the employer spending many hours per year monitoring activities (such as conference or trade association meetings, training sessions or employee committee meetings, communications with outside attorneys, and development of employee opinion surveys) for persuader content, which would lead to over $100 million in total reporting.

Concerning other reporting and recordkeeping burden estimates, an employer association argued that the Department incorrectly relied on estimates used in the recently published Form LM–30 final rule, as that report is filed by individuals, not organizations that are more complex. See 76 FR 66485–89.[105] The employer association asserted that the filers do not regularly keep the required records, although it acknowledged that they ''may have appropriate records,'' but the NPRM did not take into account the need to review them. The commenter specifically mentioned records concerning seminars, as the employer may not keep track at all, nor would a lawyer who does not know the attendees.

[103] The Department has updated its estimate of Form LM–10 reports to account for more recent data made available by the NLRB and NMB, as well as that data accessible from the OLMS reporting records. The Department, however, has not otherwise modified its Form LM–10 estimates. Under the final rule, employers are not required to report their attendance at union avoidance seminars on the Form LM–10. See Section IV.B of the preamble. A consultant that conducts a union avoidance seminar identifies the employer attendees in a single report. Id.

[104] Commenters also mentioned the increased burden associated with the Form LM–21 Receipts and Disbursements Report. The Department has separately addressed the burden associated with this report in the Information Collection Request to OMB accompanying this rule.

[105] A public policy organization suggested that the Department in this rulemaking imposes a substantial burden on filers, whereas in 2011 the Department revised its LM–30 reporting requirements in order to reduce by five minutes the burden on union officials and to avoid overwhelming the public with unnecessary reports. In both rulemakings, the Department has been sensitive to concerns about imposing undue burden on filers, ensuring that burden brings with it meaningful benefits to employees, this Department, and the public. In the Form LM–30 rulemaking, the Department was concerned with the substantial time required by union officials to report union leave (payments from employers to union officials, who are current or former employees of the employer, for union work) under the previous rule (saving 120 minutes for those required to file the report and a substantial, although uncalculated, burden on non-filers, who needed to read the form and instructions and keep track of the number of union leave hours received). See 76 FR 66454.

In the Form LM–30 final rule, the Department determined that union leave reporting, as well as the reporting of certain bona fide loan payments to union officials, did not present actual or potential conflicts of interest, and therefore should be eliminated from reporting to prevent unnecessary burden on union officials and the receipt of superfluous reports that do not demonstrate conflicts of interest. See 76 FR 66451–54, 57. Similarly, the Department in this rule protects employers and consultants by focusing on employer retention of third parties to persuade employees, not in-house management officials. Further, for example, this rule exempts reporting for vulnerability assessments; personnel polices developed by the consultant without an object to persuade; and by exempting reporting for employer retention of attorneys for strictly legal services as well as other third parties for providing exclusively advice or certain representative services. The reporting of these services is not necessary for workers to evaluate the information presented to them by their employer, and reporting would burden employers and consultants and overwhelm the public with unnecessary information.

Further, a trade association disagreed with the estimated two minutes for ''signature and verification'' for the president and treasurer, which it considered too low due to the difficulty in ensuring each of these officers of a complex organization to sign any document. A law firm contended that the Department underestimated the time needed to identify the subject employees who are to be persuaded in Form LM–20 Item 12(a) and Form LM–10 Item 14(e), which, it argued, involved greater detail than the prior form, which only required the filer to provide the ''identity of the subject employees.''

The Department largely disagrees with these comments. The Department's estimates are not arbitrary, but rather derive from the similar Form LM–30 report. The Department views the use of Form LM–30 data is an appropriate benchmark, because each must be filed only upon a triggering event, and not merely by virtue of an entity's existence, as with the annual labor organization reports. The Form LM–30 also has many similar data requests to the Forms LM–10 and LM–20. The fact that Form LM–30 filers are individuals rather than organizations generally has no bearing on the type of information requested or the manner in which it is reported. Indeed, employers and consultant firms are more likely to employ attorneys to complete the reports, and likely have greater background in completing such reporting forms or in retaining the types of records required to be maintained, than labor organization officers and employees. In contrast, organizations such as employers and consultants regularly employ and retain hourly billing, financial, and other records and likely have systems in place to retrieve them.

Furthermore, as explained in the preamble, the Department asserts that the definition of ''persuasion'' has not changed and is an objective test. The preamble also clarifies that the reporting requirements are triggered by the consultant's object in undertaking the activities, including the development of personnel policies, as evidenced by the agreement and communications and personnel policies prepared and disseminated to employees. Thus, employers and consultants already have access to identical information, and neither party would be required to create any additional documents as a result of this rule. The parties also do not need to monitor activities undertaken, because reporting is triggered upon entering into the agreement. Thus, the parties would generally need to analyze the agreement itself, with a review of communications or policies only if the agreement did not make clear the intended consultant activities. In such cases, the employer and consultant would both likely have access to the consultant-created communications or personnel policies disseminated to employees, or employer-created material reviewed by the consultant who directed or coordinated the activities of the employer's representatives, and would therefore be able to review them. Concerning union avoidance seminars, the Department has exempted employers from reporting these agreements, and the Department is not convinced that the organizers of such events would fail to keep records of attendees. The organizers would likely maintain such business records both to ensure proper payment for attendance and to recruit participants for future conferences and/or consulting opportunities. The organizers, too, would have possession of the materials used at the seminar, if for no other reason than to use the same or very similar materials in future seminars or to provide additional copies of materials to participants or even non-participants that might request them. Any presenter at the event could obtain this information from the organizer, and it likely does so for purposes of identifying prospective clients. Additionally, as stated, the final rule removes, generally, employee attitude surveys and vulnerability assessments from reporting, unless there is evidence that the surveys are ''push-surveys'' or they otherwise evidence an object to persuade for the consultant.[106]

The Department concurs with the business association that the estimated 20 minutes to read and apply the Form LM–10 instructions and 10 minutes to read and apply the Form LM–20 instructions are too low. Since both parties will also need to apply the instructions to the agreement and related activities to determine reporting, and these estimates are significantly lower than the 30 minutes provided for the Form LM–30 instructions, the Department has increased both estimates to account for the total time needed to review and apply the instructions. Thus, the Department estimates that Form LM–10 filers will require 25 minutes to read and apply the instructions, and Form LM–20 filers 20 minutes to do so. This is a five and ten-minute increase over the revised rule for the two forms, respectively. While the Department estimates that Form LM–30 filers will require 30 minutes, see 76 FR 66487, the Forms LM–10 and LM–20 are completed by organizations, often with the assistance of attorneys, thus justifying the reduced time. The estimate for the Form LM–10 is greater than the Form LM–20, because the form and instructions have provisions that are not in the Form LM–20.

The Department does not agree that it must include the time needed to read other aspects of the LMRDA or its implementing regulations or any guidance issued by the Department concerning the Form LM–10 and LM–20 in the preamble to this rule or subsequent to its publication. Such further guidance will simply assist filers in applying the form and instructions, and thus the filer is not required to read such material. Further, no such time is given union officials in the case of the Form LM–30 or for that matter, for union officials who must complete the Form LM–2 or other annual financial reports. The time needed to gather records, upon reading the instructions, is a separately identified recordkeeping burden.

The Department also concurs that several other burden estimates should be increased. As a result of the determination to allow Form LM–20 filers to consolidate information concerning union avoidance seminar attendees on one form, the Department has increased the time required to complete Form LM–20 Item 6 from four minutes to ten minutes. This item requires the filer to identify the employer with which it entered into the agreement. The Department does not believe that, for example, Item 6 will require four minutes for each employer attendee, as the information for all attendees of the seminar will likely be located in one document and will be readily available. Additionally, the presenters of such seminars likely already receive this information from the seminar organizers, as explained. Furthermore, the Department will allow filers to import this data into the electronic form. However, the Department has increased the total estimate of time for these items because of the volume of employer attendees that certain seminar filers will need to record on the form.

[106] The Department notes that the consultant firm that estimated that the total burden of the proposed rule amounted to at least 1.4 million hours per year based its calculation on an incorrect assumption about the total of filers, which it stated would be in the hundreds of thousands. The commenter grounded this estimate of total filers in incorrect assumptions and estimates, as explained, made about seminars and opinion surveys. Thus, the Department dismisses the highly exaggerated estimate of total burden hours. The Department's revised estimates on total burden hours and costs, including more specific response to comments received, are detailed within this section.

The Department has also increased the estimated time required to identify the subject employees who are to be persuaded in Form LM–20 Item 12(a) and Form LM–10 Item 14(e), from one minute to five minutes. The Department agrees that the information required, although readily available, will require more than one minute to compile and record on the form. The information will either be readily available in the agreement itself or in the communications or policies prepared for employees. In certain cases, the consultant may have targeted its persuasion to all the employer's employees, or large groups of the employees, in which case the information will also be easily obtained.

Further, the Department has increased the estimated time for completing Form LM–20 Items 13 and 14, and Form LM–10 Items 18 and 19, the ''Signature and Verification'' items. The Department concurs that the president and treasurer of Forms LM–10 and LM–20 filers are not similar enough to Form LM–30 filers, in this respect, to justify the identical burden estimate for this aspect of the form. Rather, the president and secretary-treasurer of large labor organizations are more identical in this respect. In the 2003 Form LM–2 final rule, the Department estimated that it would take union officers two hours each to obtain an electronic signature and one hour to read and sign the report, upon its full implementation. See 68 FR 58438. However, the two-hour estimate to acquire the electronic signature no longer applies, as the Department has eliminated the costly and burdensome digital signature and has adopted a free and easy-to-obtain PIN and password approach, the same system that will be used by Form LM–10 and Form LM–20 filers. Further, the Forms LM–10 and LM–20 estimates do not exactly mirror the more detailed and time-consuming Form LM–2 report. Thus, the Department estimates that the signature and verification process will require a total of 20 minutes, 18 more than proposed. This estimate is identical to that of the recently rescinded Form T–1 Trust Annual Report. See 73 FR 57441.[107]

In response to the Department's cost estimates, the employer association rejected the Department's use of the average hourly compensation for lawyers of $87.59, pursuant to data from the Bureau of Labor Statistics (BLS), and instead supported the use of average hourly compensation for chief executive officers (CEOs) of $108.34. A trade association also criticized the per-hour compensation figure, as it may be ''realistic'' for some ''in-house lawyers'' but not for lawyers in law firms. The Department rejects the employer association's suggestion, and retains the use of the total compensation figure for attorneys, as this conforms to the Department's historical practice, and the rulemaking record does not support the inference that the Form LM–10 or Form LM–20 is completed by CEOs rather than lawyers.[108] The Department also notes, as explained in more detail below, that it has updated its adjustment for total compensation from 41.2% (as used in the NPRM, see 76 FR 36203) to approximately 44.5% as a result of the availability new data from BLS, resulting in a revised average hourly compensation for lawyers of $92.53. The Department also rejects the lower 30% provided by the commenter. Further, the Department retains the BLS estimate for the hourly wage of lawyers (updated with more recent data), as the figure represents an average for all lawyers, and neither the trade association nor any other commenter provided an alternative estimate for the hourly wage for lawyers.

Additionally, a business association contended that affected employers would seek advice regarding LMRDA reporting compliance from outside counsel, and the Department did not take this into account. The Department emphasizes that the burden estimates to complete and submit the Form LM–10 are burdens impacting the employer, but this does not prevent the employer from seeking assistance from another party to complete the form. Indeed, in such a case the estimates are of time undertaken by the third party, although charged to the employer. In many cases, the consultant that entered into the agreement with the employer may assist the employer in completing the employer's report as well as its own. This third-party assistance is appropriate, as long as the employer's president and treasurer verifies and signs the report.

Finally, the Department in the preamble responded to comments that suggested that the revised forms established a ''subjective'' test, replacing a ''bright-line'' test, without adequate justification in the statute, legislative history, or public policy. The Department also responded to assertions that the proposed rule would chill employer speech, restrict access to attorneys and thereby increase labor law violations, and discourage positive personnel policies. In response, as explained elsewhere in the preamble, the Department clarified the objective nature of the test to determine reportability of employer-consultant agreements, the strong support for such test in the text of the statute and its legislative history, and the benefits concerning such transparency to employee rights to organize and bargain collectively, as well as to stable and peaceful labor-management relations. In particular, the Department explained that reporting is not triggered merely because the consultant developed a personnel policy that improves employee wages, benefits, or working conditions. Rather, the consultant must have an object to persuade employees.

Except as noted above or within, the analysis below is identical to that of the NPRM. Any differences are explained in this section.

2. Overview of the Revised Forms LM–20, LM–10, and Instructions

a. Revised Form LM–20 and Instructions

The Revised Form LM–20 and Instructions (see Appendix A) are described in Section IV.D, and this discussion is incorporated here by reference.

b. Revised Form LM–10 and Instructions

The Revised Form LM–10 and Instructions (see Appendix B) are described in Section IV.D, above, and this discussion is incorporated here by reference.

3. Methodology for the Burden Estimates

The Department first estimated the number of Form LM–10 and Form LM–20 filers that will submit the revised form, as well as the increase in submissions that result from the rule. Then, the estimated number of minutes that each filer will need to meet the

[107] The Department notes that the Form T–1 estimate was also based on the prior digital signature, not the easily-obtained EFS electronic signature. Thus, the 20-minute estimate may overstate the actual burden. Furthermore, the Department also notes that the rescission of the Form T–1 was not based upon errors in the PRA analysis. Indeed, the Department utilized some of the estimates and underlying assumptions in the PRA analysis establishing the Form T–1 in order to estimate the burden for subsidiary organization reporting on the Form LM–2. See 73 FR 74952.

[108] The Department acknowledges that the employer officials signing and verifying the Form LM–10 reports may be CEOs rather than attorneys. However, the Department estimates that attorneys would still complete the overwhelming majority of the report, with the employer officials spending the estimated 20 minutes signing and verifying the forms, which is only a fraction of the total estimate of 147 minutes (approximately 13.6%) for the form. This difference, along with the relatively small difference in total compensation between the CEO and attorney categories, does not warrant a separate calculation, and the use of the average total attorney compensation provides a reasonable estimate for the Form LM–10.

reporting and recordkeeping burden of the revised forms was calculated, as was the total burden hours. The Department then estimated the cost to each filer for meeting those burden hours, as well as the total cost to all filers. Federal costs associated with the rule were also estimated. Additionally, the Department notes that the burden figures provided below are intended to be reasonable estimates, for the average filer, and not precise statements of the number of filers and hour and cost burden for every filer.

a. Number of Revised Form LM–20 and Form LM–10 Filers

The Department estimates 4,194 Form LM–20 reports and 2,777 Form LM–10 reports under this rule (the first number is increased from the 2,601 estimate in the NPRM; the second figure represents a decrease from the 3,414 estimate in the NPRM). The Form LM–20 total represents an increase of 3,807 Form LM–20 reports over the total of 191 reports estimated in the Department's most recent Information Collection Request (ICR) submission to the Office of Management and Budget (OMB). The Form LM–10 total represents a 1,820 increase over the average of 957 Form LM–10 reports received annually between FY 2010 and 2014.[109]

(i). Form LM–20 Total Filer Estimate

The Department estimates 4,187 revised Form LM–20 reports. To estimate the total number of revised Form LM–20 reports, the Department first estimated the number of individual persuader agreements between one employer and one consultant firm. Second, in response to comments received concerning seminar reporting, the Department estimated the number of Form LM–20 reports received for union avoidance seminars from consultant firms (including law firms).

First, the Department employed the mean rate (78%) of employer utilization of consultants to manage an anti-union campaign when faced with an organizing effort. See Section III.B.3. The Department views this rate as providing the best method at estimating non-seminar persuader reporting, as it is aware of no data set that will reflect all instances in which a labor relations consultant will engage in reportable persuader activity. Further, there is no ready proxy for estimating the use of consultants in contexts other than in election cases (with the exception of union avoidance seminars, as explained below), such as employer efforts to persuade employees during collective bargaining, a strike, or other labor dispute. The Department believes, however, that the number of representation and decertification elections supervised by the National Labor Relations Board (NLRB) and the National Mediation Board (NMB), the agencies that enforce private sector labor-management relations statutes, provides a reasonable benchmark for estimating the number of reports that will be filed under the rule.

The Department applied the 78% employer utilization rate of consultants to data from the NLRB and NMB. As shown above in Section III.B.3, and as updated from the NPRM to account for the most recent fiscal years available, the NLRB received an annual average of 2,658 representation cases during the fiscal years 2009–2013.[110] The NMB handled an annual average of 40 representation cases during the fiscal years 2010–2014.[111] Applying the 78% figure to 2,698 (the approximate, combined NLRB and NMB average representation case total per year) results in approximately 2,104 Form LM–20 reports.

Second, in response to comments received concerning persuader seminars and other persuader activities conducted outside the context of NLRB and NMB election process, and as explained above, the Department also assumes that reports will be filed in the context of union avoidance seminars (calculated independently from the NLRB and NMB election-based estimates). The Department estimated the number of Form LM–20 reports filed by consultants for such seminars by distinguishing between those seminars organized by a trade or businesses association but presented by a consultant who subcontracts with the association, and those seminars organized and presented by a consultant itself (or a trade or business association itself). The Department utilized data concerning the 15,808 ''business associations'' from the NAICS.[112] This category includes trade associations and chambers of commerce. The Department does not consider it likely that business associations with less than 20 employees will organize seminars for employers. Rather, the Department assumes that each of the 1,045 business associations that operate year round and have 20 or more employees will, on average, organize annually one persuader seminar. The Department does not believe it is likely that these associations would conduct such seminars themselves, but, rather, will contract to a consultant or law firm, as described. Additionally, to provide a more comprehensive picture of seminar reporting, the Department estimates that the combined 358 individual *filers* (law firms or other consultants), in addition to presenting the 1,045 seminars for business associations, would also conduct or present an additional 1,045 seminars conducted annually. Thus, the Department estimates that it will receive 2,090 (1,045 + 1,045) revised Form LM–20 reports annually as a result of union avoidance seminars, which corresponds to an average of approximately six seminar reports per filer. While the rulemaking record on this point is limited, it suggests that such seminars are relatively common and certain firms will conduct directly or present for business associations multiple seminars annually. However, the record does not suggest that all or the majority of firms will do so; the Department assumes that some will conduct no seminars, some only annually, and others perhaps as often as once per month. The Department therefore considers it reasonable to estimate that consultants, including law firms, will, *on average,* conduct or present approximately six such seminars annually.

The Department therefore estimates that the revised Form LM–20 will generate 4,194 (2,090 + 2,104) *reports,* which is an increase of 3,807 over the previous estimate of 387 (in the Department's most recent ICR submission to the OMB).[113] Additionally, the Department estimated the number of *filers* for those 4,194 reports. The Department reviewed the 2,726 Form LM–20 reports it registered from FY 10–14, and determined that

[109] In the NPRM, the Department did not utilize the Form LM–10 reports estimate from its recent ICR submission to OMB, because this total did not break the reports out pursuant to subsection of section 203(a), as did the FY 2007 and FY 2008 study referenced in the NPRM, and the total of 930 reports used in the NPRM is almost identical to the 938 Form LM–10 reports estimated in the prior ICR submission.

[110] The number of NLRB petitions include those filed in certification and decertification (RC, RD, and RM) cases. See 2010 and 2012 NLRB Summary of Operations (which include FYs 09 and 11) at *http://www.nlrb.gov/reports-guidance/reports/summary-operations*, as well as Number of Petitions Filed in FY13: *http://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/number-petitions-filed-fy13.* Does not include unit deauthorization, unit amendment and unit clarification (UD, AC and UC) cases.

[111] See 2014 NMB Annual Report, Table 1 (CASES RECEIVED AND CLOSED), at the ''new'' cases line, *http://storage.googleapis.com/dakota-dev-content/2014annual-report/index.html.*

[112] See 2012 Economic Census, U.S. Census Bureau: NAICS 813910—Business Associations, United States, accessed at: *http://www.census.gov/econ/susb/.*

[113] As stated, these figures represent an increase over the NPRM's estimate. The estimate of 4,194 reports received is 1,593 greater than the 2,601 estimated in the NPRM. See 76 FR 36198.

these reports came from a *total* of 464 consultants, which averages to approximately 5.875 reports per consultant. Applying this ratio to the estimated 2,104 revised Form LM–20 reports received for non-seminar agreements results in an *average* of approximately 358 (2,104/5.875) consultant firms (including law firms) filing reports.[114]

(ii). Form LM–10 Total Filer Estimate

The Department estimates 2,777 revised Form LM–10 filers, for a total increase of 1,820 over the average of 957 Form LM–10 reports estimated in the Department's most recent ICR renewal. The Form LM–10 analysis follows only the first portion of the above analysis, as employers are not required to file Form LM–10 reports for participation at union avoidance seminars, and an employer files one Form LM–10 report per fiscal year, regardless of the number of persuader agreements entered. This contrasts with consultants, who file one Form LM–20 per agreement.

Additionally, the Form LM–10 has other aspects that are not affected by this rule. Specifically, an employer must report certain payments to unions and union officials pursuant to section 203(a)(1), as well as persuader and information gathering related payments pursuant to section 203(a)(2) and 202(a)(3). For these portions of the Form LM–10, the Department utilized data obtained from a review of the OLMS e.LORS system, which revealed an average of non-persuader Form LM–10 reports registered annually from FY 2010–2014.

The Department assumes for this calculation that each Form LM–10 report submitted will involve just one of the above statutory provisions, although in practice there may be some overlap. Thus, the Department combines the estimated 2,104 non-seminar persuader agreements between employers and law firms or other consultant firms, calculated for the Form LM–20, with 672.6 (the annual average number of Form LM–10 reports registered from FY 10–14, indicating that the forms were submitted pursuant to sections 203(a)(1)–(3), the non-consultant agreement or arrangement provisions). This yields a total estimate of approximately 2,777 revised Form LM–10 reports (2,104 + 672.6 = 2,776.6), which represents an increase of 1,820 reports over the average of 957 Form LM–10 reports registered annually from FY 10–14.

b. Hours To Complete and File the Revised Form LM–20 and Form LM–10

The Department has estimated the number of minutes that each Form LM–20 and Form LM–10 filer will need for completing and filing the revised forms (reporting burden), as well as the minutes needed to track and maintain records necessary to complete the forms (recordkeeping burden). The estimates for the Form LM–20 are included in Tables 1 and 2, and the estimates for the Form LM–10 are included in Tables 3 and 4. The tables describe the information sought by the revised forms and instructions, where on each form the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The estimates for the reporting burden associated with completing certain items of the forms and reading the instructions, as well as the related recordkeeping requirements, are based on similar estimates utilized in the recent Form LM–30 Labor Organization Officer and Employee Report rulemaking, pursuant to section 202 of the LMRDA. While the information required to be reported in that form differs from the Forms LM–10 and LM–20, and union officers differ from attorneys who complete the employer and consultant forms, the Forms LM–10 and LM–20 contain primarily informational items such as contact names, many of which are very similar to that requested on the Form LM–30. Thus, the similarities in the forms and length of the instructions provide a reasonable basis for these estimates.

Further, the estimates include the time associated with gathering documentation and any work needed to complete the forms. For example, the estimates include reading the instructions, gathering relevant documentation and information, and checking the appropriate persuader or information-supplying activities boxes. The Department also notes that there are no calculations required for the Form LM–20, as it does not require the reporting of financial transactions (although Item 10, Terms and Conditions, requires reporting of aspects related to rate of consultant pay). The aspect of the Form LM–10 affected by this rulemaking, concerning the details of persuader agreements, requires the reporting disbursements made to the consultant, without any calculations.

Additionally, the estimates below are for all filers, including first-time filers and subsequent filers. While the Department considered separately estimating burdens for first-time and subsequent filers, the nature of Form LM–20 and Form LM–10 reporting militates against such a decision. Employers, labor relations consultants, and others may not be required to file reports for multiple fiscal years. In those cases in which the Department has reduced burden estimates for subsequent-year filings, it generally did so with regard to annual reports, specifically labor organization annual reports, Forms LM–2, LM–3, and LM–4. In contrast, the Form LM–20 and Form LM–10, like the Form LM–30, is only required for employers, labor relations consultants, and other filers in years that they engage in reportable transactions. As such, the burden estimates assume that the filer has never before filed a Form LM–20 or Form LM–10. See Form LM–30 Final Rule at 76 FR 66487.

(i). Recordkeeping Burden Hours To Complete the Form LM–20

The recordkeeping estimate of 15 minutes per filer represents a 13-minute increase from the 2-minute estimate for the prior Form LM–20, as prepared for the Department's most recent information collection request for OMB # 1245–0003. See also the prior Form LM–20 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. Additionally, the Department assumes that consultants retain most of the records needed to complete the form in the normal course of their business. Finally, the 15 minutes accounts for the 5-year retention period required by statute. See section 206, 29 U.S.C. 436.

(ii). Reporting Burden Hours for the Form LM–20

The reporting burden of 83 minutes per filer represents a 63-minute increase from the 20-minute estimate for the prior Form LM–20, as prepared for the Department's most recent information collection request for OMB # 1215–0188. See also the prior Form LM–20

[114] The Department notes that, pursuant to the terms of the statute and the instructions to the form, other persons who enter into agreements to aid the consultant in its efforts to persuade the employer's employees, are also required to submit Form LM–20 reports. Furthermore, it is possible that an employer could enter into reportable agreements with multiple consultants during an anti-union organizing effort. However, the Department did not receive any further information on these points in response to the NPRM. The Department therefore assumes in its estimates that most employers will hire one consultant for each persuader agreement. Moreover, as discussed, we assume that insofar as union avoidance seminars are concerned, in most instances, a law or consultant firm, as the presenter, will undertake the reporting.

Additionally, the Department notes that the estimated 358 filers will file approximately 12 reports each (4,194/358=11.71).

and instructions. (As explained below, this is also a 38-minute increase over the proposed Form LM–20 reporting burden estimate in the NPRM.) This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. It also includes the time required to read the Form LM–20 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 20 minutes to read the instructions, which includes the time needed to apply the Department's revised interpretation of the advice exemption.[115] (This is a ten-minute increase over the NPRM's estimate.)

The Department views the simple data entries required by Items 1.a through 1.c, 4, 5, 7, and 11b–c as only requiring 30 seconds each. These items only require simple data entry regarding dates or file numbers, checking boxes, or, in the case of 11.c, a simple answer regarding the extent or performance for the activities undertaken pursuant to the agreement or arrangement. Additionally, Item 9 includes two boxes to check identifying generally the nature of the activities performed, so the Department estimates that this item will require one minute to complete. The Department estimates that a filer will be able to enter its own contact information in only two minutes, including its Employer Identification Number (EIN), if applicable, in Item 2, as well as two minutes for any additional contact information in Item 3. Further, the filer will require two minutes to record in Item 8(a) or Item 8(b) the names of the employer's representatives or officials of the prime consultant with whom the filer entered into the agreement or arrangement, as well as two minutes to identify in Item 11.d the individuals who carried out the activities for the employer. The filer will need ten minutes; however, to enter the information for the employer in Item 6, including the EIN, for non-seminar reports, as this information may not be as readily available as the filer's own. (This is a six-minute increase over the NPRM.)

The Department estimates that it will take filers five minutes to describe in Item 10 in narrative form the nature of the agreement or arrangement, as well as attach the written agreement (if applicable), and five minutes to complete the checklist in Item 11.a, which illustrates the nature of the activities undertaken pursuant to the agreement or arrangement. It will also take five minutes for Item 12.a (which represents a four-minute increase over the NPRM) and one minute for Item 12.b, in order to identify the subject group of employee(s) and organization(s).

Finally, the Department estimates that a Form LM–20 filer will utilize five minutes to check responses and review the completed report, and will require ten minutes per official to sign and verify the report in Items 13 and 14 (for 20 minutes total for these two items, which is an 18-minute increase over the NPRM). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, the electronic form system or EFS, which will reduce burden on filers.

As a result, the Department estimates that a filer of the revised Form LM–20 will incur 98 minutes in reporting and recordkeeping burden to file a complete form (this is a 38-minute increase over the 60 minutes estimated in the NPRM). This 98-minute total compares with the 22 minutes per Form LM–20 filer in the currently approved information collection request. See Table 1 below.

TABLE 1—FORM LM–20 FILER RECORDKEEPING AND REPORTING BURDEN

[In minutes]

Burden description	Section of revised form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	15 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	20 minutes.
Reporting LM–20 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds.[116]
Identifying if report is amended	Item 1.c	30 seconds.[117]
Reporting filer's contact information	Item 2	2 minutes.
Identifying Other Address Where Records Are Kept	Item 3	2 minutes.
Date Fiscal Year Ends	Item 4	30 seconds.
Type of Person	Item 5	30 seconds.
Full Name and Address of Employer	Item 6	10 minutes.
Date of Agreement or Arrangement	Item 7	30 seconds.
Person(s) Through Whom Agreement or Arrangement Made	Items 8(a) and (b)	2 minutes.
Object of Activities	Item 9	1 minute.
Terms and Conditions	Item 10	5 minutes.
Nature of Activities	Item 11.a	5 minutes.
Period During Which Activity Performed	Item 11.b	30 seconds.
Extent of Performance	Item 11.c	30 seconds.
Name and Address of Person Through Whom Performed	Item 11.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 12.a	5 minutes.
Identify the Subject Labor Organization(s)	Item 12.b	1 minute.
Checking Responses	N/A	5 minutes.

[115] Additionally, the Department estimates that those persons who are not required to file the Form LM–20 will spend ten minutes reading the instructions. As explained further in the RFA section, these entities will spend an estimated 50 minutes applying the instructions to all of their clients to determine that reporting is not required, for a total burden of 60 minutes (or one hour) for these non-filers. This burden is not included in the total reporting burden, since these persons do not file and are thus not respondents.

[116] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be completed, so it has not been included in the total below.

[117] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

TABLE 1—FORM LM–20 FILER RECORDKEEPING AND REPORTING BURDEN—Continued

[In minutes]

Burden description	Section of revised form	Recurring burden hours
Signature and verification	Items 13–14	20 minutes.
Total Recordkeeping Burden Hour Estimate Per Form LM–20 Filer		15 minutes.
Total Reporting Burden Hour Estimate Per Form LM–20 Filer		83 minutes.
Total Burden Estimate Per Form LM–20 Filer		98 minutes.

(iii). Total Form LM–20 Reporting and Recordkeeping Burden

As stated, the Department estimates that the burden of maintaining and gathering records is 15 minutes and that it will receive 4,194 revised Form LM–20 reports. Thus, the estimated recordkeeping burden for all *reports* is 62,916.6 minutes (15 × 4,194.44 = 62,916.60 minutes) or approximately 1,048.61 hours (62,916.6/60 = 1,048.61). The remaining times (83 minutes) represents the burden involved with reviewing the instructions and reporting the data. The total estimated reporting burden for all LM–20 *reports* is 348,138.52 minutes (83 × 4,194.44 = 348,138.52 minutes) or approximately 5,802 hours (348,138.52/60 = 5,802.3 hours). The total estimated burden for all LM–20 *reports* is, therefore, 411,055 minutes or approximately 6,851 hours (1,048.61 + 5,802.3 = 6,850.9).[118] See Table 2 below.[119]

The total recordkeeping burden of approximately 1,049 hours represents an approximately 952-hour increase over the 96.8 hours Form LM–20 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of approximately 5,802 hours represents an approximately 5,268-hour increase over the 534 hours Form LM–20 reporting burden estimate presented in the ICR submission. The total burden of approximately 6,851 hours is an approximately 6,220-hour increase over the estimated 631 hours Form LM–20 burden total in the most recent ICR submission.

TABLE 2—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 4,194 FORM LM–20 REPORTS

[In hours][120]

Total Recordkeeping Burden	1,049
Total Reporting Burden	5,802
Total Burden	6,851

(iv). Recordkeeping Burden Hours To Complete the Form LM–10

The recordkeeping estimate of 25 minutes per filer represents a 20-minute increase from the 5-minute estimate for the prior Form LM–10, as prepared for the Department's most recent information collection request for OMB # 1245–0003. See also the prior Form LM–10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. The Department assumes that employers retain most of the records needed to complete the form in the ordinary course of their business. Furthermore, the 15 minutes accounts for the 5-year retention period required by statute. See section 206, 29 U.S.C. 436. Finally, the Department notes that the estimate for the Form LM–10 recordkeeping burden is ten minutes longer than that for the Form LM–20, which reflects the greater amount of information reported on the Form LM–10.

(v). Reporting Burden Hours To Complete the Form LM–10

In proposing these estimates, the Department is aware that not all employers required to file the Form LM–10 will need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department assumes that the Form LM–10 filer engages in reportable transactions, agreements, or arrangements in all four of the revised parts.

The reporting burden of 147 minutes per filer represents an 112-minute increase from the 35-minute estimate for the prior Form LM–10, as prepared for the Department's most recent information collection request for OMB # 1245–0003. (This estimate is 27 minutes greater than estimated in the NPRM.) See also the prior Form LM–10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with a consultant and the types of activities engaged in pursuant to such agreement or arrangement, as well as record and enter each reportable payment or expenditure. It also includes the time required to read the Form LM–10 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 25 minutes to read the instructions (a five-minute increase over the NPRM), which includes the time needed to apply the Department's revised interpretation of the ''advice'' exemption.[121] This estimate is five minutes greater than for the Form LM–20 instructions, as the Form LM–10 is a more complex report.

[118] As discussed earlier in the text, the Department has estimated that a total of 4,194 LM–20 reports will be filed annually. Based on the estimated number of unique filers (358), the Department estimates that on average each of these filers will file 11.71 reports annually (4,194.44/358.2). (The Department has elsewhere rounded the average number of reports to 12). The estimated total recordkeeping burden per *filer* for the estimated 358 labor relations consultant firms is approximately 176 minutes (15 minutes × 11.71) or approximately 2.93 hours, and the estimated total reporting burden per such *filer* is 972 minutes (83 × 11.71) or approximately 16.2 hours. Thus, the estimated total burden per such *filer* is approximately 1,148 minutes (176 + 972) or approximately 19 hours.

[119] As explained, while the recordkeeping burden of 15 minutes is identical to the NPRM, these other totals represent increases over the estimates in the NPRM. The total recordkeeping burden of 62,916.6 minutes or 1,048.61 hours is a 23,901.6-minute increase (or 398.36 hours) over the NPRM estimate of 39,015 minutes (or 650.25 hours). The reporting burden of 83 minutes is a 38-minute increase over the NPRM's estimate of 45 minutes, with a total of 348,138.52 minutes or 5,802.3 hours, for a total increase of 231,093.52 minutes (or approximately 3,852 hours) over the NPRM's estimate of 117,045 minutes (or 1,950.75 hours). The total Form LM–20 burden in this final rule is a 254,995-minute (or approximately 4,250 hour) increase over the 156,060 minutes (or 2,601 hours). See 76 FR 36201.

[120] The estimates in this table have all been rounded to the nearest whole number.

[121] Additionally, the Department estimates that those persons who are not required to file the Form LM–10 will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these persons do not file and are thus not respondents.

The Department estimates, as with the Form LM–20, that it will take 30 seconds to complete each item that calls for entering dates, checking appropriate boxes, as well as entering the amount of a payment or expenditure and its type (see Items 1.a, 1.b, 1.c, 2, 6, 7, 9.a, 9.b, 9.c, 11.a, 11.b, 11.c, 13.a, 14.b, 15.a, 15.b, 15.c, 17.a, 17.b, and 17.c). Additionally, Parts C and D call for checking multiple boxes, which the Department also estimates will take 30 seconds each, or one minute for Part C and Part D, respectively.

The Department also estimated that it would take one minute to identify the labor organization target of persuader activities, as well as indicating the extent to which the activities have been performed (see Items 14.c and 14.f, respectively), while it will take 5 minutes to identify the employees being persuaded in Item 14.e (which is a four-minute increase over the NPRM).

Further, the Department estimates, as with the Form LM–20, that it will take two minutes for the employer to complete items calling for its own identifying information (see Items 3–5 and 14.d), including its EIN, if applicable and four minutes for items calling for another's identifying information, including EIN, if applicable (see Items 8, 10, 12, 14.d, and 16). The Department also estimates that it will take five minutes to detail the circumstances of each payment or expenditure, terms and conditions of any agreement or arrangement, and any activities pursuant to such agreement or arrangement (see Items 9.d, 11.d, 13.b, 14.a, 15.d, and 17.d).

Finally, the Department estimates that a Form LM–10 filer will utilize five minutes to check responses and review the completed report, and will require ten minutes per official to sign and verify the report in Items 18 and 19 (for 20 minutes total for these two items, which is an 18-minute increase over the NPRM). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, which will reduce burden on filers.

As a result, the Department estimates that a filer of the revised Form LM–10 will incur 147 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 35 minutes per filer in the currently approved information collection request. See Table 3 below.

TABLE 3—FORM LM–10 FILER RECORDKEEPING AND REPORTING BURDEN

[In minutes]

Burden description	Section of revised form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	25 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	25 minutes.
Reporting LM–10 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds.[122]
Identifying if report is amended	Item 1.c	30 seconds.[123]
Fiscal Year Covered	Item 2	30 seconds.
Reporting employer's contact information	Item 3	2 minutes.
Reporting president's contact information if different than 3	Item 4	2 minutes.
Identifying Other Address Where Records Are Kept	Item 5	2 minutes.
Identifying where records are kept	Item 6	30 seconds.
Type of Organization	Item 7	30 seconds.
Reporting union or union official's contact information (Part A)	Item 8	4 minutes.
Date of Part A payments	Item 9.a	30 seconds.
Amount of Part A payments	Item 9.b	30 seconds.
Kind of Part A payments	Item 9.c	30 seconds.
Explaining Part A payments	Item 9.d	5 minutes.
Identifying recipient's name and contact information	Item 10	4 minutes.
Date of Part B payments	Item 11.a	30 seconds.
Amount of Part B payments	Item 11.b	30 seconds.
Kind of Part B payments	Item 11.c	30 seconds.
Explaining Part B payments	Item 11.d	5 minutes.
Part C: Identifying object(s) of the agreement or arrangement	Part C	1 minute.
Identifying name and contact information for individual with whom agreement or arrangement was made.	Item 12	4 minutes.
Indicating the date of the agreement or arrangement	Item 13.a	30 seconds.
Detailing the terms and conditions of agreement or arrangement	Item 13.b	5 minutes.
Identifying specific activities to be performed	Item 14.a	5 minutes.
Identifying period during which performed	Item 14.b	30 seconds.
Identifying the extent performed	Item 14.c	1 minute.
Identifying name of person(s) through whom activities were performed	Item 14.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 14.e	5 minutes.
Identify the Subject Labor Organization(s)	Item 14.f	1 minute.
Indicating the date of each payment pursuant to agreement or arrangement	Item 15.a	30 seconds.
Indicating the amount of each payment	Item 15.b	30 seconds.
Indicating the kind of payment	Item 15.c	30 seconds.
Explanation for the circumstances surrounding the payment(s)	Item 15.d	5 minutes.
Part D: Identifying purpose of expenditure(s)	Part D	1 minute.
Part D: Identifying recipient's name and contact information	Item 16	4 minutes.
Date of Part D payments	Item 17.a	30 seconds.
Amount of Part D payments	Item 17.b	30 seconds.
Kind of Part D payments	Item 17.c	30 seconds.
Explaining Part D payments	Item 17.d	5 minutes.
Checking Responses	N/A	5 minutes.
Signature and verification	Items 18–19	20 minutes.

TABLE 3—FORM LM–10 FILER RECORDKEEPING AND REPORTING BURDEN—Continued

[In minutes]

Burden description	Section of revised form	Recurring burden hours
Total Recordkeeping Burden Hour Estimate Per Form LM–10 Filer	.....	25 minutes.
Total Reporting Burden Hour Estimate Per Form LM–10 Filer	.....	122 minutes.
Total Burden Estimate Per Form LM–10 Filer	.....	147 minutes.

(vi). Total Form LM–10 Reporting and Recordkeeping Burden

As stated, the Department estimates that it will receive 2,777 revised Form LM–10 reports. Thus, the estimated recordkeeping burden for all Form LM–10 filers is 69,426 minutes (25 × 2,777.04 = 69,426 minutes) or approximately 1,157.1 hours (69,426/60 = 1,157.1). The total estimated reporting burden for all Form LM–10 filers is 338,798.88 minutes (122 × 2,777.04 = 338,798.88 minutes) or approximately 5,647 hours (338,798.88/60 = 5,646.648. hours).

The total estimated burden for all Form LM–10 filers is, therefore, approximately 408,225 minutes (69,426 + 338,798.88 = 408,224.88) or approximately 6,804 hours (1,157.1 + 5,646.648 = 6,803.748). See Table 4 below.[124] The total recordkeeping burden of 1,157.1 hours represents a 755.2-hour increase over the 401.9-hour Form LM–10 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of 5,646.648 hours represents a 3,703.948-hour increase over the 1,942.7 hour Form LM–10 reporting burden estimate presented in the ICR request. The total burden of approximately 6,804 hours is an approximately 4,459-hour increase over the 2,344.6-hour Form LM–10 burden hour total in the most recent ICR submission.

TABLE 4—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 2,777 FORM LM–10 REPORTS

[In Hours] [125]

	Hours
Total Recordkeeping Burden	1,157
Total Reporting Burden	5,647
Total Burden	6,804

c. Cost of Submitting the Form LM–20 and Form LM–10

The total cost imposed by the rule on Form LM–20 and Form LM–10 filers is $1,263,499.50. See Table 5 below. This is a $993,746.50 increase over the $269,753 estimated for the two forms in the most recent ICR submission. (This is also an increase of $437,613.39 over the estimated total cost of $825,886.11 in the NPRM. See 76 FR 36203).

(i). Form LM–20

To determine the cost per filer to submit the Form LM–20, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM–20, and the assumption also corresponds to the analysis above in which the Department notes that the consultant industry consists in large part of practicing attorneys. The Department also considers non-attorney consultant firms as likely utilizing the services of attorneys to complete the form.

To determine the hourly compensation for attorneys for the purposes of this analysis, the Department first identified the average hourly salary for lawyers, $64.17, as derived from the Occupational Employment and Wages Survey for May 2014 (released on 3/25/15), Table 1 on page 12, from the Bureau of Labor Statistics (BLS) at *www.bls.gov/news.release/pdf/ocwage.pdf*. Next, the Department increased these figures by approximately 44.2% to account for total compensation.[126] For the purposes of this analysis, this yields an average hourly compensation for attorneys of approximately $92.53. ($64.17 plus $28.36).

Applying this hourly total compensation to the estimated 98-minute reporting and recordkeeping burden yields an estimated cost of approximately $151.14 ($92.5324 x (98/60)) per Form LM–20 *report*.[127] This is $3.36 greater than the $147.7752 estimate in the most recent ICR submission. The total cost for the estimated 4,194.44 Form LM–20 reports is therefore approximately $633,932.16 (4,194.44 × ($92.53(rounded) × 98/60) ≈ $633,932), which is $576,743.16 greater than the $57,189 total burden estimate for the Form LM–20 in the most recent ICR submission.[128]

(ii). Form LM–10

As with the Form LM–20 calculation above, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM–10. The Department also considers that consultant firms are likely utilizing the

[122] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be completed, so it has not been included in the total below.

[123] The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

[124] The total *recordkeeping* burden of 69,426 minutes is 15,924 less than the 85,350 minutes estimated in the NPRM (and the 1,157 hours is 266 hours less than the 1,423 hours estimated in the NPRM). The total *reporting* burden, however, is approximately 14,469 minutes over the estimated 324,330 minutes in the NPRM, or approximately 241 hours over the estimated 5,406 hours in the NPRM. The Form LM–10 *total burden* estimate is a decrease of 1,455 minutes (or 24.25 hours) over the 409,680 minutes (or 6,828 hours) in the NPRM. See 76 FR 36203.

[125] The estimates in this table have all been rounded to the nearest whole number.

[126] *See* Employer Costs for Employee Compensation Summary, from the BLS, December 2014 (released on 3/11/15) at *www.bls.gov/news.release/ecec.nr0.htm*. The Department increased the average hourly wage rate for employees ($21.72 in 2014) by the percentage total of the average hourly compensation figure ($9.60 in 2014) over the average hourly wage ($9.60/$21.72). Note: The Department has updated its estimates here from the NPRM, which was based upon 2009 BLS data.

[127] The Department also estimated the total costs per Form LM–20 *filer*. The estimated total cost per *filer* for the estimated 358 labor relations consultant firms, including law firms, is approximately $1,769.76, which the Department derived by multiplying the exact cost per form ($92.5324 × 98/60) by the exact number of forms per filer 11.7097. The Department derived the number of forms per filer by dividing the total estimate for Form LM–20 reports (4,194.44) by 358.2026 filers, and then rounding up to 12.

[128] The cost per Form LM–20 report is an increase of $63.55 over the $87.59 estimate in the NPRM. The total Form LM–20 estimated cost is $406,110.57 greater than the estimated $227,821.59 in the NPRM. See 76 FR 36203.

services of attorneys to complete the form.

Applying this hourly total compensation to the estimated 147-minute reporting and recordkeeping burden yields an estimated cost of approximately $226.70 ($92.53 × (147/60) = $226.6985) per report/filer. This is $4.59 greater than the estimated $222.11 Form LM–10 burden presented in the most recent ICR submission. The total cost for the estimated 2,777 Form LM–10 reports/filers is therefore approximately $629,567.34 (2,777.04 × $226.70(rounded) ≈ $629,567), which is $417,003.34 greater than the $212,564 estimated for the most recent ICR submission.[129]

(iii). Federal Costs

In its recent submission for revision of OMB #1245–0003, which contains all LMRDA forms, the Department estimates that its costs associated with the LMRDA forms are $1,825,935 for the OLMS national office and $3,279,173 for the OLMS field offices, for a total Federal cost of $5,105,108. Federal estimated costs include costs for contractors and operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices who are involved with reporting and disclosure activities. These estimates include time devoted to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) reviewing reports; (e) obtaining amended reports if reports are determined to be deficient; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

TABLE 5—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM LM–20 AND FORM LM–10 [130]

Number of reports	Reporting hours per report	Total reporting hours	Recordkeeping hours per report	Total recordkeeping hours	Total burden hours per report	Total burden hours	Average cost per report	Total cost [131]
Form LM–20: 4,194	[132] 1.38	5,802	0.25	1,049	1.63	6,851	$151.14	$633,932.16
Form LM–10: 2,777	[133] 2.03	5,647	[134] 0.42	1,157	2.45	6,804	226.70	629,567.34
Total								1,263,499.50

The total burden for the Labor Organization and Auxiliary Reports information collection, including those not changed by this rulemaking action, is summarized as follows:

Agency: DOL–OLMS.

Title of Collection: Labor Organization and Auxiliary Reports.

OMB Control Number: 1245–0003.

Affected Public: Private Sector—businesses or other for-profits, farms, not-for-profit institutions, and individuals or households.

Total Estimated Number of Responses: 37,414.

Total Estimated Annual Burden Hours: 4,593,235.

Total Estimated Annual Other Costs Burden: $0.

H. Regulatory Flexibility Analysis and Executive Order 13272

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b). The Department provided that certification in the NPRM. 76 FR 36206. Executive Order 13272 concerns implementation of the RFA, and generally reinforces the RFA provisions. The Department has considered the impact of this rule on small businesses and small organizations as prescribed by this Executive Order. Although the Executive Order, at section 3(c), allows the Chief Counsel for Advocacy of the Small Business Administration to submit comments on a proposed rule, none have been submitted in this rulemaking.

The Department has modified its RFA analysis for this final rule in response to comments. In the analysis that follows, the Department considers the economic impact of the rule not only on small entity consultants and employers required to file reports, as discussed in the NPRM, but also on those small consultants and employers that may need to review the reporting requirements even if they ultimately are not required to file reports. The analysis shows that the estimated cost of the rule per affected small entity is not significant when compared to gross revenue. The Department therefore certifies that this rule does not have a significant economic impact on a substantial number of small entities. A full RFA analysis is thus not required.

1. Statement of the Need for, and Objectives of, the Rule

The discussion concerning Executive Orders 13563 and 12866 is hereby incorporated by reference.

2. Legal Basis for Rule

The legal authority for this rule is provided in sections 203 and 208 of the LMRDA. 29 U.S.C. 433, 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

3. Number of Small Entities Covered Under the Final Rule

As explained below, the Department estimates that there are approximately 358 small consultants affected by the Form LM–20 portion of the rule as filing entities and 2,777 employers affected by the Form LM–10 portion as filing entities, for a total of 3,135 small entities affected by the rule as filing entities. Additionally, in response to comments received, the Department, as also explained below, has estimated the number of entities that will need to review the rule in order to determine

[129] The cost per Form LM–10 report is an increase of $51.52 over the $175.18 estimate in the NPRM. The total Form LM–10 estimated cost is $31,502.82 greater than the estimated $598,064.52 in the NPRM. See 76 FR 36203.

[130] The estimates in this table have all been rounded to the nearest whole number.

[131] The cost estimates provided in the table may not multiply exactly due to rounding. The PRA section of the final rule explains more precisely how the Department derived these figures.

[132] This is an approximate per hour figure derived from the estimated reporting burden of 83 minutes divided by 60 minutes in an hour.

[133] This is an approximate per hour figure derived from the estimated reporting burden of 122 minutes divided by 60 minutes in an hour.

[134] This is an approximate per hour figure derived from the estimated recordkeeping burden of 25 minutes divided by 60 minutes in an hour.

that they have not incurred a filing obligation: 39,298 non-filing consultants and 185,060 non-filing employers (for a total of 224,358 non-filing entities) affected by the rule.

Filing Consultants and Employers

As explained in the PRA analysis above, the Department estimates that there are 358 unique consultant firms that will file the expected 2,104 non-seminar Form LM–20 reports. Next, the Department analyzed data from the U.S. Census Bureau's North American Industry Classification System Codes (NAICS) for ''Human Resources Consulting Services,'' which includes ''Labor Relations Consulting Services.'' [135] Additionally, the Department utilized the Small Business Administration's (''SBA'') ''small business'' standard of $15 million in average annual receipts for ''Human Resources Consulting Services,'' NAICS code 541612.[136]

A review of the above data reveals that there are 6,461 firms within the ''Human Resources Consulting Services'' NAICS category, with nearly all of them (6,337, approximately 98% of the total) with less than $15 million in average annual receipts. See Statistics of U.S. Businesses: 2012: NAICS 541612. As a result, based on the best available data, the Department assumes for the purposes of the RFA certification that all 358 Form LM–20 filing entities are small entities affected by the Form LM–20 portion of the rule.

To determine the number of filing employers that can be classified as small entities, pursuant to the Form LM–10 portion of the rule, the Department notes that the SBA considers 99.7 percent of all employer firms to qualify as small entities.[137] Further, the rule affects all private sector employers. As a result, for the purposes of the RFA certification, the Department concludes that all 2,777 employers that the Department estimates will file under this rule (the derivation of the 2,777 estimate is explained in the PRA analysis) constitute small entities.

Therefore, the total number of small entities required to file reports under this rule is estimated to be 3,135 entities (358 consultants and 2,777 employers).

Non-Filing Consultants and Employers

Additionally, the Department has estimated the number of entities that, although not required to file reports by this rule, are affected by the rule because they must review the reporting requirements to determine that reporting is not required. The NPRM did not include such estimate. To estimate the number of affected non-filing consultant firms, the Department reviewed all law firms within the ''Offices of Lawyers'' category of NAICS Code 541110, human resources consultant firms within NAICS code 541612, and all business associations within NAICS Code 813910. First, concerning law firms, while there are 165,435 entities within NAICS Code 541110,[138] not all such firms will need to review the reporting requirements; rather, only those involved in the practice of labor and employment law will need to conduct that review. Indeed, only 17,387 firms in the United States fall into such category.[139] Second, as stated, there are 6,461 consultant firms within NAICS Code 541612. See Statistics of U.S. Businesses: 2012: NAICS 541612. Third, there are 15,808 business associations in the United States. See Statistics of U.S. Businesses: 2012: NAICS 813910. As a result, and subtracting out the 358 filing law and consultant firms, there are 39,298 non-filing, consultant small entities affected by this rule. The Department assumes that each of these entities is a small entity.

The Department found no empirical data upon which to estimate the universe of small employers that, although not required to file, may otherwise be affected by the rule. Not every private sector employer, large or small, will be impacted and required to review the new reporting requirements. However, many small businesses and small business representatives commented that *some small businesses*—out of the more than 2 million small business employers with over five employees—should be counted as affected small entities. These small businesses, they contend, could potentially be contacted about an organizing drive or other labor relations matter and will therefore hire labor relations consultants, even though the consultants ultimately do not undertake any reportable persuader activities on their behalf.

The Department agrees that these non-filing small businesses will potentially be affected by this rule because of their need to review the revised Form LM–10 instructions before determining that they are not required to file. However, the Department has found no reliable data or information that identifies the number of employers, large or small, that hire labor relations consultants. The NLRB compiles statistics on the number of representation petitions and elections, which the Department used to estimate the number of filing entities, but this data does not capture the total number of employers that have hired consultants, especially outside of the election context. In the absence of empirical data on this subset of employers, the Department assumes that the universe of non-filing employers utilize consultants at the same rate as the universe of filing employers. In other words, the Department assumes for this purpose that the rate of employer-consultant agreements resulting in reportable persuader activities is the same as the rate of employer-consultant agreements that do not lead to persuader activities. As explained previously, the Department estimates that there will be 2,777 filing employers and 358 filing consultants. Thus, the ratio of filing employers to filing consultants is about 7.76 (2,777 ÷ 358).

Using these assumptions, the Department estimates the universe of affected non-filing employers by applying the 7.76 rate to the number of non-filing consultants reasonably expected to be hired for organizing or collective bargaining purposes. Like with employers (discussed above), there is a lack of empirical data on the aggregate number of consultants that are hired but do not engage in persuader activities. Therefore, to make a conservative estimate, the Department assumes that every labor relations consultant (except for trade or business associations) will have employer clients that hire the consultant for a purpose requiring the employer-client to review the rule. As discussed above, the Department estimates that there are 17,387 labor and employment law firms and 6,461 human resources consultant firms that might be affected by the rule.

[135] *See* U.S. Census Bureau, Statistics of U.S. Businesses: 2012: Number of Firms, Number of Establishments, Employment and Annual Payroll by Enterprise Employment Size for the United States, NAICS 541612—Human resources & executive search consulting services, United States, accessed at: *www.census.gov/econ/susb/*.

[136] See U.S. Small Business Administration's Table of Small Business Size Standards Matched to the North American Industry Classification System Codes, at 42, accessed at: *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Note: The $15 million standard replaces the prior standard for NAICS 541612 used in the NPRM, as the SBA updated its data subsequent to the publication of the NPRM.

[137] See *https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf*.

[138] See U.S. Census Bureau, Statistics of U.S. Businesses: 2012: Number of Firms, Number of Establishments, Employment and Annual Payroll by Enterprise Employment Size for the United States, NAICS 541110—Offices of Lawyers, United States, accessed at: *www.census.gov/econ/susb/*.

[139] See Martindale law firm search engine at *http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx*. Search conducted on 5/18/15 for all United States law firms that focus on labor and employment law.

This data adds up to 23,848 non-filing consultant firms that small businesses will likely hire.[140] Applying the 7.76 ratio to the 23,848 non-filing consultant firms results in approximately 185,060 (7.76 × 23,848) small employers that will be affected by the rule but not required to file. This number likely overestimates the universe of affected non-filing small businesses because the Department believes it unlikely every consultant will be hired in any given year for services related to organizing or collective bargaining.

Nonetheless, The Department estimates that the total number of non-filing small entities that will be affected by the rule is comprised of 39,298 consultants and 185,060 employers. The total number of affected small entities is outlined in Table 6.

TABLE 6—NUMBER OF AFFECTED SMALL ENTITIES

Category	Number
Filing consultants	358
Filing employers	2,777
Non-filing consultants	39,298
Non-filing employers	185,060
Total consultants	39,656
Total employers	187,837
Total of all entities	227,493

4. Costs of Reporting, Recording, and Other Compliance Requirements of the Rule on Small Entities

The rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. The LMRDA establishes various reporting requirements for employers, labor relations consultants, and others, pursuant to Title II of the Act. Accordingly, the primary economic impact of the rule will be the cost to reporting entities of compiling, recording, and reporting required information or determining that such reporting is not required.

The Regulatory Flexibility Act does not define either ''significant economic impact'' or ''substantial'' as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' See SBA's Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act at 17.[141] As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. Id.

This rule has an impact on a certain number of small entities that belong to two discrete categories of small entities: the consultant industry and all other small employers. For the consultant category, the Department estimates that the average annual revenue of a small entity consultant in the consultant industry is $734,058. To arrive at this figure, the Department took the total estimated receipts of small entities (those entities with less than $15 million in receipts) belonging to NAICS codes 541110 (attorneys), 541612 (human resources consultants), and 813810 (business associations) and divided the total receipts by the total number of firms within those codes. The Department found that there are an estimated 185,612 small consultant firms generating $136,250,030,000 in total receipts, resulting in an average of $734,058 in gross revenue per consultant firm. The Department assumed for this calculation that labor and employment law firms generate, on average, the same receipts as other law firms.

For all other small employers, the Department estimates that the average annual revenue for a small entity is $965,774. This figure is derived from taking the total estimated annual receipts of all entities in the United States with less than $15 million in receipts, excluding the receipts from the consultant industry, and then dividing the total receipts by the total number of firms with less than $15 million in receipts, excluding consultant firms. The Department found that there are an estimated 5,403,528 small firms, excluding consultants, generating $5,218,588,269,000 in total receipts, resulting in an average of $965,774 in gross revenue per firm.[142]

Costs on Filing Small Entities

As explained above, the Department estimates that there are 358 labor relations consultants and other small entities required to file the revised Form LM–20. Further, the Department estimates that there are 2,777 employer small entities required to file the revised Form LM–10, for a total of 3,135 small entities affected by the rule as filers. In the PRA analysis, above, the Department estimates that a Form LM–20 filer will spend $151.14 completing the form. The Department also noted that each of the 358 consultants will, on average, file about 11.71 Form LM–20 reports, resulting in 4,194 reports every year. The total cost for the estimated 4,194 Form LM–20 reports is therefore approximately $633,932.16 annually.

The Department estimates in the PRA analysis that it will cost an employer approximately $226.70 to complete the Form LM–10. The total cost for the estimated 2,777 Form LM–10 reports is therefore approximately $629,567.34 annually.

The combined cost for both Form LM–20 and Form LM–10 filers is $1,263,499.50 ($633,932.16 + $629,567.34).

Costs on Non-Filing Small Entities

As discussed above, the Department estimates that there are 39,298 non-filing consultants and 185,060 non-filing employers that will be affected by the rule, for a total of 224,358 non-filing entities.

The Department estimates that each of the 39,298 non-filing consultants will spend one hour reviewing the Form LM–20 instructions to determine that they do not have any reporting obligations. For the purposes of this analysis, the Department uses the average hourly compensation for attorneys of $92.53 because, as stated previously, the consultant industry consists in large part of practicing attorneys. Accordingly, the total cost of the rule on non-filing consultants is approximately $3,636,244 (39,298 consultants × 1 hour × $92.53/hr). This amount is a one-time cost to non-filing consultants.

The Department estimates that each of the 185,060 non-filing employers affected by the rule will spend 30 minutes reviewing the Form LM–10 instructions and applying them to the agreement with the consultant in order to determine that no report is owed. This cost is calculated as 30 minutes at the hourly wage of a Human Resources Specialist. The median hourly wage of a Human Resources Specialist is $27.23 plus 44.2 percent in fringe benefits. See note 126. This results in a total hourly rate of $39.27 (($27.23 × 0.442) + $27.23).[143] The cost to an employer for its own review will therefore be $19.64 ($39.27 × 0.5 hour). The total cost for all

[140] This number does not include trade or business associations (NAICS 813910) because such associations are unlikely to be hired to perform organizing or collective bargaining services.

[141] The Guide may be accessed at *https://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.*

[142] See U.S. Small Business Administration, Statistics of U.S. Businesses, Table 2—Number of firms, establishments, receipts, employment, and payroll by firm size (in receipts) and industry, available at *https://www.sba.gov/advocacy/firm-size-data* (last accessed March 1, 2016).

[143] See BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2013, *http://www.bls.gov/oes/current/oes131071.htm.*

non-filing employers is approximately $3,634,578 ($19.64 x 185,060).

The combined cost for both non-filing consultants and non-filing employers is $7,270,822 ($3,636,244 + $3,634,578).

Economic Impact on Small Entities

The Department estimates that this rule will have a one-time cost on all small entity consultants of approximately $4,270,176. This amount represents the cost on filing consultants of $633,932 plus the cost on non-filing consultants of $3,636,244. Therefore, the total one-time cost per small entity consultant is $107.68 ($4,270,176 ÷ (358 filing consultants + 39,298 non-filing consultants)). This cost per consultant is not significant in comparison to the average annual gross revenue of a small entity consultant, which the Department calculated above to be $734,058. The $107.68 one-time cost per consultant represents only a 0.015% share of a consultant's average revenue ($107.68 ÷ $734,058).

Additionally, the rule will impose a recurring annual cost of $1,771 per filing consultant ($633,932 ÷ 358 filing consultants). This annual cost per consultant is not significant because it represents only a 0.24% share of a consultant's average annual gross revenue ($1,771 ÷ $734,058).

For employers, the Department estimates that the rule will have an annual cost on all small entity employers, excluding consultants, of $4,264,145. This amount represents the cost on filing employers of $629,567 plus the cost on non-filing employers of $3,634,578. Therefore, the annual cost per small entity employer, excluding consultants, is $22.70 ($4,264,145 ÷ (2,777 filing employers + 185,060 non-filing employers)). This cost per employer is not significant in comparison to the average annual gross revenue of a small entity employer, which the Department calculated above to be $965,774. The $22.70 annual cost per employer represents only a 0.002% share of a small employer's average gross revenue ($22.70 ÷ $965,774).

The above estimates show that the cost of the rule on small entities is not a significant cost. These costs are summarized in Table 7 and Table 8. Therefore, under 5 U.S.C. 605, the Department certifies to the Chief Counsel for Advocacy that the rule will not have a significant economic impact on a substantial number of small entities.

TABLE 7—COST AND IMPACT ON CONSULTANTS

Category	Number	Total cost	Cost per consultant	Average gross revenue	Cost per compared to gross revenue (percent)
Filing consultants	358	$633,932	$1,771	$734,058	0.024
Non-filing consultants	39,298	3,636,244	92.53	734,058	0.013
Total	39,656	4,270,176	107.68	734,058	0.015

TABLE 8—ANNUAL COST AND IMPACT ON OTHER EMPLOYERS

Category	Number	Total cost	Cost per other employer	Average gross revenue	Cost per compared to gross revenue (percent)
Filing employers	2,777	$629,567	$226.70	$965,774	0.023
Non-filing employers	185,060	3,634,578	19.63	965,774	0.002
Total	187,837	4,264,145	22.70	965,774	0.002

5. Relevant Federal Requirements Duplicating, Overlapping, or Conflicting With the Rule

The Department is not aware of any other Federal requirements requiring reporting of the activities, agreements, and arrangements covered by this rule.

6. Differing Compliance or Reporting Requirements for Small Entities

Under the rule, the Form LM–20 reporting and recordkeeping requirements apply equally to all persons required to file a Form LM–20, and the Form LM–10 reporting and recordkeeping requirements apply equally to all employers covered under the LMRDA. However, to reduce burden, the Department has exempted employers from filing Form LM–10 reports concerning agreements with consultants to participate in union avoidance seminars. For example, pursuant to the NPRM, if a reportable seminar was attended by 50 different employers, each of the 50 would have to file a separate Form LM–10 report. Under this rule, none are required to file in this instance. Further, only the entity that presented the seminar is required to file a Form LM–20 report, not the organizer of the event.

7. Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities

The revised format of the Form LM–10, which organizes the material in a more user-friendly manner, will simplify filing by small entity employers. Furthermore, the addition of instructions regarding the ''advice'' exemption into the Form LM–20 and Form LM–10 instructions will improve the ease of filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the OLMS Electronic Forms System (EFS). A toll-free help desk is staffed during normal business hours and can be reached by telephone at (866) 401–1109. Additionally, the public can contact the OLMS Division of Interpretations and Standards directly at (202) 693–0123.

8. Steps Taken To Reduce Burden

The Department proposed that Form LM–10 and LM–20 filers submit reports electronically. Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with these requirements. The Department reasonably expects that

employers and consultants will have the information technology resources and capacity to file electronically as well.

The use of electronic forms helps reduce burden by making it possible to download information from previously filed reports directly into the form; enables most schedule information to be imported into the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which assists reporting compliance and reduces the likelihood that the filer will have to file an amended report. The error summaries provided by the electronic system, combined with the speed and ease of electronic filing, also make it easier for both the reporting organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

Moreover, a simplified electronic filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot currently be filed electronically, such as the Form LM–10 and Form LM–20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms. Further, for those filers unable to submit electronically, without undue burden or expense, they will be permitted to apply for a continuing hardship exemption that permits filers to submit hardcopy forms.

9. Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The Form LM–20 and Form LM–10 reports now in use can be accessed and completed at the OLMS Web site. OLMS has implemented a system enabling such filers to submit forms electronically with electronic signatures.

The OLMS Online Disclosure Web site at *www.unionreports.gov* is available for public use. The Web site contains a copy of each Form LM–20 and Form LM–10 report for reporting years 2000 and thereafter, as well as an indexed computer database of the information in each report that is searchable through the Internet.

Information about this system can be obtained on the OLMS Web site at *www.olms.dol.gov*.

10. Response to Comments Received

The Department received several comments that addressed aspects of the RFA certification in the NPRM. These commenters argued that the Department should have included an analysis of the impact of the proposed rule on small entities, analyzed effective alternatives that minimized burden, and made them available for public input. An employer association contended that the certification was incorrect, as it only analyzed the burden on small entities required to file reports under the proposed rule, as described in the PRA analysis, and not those entities that must review the form and instructions to determine filing is not required. The employer association asserted that each employer in the United States with greater than five employees would be impacted by the proposed rule, along with every law firm and human relations consultant firm. The association also provided estimates for ''initial familiarization cost'' and ''annual compliance review cost.'' The association assumed that all of the nearly 6 million employers in the United States would need to review the Form LM–10 instructions, although its analysis limited this number to the 2.5 million employers with five or more employees. With these 2.5 million employees, multiplying by the $175.18 average cost for employer as noted in the NPRM, the commenter estimated a total cost on employers by the proposed rule of $444 million. Further, the commenter stated that initial familiarization for consultants would cost between four and 16 hours, corresponding to between $74.6 and $298.3 million, and two to four hours for employers, corresponding to between $549.6 million to $1.11 billion. The ''annual review'' costs were estimated, for consultants, at $385.5 million per year and for employers $408 million. The total costs in the first year were between $910.1 million and $2.2 billion and in subsequent years between $285.9 million and $793.1 million.

The association further argued that the Department did not factor into its estimates the increased burden created, in its view, by the ''new, subjective'' test; the need to communicate between employers and consultants concerning potential reporting; the need for parties to protect themselves against possible investigations and enforcement actions; and the potential negative impact on industry. Other commenters stated that the Department should also have considered the burden resulting from the ''continuous review'' that would be necessary, in its opinion, to ensure compliance, particularly because of the ''new'' and ''subjective'' nature of the test, and the reporting triggered by the development of personnel policies, conducting of seminars, and administrating employee attitude surveys. One employer coalition stressed the potential negative impact of the proposed rule on labor relations, as employers would be unable to obtain advice from lawyers and other third parties and would therefore be more likely to violate labor laws. The commenter urged the Department to take these factors into account as well, not just the PRA burden separately calculated for Form LM–10 and LM–20 filers.

As an initial matter, as stated at length in the preamble, the Department disagrees with the suggestion that the rule provides a subjective test that adds complexity and concomitant costs on filers or will have a negative and costly impact on labor relations. The Department also disagrees with the contention by the employer association that every employer and law firm in the United States must review the instructions, and therefore rejects the commenter's burden estimates as highly inflated. Rather, only those employers that retain third parties to provide labor relations services, and only those law firms involved in labor and employment law, must review the reporting requirements. Further, such a review is not of every activity engaged in by the employer's representatives, but only of each agreement entered into and the activities engaged upon by consultants pursuant to such an agreement. While the Department cannot reasonably provide an estimate for the number of employers retaining third parties for such services, the PRA analysis demonstrates that an insubstantial number of small business employers will be Form LM–10 respondents (2,777 Form LM–10 filers out of 2,182,169 employer firms in the United States with five or more employees).[144] Moreover, although the Department acknowledges that a larger number of small business employers must review the Form LM–10 instructions than merely those who must file, only an insubstantial number of total employer firms with five or more employees (2,777/2,182,169 = 0.1273%) must file the Form LM–10 (less than 0.13%), and the burden on filers and non-filers alike is not significant. Moreover, as explained in the RFA analysis above, the number of law firms engaged in labor and employment law is a fraction of the total figure, and the burden on

[144] See U.S. Census Bureau, Statistics of U.S. Businesses, 2012: United States & states, totals. See *http://www.census.gov/econ/susb/index.html.*

such labor and employment law firms is not significant.

Furthermore, the Department rejects the suggestion that it must provide an estimate for ''initial familiarization'' for each filing entity. Form LM–10 and LM–20 filers, similar to union officials who file the Form LM–30 conflict-of-interest report, are ''special reports'' not required to be filed each year, in contrast to labor organizations who must file the Forms LM–2, LM–3, or LM–4 Labor Organization Annual Report, disclosing financial information. Thus, the Department assumes that employers and consultants are unique filers each year, and costs associated with ''familiarization'' are therefore included within the estimated costs. This is particularly appropriate for employers, who are unlikely to enter into reportable persuader agreements with different firms in different years. This is also consistent with the Department's position regarding union officials, as stated in the recently published Form LM–30 final rule, which is also a special report that is only required upon the receipt of certain payments. See 76 FR 66487. Indeed, this is a conservative assumption, because, for law and consultant firms that do file multiple Form LM–20 reports over many years, the compliance costs estimated in this rule will decrease with familiarity. Moreover, Form LM–10 and LM–20 filers are not required to change any practices or create any new documents or procedures in order to comply with this rule.[145]

Finally, in the preamble the Department responded to comments that suggested that the revised forms established a subjective test that could establish burdens negatively impacting employer free speech and the attorney-client relationship, thus preventing employers from getting needed advice. In response, the Department explained the objective nature of the test to determine reportability of employer-consultant agreements, and the minimal impact, if any, on the rights of employers and consultants. Thus, the Department is not persuaded that employers could not obtain advice, and, as a result, there would be increase in violations of the law.

The Department, however, agrees with the suggestion that it should consider the impact of the rule on certain entities that may be affected by the rule, even though they may not be required to file Form LM–10 or LM–20 reports, such as employers, law firms, consultant firms, and business associations. Some of these entities will need to read and apply the Form LM–10 and LM–20 instructions to ensure LMRDA compliance.[146] Thus, the Department, utilizing the PRA estimate for non-filers of 10 minutes to read the Form LM–20 Instructions (as explained in the NPRM), also estimates in this rule that these entities will spend an additional estimated 50 minutes applying the instructions to all of their clients to determine that reporting is not required. Therefore, the Department has increased this estimate to a total of 60 minutes (or one hour) for consultants to read and apply the same instructions to each of their non-reportable agreements. The Department has estimated in the PRA analysis that it would take ten minutes to read the instructions, with an additional ten minutes to apply to a persuader agreement, with the entire reporting and submission process taking 98 and 147 minutes, respectively, for the Forms LM–20 and LM–10. The Department considers it reasonable to estimate that the process for non-filers to read the instructions and apply to each of their non-reportable agreements (and determine non-reportability) to take on average one hour less than the time to complete and submit the forms.[147] As explained in more detail in the RFA analysis above, the cost on all small entities, employer and consultant, is still not significant within the meaning of the RFA. Further, this would be the case even using the lower-end, four-hour annual compliance cost estimate provided by the commenter. See note 146, instead of the one-hour estimate.

Further, in terms of hourly wage data that is multiplied by total hours used to determine total costs, the Department rejects the employer association's suggestion to use the chief executive officer category, and instead has employed the attorney category that it used in the NPRM and in the PRA analysis for this rule. The Department has utilized this category in the past for Form LM–10 and LM–20 burden analyses, and it is reasonable to assume that employer firms will utilize the services of the law or consultant firm, connected with the agreement in question, to determine the large majority of the reportability decisions.

List of Subjects

29 CFR Part 405

Labor management relations, Reporting and recordkeeping requirements.

29 CFR Part 406

Labor management relations, Reporting and recordkeeping requirements.

Text of Rule

Accordingly, for the reasons provided above, the Department amends parts 405 and 406 of title 29, chapter IV of the Code of Federal Regulations as set forth below:

PART 405—EMPLOYER REPORTS

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 405.5 [Amended]

■ 2. Amend § 405.5 by removing the phrase ''the second paragraph under the instructions for Question 8A of Form LM–10'' and adding in its place ''the instructions for Part A of the Form LM–10''.

§ 405.7 [Amended]

■ 3. Amend § 405.7 by removing the phrase ''Question 8C of Form LM–10'' and adding in its place ''Part D of the Form LM–10.''

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

■ 4. The authority citation for part 406 continues to read as follows:

[145] To the extent that attorneys, to ensure compliance with their ethical obligations, communicate with their clients concerning the reporting requirements, attorneys will likely engage in such communication for each agreement, even in subsequent years. Further, any such communication between the law firm and client is included in the time required to review and apply the reporting instructions for reportable agreements, and is part of the one hour estimated annual compliance review for non-reportable agreements.

[146] The Department, however, rejects the varying estimates provided by an employer association for ''annual compliance review'' of 1.5 to 28 hours for these employer firms to engage in annual compliance review, and four to 20 hours for law firms and 16–40 hours for HR consultant firms. The Department also rejects another commenter's estimate of 12 hours per year for employers to conduct a continual compliance review. These estimates appear highly overstated.

[147] The Department rejects the commenters' estimates for ''annual compliance review'' for employers, in addition to consultants, as this approach double-counts the annual burden for non-filers, as an employer and a consultant will have identical review time in situations where no report is required from either party. The consultant or law firm can review the agreement and advise the employer that no reporting is required. Thus, the review time would be simultaneously undertaken by the consultant on behalf of both parties. (Further, employers are exempt from reporting union avoidance seminars.)

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 5. Amend § 406.2(a) by revising the last two sentences of the paragraph to read as follows:

§ 406.2 Agreement and activities report.

(a) * * * The report shall be filed within 30 days after entering into an agreement or arrangement of the type described in this section, except that an agreement or arrangement to present a union avoidance seminar shall be filed within 30 days after the date of the seminar. If there is any change in the information reported (other than that required by Item 11.c, of the Form), it must be filed in a report clearly marked ''Amended Report'' within 30 days of the change.

* * * * *

Signed in Washington, DC, this 16th day of March, 2016.

Michael Hayes,

Director, Office of Labor-Management Standards.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices: Revised Forms and Instructions

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 147 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

Instructions for Form LM-10 Employer Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions, agreements, or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Additionally, an employer must disclose expenditures for certain objects relating to activities of employees or a union. Pursuant to Section 203 of the LMRDA, every employer who has engaged in any such transaction, agreement, arrangement, or expenditures during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM-10, for employers to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified financial transactions, agreements, or arrangements. The reporting requirements do not address whether specific payments, expenditures, transactions, agreements, or arrangements are lawful or unlawful. The fact that a particular payment, expenditure, transaction, agreement, or arrangement is or is not required to be reported does not indicate whether or not it is subject to any legal prohibition.

II. Who Must File

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions, agreements, or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one Form LM-10 report each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The types of financial transactions, agreements, arrangements, or expenditures that must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction, agreement, or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date and amount of each transaction, agreement, or arrangement; (2) the name, address, and position of the person with whom the agreement, arrangement, or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into four parts: Part A, Part B, Part C, and Part D.

Part A, pursuant to LMRDA section 203(a)(1), details direct or indirect payments, including loans, to unions or union officials.

Part B, pursuant to LMRDA section 203(a)(2), details direct or indirect payments (including reimbursed expenses) to any of the employer's employees, or to any group or committee of the employer's employees, for the purpose of causing them to persuade other employees to exercise or not exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees.

Part C, pursuant to LMRDA sections 203(a)(4) and (5), details agreements and arrangements, and any payments made pursuant to such agreements or arrangements, between employers, labor relations consultants or other independent contractors or organizations under which the consultant or other person engages in actions, conduct, or communications with an object, directly or indirectly, to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own

choosing. Also reportable in Part C are agreements and arrangements under which the consultant or independent contractor or organization supplies information regarding employees or a labor organization in connection with a labor dispute involving the employer.

Part D, pursuant to LMRDA section 203(a)(3), details expenditures where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; and any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute involving the employer.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically identified personnel on particular matters referred to in the instructions for Part A.

While Section 203 of the LMRDA does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, employers must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information employers are required to report in response to question 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) of the LMRDA of the term "interfere with, restrain, or coerce," which is used in question 8.c, does not cover such matters.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

IV. Who Must Sign the Report

Both the president and the treasurer, or corresponding officers, of the reporting employer must sign the completed Form LM-10. A report from a sole proprietor need only bear one signature.

V. When to File

Each employer, as defined by the LMRDA, who has engaged in any of the transactions or arrangements set forth in the form must submit a Form LM-10 report *within 90 days* after the end of the employer's fiscal year.

VI. How to File

Form LM-10 must be completed online, electronically signed, and submitted along with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic Form LM-10 can be accessed and completed at the OLMS website at www.olms.dol.gov.

If you have difficulty navigating EFS, or have questions about its functions or features, call the OLMS Help Desk at (866) 401-1109. You may also email questions to OLMS-Public@dol.gov.

You will be able to file a report in paper format only if you assert a temporary hardship exemption or apply for and are granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If you experience unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, you may file Form LM-10 in paper format by the required due date at this address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210

An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that you are filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at (202) 693-0123, or by fax at (202) 693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) You may apply in writing for a continuing hardship exemption if Form LM-10 cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609

Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at (202) 693-0123, or by fax at (202) 693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the requested time period of, and justification for, the exemption (you must specify a time period not to exceed one year); (2) the burden and expense that you would incur if required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, you shall submit the report(s) in paper format by the required due date. You may be required to submit Form LM-10 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b. (Hardship Exemption) that you are filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. In the Online Public Disclosure Room at www.unionreports.gov, you may view and print copies of Form LM-10 reports, beginning with the year 2000.

You may also examine the Form LM-10 reports at, and purchase copies from, the OLMS Public Disclosure Room at:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210
Telephone: (202) 693-0125

VIII. Officer Responsibilities and Penalties

The president and treasurer, or corresponding principal officers of the reporting employer required to sign the Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and the officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individuals required to file Form LM-10 are responsible for maintaining records which must provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report, including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

X. Completing Form LM-10

Read the instructions carefully before completing Form LM-10.

Information Entry. Complete Form LM-10 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation or further information, EFS automatically adds space for additional entries.

Validation. You should click on the "Validate" button on each page to check for errors. This action will generate a "Validation Summary Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

Entering Dollars. In all items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if you have nothing to report.

Additional Parts. If you entered into multiple reportable transactions, agreements, or arrangements, then click the "Add Another" button to generate an additional part.

Information Items (Items 1–7)

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. *File Number.* EFS will pre-fill this item with the reporting employer's file number. If you are a new filer, EFS will assign your organization a number upon registration.

1.b. *Hardship Exemption.* Indicate here if you are filing a hardcopy Form LM-10 pursuant to a hardship exemption.

1.c. *Amended Report.* Indicate here if you are filing an amended Form LM-10.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report in mm/dd/yyyy format. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent, including any building and room number. Enter a valid email address for the employer. Also enter the Employer Identification Number (EIN) of the employer. If the employer does not have an EIN, enter "none."

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the president or corresponding principal officer if the address is different from Item 3. Enter a valid email address for the principal officer.

5. ANY OTHER ADDRESS WHERE RECORDS ARE KEPT—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. WHERE RECORDS ARE AVAILABLE—Select the appropriate box(es) to indicate where the records necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box that describes the reporting employer: Corporation, Partnership, or Individual. If none of these choices apply, select "Other" and specify the type of reporting employer filing this report in the space provided.

Part A – PAYMENTS TO UNIONS OR UNION OFFICIALS

Complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer,

agent, shop steward, or other representative or employee of any labor organization.

In answering Part A, ***exclude*** the following: (1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following situations are required to be reported:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer;

(b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization;

(c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or

(2) made pursuant to a custom or practice under such a collective agreement, or

(3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization;

(d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting the terms specified in paragraph (4) of Section 302(c) of the LMRA;

(e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8. Enter the name and title of the recipient/contact, enter the name of the labor organization, and specify whether the recipient was an individual or a labor organization by selecting the appropriate box. Enter the address, telephone number, and email address of the recipient or contact person in the space provided. If the address of the labor organization differs from that of the individual recipient of the payment or the contact person for the labor organization, click the "Add Another" button to generate an additional page and enter the address of the organization or person on this page.

9. Enter information for each payment.

9.a. Enter the date the payment was made (or promise or agreement was entered into) in mm/dd/yyyy format.

9.b. Enter the amount of the payment.

9.c. Specify if this was a payment or a loan, and if it was made by cash or property. If the form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value (in U.S. dollars) of the property at the time of transfer. If the form of payment was another thing of value, describe the payment.

9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons or labor organizations named in Item 8. If you made or promised or agreed to make payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient.

Part B – PERSUADER PAYMENTS TO EMPLOYEES OR EMPLOYEE COMMITTEES

Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees.

> In answering Part B, **exclude** payments made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

10. Enter the name of the recipient and specify whether the recipient was an employee or employee group or committee by selecting the appropriate box. If you selected "Employee Group/Committee," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the group or committee differs from that of the individual recipient of the payment or the contact person for the group or committee, click the "Add Another" button to generate an additional page and enter the additional address on this page.

11. Enter information for each payment.

11.a. Enter the date of each payment in mm/dd/yyyy format.

11.b. Enter the amount of each payment.

11.c. Specify if this was a payment or a loan, and if it was made by cash or property. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value (in U.S. dollars) of the property at the time of transfer.

11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payment made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 10. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient.

Part C – PERSUADER AGREEMENTS OR ARRANGEMENTS WITH LABOR RELATIONS CONSULTANTS

Check the appropriate box(es) and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or

organization undertook activities where an object thereof, directly or indirectly, was to:

- Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.
- Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

The term "agreement or arrangement" should be construed broadly and does not need to be in writing. A person "undertakes" activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

When completing Part C, **exclude** agreements or arrangements covering services related exclusively to the following:

(1) giving or agreeing to give you advice; **or**

(2) agreeing to represent you before any court, administrative agency, or tribunal of arbitration; **or**

(3) engaging in collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment, or negotiating a collective bargaining agreement or any question arising thereunder.

Note: If **any** reportable activities are undertaken, or are agreed to be undertaken, pursuant to the agreement or arrangement, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

Reportable Persuader Agreements or Arrangements

An agreement or arrangement is reportable if a consultant undertakes activities with an object, directly or indirectly, to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing (hereinafter "persuade employees"). Such "persuader activities" are any actions, conduct, or communications that are undertaken with an object, explicitly or implicitly, directly or indirectly, to affect an employee's decisions regarding his or her representation or collective bargaining rights. Under a typical reportable agreement or arrangement, a consultant manages a campaign or program to avoid or counter a union organizing or collective bargaining effort, either jointly with the employer or separately, or conducts a union avoidance seminar.

Reporting of an agreement or arrangement is triggered when:

(1) A consultant engages in direct contact or communication with any employee with an object to persuade such employee; or

(2) A consultant who has no direct contact with employees undertakes the following activities with an object to persuade employees:

(a) plans, directs, or coordinates activities undertaken by supervisors or other employer representatives, including meetings and interactions with employees;

(b) provides material or communications to the employer, in oral, written, or electronic form, for dissemination or distribution to employees;

(c) develops or implements personnel policies, practices, or actions for the employer.

Specific examples of activities that either alone or in combination would trigger the reporting requirements include but are not limited to:

- planning or conducting individual employee meetings;
- planning or conducting group employee meetings;
- training supervisors or employer representatives to conduct such meetings;
- coordinating or directing the activities of supervisors or employer representatives;
- establishing or facilitating employee committees;
- drafting, revising, or providing speeches, written material, website, audiovisual or multimedia content for presentation, dissemination, or distribution to employees, directly or indirectly (including the sale of "off-the-shelf[1]" materials where the consultant assists the employer in the selection of such materials, except as noted below where such selection is made by trade associations for member-employers);
- developing employer personnel policies designed to persuade, such as when a consultant, in response to employee complaints about the need for a union to protect against arbitrary firings, develops a policy under which employees may arbitrate grievances;
- identifying employees for disciplinary action, reward, or other targeting based on their

[1] "Off-the-shelf materials" refer to pre-existing *material* not created for the particular employer who is party to the agreement.

involvement with a union representation campaign or perceived support for the union;
- coordinating the timing and sequencing of union avoidance tactics and strategies.

To be reportable, as noted above, such activities must be undertaken with an object to persuade employees, as evidenced by the agreement, any accompanying communications, the timing, or other circumstances relevant to the undertaking.

Reportable Information-Supplying Agreements or Arrangements

Reportable information-supplying agreements or arrangements include those in which a consultant engages in activities with an object to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute[2] involving such employer. Such activities include information obtained from: supervisors or employer representatives; employees, employee representatives, or union meetings; research or investigation concerning employees or labor organizations; and surveillance of employees or union representatives (electronically or in person). A reportable agreement or arrangement includes an employer's purchase or other acquisition of such information, for example, from a consultant's website. Such purchase or acquisition would be reportable by both the consultant and the employer.

Exempt Agreements or Arrangements

No report is required covering the services of a labor relations consultant by reason of the consultant's giving or agreeing to give advice to an employer. "Advice" means an oral or written recommendation regarding a decision or a course of conduct. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, reviews personnel policies or actions for legality or to ensure a productive and efficient workplace for the client, or provides guidance on National Labor Relations Board (NLRB) or National Mediation Board (NMB) practice or precedent is providing "advice."

As a general principle, no reporting is required for an agreement or arrangement to exclusively provide legal services. For example, no report is required if a lawyer or other consultant revises persuasive materials, communications, or policies created by the employer in order to ensure their legality rather than enhancing their persuasive effect. In such cases, the consultant has no object to persuade employees. Additionally, reports are not required for an agreement that involves a consultant merely representing the employer before any court, administrative agency, or tribunal of arbitration, or engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.

The consultant's development or implementation of personnel policies or actions that improve employee pay, benefits, or working conditions do not trigger reporting merely because the policies or actions improve the pay, benefits, or working conditions of employees, even where they could subtly affect or influence the attitudes or views of the employees. Rather, to be reportable, the consultant must undertake the activities with an object to persuade employees, as evidenced by the agreement, any accompanying communications, the timing, or other circumstances relevant to the undertaking.

No report from an employer is required for an agreement or arrangement to conduct a union avoidance seminar. A Form LM-20 report listing employer-attendees will be filed by the consultant.

Where a trade association sponsors a union avoidance seminar, it is required to file a report only if its staff makes a presentation at the seminar. In instances where solely an outside consultant makes the presentation, only the consultant is required to file a report. Employer-attendees are not required to report their attendance at union avoidance seminars.

A report is not required concerning an agreement or arrangement whereby the consultant conducts a survey of employees (other than a push survey designed to influence participants and thus with an object to persuade) or a vulnerability assessment for an employer concerning the proneness of union organizing. No reporting is required where a consultant merely makes a sales pitch to an employer to undertake persuader activities for the employer.

Moreover, no reporting is required for an agreement or arrangement under which an employer exclusively purchases or otherwise acquires off-the-shelf union avoidance materials from a consultant without any input by the consultant concerning the selection or dissemination of the materials.

Additionally, concerning potential reporting of information-supplying agreements or arrangements, no reporting is required for an agreement or arrangement

[2] The LMRDA defines a "labor dispute" as including "any controversy concerning the terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." See LMRDA section 3(g). Thus, a "labor dispute" includes any controversy over matters relating to the representation and collective bargaining rights of employees.

that covers services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.

No reporting is required concerning an agreement between a franchisor and franchisee.

Agreements Involving Trade Associations

Trade associations are not required to file a report by reason of: their membership agreements, selecting off-the-shelf materials for member-employers, or distributing newsletters for member-employers. Such associations, however, are required to file reports for agreements covering the following activities:

Union avoidance seminars in which the trade association's employees serve as presenters; and

The trade association engages in reportable persuader activities for a particular employer or employers other than at a union avoidance seminar merely sponsored by the association.

NLRA Does Not Affect Reporting Obligations

While Section 203 of the LMRDA does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, activities of the type set forth in Section 203(a) of the LMRDA must be reported regardless of whether they are protected by Section 8(c) of the NLRA.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

12. Enter the name of the person with whom (or through) a separate agreement or arrangement was made. Enter the name of the organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. Also enter the Employer Identification Number (EIN) of the person, if applicable. If the address of the consultant or other organization differs from that of the individual with whom the separate agreement or arrangement was made, click the "Add Another" button to generate an additional page and enter the additional address on this page.

13. Enter details about the agreement or arrangement:

13.a. Enter the date of the agreement or arrangement in mm/dd/yyyy format.

13.b. Explain fully the terms and conditions of the agreement or arrangement. Any incomplete responses or unclear explanations will render this report deficient. The explanation must include the fee arrangement, as well as a description of the nature of the services agreed to be performed. For example, you must explain if you hired the labor relations consultant to manage a counter-organizing or union-avoidance campaign or to provide assistance to you in such a campaign through the persuader activities identified in Item 14. If you hired an attorney who provided legal advice and representation in addition to persuader services, you are only required to describe such portion of the agreement as the provision of "legal services," without any further description.

If any agreement or arrangement is in whole or in part contained in a written contract, memorandum, letter, or other written instrument, or has been wholly or partially reduced to writing, you must refer to that document and attach a copy of it to this report by clicking on the "Add Attachments" link at the top of the form.

14. Enter details about the specific activities performed or to be performed:

14.a. Nature of Activities. Select from the list in 14.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information supplying activities, as identified in the initial boxes to Part C. For persuader activity, select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace. Select all that apply for each part that you identified in the initial boxes. If none of the items listed accurately describes the nature of a particular activity or activities, select "Other" and describe the nature of the activity or activities in the "Additional Information" space of Item 14.a. You may also provide further explanation for any activity selected in the "Additional Information" space of Item 14.a.

14.b. Describe the period during which the activity has been or will be performed. For example, if the performance will begin in June 2013 and will terminate in August 2013, so indicate by stating "06/01/2013 through 08/31/2013."

14.c. Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

14.d. Enter the name of the person who performed the activities and indicate if the person is employed by the consultant or serves as an independent contractor or as part of a separate organization. Independent contractors or separate organizations in such cases are sub-consultants, who are required to file a separate Form LM-20 report. Enter the name of the

organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. For independent contractors and a separate organization, add the employer identification number (EIN), if available. If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the "Add Another" button to generate an additional page and enter the address of the organization or the additional persons on this page.

14.e. Identify the subject groups of employees who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work.

14.f. Identify the subject labor organizations that employees are seeking to join, or about whose activities information is to be supplied to the employer.

15. Enter information about each payment.

15.a. Enter the date of the payment in mm/dd/yyyy format.

15.b. Enter the amount of the payment. If the form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of transfer.

15.c. Specify if this was a payment or a loan and if it was made by cash or property.

15.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments reported specifically benefited the person or persons named in Item 12. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient.

Part D – EXPENDITURES MADE TO INTERFERE WITH, RESTRAIN, OR COERCE EMPLOYEES OR TO OBTAIN INFORMATION CONCERNING EMPLOYEES OR A LABOR ORGANIZATION

Check the appropriate box in Part D and complete this Part if you made:

- Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing.

In answering this provision of Part D, **exclude** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

Note: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

- Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute in which you were involved.

In answering this provision of Part D, **exclude** the following:

(1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; and
(2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

16. Enter the name of the recipient of the expenditure and specify whether the recipient was an employee, an independent contractor or other individual, or a business or organization by selecting the appropriate box. If you selected "Business/Organization," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the business or other organization differs from that of the individual who received the expenditure or that of the contact for the business or organization, click the "Add Another" button to generate an additional page and enter the additional address on this page.

17. Enter information for each expenditure.

17.a. Enter the date of the expenditure in mm/dd/yyyy format.

17.b. Enter the amount of the expenditure.

17.c. Specify if this was a payment or a loan and if it was made by cash or property.

17.d. Explain fully the circumstances of the expenditure, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the expenditures made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 16. If you made expenditures through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the expenditure. Any incomplete responses or unclear explanations will render this report deficient.

18–19. Signatures—The completed Form LM-10 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which should be entered in Item 18. Otherwise, this report must bear **two** signatures. If the report is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Before signing the form, click the Validate button at the top of page 1 to ensure that the report passes validation and thus can be signed and submitted.

To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism.

To electronically sign the form, click the signature spaces provided. Enter the date the report was signed and the telephone number at which the signatories conduct official business; you do not have to report a private, unlisted telephone number.

Once signed, the completed report can be electronically submitted to OLMS.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Persons" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce

(1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or

(2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers

concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it:

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce;

(3) or has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2) ;

(4) or has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) Not applicable.

(l) Not applicable.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers

Sec. 203.

(a) Every employer who in any fiscal year made-

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except
   (a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and
   (b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or

arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision(4); shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(d) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(e) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended.

(f) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions re made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Honolulu, HI
Kansas City, MO
Fort Lauderdale, FL
Los Angeles, CA
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Orleans, LA
New York, NY
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office. Contact information for OLMS field offices is also available on the OLMS website at www.olms.dol.gov.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is available on the OLMS website at www.olms.dol.gov.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-10 or the instructions, call your nearest OLMS field office or the OLMS Division of Interpretations and Standards at (202) 693-0123. You can also email questions to olms-public@dol.gov.

If you would like to receive periodic email updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement information, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: www.olms.dol.gov.

Revised 03/2016

FORM LM-10
EMPLOYER REPORT

OMB No. 1245-0003. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

For Official Use Only

E

▶ *Read the instructions carefully before completing this report.* ◀

1.a. File Number E-	1.b. ☐ Hardship Exemption	1.c. ☐ Amended Report	2. Fiscal Year Covered: _____ (mm/dd/yyyy) through _____ (mm/dd/yyyy)

3. Name and address of Reporting Employer (including trade name, if any).

Employer _____

Attention To (including title) _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

Employer Identification Number (EIN) _____

4. Name of President or corresponding principal officer and address if different from address in Item 3.

Name _____

Title _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

5. Any other address where records necessary to verify this report will be available for examination.

Organization _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

Contact Name _____

Title _____

6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.

☐ Address in Item 3

☐ Address in Item 4

☐ Address in Item 5

7. Type of organization.

☐ Corporation ☐ Partnership ☐ Individual ☐ Other

(specify) _____

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VIII on penalties in the instructions.)*

18. Signed _____
President (if other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

19. Signed _____
Treasurer (if other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

PART A – Payments to Unions and Union Officials. You must complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization.

8. Name and Title of Recipient/Contact _____ Labor Organization _____

☐ Individual recipient ☐ Labor organization recipient

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

9.a. Date of each payment. (mm/dd/yyyy)	9.b. Amount of each payment.	9.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			
(2)			
(3)			

PART B – Persuader Payments to Employees and Employee Committees. Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to other employees.

10. Name of Recipient _____

Type of Recipient: ☐ Employee ☐ Employee Group/Committee
If you checked "Employee Group/Committee" provide contact name and title: _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the group or organization differs from that of the individual recipient of the payment or the contact person for the group or organization, click here:

11.a. Date of each payment. (mm/dd/yyyy)	11.b. Amount of each payment.	11.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			
(2)			
(3)			

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Check the box(es) below and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or organization undertook activities where an object thereof, directly or indirectly, was to:

☐ Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.

☐ Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

12. Name of person with whom (or through) a separate agreement was made _____

Organization _____ Position in Organization _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

Employer Identification Number (EIN) _____

If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here:

13.a. Date of the agreement or arrangement. (mm/dd/yyyy)	13.b. Terms and conditions. (Explain in detail; see instructions. Written agreements must be attached by clicking the "Add Attachments" link at the top of the form.)

14. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement.

14.a. Nature of activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement:

PERSUADER ACTIVITIES: Select from the following reportable activities those which, per agreement with the consultant(s) named in item 12, have been or will be performed:

☐ Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees

☐ Drafting, revising, or providing a speech for presentation to employees

☐ Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees

☐ Drafting, revising, or providing website content for employees

☐ Planning or conducting individual employee meetings

☐ Planning or conducting group employee meetings

☐ Training supervisors or employer representatives to conduct individual or group employee meetings

☐ Coordinating or directing the activities of supervisors or employer representatives

☐ Establishing or facilitating employee committees

☐ Developing personnel policies or practices

☐ Identifying employees for disciplinary action, reward, or other targeting

☐ Speaking with or otherwise communicating directly with employees

☐ Other

INFORMATION SUPPLYING ACTIVITIES: Select each activity whereby the labor relations consultant supplies you with information concerning the activities of employees or a labor organization in connection with a labor dispute in which you are involved:

☐ Supplying information obtained from:

- ☐ Research or investigation concerning employees or labor organizations
- ☐ Supervisors or employer representatives
- ☐ Employees, employee representatives, or union meetings
- ☐ Surveillance of employees or union representatives (electronically or in person)

☐ Other

ADDITIONAL INFORMATION:

14.b. Period during which performed.	14.c. Extent performed.

14.d. Name of person(s) who performed activities _____

Type of Person: ☐ Employee of Consultant ☐ Independent Contractor ☐ Separate Organization

Organization _____ Position in Organization _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____ Employer Identification Number (EIN) _____

If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click here:

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Continued

14.e. Identify subject groups of employees. [Continuation button]	14.f. Identify subject labor organizations.

15.a. Date of each payment. (mm/dd/yyyy)	15.b. Amount of each payment.	15.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	15.d. Explain fully the circumstances of the payment(s), including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			
(2)			
(3)			

PART D – Expenditures Made to Interfere With, Restrain, or Coerce Employees; Obtain Information Concerning Employees or a Labor Organization.

Check the box(es) below and complete Part D if you made:

☐ Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; or

☐ Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

16. Name of Recipient _____

Type of Recipient: ☐ Employee ☐ Independent Contractor ☐ Business/Organization

If you checked "Business/Organization," provide contact name and title: _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here:

17.a. Date of each expenditure. (mm/dd/yyyy)	17.b. Amount of each expenditure.	17.c. Kind of expenditure (Specify if payment or loan, and if in cash or property.)	17.d. Explain fully the circumstances of the expenditure(s), including the terms of any oral agreement or understanding pursuant to which they were made.
(1)			
(2)			
(3)			

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 98 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-20 TO THE ABOVE ADDRESS.

Instructions for Form LM-20 Agreement and Activities Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of agreements or arrangements made between any person, including labor relations consultants and other individuals and organizations, and an employer to undertake certain actions, conduct, or communications concerning employees or labor organizations (hereinafter "activities"). Pursuant to Section 203(b) of the LMRDA, every person who undertakes any such activity under an agreement or arrangement with an employer is required to file detailed reports with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Agreement and Activities Report, Form LM-20, to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specific agreements, arrangements, and/or activities. The reporting requirements do not address whether such agreements or arrangements or activities are lawful or unlawful. The fact that a particular agreement, arrangement, or activity is or is not required to be reported does not indicate whether or not it is subject to any legal prohibition.

II. Who Must File

Any person who, as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to the agreement or arrangement, any activity of the type described in Section 203(b) of the LMRDA, must file a Form LM-20. The term "agreement or arrangement" should be construed broadly and does not need to be in writing.

A "person" is defined by LMRDA Section 3(d) to include, among others, labor relations consultants and other individuals and organizations. A person "undertakes" activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

A "direct or indirect party" to an agreement or arrangement includes (1) persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in Section 203(b) of the LMRDA, and (2) persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person. However, bona fide regular officers, supervisors, or employees of an employer are exempt from this reporting requirement to the extent that the services they undertook to perform were undertaken as such bona fide regular officers, supervisors, or employees of their employer.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The information required to be reported on Form LM-20, as set forth in the form and the instructions below, includes (1) the party or parties to the agreement or arrangement, (2) the object and terms and conditions of the agreement or arrangement, and (3) the activities performed or to be performed pursuant to the agreement or arrangement.

Any person required to file Form LM-20 must also file Form LM-21, Receipts and Disbursements Report. You must file Form LM-21 for each fiscal year during which you made or received payments as a result of any agreement or arrangement described in Form LM-20.

You must file Form LM-21 within 90 days after the end of your fiscal year.

Note: With the exception of reportable union avoidance seminars, as described in Part X below, a separate Form

LM-20 must be filed for each agreement or arrangement the filer makes with an employer to undertake any activity of the type set forth in LMRDA Section 203(b).

IV. Who Must Sign the Report

Both the president and the treasurer, or the corresponding principal officers, of the reporting organization must sign the completed Form LM-20. A report from a sole proprietor or an individual on his/her own behalf need only bear one signature.

V. When to File

Each person who has entered into any agreement or arrangement to undertake reportable activities must file the report *within 30 days* after entering into such agreement or arrangement. For a reportable union avoidance seminar, as described in Part X below, you must file the report within 30 days after the conclusion of the seminar. You must file any changes to the information reported in Form LM-20 (excluding matters related to Item 11.c. (Extent of Performance)) within 30 days of the change in a report with Item 1.c. (Amended Report) clearly checked.

VI. How to File

Form LM-20 must be completed online, electronically signed, and submitted along with any required attachments using the OLMS Electronic Forms System (EFS). The electronic Form LM-20 can be accessed and completed at the OLMS website at www.olms.dol.gov.

If you have difficulty navigating EFS, or have questions about its functions or features, call the OLMS Help Desk at (866) 401-1109. You may also email questions to OLMS-Public@dol.gov.

You will be able to file a report in paper format only if you assert a temporary hardship exemption or apply for and are granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If you experience unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, you may file Form LM-20 in paper format by the required due date at this address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210

An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b. (Hardship Exemption) that you are filing under the hardship exemption procedures.

Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the Office of Labor-Management Standards (OLMS) Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at (202) 693-0123, or by fax at (202) 693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) You may apply in writing for a continuing hardship exemption if filing Form LM-20 electronically would cause undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at (202) 693-0123, or by fax at (202) 693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the requested time period of, and justification for, the exemption (you must specify a time period not to exceed one year); (2) the burden and expense that you would incur if required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, you shall submit the report(s) in paper format by the required due date. You will also be required to submit Form LM-20 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b. (Hardship

Exemption) that you are filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. In the Online Public Disclosure Room at www.unionreports.gov, you may view and print copies of Form LM-20 reports, beginning with the year 2000.

You may also examine the Form LM-20 reports at, and purchase copies from, the OLMS Public Disclosure Room at:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001
Telephone: (202) 693-0125

VIII. Responsibilities and Penalties

The individuals required to sign Form LM-20 are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting individuals and the reporting organizations, if any, are also subject to civil prosecution for violations of the filing requirements. According to Section 210 of the LMRDA, "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individuals required to file Form LM-20 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report, including, but not limited to vouchers, worksheets, receipts, and applicable resolutions. Also to be included are the agreement or arrangement, and any related documents.

X. Completing Form LM-20

Read the instructions carefully before completing Form LM-20.

Information about EFS can be found on the OLMS website at www.olms.dol.gov.

Information Entry. Complete Form LM-20 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation or further information, EFS automatically adds space for additional entries.

Validation. You should click on the "Validate" button on each page to check for errors. This action will generate a "Validation Summary Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

General Instructions for Agreements, Arrangements, and Activities

You must file a separate report for each agreement or arrangement made with an employer where an object is, directly or indirectly:

(1) To persuade employees to exercise or not to exercise, or to persuade them as to the manner of exercising, the right to organize and bargain collectively through representatives of their choice. (**Excluded** are agreements or arrangements that cover services relating exclusively to: (a) giving or agreeing to give advice to the employer; (b) representing the employer before any court, administrative agency, or tribunal of arbitration, and (c) engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any collective bargaining agreement or any question arising under the agreement.)

or

(2) To supply the employer with information concerning activities of employees or a labor organization in connection with a labor dispute involving such employer. (**Excluded** are agreements or arrangements that cover services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.)

Note: If **any** reportable activities are undertaken, or agreed to be undertaken, pursuant to the agreement or arrangement, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

Reportable Persuader Agreements or Arrangements

An agreement or arrangement is reportable if a consultant undertakes activities with an object, directly or

indirectly, to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing (hereinafter "persuade employees"). Such "persuader activities" are any actions, conduct, or communications that are undertaken with an object, explicitly or implicitly, directly or indirectly, to affect an employee's decisions regarding his or her representation or collective bargaining rights. Under a typical reportable agreement or arrangement, a consultant manages a campaign or program to avoid or counter a union organizing or collective bargaining effort, either jointly with the employer or separately, or conducts a union avoidance seminar.

Reporting of an agreement or arrangement is triggered when:

(1) A consultant engages in direct contact or communication with any employee with an object to persuade such employee; or

(2) A consultant who has no direct contact with employees undertakes the following activities with an object to persuade employees:

(a) plans, directs, or coordinates activities undertaken by supervisors or other employer representatives, including meetings and interactions with employees;

(b) provides material or communications to the employer, in oral, written, or electronic form, for dissemination or distribution to employees;

(c) conducts a seminar for supervisors or other employer representatives; or

(d) develops or implements personnel policies, practices, or actions for the employer.

Specific examples of activities that either alone or in combination would trigger the reporting requirements include but are not limited to:

- planning or conducting individual employee meetings;
- planning or conducting group employee meetings;
- training supervisors or employer representatives to conduct such meetings;
- coordinating or directing the activities of supervisors or employer representatives;
- establishing or facilitating employee committees;
- conducting a union avoidance seminar for supervisors or employer representatives in which the consultant develops or assists the attending employers in developing anti-union tactics or strategies for use by the employers' supervisors or other representatives ("reportable union avoidance seminar");[1]
- drafting, revising, or providing speeches, written material, website, audiovisual or multimedia content for presentation, dissemination, or distribution to employees, directly or indirectly (including the sale of "off-the-shelf[2]" materials where the consultant assists the employer in the selection of such materials, except as noted below where such selection is made by trade associations for member-employers);
- developing employer personnel policies designed to persuade, such as when a consultant, in response to employee complaints about the need for a union to protect against arbitrary firings, develops a policy under which employees may arbitrate grievances;
- identifying employees for disciplinary action, reward, or other targeting based on their involvement with a union representation campaign or perceived support for the union;
- coordinating the timing and sequencing of union avoidance tactics and strategies.

To be reportable, as noted above, such activities must be undertaken with an object to persuade employees, as evidenced by the agreement, any accompanying communications, the timing, or other circumstances relevant to the undertaking.

Reportable Information-Supplying Agreements or Arrangements

Reportable information-supplying agreements or arrangements include those in which a consultant engages in activities with an object to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute[3] involving such employer. Such activities

[1] Note: Where a trade association sponsors a union avoidance seminar at which an independent contractor makes the presentation, only the independent contractor is required to file the report. The trade association and the employer-attendees do not need to report the seminars.

[2] "Off-the-shelf materials" refer to pre-existing material not created for the particular employer who is party to the agreement.

[3] The LMRDA defines a "labor dispute" as including "any controversy concerning the terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." See LMRDA section 3(g). Thus, a "labor dispute" includes any controversy over matters

include information obtained from: supervisors or employer representatives; employees, employee representatives, or union meetings; research or investigation concerning employees or labor organizations; and surveillance of employees or union representatives (electronically or in person). A reportable agreement or arrangement includes an employer's purchase or other acquisition of such information, for example, from a consultant's website. Such purchase or acquisition would be reportable by both the consultant and the employer.

Exempt Agreements or Arrangements

No report is required covering the services of a labor relations consultant by reason of the consultant's giving or agreeing to give advice to an employer. "Advice" means an oral or written recommendation regarding a decision or a course of conduct. For example, a consultant who, exclusively, counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, offers guidance on employer personnel policies and best practices, or provides guidance on National Labor Relations Board (NLRB) or National Mediation Board (NMB) practice or precedent is providing "advice."

As a general principle, no reporting is required for an agreement or arrangement to exclusively provide legal services. For example, no report is required if a lawyer or other consultant revises persuasive materials, communications, or policies created by the employer in order to ensure their legality rather than enhancing their persuasive effect. In such cases, the consultant has no object to persuade employees. Additionally, reports are not required for an agreement that involves a consultant merely representing the employer before any court, administrative agency, or tribunal of arbitration, or engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.

The consultant's development or implementation of personnel policies or actions that improve employee pay, benefits, or working conditions do not trigger reporting merely because the policies or actions improve the pay, benefits, or working conditions of employees, even where they could subtly affect or influence the attitudes or views of the employees. Rather, to be reportable, the consultant must undertake the activities with an object to persuade employees, as evidenced by the agreement, any accompanying communications, the timing, or other circumstances relevant to the undertaking.

No report is required for an agreement or arrangement to conduct a seminar for employers in which the consultant does not develop or assist the attending employers in developing anti-union tactics or strategies.

Where a trade association sponsors a union avoidance seminar, it is required to file a report only if its staff makes a presentation at the seminar. In instances where solely an outside consultant makes the presentation, only the consultant is required to file a report. Employer-attendees are not required to report their attendance at union avoidance seminars.

A report is not required concerning an agreement or arrangement whereby the consultant conducts a survey of employees (other than a push survey designed to influence participants and thus with an object to persuade) or a vulnerability assessment for an employer concerning the proneness of union organizing. No reporting is required where a consultant merely makes a sales pitch to an employer to undertake persuader activities for the employer.

Moreover, no reporting is required for an agreement or arrangement under which an employer exclusively purchases or otherwise acquires off-the-shelf union avoidance materials from a consultant without any input by the consultant concerning the selection or dissemination of the materials.

Additionally, concerning potential reporting of information-supplying agreements or arrangements, no reporting is required for an agreement or arrangement that covers services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.

No reporting is required concerning an agreement between a franchisor and franchisee.

Agreements Involving Trade Associations

Trade associations are not required to file a report by reason of: their membership agreements, selecting off-the-shelf materials for member-employers, or distributing newsletters for member-employers. Such associations, however, are required to file reports for agreements covering the following activities:

Union avoidance seminars in which the trade association's employees serve as presenters; and

The trade association engages in reportable persuader activities for a particular employer or employers other than at a union avoidance seminar merely sponsored by the association.

NLRA Does Not Affect Reporting Obligations

relating to the representation and collective bargaining rights of employees.

While Section 203 of the LMRDA does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, activities of the type set forth in Section 203(b) of the LMRDA must be reported regardless of whether they are protected by Section 8(c) of the NLRA.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

Items 1–14

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. *File Number.* EFS will pre-fill this item with your organization's file number. If you are a new filer, EFS will assign your organization a number upon registration.

1.b. *Hardship Exemption.* Indicate here if you are filing a hardcopy Form LM-20 pursuant to a hardship exemption.

1.c. *Amended Report.* Indicate here if you are filing an amended Form LM-20.

2. CONTACT INFORMATION FOR PERSON FILING—Enter the full legal name of the reporting individual or organization, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent, including any building and room number, and the person's email address. Also enter the Employer Identification Number (EIN) of the filer. If you do not have an EIN, enter "none."

3. OTHER ADDRESS WHERE RECORDS ARE KEPT—If you maintain any of the records necessary to verify this report at an address different from the address listed in Item 2, enter the appropriate name and address in Item 3.

4. FISCAL YEAR — Enter the beginning and ending dates of the fiscal year covered in this report in mm/dd/yyyy format. The report must not cover more than a 12-month period. For example, if the person's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

5. TYPE OF PERSON—If the person reporting is an individual, partnership, or corporation, so indicate by checking the appropriate box. If none of the choices apply, check "Other" and describe in the space provided the type of person.

6. FULL NAME AND ADDRESS OF EMPLOYER(S)—Enter the full legal name of the employer with whom the agreement or arrangement was made, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, the complete address where mail should be sent, including any building and room number, and the employer's email address. Also enter the Employer Identification Number (EIN) of the employer unless the employer is only attending a union avoidance seminar.

If you are reporting an agreement or arrangement concerning a union avoidance seminar, you must check the "seminar reporting" box and fully complete a separate Item 6 for each attendee, including member-employers of a trade association that organized the seminar. However, for such seminar reporting, you are not required to provide the EIN for each attending employer.

7. DATE OF AGREEMENT OR ARRANGEMENT—Enter the date on which you entered into the agreement or arrangement in mm/dd/yyyy format. Note: you are not required to complete this item if you are reporting an agreement or arrangement concerning a union avoidance seminar. However, you must complete a separate Item 6 for each attendee.

8. PERSON(S) THROUGH WHOM AGREEMENT OR ARRANGEMENT MADE—(a) ***Employer Representative***: Complete this portion of the item only if you are the prime consultant. Enter the name and title of each person, acting on behalf of the employer, making the agreement or arrangement. Leave Item 8(b) blank. **Note**: If you are a trade association completing this report for a reportable union avoidance seminar, then you are not required to complete Item 8.

(b) ***Prime Consultant***: Complete this portion of the item only if you are an indirect party (or sub-consultant) to a reportable employer-consultant agreement. Enter the name of the prime consultant with whom you entered into such agreement or arrangement, as well as its Employer Identification Number (EIN) and mailing address. If the prime consultant does not have an EIN, enter "none." Also enter the name and title of each person acting on behalf of the prime consultant making the agreement or arrangement. Leave Item 8(a) blank. **Note**: If you are a presenter at a reportable union avoidance seminar organized by a trade association, then you must enter the name of the trade association and the name and title of the association's official with whom you entered into such agreement or arrangement.

9. OBJECT OF ACTIVITIES—Check the appropriate box(es) indicating whether the object of your activities, pursuant to the agreement or arrangement is, directly or indirectly, to persuade employees to exercise their bargaining rights ***or*** to supply an employer with information related to a labor dispute. You must check either one or both of the boxes.

10. TERMS AND CONDITIONS—Provide a detailed explanation of the terms and conditions of the agreement or arrangement. This includes an explanation of the fee arrangement, as well as a description of the nature of the services agreed to be performed. For example, you must explain if you were hired to manage a counter-organizing or union-avoidance campaign, to conduct a union avoidance seminar, or to provide assistance to an employer in such a campaign through the persuader activities identified in Item 11. If you are an attorney who provides legal advice and representation in addition to persuader services, you are only required to describe such portion of the agreement as the provision of "legal services," without any further description.

If any agreement or arrangement is in whole or in part contained in a written contract, memorandum, letter, or other written instrument, or has been wholly or partially reduced to writing, you must refer to that document and attach a copy of it to this report by clicking on the "Add Attachments" link at the top of the form. For a reportable union avoidance seminar, this includes a single copy of the registration form and a description of the seminar provided to attendees.

11. DESCRIPTION OF ACTIVITIES—For each activity to be performed, give a detailed explanation of the following:

11.a. *Nature of Activity.* Select from the list in 11.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information-supplying activities, as identified in Item 9. For persuader activity, select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing. Select all activities that apply for each part that you identified in Item 9. If none of the items listed accurately describes the nature of a particular activity or activities, select "Other" and describe the nature of the activity or activities in the "Additional Information" space of Item 11.a. You may also provide further explanation for any activity selected in the "Additional Information" space of Item 11.a.

11.b. *Period during which activity performed.* Describe the period during which the activity has been or will be performed. For example, if the performance will begin in June 2013 and will terminate in August 2013, so indicate by stating "06/01/2013 through 08/31/2013." For a reportable union avoidance seminar, enter the date(s) in which the event was held.

11.c. *Extent of Performance.* Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

11.d. *Name and Address of person through whom activity performed.* Enter the full legal name, title, organization, and contact information, including email address, of the person(s) through whom the activities are to be performed or have been performed and indicate if those person(s) are employed by the consultant or serve as an independent contractor. Independent contractors in such cases are sub-consultants, who are required to file a separate Form LM-20 report. For independent contractors, add the employer identification number (EIN). If the contractor does not have an EIN, enter "none." If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the "Add Another" button to generate an additional page and enter the address of the organization or the additional persons on this page.

12. SUBJECT GROUPS OF EMPLOYEES AND/OR LABOR ORGANIZATIONS—Identify the subject groups of employees who are to be persuaded and/or those labor organizations about whose activities information is to be supplied to the employer.

12.a. Identify the subject groups of employees who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work.

If you are completing this item for an agreement or arrangement involving a reportable union avoidance seminar, then you must identify generally the category(ies) of employees employed in the industry or industries addressed or to be addressed by the seminar.

12.b. Identify the subject labor organization(s).

If you are completing this item for an agreement or arrangement involving a reportable union avoidance seminar, then you must identify the labor organization(s) upon which the event focuses or which represents or seeks to represent employees in the industry or industries with which the event focuses.

13-14. SIGNATURES—The completed Form LM-20 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal

officers, of the reporting organization. A report from an individual or a sole proprietor, on his/her own behalf, need only bear **one** signature which should be entered in Item 13. Otherwise, this report must bear **two** signatures. If the report is from an organization and is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Before signing the form, click the Validate button at the top of page 1 to ensure that the report passes validation and thus can be signed and submitted.

To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism.

To electronically sign the form, click the signature spaces provided. Enter the date the report was signed and the telephone number at which the signatories conduct official business; you do not have to report a private, unlisted telephone number.

Once signed, the completed report can be electronically submitted to OLMS.

SELECTED DEFINITIONS AND RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Section 3.

(a) 'Commerce' means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf' Lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) 'Industry affecting commerce' means any activity, business or industry in commerce or in which a labor dispute could hinder or obstruct commerce or the free flow of commerce and includes any activity or Industry 'affecting commerce' within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) 'Labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exits for the purpose, in whole or in part, or dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in a industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2)

as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

Section 203.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

Section 204.

Nothing contained In this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include In any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

National Labor Relations Act

Section 8(c).

The expressing of any views, argument, or opinion, or the discussion thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

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Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
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Denver, CO
Detroit, MI
Honolulu, HI
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Los Angeles, CA
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Nashville, TN
New Orleans, LA
New York, NY
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office. Contact information for OLMS field offices is also available on the OLMS website at www.olms.dol.gov.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is available on the OLMS website at www.olms.dol.gov.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-20 or the instructions, call your nearest OLMS field office or the OLMS Division of Interpretations and Standards at (202) 693-0123. You can also email questions to olms-public@dol.gov.

If you would like to receive periodic email updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement information, and compliance assistance programs, you

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Revised 03/2016

FORM LM-20 – AGREEMENT & ACTIVITIES REPORT

OMB No. 1245-0003. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440. Required of persons, including Labor Relations Consultants and Other Individuals and Organizations, under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA).

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

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E

▶ *Read the instructions carefully before completing this report.* ◀

1.a. File Number: C-	1.b. ☐ Hardship Exemption	1.c. ☐ Amended Report

2. Contact information for person filing:

Organization _____

Street _____

City _____ State ____

ZIP Code _____ Email Address _____

Employer Identification Number (EIN) _____

Contact Name _____

Title _____

3. Other address where records necessary to verify this report are kept:

Name _____

Title _____

Organization _____

Street _____

City _____

State _____ ZIP Code _____

Email Address _____

4. Fiscal Year Covered: from _____ through _____
(mm/dd/yyyy) (mm/dd/yyyy)

5. Type of person

a. ☐ Individual b. ☐ Partnership c. ☐ Corporation d. ☐ Other

6. Full name and address of employer with whom agreement or arrangement was made:

☐ Check this box if you are filing a report for a union avoidance seminar.

Organization (including trade name, if any) _____

Street _____

City _____ State ____

ZIP Code _____ Email Address _____

Employer Identification Number (EIN) _____

Contact Name _____

Title _____

7. Date agreement or arrangement entered into: _____
mm/dd/yyyy

8. Person(s) through whom agreement or arrangement made:

(a) Employer Representative:

Name and Title _____

OR

(b) Prime Consultant: _____

Name and Title _____

Employer Identification Number (EIN) _____

Address _____

Signatures

Each of the undersigned declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VII on penalties in the instructions.)*

13. Signed _____
President (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

14. Signed _____
Treasurer (If other title, see instructions.)

On _____ _____
Date (mm/dd/yyyy) Telephone Number

Name of person filing:	File Number: C-

9. Check the appropriate box(es) to indicate whether an object of the activities undertaken is directly or indirectly:

a. ☐ To persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.

b. ☐ To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

10. Terms and conditions. (Explain in detail; see instructions. Written agreements must be attached by clicking the "Add Attachments" link at the top of the form. If reporting a union avoidance seminar, a single copy of the registration form and a description of the seminar provided to attendees also must be attached by clicking the "Add Attachments" link at the top of the form.)

11. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement. (See instructions.)

a. Nature of activities performed or to be performed by the labor relations consultant pursuant to the agreement or arrangement:

PERSUADER ACTIVITIES: Select from the following reportable activities those which, per agreement with the employer(s) named in item 6, have been or will be performed:

- ☐ Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees
- ☐ Drafting, revising, or providing a speech for presentation to employees
- ☐ Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees
- ☐ Drafting, revising, or providing website content for employees
- ☐ Planning or conducting individual employee meetings
- ☐ Planning or conducting group employee meetings
- ☐ Training supervisors or employer representatives to conduct individual or group employee meetings
- ☐ Coordinating or directing the activities of supervisors or employer representatives
- ☐ Establishing or facilitating employee committees
- ☐ Developing employer personnel policies or practices
- ☐ Identifying employees for disciplinary action, reward, or other targeting
- ☐ Conducting a seminar for supervisors or employer representatives
- ☐ Speaking with or otherwise communicating directly with employees.
- ☐ Other

INFORMATION-SUPPLYING ACTIVITIES: Select each activity whereby you supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer:

- ☐ Supplying information obtained from:
  - ☐ Research or investigation concerning employees or labor organizations
  - ☐ Supervisors or employer representatives
  - ☐ Employees, employee representatives, or union meetings
  - ☐ Surveillance of employees or union representatives (electronically or in person)
- ☐ Other

ADDITIONAL INFORMATION:

11.b. Period during which activities performed: _____ mm/dd/yyyy – mm/dd/yyyy

11.c. Extent of performance:

11.d. Name and address of person(s) through whom activities were performed or will be performed:

Name and Title _____

Type of Person: ☐ Employee of Consultant ☐ Independent Contractor

Organization _____

Street _____

City _____ State _____ ZIP Code _____

Email Address _____

Employer Identification Number (EIN) _____

12.a. Identify subject groups of employees:

12.b. Identify subject labor organizations:

[FR Doc. 2016–06296 Filed 3–23–16; 8:45 am]

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