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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB–2014–0033]

RIN 3170–AA74

Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; Official Interpretation; Correction.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is making several corrections to the final rule it issued in August 2016 (2016 Mortgage Servicing Final Rule) amending certain of the Bureau's mortgage servicing rules. First, the Bureau is correcting two typographical errors relating to the early intervention requirements. Second, the Bureau is making corrections relating to the effective date of official commentary relating to servicers' ability to remove certain language in periodic statement sample forms as an option when, for example, communicating with confirmed successors in interest; sample periodic statement forms that servicers may use for certain consumers in bankruptcy; and official commentary relating to the bankruptcy periodic statement exemptions and modified statements. The corrected effective date for the sample periodic statement forms and commentary will be April 19, 2018. Third, the Bureau is amending the Bureau's authority citation for Regulation Z.

DATES: This correction is effective October 19, 2017. The effective date of amendatory instructions 24.d at 81 FR 72390 and 25.d.ii, vii through xvi, xix, xx, and xxi through xxiv at 81 FR 72396 is being corrected from October 19, 2017, to April 19, 2018.

Pursuant to this correction, beginning April 19, 2018: proper use of the sample forms in appendices H–30(E) and H–30(F) will comply with the form and layout requirements of 12 CFR 1026.41(c) and (d); and compliance with comment 41(c)–5 of 12 CFR 1026.41(c) and commentary to 12 CFR 1026.41(e)(5) and (f) is required.

FOR FURTHER INFORMATION CONTACT: Joel L. Singerman, Counsel; or Laura A. Johnson, Senior Counsel; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 2016, the Bureau issued the 2016 Mortgage Servicing Final Rule amending certain of the Bureau's mortgage servicing rules.[1] The amendments cover nine major topics and focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The amendments also address proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act. The Bureau makes the following corrections to the 2016 Mortgage Servicing Final Rule.

A. Regulation X

Model Clause MS–4(D)—Typographical Error

Model clause MS–4(D) in the 2016 Mortgage Servicing Final Rule contains a typographical error. It provides, in part, ''We have a right to invoke foreclosure based on the terms of your mortgage contact.'' The Bureau intended the sentence to read, ''We have a right to invoke foreclosure based on the terms of your mortgage contract.'' The Bureau is correcting this typographical error.

Comment 39(d)(2)–1—Typographical Error

Regulation X comment 39(d)(2)–1 in the 2016 Mortgage Servicing Final Rule discuses a servicer's obligations relating to the written early intervention notice, generally required under § 1024.39(b), when the borrower has provided a notice under section 805(c) of the Fair Debt Collection Practices Act and while any borrower on the mortgage loan is a debtor in bankruptcy under title 11 of the U.S. Bankruptcy Code. The comment refers to an example in comment 39(c)(1)(ii)–1.ii but should have referenced comment 39(c)(1)(ii)–2.ii. The relevant example is set forth in comment 39(c)(1)(ii)–2.ii. The Bureau is correcting this typographical error.

B. Regulation Z

Effective Date Stated in the Amendatory Instruction Relating to Comment 41(c)–5 in Regulation Z

The Bureau is correcting the amendatory instruction for comment 41(c)–5 in Regulation Z. Comment 41(c)–5 relates to servicers' ability to remove language from sample periodic statement forms that could suggest liability under the mortgage loan agreement if such language is not applicable, for example, in the case of a confirmed successor in interest who is not liable on the mortgage loan obligation.[2] Although the Bureau specified an effective date for this comment of April 19, 2018, in the **DATES** section of the 2016 Mortgage Servicing Rule, it did not do so in the relevant amendatory instruction. The Bureau corrects this error and applies an effective date of April 19, 2018, to comment 41(c)–5.

Effective Date for Sample Periodic Statement Forms and Commentary Relating to Bankruptcy Periodic Statements

The Bureau is correcting the effective date of the (1) sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with Regulation Z § 1026.41, and (2) commentary to Regulation Z § 1026.41(e) and (f) relating to the bankruptcy periodic statement exemption and modified statements. In the 2016 Mortgage Servicing Final Rule, the Bureau

[1] *See* Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016).

[2] 81 FR 72300.

finalized rules relating to a servicer's obligation to provide a periodic statement to certain consumers in bankruptcy. First, it amended § 1026.41(e)(5) and associated commentary generally to limit the circumstances in which a servicer is exempt from periodic statement requirements with respect to a consumer who is a debtor in bankruptcy or has discharged personal liability for a mortgage loan through bankruptcy.[3] Second, it amended § 1026.41(f) and associated commentary generally to allow servicers to make various clarifications and modifications to the periodic statement requirements with respect to consumers in bankruptcy or who have discharged personal liability for a mortgage through bankruptcy.[4] Third, it issued sample forms for periodic statements for certain consumers in bankruptcy.[5]

The Bureau intended all of these amendments relating to the bankruptcy periodic statement exemptions and modified statements to take effect on April 19, 2018, 18 months after publication in the **Federal Register**.[6] Although the Bureau specified an 18-month implementation period for the regulatory text of § 1026.41(e)(5) and (f), it specified only a 12-month implementation period for the commentary to those provisions and the bankruptcy periodic statement sample forms in appendices H–30(E) and H–30(F). The Bureau corrects this error and applies an effective date of April 19, 2018, to the commentary to § 1026.41(e)(5) and (f) and the sample forms in appendices H–30(E) and H–30(F).

Authority Citation for Regulation Z To Include 12 U.S.C. 3353

The Bureau is correcting an omission in the authority citation in the 2016 Mortgage Servicing Final Rule. The Bureau did not include 12 U.S.C. 3353 in the authority citation for amendments to Regulation Z. The Bureau is correcting the authority citation to part 1026 to include the citation to 12 U.S.C. 3353.

II. Regulatory Requirements

The Bureau finds that there is good cause to publish these corrections without seeking public comment.[7] Public comment is unnecessary because the Bureau is correcting inadvertent, technical errors about which there is minimal, if any, basis for substantive disagreement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[8] The Bureau has determined that these corrections do not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects

12 CFR Part 1024

Condominiums, Consumer protection, Housing, Insurance, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Correction

For the reasons set forth above, the Bureau makes the following corrections to the final rule FR Doc. No. 2016–18901, published on October 19, 2016, at 81 FR 72160:

■ 1. On page 72376, in the third column, under amendatory instruction 16, revise added MS–4(D) to read as follows:

Appendix MS–4 to Part 1024—Model Clauses for the Written Early Intervention Notice

* * * * *

MS–4(D)—Written Early Intervention Notice for Servicers Subject to FDCPA (§ 1024.39(d)(2)(iii))

This is a legally required notice. We are sending this notice to you because you are behind on your mortgage payment. We want to notify you of possible ways to avoid losing your home. We have a right to invoke foreclosure based on the terms of your mortgage contract. Please read this letter carefully.

■ 2. On page 72382, in the third column, under amendatory instruction 17.g.vii, revise added paragraph 1 under added heading *Paragraph 39(d)(2)* to read as follows:

1. *Borrowers in bankruptcy.* To the extent the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) applies to a servicer's communications with a borrower and the borrower has provided a notification pursuant to FDCPA section 805(c) notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease communications, with regard to that mortgage loan, § 1024.39(d)(2) exempts a servicer from providing the written notice required by § 1024.39(d) while any borrower on the mortgage loan is also a debtor in bankruptcy under title 11 of the United States Code. For an example, see comment 39(c)(1)(ii)–2.ii.

■ 3. Revise amendatory instruction 18 and its regulatory text appearing on page 72388, first column, to read as follows:

''18. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*''

■ 4. Revise amendatory instruction 24.d appearing on page 72390, third column, to read as follows:

''d. Effective April 19, 2018, adding H–30(E) and H–30(F).''

■ 5. Revise amendatory instruction 25.d.ii appearing on page 72396, first column, to read as follows:

''ii. Effective April 19, 2018, under *41(c) Form of the periodic statement,* paragraph 5 is added.''

■ 6. Revise amendatory instructions 25.d.vii through xvi and 25.d.xix and xx, appearing on page 72396, first column, to read as follows:

''vii. Effective April 19, 2018, after the entry for *41(d)(8),* the heading *41(e) Exemptions* is added.''

''viii. Effective April 19, 2018, the heading for *41(e)(5)* is revised, and under that heading paragraphs 1 through 3 are revised, and paragraph 4 is added.''

''ix. Effective April 19, 2018, the heading *41(e)(5)(i) Exemption* is added, and paragraph 1 under that heading is added.''

''x. Effective April 19, 2018, the heading *Paragraph 41(e)(5)(i)(B)(2)* is added, and paragraph 1 under that heading is added.''

''xi. Effective April 19, 2018, the heading *Paragraph 41(e)(5)(i)(B)(4)* is added, and paragraph 1 under that heading is added.''

''xii. Effective April 19, 2018, the heading *41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book* is added, and paragraph 1 under that heading is added.''

''xiii. Effective April 19, 2018, the heading *41(e)(5)(iv) Timing of compliance following transition* is added.''

''xiv. Effective April 19, 2018, the heading *41(e)(5)(iv)(A) Triggering events*

[3] 81 FR 72310–11.

[4] 81 FR 72330.

[5] 81 FR 72348.

[6] 81 FR 72349.

[7] *See* 5 U.S.C. 553(b)(B).

[8] 5 U.S.C. 603(a) and 604(a).

for transitioning to modified or unmodified statement or coupon book is added, and paragraphs 1 and 2 under that heading are added.''

''xv. Effective April 19, 2018, the heading *41(e)(5)(iv)(B) Transitional single-billing-cycle exemption* is added, and paragraph 1 under that heading is added.''

''xvi. Effective April 19, 2018, the heading *41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition* is added, and paragraphs 1 through 3 under that heading are added.''

* * * * *

''xix. Effective April 19, 2018, the heading *41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy* is added, and paragraphs 1 through 6 under that heading are added.''

''xx. Effective April 19, 2018, the heading *41(f)(3) Chapter 12 and chapter 13 consumers* is added, and paragraphs 1 through 3 under that heading are added.''

■ 7. Revise amendatory instructions 25.d.xxi through xxiv, appearing on page 72396, second column, to read as follows:

''xxi. Effective April 19, 2018, the heading *41(f)(3)(ii) Amount due* is added, and paragraph 1 under that heading is added.''

''xxii. Effective April 19, 2018, the heading *41(f)(3)(iii) Explanation of amount due* is added, and paragraph 1 under that heading is added.''

''xxiii. Effective April 19, 2018, the heading *41(f)(3)(v) Pre-petition arrearage* is added, and paragraph 1 under that heading is added.''

''xxiv. Effective April 19, 2018, the heading *41(f)(4) Multiple obligors* is added, and paragraphs 1 and 2 under that heading are added.''

Dated: June 26, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–13796 Filed 7–3–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9071; Directorate Identifier 2016–NM–019–AD; Amendment 39–18942; AD 2017–13–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by an evaluation by the design approval holder (DAH), which indicates that the main landing gear (MLG) does not comply with certification specifications, which could result in a locking failure of the MLG side stay. This AD requires modification or replacement of certain MLG side stay assemblies. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 9, 2017.

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

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

For Messier-Dowty service information identified in this final rule, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone: 703–450–8233; fax: 703–404–1621; Internet: *https://techpubs.services/messier-dowty.com.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9071.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9071; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on September 8, 2016 (81 FR 62035). The NPRM was prompted by an evaluation by the DAH which indicates that the MLG does not comply with certification specifications, which could result in a locking failure of the MLG side stay. The NPRM proposed to require modification or replacement of certain MLG side stay assemblies. We are issuing this AD to prevent possible collapse of the MLG during takeoff and landing.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0018R1, dated September 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

During studies for a new landing gear design, it was discovered that the single-locked upper and lower cardan joints of the Main Landing Gear (MLG) do not comply with the certification specifications of (CS, formerly [Joint Aviation Requirements] JAR) Part 25.607.

This condition, if not corrected, could lead to MLG side stay locking failure that, during take-off and landing, may result in damage to the aeroplane and detrimental effect on safe flight.

To address this potential unsafe condition, the MLG manufacturer developed a modification to change the single-locked MLG joint into a double-locked one. This modification is available for in-service application through Messier-Bugatti-Dowty (MBD) Service Bulletin (SB) 200–32–315 or SB 201–32–63, or Airbus SB A320–32–1429.

For the reasons described above, EASA issued AD 2016–0018 to require modification or replacement of the MLG side stay assemblies, introducing the double locking of the MLG upper and lower cardan joints.

Following new engineering evaluation, this [EASA] AD is revised to extend the compliance time. This revised [EASA] AD also clarifies the affected Part Number (P/N) references in Appendix 1 by adding Notes, and introduces some editorial changes without affecting the requirements.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9071.

Comments

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

Support for the NPRM

Air Line Pilots Association, International (ALPA), American Airlines (AAL), and Allegiant Air (Allegiant) expressed support for the NPRM.

Requests To Extend Compliance Time for the Proposed Modification/Replacement

Air France, AAL, Delta Airlines (DAL), and Virgin America (Virgin) commented that EASA has released EASA AD 2016–0018R1, dated September 14, 2016 (''EASA AD 2016–0018R1''). The commenters pointed out that EASA AD 2016–0018R1 extends the compliance time for the modification or replacement from 66 months to 120 months following a new engineering evaluation. Air France and Virgin America (Virgin) requested that the FAA refer to EASA AD 2016–0018R1. DAL also asserts that the extension would enable operators to accomplish the modification during MLG overhauls with no impact on airline operations.

We agree with the commenters' requests to extend the compliance time for the modification or replacement. We have determined that, based on the new engineering evaluation, extending the compliance time will not adversely affect safety, and will provide operators more flexibility regarding where and when they accomplish the required actions. We have revised paragraph (g) of this AD to specify a compliance time of within 120 months after the effective date of this AD.

Requests To Refer to Updated Service Information

Allegiant and DAL requested that we revise the NPRM to refer to Airbus Service Bulletin A320–32–1429, Revision 01, dated February 29, 2016 (''Airbus Service Bulletin A320–32–1429, Revision 01''). The commenters explained that Airbus Service Bulletin A320–32–1429, Revision 01, contains corrected part numbers for certain MLG side stay assemblies.

We agree with the commenters for the reasons provided. We have revised this AD to refer to Airbus Service Bulletin A320–32–1429, Revision 01. We have also revised this AD to provide credit for actions done before the effective date of this AD, if those actions were done using Airbus Service Bulletin A320–32–1429, dated September 10, 2015.

Request To Change Tracking Method of Completed Modification

AAL requested that we revise the NPRM to require the manufacturer to change its method of adding a modification strike to track accomplishment of the proposed modification. AAL suggested that the manufacturer develop a new part number for easier tracking of a completed modification.

We disagree with the commenter's request. We have determined that the actions required by this AD, as specified in the service information, adequately address the unsafe condition. We have not revised this AD in this regard. However, if the manufacturer revises the service information in the future, operators may request approval of an alternative method of compliance (AMOC), provided adequate data are provided to substantiate that the AMOC provides an acceptable level of safety.

Request To Postpone Release of This AD

Allegiant requested that this AD be postponed until Airbus Service Bulletin A320–32–1429, Revision 02, is published. Allegiant stated that Revision 02 will incorporate updated information described in Airbus Operators Information Transmission (OIT) 16–0028, Revision 01, dated May 26, 2016. Allegiant pointed out that the Airbus OIT explains that there could be difficulties with accomplishing the required actions ''on-wing,'' and that Airbus recommends postponing accomplishment of the required actions. Allegiant asserts that Airbus Service Bulletin A320–32–1429, Revision 02, is intended to provide an airplane jacking procedure that could allow modification of the MLG while it is attached to the airplane.

We partially agree with the commenter's request. We do not agree to delay issuance of this final rule. We have coordinated this issue with Airbus, and Airbus does not recommend postponing accomplishment of Airbus Service Bulletin A320–32–1429, Revision 01, altogether. Airbus does recommend that operators planning to do the modification/replacement ''on wing'' postpone accomplishment until the jacking procedure is provided. Airbus also recommends that the modification/replacement be accomplished when the airplane is ''in shop'' for scheduled MLG overhaul.

Operators are not required to accomplish the required modification ''on wing.'' We have revised paragraph (g)(1) of this AD to clarify that the modification may be done ''off wing,'' provided the modified MLG is reinstalled on the airplane. Additionally, as previously explained, we have extended the compliance time in this AD, effectively doubling the time in which operators have to accomplish the required actions.

Request To Change Applicability From Airplane Model to MLG Component

DAL requested that we revise the proposed applicability to apply to the MLG side stays instead of the airplane model. DAL pointed out that the MLG side stays are tracked independently from the airframe because of the 10-year overhaul requirement for the landing gear. DAL reasons that compliance could then be tracked at the component level, simplifying compliance.

We disagree with the commenter's request. Not all U.S. operators may track the MLG parts using a method similar to that used by DAL. Therefore, while the requested change might simplify compliance tracking for DAL, it might complicate compliance tracking for other operators. We have not revised this AD in this regard.

Request To Remove Statement Regarding Method of Repair

DAL requested that we revise the proposed AD to remove the statement

regarding the method of replacement specified in paragraph (g)(2) of the proposed AD. Instead, DAL recommended allowing operators to replace the MLG side stays using normal airplane maintenance manual (AMM) procedures. DAL explains that the AMM procedures include both pre- and post-modification procedures as specified in Airbus Service Bulletin A320–32–1429, Revision 01. However, DAL pointed out that, as of the effective date of this AD, paragraph (i) of the proposed AD states that only post-modification MLG side stays may be installed, so only the post-modification AMM procedures will apply. The pre-modification procedures will be removed from the AMM, and there will be no risk of de-modifying the MLG side stay.

We disagree with the commenter's request. AMMs are customizable documents that may be used for compliance with paragraph (g)(2) of this AD only with an approved method of compliance. Operators may request that their AMM be revised to show only the post-modification MLG configuration for installing new MLG side stays, or request an AMOC to use another acceptable method for installing the MLG side stays. We have not changed this AD in this regard.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We have reviewed the following service information.

- Airbus Service Bulletin A320–32–1429, Revision 01, dated February 29, 2016.
- Messier-Bugatti-Dowty Service Bulletin 200–32–315, dated April 24, 2015.
- Messier-Bugatti-Dowty Service Bulletin 201–32–63, dated April 24, 2015.

The service information describes procedures for modifying the MLG side stay assembly. The Messier-Bugatti-Dowty documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 959 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement or modification	9 work-hour × $85 per hour = $765	$14,104	$14,869	$14,259,371

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–13–12 Airbus: Amendment 39–18942; Docket No. FAA–2016–9071; Directorate Identifier 2016–NM–019–AD.

(a) Effective Date

This AD is effective August 9, 2017.

(b) Affected ADs

None.

(c) Applicability

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

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by an evaluation by the design approval holder, which indicates that the main landing gear (MLG) does not comply with certification specifications, which could result in a locking failure of the MLG side stay. We are issuing this AD to prevent possible collapse of the MLG during takeoff and landing.

(f) Compliance

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

(g) Modification or Replacement

Within 120 months after the effective date of this AD, accomplish the action specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Modify each MLG side stay assembly having a part number listed in figure 1 to paragraphs (g), (h), and (i) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1429, Revision 01, dated February 29, 2016, and the service information specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, as applicable. The modification may be done ''off wing,'' provided the modified MLG is reinstalled on the airplane.

(i) For Model A318 series airplanes; Model A319 series airplanes; and Model A320–211, –212, –214, –231, –232, and –233 airplanes: Messier-Bugatti-Dowty Service Bulletin 200–32–315, dated April 24, 2015.

(ii) For Model A321 series airplanes: Messier-Bugatti-Dowty Service Bulletin 201–32–63, dated April 24, 2015.

(2) Replace the MLG side stay assembly with a side stay assembly that has been modified in accordance with paragraph (g)(1) of this AD. Do the replacement using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or The European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

Note 1 to paragraph (g)(2) of this AD: Additional guidance for the replacement can be found in Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual.

FIGURE 1 TO PARAGRAPHS (g), (h), AND (i) OF THIS AD—AFFECTED MLG SIDE STAY ASSEMBLIES

Models	Affected part Nos. (P/N)	Strike No. not cancelled
A318–111, –112, –121, and –122 airplanes	201166001–xxx [1]	12
A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and	201166002–xxx [1]	12
A320–211, –212, –214, –231, –232, and –233 airplanes	201166003–xxx [1]	12
	201166004–xxx [1]	12
	201166005–xxx [1]	12
	201166006–xxx [1]	12
	201166007–xxx [1]	12
	201166008–xxx [1]	12
	201166009–xxx [1]	12
	201166010–xxx [1]	12
	201166011–xxx [1]	12
	201166012–xxx [1]	12
	201166013–000 through 201166013–030 inclusive [2]	12
	201166014–000 through 201166014–030 inclusive [2]	12
A321–111, –112, and –131 airplanes	201390001–000 through 201390001–040 inclusive [2]	15
	201390002–000 through 201390002–040 inclusive [2]	15
	201527001–000 through 201527001–025 inclusive [2]	15
	201527002–000 through 201527002–025 inclusive [2]	15
A321–211, –212, –213, –231, and –232 airplanes	201524001–000 through 201524001–035 inclusive [2]	15
	201524002–000 through 201524002–035 inclusive [2]	15
	201660001–000 through 201660001–030 inclusive [2]	15
	201660002–000 through 201660002–030 inclusive [2]	15

[1] The 'xxx' used in this figure can be any 3-digit combination.

[2] Units having a P/N with no dash number after the first 9 digits are also affected. Units having a P/N with the first 9 digits and a dash number higher than those listed, are not affected by the requirements of this AD.

(h) Unaffected Airplanes

An airplane on which Airbus Modification (Mod) 156646, Airbus Mod 161202, or Airbus Mod 161346 has been embodied in production is not affected by the requirements of paragraph (g) of this AD, provided it is determined that no part having a part number identified in figure 1 to paragraphs (g), (h), and (i) of this AD, has been installed on that airplane since the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness. A review of the airplane maintenance records is acceptable to make this determination, provided that these records are accurate and can be relied upon to conclusively make that determination.

(i) Parts Installation Prohibition

As of the effective date of this AD, do not install on any airplane, an MLG side stay assembly having a part number, with the strike number not cancelled, as identified in figure 1 to paragraphs (g), (h), and (i) of this AD, unless it has been modified in accordance with the requirements of paragraph (g) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–32–1429, dated September 10, 2015.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0018R1, dated September 14, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9071.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3), (m)(4), and (m)(5) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–32–1429, Revision 01, dated February 29, 2016.

(ii) Messier-Bugatti-Dowty Service Bulletin 200–32–315, dated April 24, 2015.

(iii) Messier-Bugatti-Dowty Service Bulletin 201–32–63, dated April 24, 2015.

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

(4) For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone: 703–450–8233; fax: 703–404–1621; Internet: *https://techpubs.services/messier-dowty.com.*

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

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

Issued in Renton, Washington, on June 19, 2017.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13759 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9384; Directorate Identifier 2016–NM–154–AD; Amendment 39–18944; AD 2017–13–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–300ER series airplanes. This AD was prompted by a report that certain galley tripod mount assemblies were not connected to the tie rods in the overhead support structure. This AD requires an inspection of certain galleys for the presence of the hardware that connects the tripod mount assembly to the tie rods in the overhead support structure, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 9, 2017.

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

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9384.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9384; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Allison Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6495; fax: 425–917–6590; email: *allison.buss@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–300ER series airplanes. The NPRM published in the **Federal Register** on November 17, 2016 (81 FR 81021) (''the NPRM''). The NPRM was prompted by a report that the T53 and T52 tie rods to the tripod mount assembly in the A2 and A3 galleys were found unattached during a routine production inspection of certain airplanes before delivery. The NPRM proposed to require an inspection of A2 and A3 galleys for the presence of the hardware that connects the tripod mount assembly to the tie rods in the overhead support structure, and corrective actions if necessary. We are issuing this AD to detect and correct an unconnected galley tripod mount assembly to the tie rods in the overhead support structure, which can cause a galley to come loose under a high dynamic load, causing a risk of serious injury to passengers and the blocking of evacuation routes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments

received on the NPRM and the FAA's response to each comment.

Request To Clarify the Inspection Type

Boeing, Air New-Zealand (ANZ), and American Airlines (AA) requested that we clarify whether the required inspection type is general visual or detailed. The commenters noted that Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016, requires a general visual inspection, while the proposed AD would require a detailed inspection. ANZ inquired whether the detailed inspection was an additional requirement or a terminology correction. Boeing requested that we remove the detailed inspection description in paragraph (h) of the proposed AD and replace it with a description of a general visual inspection.

We agree to clarify the inspection type required by this AD. A general visual inspection is intended to detect obvious irregularities; in this case, the irregularity to be detected—a missing pin or bolt assembly that connects the tripod mount assembly to the applicable tie rod—may not be obvious. A detailed inspection is therefore most appropriate for this situation. We have not changed this AD in this regard.

Request To Allow an Alternative Part

AA requested that the proposed AD allow the use of a specific alternative washer. AA provided no justification for this request.

We infer that AA considers the use of alternative parts prohibited. To clarify, substitutions are allowed under paragraph 3.A., Note 4., of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016. Therefore, we have not changed this AD in this regard.

Request To Add a Corrective Action

AA requested that Boeing update Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016, to add a corrective action if the hardware is missing. AA stated that the service information specifies to confirm the presence or absence of hardware, but gives no corrective action if the hardware is missing.

We do not control service bulletin changes, and we also disagree with AA's characterization of the required actions. The service information specifies inspecting to ''make sure the hardware (*i.e.,* pin assembly or bolt assembly) that connects the tripod mount assembly to the T53 tie rod is installed.'' While investigating this issue, Boeing found that the hardware was present, but not installed. Boeing has confirmed that the service information does not need to include corrective actions to address missing hardware. The hardware should be present. If it is not, operators should install the correct hardware. We have not changed this AD in this regard.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016. The service information describes procedures for doing an inspection of the area above the A2 and A3 galleys to make sure the hardware (*i.e.,* pin assembly or bolt assembly) that connects the tripod mount assembly to the applicable T53 and T52 tie rods is installed, and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$340

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–13–14 The Boeing Company: Amendment 39–18944; Docket No. FAA–2016–9384; Directorate Identifier 2016–NM–154–AD.

(a) Effective Date

This AD is effective August 9, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–300ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report that certain galley tripod mount assemblies were not attached to the tie rods in the overhead support structure. We are issuing this AD to detect and correct an unconnected galley tripod mount assembly to the tie rods in the overhead support structure, which can cause a galley to come loose under a high dynamic load, causing a risk of serious injury to passengers and the blocking of evacuation routes.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 12 months after the effective date of this AD: Do a detailed inspection of the area above the A2 and A3 galleys to make sure the hardware (*i.e.,* pin assembly or bolt assembly) that connects the tripod mount assembly to the applicable T53 and T52 tie rods is installed, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016. Do all applicable corrective actions before further flight.

(h) Definition of Detailed Inspection

For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

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

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Allison Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6495; fax: 425–917–6590; email: *allison.buss@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 777–25A0677, dated April 25, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on June 22, 2017.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13757 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0187; Directorate Identifier 2017–NE–08–AD; Amendment 39–18893; AD 2017–10–19]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) Trent 1000–A2, Trent 1000–C2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 turbofan engines. This AD requires initial and repetitive on-wing inspections of affected intermediate pressure compressor (IPC) rotor seals. This AD was prompted by a failure of the IPC rotor seal. We are

issuing this AD to correct the unsafe condition on these products.

DATES: This AD becomes effective July 20, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 20, 2017.

We must receive comments on this AD by August 21, 2017.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp*; Internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0187.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0187; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0187; Directorate Identifier 2017–NE–08–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0017, dated February 1, 2017 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Recently, a low speed abort (60 to 65 knots) occurred on take-off on a Trent 1000-powered Boeing 787 aeroplane. The pilot performed a commanded engine shutdown and the aeroplane safely returned to the gate. Following investigation, failure and release of the intermediate pressure compressor (IPC) rotor seal was confirmed as having caused this event. RR have confirmed that other IPC rotor seals, Part Number (P/N) KH19098, have been found with cracking at the seal head. This condition, if not detected and corrected, could lead to engine power loss, possibly resulting in reduced control of the aeroplane.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0187.

Related Service Information Under 1 CFR Part 51

RR has issued Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AJ467, Revision 1, dated February 13, 2017; and NMSB Trent 1000 72–J353, Revision 1, dated November 24, 2016. The Alert NMSB describes procedures for initial and repetitive inspections of affected IPC rotor seal. The NMSB describes procedures for in-shop inspections of affected IPC rotor seals. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires initial and repetitive inspections of affected IPC rotor seal for cracks.

FAA's Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of IPC rotor seal	12.5 work-hours × $85 per hour = $1,062.50	$0	$1,062.50	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–10–19 Rolls-Royce plc: Amendment 39–18893; Docket No. FAA–2017–0187; Directorate Identifier 2017–NE–08–AD.

(a) Effective Date

This AD is effective July 20, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce plc (RR) Trent 1000–A2, Trent 1000–C2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 turbofan engines with intermediate pressure compressor (IPC) rotor seal, part number (P/N) KH19098, installed.

(d) Subject

Joint Aircraft System Component (JASC) 7230, Turbine Engine, Compressor Section.

(e) Reason

This AD was prompted by failure of the IPC rotor seal. We are issuing this AD to prevent failure of the IPC rotor seal, loss of engine thrust control, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Perform an on-wing borescope inspection (BSI) of the IPC rotor seal using paragraph 3, Accomplishment Instructions, of RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AJ467, Revision 1, dated February 13, 2017 as follows:

(i) For engines with an IPC rotor seal with 300 flight cycles (FC) or more before August 2017, perform a BSI before August 2017.

(ii) For engines with an IPC rotor seal with less than 300 FC before August 2017, perform a BSI before the IPC rotor seal accumulates 300 FC.

(2) Depending on the findings of the inspection(s) required by paragraph (g)(1) of this AD, repeat the on-wing BSI at intervals not to exceed those specified in Figures 2 or 4 of RR Alert NMSB Trent 1000 72–AJ467, Revision 1, dated February 13, 2017.

(3) An in-shop inspection in accordance with paragraph 3, Accomplishment Instructions, of RR NMSB Trent 1000 72–J353, Revision 1, dated November 24, 2016, may be substituted for an on-wing BSI as required by paragraphs (g)(1) and (2) of this AD, within the compliance times specified.

(4) After the effective date of this AD, do not operate an aircraft, having two engines installed that are both subject to the 20 FC IPC rotor seal re-inspection interval specified in Figure 4 of RR Alert NMSB Trent 1000 72–AJ467, Revision 1, dated February 13, 2017.

(5) If, during an on-wing inspection as required by paragraphs (g)(1) or (2) of this AD, or an in-shop inspection as specified in paragraph (g)(3) of this AD, any crack is found on the rear face of the affected IPC rotor seal that is at or beyond the reject limits specified in Figure 4 of RR Alert NMSB Trent 1000 72–AJ467, Revision 1, dated February 13, 2017, replace the IPC rotor seal with a part eligible for installation, before next flight.

(6) Replacing the IPC rotor seal on an engine, as required by paragraph (g)(5) of this AD, is not terminating action for the inspections required by paragraphs (g)(1) and (2) of this AD for that engine.

(7) No reports requested in any of the Alert NMSBs that are referenced in paragraphs (g)(1), (2), and (3) of this AD are required by this AD.

(h) Credit for Previous Actions

You may take credit for inspections and corrective action that are required by paragraph (g) of this AD, if you performed these actions and corrective action before the effective date of this AD, using RR Alert NMSB Trent 1000 72–AJ467, Initial Issue, dated November 9. 2016; or RR NMSB Trent 1000 72–J353, Initial Issue, dated August 25, 2016, or Revision 1, dated November 24, 2016.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI AD 2017–0017, dated February 1, 2017, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0187.

(k) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc (RR) Non-Modification Service Bulletin (NMSB) Trent 1000 72–J353, Revision 1, dated November 24, 2016.

(ii) RR Alert NMSB Trent 1000 72–AJ467, Revision 1, dated February 13, 2017.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp*; Internet: *https://customers.rolls-royce.com/public/rollsroycecare.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200

District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on May 11, 2017.

Robert J. Ganley,

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

[FR Doc. 2017–14050 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0461; Directorate Identifier 2014–NM–159–AD; Amendment 39–18937; AD 2017–13–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A319, A320, and A321 series airplanes. This AD was prompted by a report that a main landing gear (MLG) door could not be closed due to rupture of the actuator fitting. This AD requires repetitive inspections for cracking of the MLG door actuator fitting and its components, and corrective actions if necessary. This AD also requires eventual replacement of all affected MLG door actuator fittings with new monoblock fittings, which would terminate the repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 9, 2017.

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

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0461.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0461; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A319, A320, and A321 series airplanes. The SNPRM published in the **Federal Register** on April 7, 2017 (82 FR 16948) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on January 28, 2016 (81 FR 4901) (''the NPRM''). The NPRM proposed to require repetitive inspections for cracking of the MLG door actuator fitting and its components, and corrective actions if necessary. The NPRM also proposed to require eventual replacement of all affected MLG door actuator fittings with new monoblock fittings, which would terminate the repetitive inspections. The NPRM was prompted by a report that an MLG door could not be closed due to rupture of the actuator fitting. The SNPRM proposed to revise the NPRM by reducing the compliance time for replacing the MLG actuator fitting and removing an inspection requirement for certain airplanes. We are issuing this AD to prevent rupture of the door actuator fittings, which could result in detachment of an MLG door and subsequent exterior damage and consequent reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0182, dated September 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A319, A320, and A321 series airplanes. The MCAI states:

> On one A320 aeroplane, it was reported that one of the main landing gear (MLG) doors could not be closed. Investigations revealed the rupture of the actuator fitting at the actuator attachment area on the door side. The MLG door is attached to the aeroplane by 2 (two) hinge fittings.
>
> This condition, if not corrected, could, under certain circumstances, lead to detachment of a MLG door from the aeroplane, possibly resulting in damage to the aeroplane, and/or injury to persons on the ground.
>
> Prompted by these findings, [Direction Générale de l'Aviation Civile] France issued * * * [an AD] * * *, to require a MLG door actuator fitting inspection for cracks and to check the grain direction on a batch of aeroplanes. Subsequently, DGAC France issued * * * [an AD], retaining the requirements of DGAC France AD * * *, which was superseded, to require an inspection of the lower part of the MLG door actuator fitting.
>
> After that [DGAC] AD was issued, additional investigations revealed that damage could also appear on the nerve area [of the forward monoblock fitting], in the upper part of the MLG door actuator fitting in the area of the hinge.
>
> Consequently, DGAC France issued F–2003–434, dated December 10, 2003 [*http://ad.easa.europa.eu/ad/F-2003-454*] (EASA approval 2003–1436), retaining the requirements of [a] DGAC France AD * * *, which was superseded, to require additional repetitive inspections. That [DGAC] AD also included an optional terminating action, by replacing the MLG door actuator fittings in accordance with the instructions of Airbus Service Bulletin (SB) A320–52–1073.
>
> After DGAC France AD F–2003–434 was issued, in the framework of the extended service goal campaign, it was decided to make replacement of the MLG door actuator fittings a required modification. Consequently, EASA issued AD 2014–0166 * * *, retaining the requirements of DGAC France AD F–2003–434, which was superseded, and requiring replacement of the MLG door actuator fittings with new monoblock fittings, which constitutes terminating action for the repetitive inspections.
>
> After EASA AD 2014–0166 [corresponding to the NPRM] was issued, errors were identified in the compliance time definitions.

Replacement of the MLG door actuator fittings was required ''before exceeding 48,000 flight cycles (FC) or 96,000 flight hours (FH), whichever occurs later since aeroplane first flight'', which should have been ''whichever occurs first''. Furthermore, since the MLG door is an interchangeable part, the compliance time must be defined as FC/FH accumulated by the MLG door. Furthermore, it was discovered that one of the required inspection[s] is applicable only to a batch of MLG door fittings.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2014–0166, which is superseded, but requires accomplishment of the terminating action within more stringent compliance times, and reduce[s] the applicability of one of the required inspection[s].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0461.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. United Airlines and commenter Lisa Stamps supported the SNPRM.

Clarification of Provisions for Excluded Airplanes

In paragraph (l)(1) of the proposed AD (in the SNPRM), we inadvertently omitted wording related to the prohibition on installing certain MLG door actuator fittings on modified airplanes, which is identified in step 10 of the EASA AD. We have added that provision to paragraph (l)(1) of this AD.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A320–52–1073, Revision 04, dated August 10, 1999.
- Airbus Service Bulletin A320–52–1073, Revision 05, dated September 28, 2006.

This service information describes procedures for replacement of MLG door actuator fittings with new monoblock fittings. These documents are distinct due to editorial revisions.

Airbus has also issued the following service information:

- Airbus Service Bulletin A320–52A1086, Revision 01, dated September 10, 1999. This service information describes procedures for high frequency eddy current (HFEC) inspections for cracking of the MLG door fittings, and low frequency eddy current (LFEC) inspections to determine grain direction of raw material of each actuator fitting.
- Airbus Service Bulletin A320–52–1096, Revision 02, dated July 12, 2006. This service information describes procedures for HFEC inspections of both hinge and nerve areas of the MLG doors for cracking.

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

Costs of Compliance

We estimate that this AD affects 71 airplanes of U.S. registry.

We also estimate that it takes about 136 work-hours per product to comply with the requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $6,258 per product. Based on these figures, we estimate the cost for the actions required by this AD on U.S. operators to be $1,265,078, or $17,818 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–13–07 Airbus: Amendment 39–18937; Docket No. FAA–2016–0461; Directorate Identifier 2014–NM–159–AD.

(a) Effective Date

This AD is effective August 9, 2017.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report that a main landing gear (MLG) door could not be closed due to rupture of the actuator fitting.

Later reports indicated that the forward monoblock fitting of the MLG door actuator (referred to as the nerve area) could be damaged after rupture of the actuator fitting. We are issuing this AD to prevent rupture of the door actuator fittings, which could result in detachment of an MLG door and subsequent exterior damage and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections of MLG Door Actuator Fittings

For airplanes equipped with MLG door actuator fittings having part number (P/N) D52880224000 or P/N D52880224001 that were installed before the first flight of the airplane on MLG doors identified in paragraphs (g)(1) and (g)(2) of this AD: Within 500 flight hours since the most recent high frequency eddy current (HFEC) inspection done as specified in Airbus Service Bulletin A320–52A1086, Revision 01, dated September 10, 1999, or within 30 days after the effective date of this AD, whichever occurs later, perform an HFEC inspection for cracking of the MLG door fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52A1086, Revision 01, dated September 10, 1999. Repeat the inspection thereafter at intervals not to exceed 500 flight hours, except as provided by paragraphs (i), (j), and (k) of this AD.

(1) Left-hand MLG doors with serial numbers (S/Ns) 1206 through 1237 inclusive, 1239 through 1247 inclusive, and 1249 through 1251 inclusive.

(2) Right-hand MLG doors with S/Ns 1208 through 1239 inclusive, 1241 through 1249 inclusive, and 1251.

(h) Repetitive Inspections of MLG Hinge and Nerve Areas

For airplanes equipped with MLG door actuator fittings having P/N D52880224000, P/N D52880224001, P/N D52880235000, or P/N D52880235001 that were installed before the first flight of the airplane on MLG doors identified in paragraphs (h)(1) and (h)(2) of this AD: Within 400 flight cycles after the effective date of this AD, or before the accumulation of 9,000 total flight cycles since first flight of the airplane, whichever occurs later, perform an HFEC inspection of both hinge and nerve areas of the MLG doors for cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1096, Revision 02, dated July 12, 2006. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles, except as provided by paragraphs (i)(1), (j), and (k) of this AD.

(1) Left-hand MLG doors with S/Ns 1206 through 1510 inclusive, 1548, 1564, and 2000 through 2065 inclusive.

(2) Right-hand MLG doors with S/Ns 1208 through 1519 inclusive, 1551, and 2000 through 2065 inclusive.

(i) Inspections/Corrective Actions

(1) If any crack is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, replace the affected MLG door actuator fittings with new monoblock fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1073, Revision 05, dated September 28, 2006. Accomplishing this replacement terminates the repetitive inspections required by paragraphs (g) and (h) of this AD.

(2) If, during any HFEC inspection required by paragraph (g) of this AD, no crack is found: Before further flight, perform a low frequency eddy current (LFEC) inspection to determine the grain direction of the raw material of each MLG actuator fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52A1086, Revision 01, dated September 10, 1999.

(i) If the grain direction of the raw material is correct, the repetitive inspections required by paragraph (g) of this AD may be terminated.

(ii) If the grain direction of the raw material is incorrect, repeat the HFEC inspection required by paragraph (g) of this AD at the time specified in paragraph (g) of this AD. Replacement of the MLG door actuator fittings with new monoblock fittings as specified in paragraph (i)(1) of this AD terminates the repetitive inspections required by paragraphs (g) and (i)(2)(ii) of this AD.

(j) MLG Door Actuator Fitting Replacement

For airplanes equipped with any MLG door actuator fitting having P/N D52880102000, P/N D52880102001, P/N D52880220000, P/N D52880220001, P/N D52880224000, P/N D52880224001, P/N D52880235000, or P/N D52880235001: At the later of the times specified in paragraphs (j)(1) and (j)(2) of this AD, replace the MLG door actuator fittings with new monoblock fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1073, Revision 05, dated September 28, 2006. Accomplishing this replacement terminates the repetitive inspections required by paragraphs (g) and (h) of this AD.

(1) Before the accumulation of 48,000 total flight cycles or 96,000 total flight hours on the MLG door, whichever occurs first.

(2) Within 30 days after the effective date of this AD.

(k) Optional Terminating Action

Replacement of the MLG door actuator fittings with new monoblock fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1073, Revision 04, dated August 10, 1999; or Airbus Service Bulletin A320–52–1073, Revision 05, dated September 28, 2006; terminates the repetitive inspections required by paragraphs (g) and (h) of this AD.

(l) Airplanes Excluded From Certain AD Requirements

(1) For airplanes on which Airbus Modification 24903, or Airbus Modification 25372, or Airbus Modification 36979 has been embodied in production, no action is required by this AD, provided that no MLG door actuator fitting having any part number identified in paragraph (j) of this AD has been reinstalled on the airplane since first flight; except the requirements of paragraph (m) of this AD remain applicable to post-mod 24903, post-mod 25372 and post-mod 36979 airplanes.

(2) Modification of an airplane by installing a version (P/N) of the MLG door actuator fitting approved after the effective date of this AD is acceptable for compliance with the requirements in paragraph (j) of this AD, provided the conditions specified in paragraphs (l)(2)(i) and (l)(2)(ii) are met.

(i) The MLG door actuator fitting (P/N) must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(ii) The modification must be accomplished in accordance with instructions approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; EASA; or Airbus's EASA DOA.

(m) Parts Installation Prohibition

As of the effective date of this AD, no person may install an MLG door actuator fitting having any part number identified in paragraph (j) of this AD on any airplane.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to the person identified in paragraph (o)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0182, dated September 13, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0461.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(p) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–52–1073, Revision 04, dated August 10, 1999.

(ii) Airbus Service Bulletin A320–52–1073, Revision 05, dated September 28, 2006.

(iii) Airbus Service Bulletin A320–52A1086, Revision 01, dated September 10, 1999.

(iv) Airbus Service Bulletin A320–52–1096, Revision 02, dated July 12, 2006.

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

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

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

Issued in Renton, Washington, on June 19, 2017.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13763 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0126; Directorate Identifier 2016–NM–211–AD; Amendment 39–18943; AD 2017–13–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of frame web cracking at certain locations. This AD requires repetitive inspections in certain locations of the frame web, and corrective action if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 9, 2017.

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

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0126.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0126; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on March 2, 2017 (82 FR 12303) (''the NPRM''). The NPRM was prompted by reports of frame web cracking at the station (STA) 344 system penetration holes between stringer S–22L and stringer S–24L. The NPRM proposed to require repetitive inspections in certain locations of the frame web, and corrective action if necessary. We are issuing this AD to detect and correct frame web cracking, which could grow in size until frames sever. Multiple adjacent severed frames, or a severed frame near cracks in the chem-milled fuselage skin, could result in uncontrolled decompression of the airplane.

Comments

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

Request To Change Inspection and Corrective Actions for Group 1 Airplanes

Boeing requested that we change the language in paragraph (g) of the proposed AD to remove a reference to Parts 2 and 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. Boeing noted that Group 1 airplanes are those that have exceeded their limit of validity, and that the inspections are not applicable to those airplanes. Boeing stated that it believes the intent of paragraph (g) of the proposed AD is for the operator to obtain maintenance actions in accordance with a method approved by the FAA. Boeing further pointed out that the language in paragraph (g) of the proposed AD allows operators to perform inspections in accordance with Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, rather than in accordance with paragraph (j) of the proposed AD (obtaining an alternative method of compliance).

We agree with the commenter's request for the reasons provided. We have revised paragraph (g) of this AD to clarify the appropriate actions for Group 1 airplanes.

Request To Correct a Service Bulletin Number

Boeing requested that we change two sentences in paragraph (h) of the proposed AD that refer to ''Boeing Alert Service Bulletin 757–53A1354.'' Boeing noted that the correct service bulletin number is ''737–53A1354.''

We agree with the commenter's request and have revised paragraph (h) of this AD accordingly.

Request To Revise the Proposed AD To Provide Credit for Removal of the 1-Inch Diameter Hole at STA 336 or STA 344

Boeing requested that we add a paragraph to the proposed AD to provide credit for previous actions to remove the 1-inch diameter hole at STA 336 or STA 344. Boeing noted that Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, provides an exception for the Part 2 high frequency eddy current (HFEC) inspections of repaired locations, provided the repair is the corrective action for the crack condition, is approved by the Boeing Organization Designation Authorization (ODA), and does not re-install any open hole. Boeing added that the proposed AD does not include such language.

We disagree with the request to revise this AD because it is not necessary. Paragraph (h) of this AD specifies to do the applicable inspections and related investigated and corrective actions in accordance with Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. The service information already contains the criteria and language proposed by Boeing within the required for compliance (RC) steps in the Accomplishment Instructions of the service information. Therefore, this language does not need to be repeated in this AD. We have not changed this AD in this regard.

Request To Revise the Proposed AD To Provide Credit for Repairs of the Open Hole at STA 328

Boeing requested that we add a paragraph to the proposed AD to provide credit for previous actions to repair any cracks at STA 328. Boeing noted that Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, states that Part 3 HFEC inspections are not required for the STA 328 frame if STA 328 was repaired in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1323. Boeing added that the proposed AD does not include such language.

We disagree with the request to revise this AD because it is not necessary. Paragraph (h) of this AD specifies to do the applicable inspections and related investigated and corrective actions in accordance with Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. The service information already contains the criteria and language proposed by Boeing within the RC steps in the Accomplishment Instructions of the service information. Therefore, this language does not need to be repeated in this AD. We have not changed this AD in this regard.

Request To Revise the Proposed AD To Provide Credit for Repairs That Remove or Plug an Open Hole Between Stringers S–20R and S–22R in the STA 328 Frame Web

Boeing requested that we add a paragraph to the proposed AD to provide credit for previous actions to plug or remove any open hole between stringers S–20R and S–22R in the STA 328 frame web. Boeing noted that Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, states that Part 3 HFEC inspections are not required at an open hole in the STA 328 frame web if there is an installed repair that plugs or removes the open hole between stringers S–20R and S–22R, and the repair was approved by the Boeing ODA. Boeing added that the proposed AD does not include such language.

We disagree with the request to revise this AD because it is not necessary. Paragraph (h) of the proposed AD specifies to do the applicable inspections and related investigated and corrective actions in accordance with Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. The service information already contains the criteria and language proposed by Boeing within the RC steps in the Accomplishment Instructions of the service information. Therefore, this language does not need to be repeated in this AD. We have not changed this AD in this regard.

Request To Change Compliance Times

The European Aviation Safety Agency (EASA) requested that we change the compliance times for the initial HFEC inspections required by paragraph (h) of the proposed AD (*i.e.,* before 35,000 total flight cycles or within 4,500 flight cycles) to match the compliance times specified in Boeing Alert Service Bulletin 737–53A1323, dated December 6, 2013, (*i.e.,* for Group 2–5 airplanes with less than 28,300 total flight cycles, before the accumulation of 20,000 total flight cycles or within 2,200 flight cycles). EASA claimed that it would be desirable to match the compliance times, as they are both addressing the same root problem in the same area, using the same inspection type. EASA noted that Boeing Alert Service Bulletin 737–53A1323, dated December 6, 2013, is referenced in an FAA NPRM, Docket No. FAA–2014–0346 (we note that the final rule has been published: AD 2015–23–08, Amendment 39–18324 (80 FR 73949, November 27, 2015)).

We disagree with the commenter's request. The HFEC inspections for the right side frames included in Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, were added based on analysis, not reported cracking. Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016 covers specific areas not included in Boeing Alert Service Bulletin 737–53A1323, dated December 6, 2013. Since there have been no reports of cracking in the applicable inspection areas on the right side of the airplane, there is no technical justification to lower the initial inspection times in this AD. We have not changed this AD in this regard.

Effects of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. The service information describes procedures for repetitive HFEC, detailed, and general visual inspections in certain locations of the frame web. This service information is

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

Costs of Compliance

We estimate that this AD affects 82 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC, detailed, and general visual inspections.	114 work-hours × $85 per hour = $9,690 per inspection cycle.	$0	$9,690 per inspection cycle ...	$794,580 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–13–13 The Boeing Company: Amendment 39–18943; Docket No. FAA–2017–0126; Directorate Identifier 2016–NM–211–AD.

(a) Effective Date

This AD is effective August 9, 2017.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of frame web cracking at station (STA) 344 system penetration holes between stringer S–22L and stringer S–24L. We are issuing this AD to detect and correct such cracking, which could grow in size until frames sever. Multiple adjacent severed frames, or a severed frame near cracks in the chem-milled fuselage skin, could result in uncontrolled decompression of the airplane.

(f) Compliance

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

(g) Group 1 Airplanes: Inspections and Corrective Actions

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016: Within 120 days after the effective date of this AD, accomplish actions to correct the unsafe condition (*e.g.* inspections, repairs, and corrective actions), using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Group 2 Airplanes: Repetitive Inspections and Corrective Actions

For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, except as required by paragraph (i)(1) of this AD: Do the inspections specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, except as required by paragraph (i)(2) of this AD. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016. Do all applicable corrective actions before further flight.

(1) Do high frequency eddy current (HFEC), detailed, and general visual inspections for cracking of the left side section 41 lower lobe frames, between STA 268.25 and STA 360.

(2) Do detailed and general visual inspections for cracking of the right side section 41 lower lobe frames, between STA 268.25 and STA 360.

(3) Do an HFEC inspection for cracking of the right side STA 312, STA 328, and STA 344, section 41 lower lobe frames.

(i) Service Information Exceptions

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, specifies a compliance time ''after the original date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016, specifies to contact Boeing for repair instructions, and specifies that action as Required for Compliance (RC), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Except as required by paragraph (i)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–53A1354, dated December 2, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on June 21, 2017.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13761 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0218; Airspace Docket No. 17–AWP–4]

Amendment of Class D and E Airspace; Tucson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the legal description of the Class E airspace designated as an extension, at Ryan Field, Tucson, AZ, eliminating the Notice to Airmen (NOTAM) part-time status. This action also updates the geographic coordinates of this airport in the associated Class D and E airspace areas to match the FAA's current aeronautical database. This action does not affect the charted boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, August 17, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Robert LaPlante, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4566.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes NOTAM part-time information for Class E airspace designated as an extension, and amends the geographic coordinates in the associated Class D and E airspace for Ryan Field, Tucson, AZ.

History

The FAA Aeronautical Information Services branch found the Class E airspace designated as an extension, for Ryan Field, Tucson, AZ, as published in FAA Order 7400.11A, Airspace Designations and Reporting Points, does not require part time status. Also, after a review, the FAA found the geographic coordinates referenced in the airspace legal descriptions under Class D and Class E airspace for Ryan Field, Tucson, AZ, do not match the FAA's current aeronautical database. This action makes these updates.

Additionally, an editorial change is made to the Class D and Class E airspace legal descriptions replacing Airport/Facility Directory with the term Chart Supplement.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 by eliminating the following language from the legal description of Class E airspace designated as an extension to a Class D at Ryan Field, Tucson, AZ, ''This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory''. Also, this action updates the geographic coordinates of Ryan Field airport in the associated Class D and Class E airspace areas for the airport to match the FAA's current aeronautical database. Lastly, this action replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the Class D and E airspace legal descriptions.

This action is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Tucson-Ryan Field, AZ [Amended]

Tucson-Ryan Field, AZ
(Lat. 32°08′32″ N., long. 111°10′28″ W.)

That airspace extending upward from the surface up to but not including 4,200 feet MSL within a 4-mile radius of Tucson-Ryan Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP AZ E2 Tucson-Ryan Field, AZ [Amended]

Tucson-Ryan Field, AZ
(Lat. 32°08′32″ N., long. 111°10′28″ W.)

Within a 4-mile radius of Tucson-Ryan Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP AZ E4 Tucson-Ryan Field, AZ [Amended]

Tucson-Ryan Field, AZ
(Lat. 32°08′32″ N., long. 111°10′28″ W.)
Ryan NDB
(Lat. 32°08′20″ N., long. 111°09′41″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Tucson-Ryan Runway 6 Localizer extending from the 4-mile radius of Tucson-Ryan Field to 6.1 miles southwest of the airport, and within 1.8 miles each side of the 317° bearing from the Ryan NDB extending from the 4-mile radius of Tucson-Ryan Field to 6.1 miles northwest of the airport.

Issued in Seattle, Washington, on June 26, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–13989 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Indemnification of Federal Trade Commission Employees

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is publishing a policy that permits indemnification of FTC employees in appropriate circumstances, as determined by the Commission or the Commission's designee, for claims made against them as a result of actions taken by them in the scope of their employment.

DATES: These amendments are effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: David C. Shonka, Acting General Counsel, (202) 326–2222, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Presently, the FTC does not have a policy to indemnify its employees who are sued in their individual capacities and who suffer an adverse judgment as a result of conduct taken within the scope of their employment; nor does the FTC have a policy to settle these claims with agency funds. Lawsuits against federal employees in their personal capacities have proliferated since the Supreme Court's decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). This decision held that personal damage awards against a federal employee are permitted when, in the course of his or her employment, the federal employee is found to have violated an individual's constitutional rights. Although the Federal Liability Reform and Tort Compensation Act of 1988, Public Law 100–694, prohibits personal actions against Federal employees for common law torts committed while acting within the scope of their employment, that Act does not apply to suits against federal employees for violation of the Constitution or federal statutes.

The FTC believes that actions against its employees in their personal capacities and the potential for a judgment against agency employees hinder the agency's effectiveness as a law enforcement agency. The FTC's ability to effectively protect consumers and promote competition depends upon the willingness of its employees to pursue investigations and litigation. Uncertainty regarding what conduct may lead to a personal liability claim resulting in a monetary judgment tends to intimidate employees, stifle creativity and initiative, and limit decisive action. Thus, the threat of personal liability against an employee for a decision made or action taken as part of official duties can adversely affect the FTC's achievement of its mission. The adoption of a policy to permit indemnification would help alleviate these problems and afford FTC employees the same protection now given to other federal employees in several other government agencies, including the Agency for International Development, Commodity Futures Trading Commission, Department of Commerce, Department of Education, Department of Health and Human Services, Department of the Interior, and the Department of Justice.

The FTC's policy permits, but does not require, the agency to indemnify a FTC employee who suffers an adverse verdict, judgment, or other monetary award, provided that the actions giving rise to the judgment were taken within the scope of employment, and that such indemnification is in the interest of the FTC, as determined by the Commission or the Commission's designee. The policy also allows the agency to settle a claim brought against an employee in his or her individual capacity by the payment of funds, upon a similar determination by the Commission or the Commission's designee. Generally, the FTC will not entertain a request either to indemnify or to pay to settle a personal damage claim against an employee before entry of an adverse verdict, judgment, or monetary award. However, in certain cases, the Commission or its designee, may determine that exceptional circumstances justify the earlier indemnification or payment of a settlement amount. This policy is applicable to actions pending against FTC employees as of its effective date, as well as to actions commenced after that date.

Regulatory Flexibility Act

The Commission certifies that these new regulations, which deal solely with internal policies governing FTC personnel, do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because they will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

The regulations adopted herein do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

Administrative Procedure Act

The indemnification policy is published in final form without the opportunity for public notice and comment because it is a general statement of policy relating to FTC management and personnel. *See* 5 U.S.C. 553(a)(2),(b).

List of Subjects in 16 CFR Part 1

Administrative practice and procedure, Government employees, Indemnity payments.

For the reasons set forth in the preamble, the Federal Trade Commission amends part 1, title 16, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§§ 1.125 through 1.129 [Added and Reserved]

■ 2. In subpart Q, add and reserve §§ 1.125 through 1.129.

■ 3. Add subpart R to read as follows:

Subpart R—Policy With Regard to Indemnification of FTC Employees

Authority: 15 U.S.C. 46.

§ 1.130 Policy on employee indemnification.

(a) The Commission may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment, or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment with the Federal Trade Commission and that such indemnification is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(b) The Commission may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(c) Absent exceptional circumstances, as determined by the Commission or its designee, the Commission will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or monetary award.

(d) When an employee of the Federal Trade Commission becomes aware that an action may be or has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify his or her supervisor that such an action is pending or threatened. The supervisor shall promptly thereafter notify the Office of the General Counsel. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(e)(1) The employee may, thereafter, request either:

(i) Indemnification to satisfy a verdict, judgment or award entered against the employee; or

(ii) Payment to satisfy the requirements of a settlement proposal.

(2) The employee shall submit a written request, with documentation including copies of the verdict, judgment, award, or settlement proposal, as appropriate, to the head of his or her division or office, who thereupon shall submit to the General Counsel, in a timely manner, a recommended disposition of the request. The General Counsel may also seek the views of the Department of Justice. The failure of an employee to provide notification under paragraph (d) of this section or make a request under this paragraph (e) shall not impair the agency's ability to provide indemnification or payment under this section if it determines it is appropriate to do so.

(f) Any amount paid under this section either to indemnify a Federal Trade Commission employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Federal Trade Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017–14008 Filed 7–3–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS RALPH JOHNSON (DDG 114) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 5, 2017 and is applicable beginning June 23, 2017.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kyle Fralick, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS RALPH JOHNSON (DDG 114) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Four, paragraph 15, adding, in alpha numerical order, by vessel number, an entry for USS RALPH JOHNSON (DDG 114); and

■ b. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS RALPH JOHNSON (DDG 114).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

15. * * *

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS Ralph Johnson	DDG 114	1.90 meters.
* * * * *	*	*

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * *	*	*	*	*	*
USS Ralph Johnson	DDG 114	X	X	X	14.5
* * * * *	*	*	*	*	*

Approved: June 23, 2017.

A.S. Janin,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: June 28, 2017.

A.M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–14049 Filed 7–3–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0510]

Drawbridge Operation Regulation; Sacramento River, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the Rio Vista Drawbridge across Sacramento River, mile 12.8, at Rio Vista, CA. The modified deviation extends the period the bridge may open with one hour advance notice and is necessary to allow the bridge owner to make necessary emergency repairs to the bridge.

DATES: This modified deviation is effective without actual notice from July 5, 2017 through 4 a.m. on July 15, 2017. For the purposes of enforcement actual notice will be used from June 28, 2017 until July 5, 2017.

ADDRESSES: The docket for this deviation, [USCG–2017–0510], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION: On June 15, 2017, the Coast Guard published a temporary deviation entitled ''Drawbridge Operation Regulation; Sacramento River, Rio Vista, California'' in the **Federal Register** (82 FR 27423). That temporary deviation, from 7 p.m. on June 16, 2017 to 4 a.m. on July 1, 2017, allows the drawspan to open on one hour advance notice at three specified time periods. The bridge owner, California Department of Transportation, has requested a modification of the currently published deviation to extend from 4 a.m. on July 1, 2017 to 4 a.m. on July 15, 2017 in order to complete the necessary repairs to the bridge deck.

The Rio Vista Drawbridge, mile 12.8, across the Sacramento River, has a vertical clearance of 18 feet above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.5, the draw opens on signal. Navigation on the waterway is commercial, search and rescue, law enforcement, and recreational.

The drawspan will require a one hour advance notice at one specified period: From 6 p.m. on July 14, 2017 to 4 a.m. on July 15, 2017. A one hour advance notice will give enough time for the contractor to clear away equipment and workers before the drawspan can safely open for transiting vessels. Scaffolding will be installed below the bridge deck from July 1, 2017 through July 15, 2017, reducing the vertical clearance by 4 feet, and will extend from the west tower 48 feet into the navigational channel. This temporary deviation modification has been coordinated with the waterway users. No objections to the proposed temporary deviation modification were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies with one hour advance notice. There is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 28, 2017.

C.T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2017–14047 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0438]

Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Sheffield Lake Fireworks, on Lake Erie and the Sheffield Lake boat ramp from 9:30 p.m. through 11 p.m. on Friday, July 14, 2017. This action is necessary to provide for the safety of life and property on navigable waters during this event. Our regulation for Annual Fireworks Events in the Captain of the Port Buffalo Zone identifies the safety zone for this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulation in 33 CFR 165.939(a)(27) will be enforced from 9:30 p.m. through 11 p.m. on July 14, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Ryan Junod, Coast Guard; telephone 216–937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following event:

Sheffield Lake Fireworks, Sheffield Lake, OH: The safety zone listed in 33 CFR 165.939(a)(27) will be enforced from 9:30 p.m. through 11 p.m. on July 14, 2017. The safety zone will encompass all navigable waters of Lake Erie and Sheffield Lake Boat ramp within a 350 foot radius of land position 41°29′27.65″ N., 082°6′47.71″ W. (NAD 83) at Sheffield Lake Boat Ramp in Sheffield Lake, OH. This action is necessary to provide for the safety of life and property on navigable waters during this event. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter this safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners and Local Notice to Mariners. If the Captain of the Port Buffalo determines that this safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 27, 2017.

J.S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2017–14034 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0578]

RIN 1625–AA00

Safety Zone; Tchefuncte River, Madisonville, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within one-half mile of a barge positioned in the Tchefuncte River, in the vicinity of Madisonville, LA. The safety zone is needed to protect persons, vessels, and the marine environment from potential hazards created by a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: This rule is effective from 8 p.m. through 9 p.m. on July 4, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0578 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, at (504) 365–2281 or *Howard.k.vacco@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by July 4, 2017 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is also contrary to the public interest as it would delay the safety measures necessary to protect life and property from the possible hazards associated with the fireworks display launched from the waterway. The impacts on navigation are expected to be minimal as the safety zone will only be in effect for a short duration of one hour. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via Broadcast Notice to Mariners (BNM) and Marine Safety Information Bulletin (MSIB).

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date to provide a full 30 days' notice is contrary to public interest because immediate action is needed to protect persons and vessels from safety hazards associated with the fireworks display over this navigable waterway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New Orleans (COTP) has determined that potential hazards, associated with a fireworks display from 8 p.m. to 9 p.m. on July 4, 2017, will be a safety concern for persons and vessels within a one-half mile radius of the launch point barge at approximately 30°24′11.63″ N., 090°09′17.39″ W. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone while the display takes place.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 p.m. to 9 p.m. on July 4, 2017. The safety zone will cover all navigable waters within a one-half mile radius of a fireworks barge anchored in the river at approximately 30°24′11.63″ N., 090°09′17.39″ W. The duration of the safety zone is intended to protect persons, vessels, and the marine environment from the hazards associated with a fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will impact a small designated area of the Tchefuncte River for one hour. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM Channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone lasting one hour that will prohibit entry within a one-half mile radius of a fireworks barge on the Tchefuncte River at approximately 30°24′11.63″ N. 090°09′17.39″ W. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Considerations (REC) is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0578 to read as follows:

§ 165.T08–0578 Safety Zones; Tchefuncte River; Madisonville, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Tchefuncte River, Madisonville, LA within a one-half mile radius of a barge anchored at approximately 30°24′11.63″ N. 090°09′17.39″ W.

(b) *Effective period.* This rule is effective on July 4, 2017, from 8 p.m. through 9 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of U.S. Coast Guard Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: June 28, 2017.

W.R. Arguin,

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

[FR Doc. 2017–14028 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0388]

RIN 1625–AA00

Safety Zones Within the Captain of the Port New Orleans Zone, New Orleans to Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for multiple locations and dates within the Captain of the Port New Orleans (COTP Zone). These safety zones are necessary to provide for the safety of life and protection of vessels from potential hazards associated with fireworks displays on navigable waterways. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: This rule is effective without actual notice from July 5, 2017 through July 14, 2017. For the purposes of enforcement, actual notice will be used from 8:00 p.m. through 10:00 p.m. each day from July 1, 2017 through July 5, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0388 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port New Orleans
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is establishing four temporary safety zones within the COTP New Orleans Zone (COTP Zone) for the following planned fireworks displays.

1. Mandeville City 4th of July Celebration Fireworks are scheduled from 8:45 p.m. through 9:45 p.m. on July 1, 2017. The fireworks barge will be positioned on Lake Pontchartrain, in vicinity of 30°21′12.0″ N. and 090°04′28.9″ W.

2. L'Auberge Casino 4th of July Celebration Fireworks are scheduled from 8:45 p.m. through 9:45 p.m. on July 2, 2017. The fireworks barge will be positioned in the Lower Mississippi River at Mile Marker 217.0 above Head of Passes.

3. St. John the Baptist Parish 4th of July Celebration Fireworks are scheduled from 8:00 p.m. through 9:00 p.m. on July 3, 2017. The fireworks barge will be positioned in the Lower Mississippi River at Mile Marker 138.0 above Head of Passes.

4. BBC Beach Body special event fireworks are scheduled from 10:30 p.m.

through 11:15 p.m. on July 14, 2017. The fireworks barge will be positioned in the Lower Mississippi River at Mile Marker 96.2 above Head of Passes.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and against public interest. We must establish this safety zone by July 1, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of these safety zones until after the scheduled dates of the fireworks displays and jeopardize public safety.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because the rule would not be effective until after the scheduled displays occur.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New Orleans (COPT) has determined that these safety zones are necessary to provide for the safety of life and to protect property due to the potential hazards associated with barge-based fireworks displays taking place on these navigable waterways. The Coast Guard will notify the public and maritime community of the proposed safety zones and their respective enforcement periods via Broadcast Notice to Mariners (BNM).

IV. Discussion of the Rule

This rule establishes four temporary safety zones within the COTP Zone on several dates and in different locations. Each safety zone will be enforced on the respective dates listed above and in the regulatory text provided at the end of this document. Each safety zone is limited to a duration of one hour, and will occur during the evening on the dates of July 1, July 2, July 3, and July 14, 2017. Entry into these safety zones is prohibited unless permission has been granted by the COTP or a designated representative.

The COTP will inform the public through Broadcast Notice to Mariners (BNM) of the enforcement period for each safety zone as well as any changes in the planned schedule. Inquiries may be made with the Coast Guard Sector New Orleans Command Center regarding the status of the safety zone by telephone at 504–365–2200.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Three of the safety zones will be no greater than 1 mile in length and will restrict navigation on the Lower Mississippi River for no longer than one hour each. The remaining safety zones will be established on Lake Pontchartrain, extending a 600 foot radius from position 30°21′12.0″ N. and 090°04′28.9″ W. and will restrict navigation for no longer than one hour. Due to the limited scope and short duration of each safety zone, the impact on routine navigation is expected to be minimal. Additionally, notice of the safety zones or any changes in the planned schedule will be made via Broadcast Notice to Mariners. Entry into the safety zones may be requested from the COTP or a designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves four temporary safety zones within the COTP Zone on four separate days. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.1D. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0388 to read as follows:

§ 165.T08–0388 Safety Zones; Safety Zones within Captain of the Port New Orleans Zone, New Orleans to Baton Rouge, LA.

(a) *Safety Zones.* The following areas are safety zones:

(1) Mandeville City 4th of July Celebration, Mandeville, LA.

(i) *Location.* All navigable waters of Lake Pontchartrain extending in a 600 foot radius from position 30°21′12.0″ N. and 090°04′28.9″ W., Mandeville, LA.

(ii) *Effective period.* This section will be effective from 8:45 p.m. through 9:45 p.m. on July 1, 2017.

(2) L'Auberge Casino Independence Day fireworks display, Baton Rouge, LA.

(i) *Location.* All navigable waters of the Lower Mississippi River from mile marker 216.5 to mile marker 217.5 above Head of Passes, Baton Rouge, LA.

(ii) *Effective period.* This section will be effective from 8:45 p.m. through 9:45 p.m. on July 2, 2017.

(3) St. John the Baptist Parish Independence Day fireworks display, LaPlace, LA.

(i) *Location.* All navigable waters of the Lower Mississippi River from mile marker 137.5 to mile marker 138.5 above Head of Passes, LaPlace, LA.

(ii) *Effective period.* This section will be effective from 8:00 p.m. through 9:00 p.m. on July 3, 2017.

(4) Team Beachbody Coach Summit fireworks display, New Orleans, LA.

(i) *Location.* All waters of the Lower Mississippi River from mile marker 95.7 to mile marker 96.7 above Head of Passes, New Orleans, LA.

(ii) *Effective period.* This section will be effective from 10:30 p.m. through 11:15 p.m. on July 14, 2017.

(b) *Definitions.* As used in this section, a designated representative means a commissioned officer, warrant officer, or petty officer of the U.S. Coast Guard assigned under the operational control of USCG Sector New Orleans.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or a designated representative. For each event, the COTP designated representative will be announced via Marine Safety Information Bulletin and Notice to Mariners.

(2) Vessels seeking entry into these safety zones must request permission from the COTP or a designated representative. They may be contacted via the U.S. Coast Guard Sector New Orleans Command Center, via VHF–FM Channel 16 or by telephone at 504–365–2200.

(3) Persons and vessels permitted to enter these safety zones must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notice to Mariners of any changes to the enforcement periods for the safety zones.

Dated: June 28, 2017.

W.R. Arguin,

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

[FR Doc. 2017–14009 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0481]

RIN 1625–AA00

Safety Zone; Cleveland Metroparks 100 Year Anniversary Fireworks Display; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Lake Erie at Edgewater Park, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Cleveland Metroparks 100 Year Anniversary fireworks display. This temporary safety zone is necessary to protect personnel, vessels, and the marine environment from the potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless

specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective from 9:25 p.m. through 10:25 p.m. on July 22, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0481 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo, NY (COTP) has determined that potential hazards associated with vessels in the vicinity of firework displays on July 22, 2017 will be a safety concern for vessels and spectators within a 700 foot radius of the launch point of the fireworks. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is happening.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:25 p.m. through 10:25 p.m. on July 22, 2017. The safety zone will cover all navigable waters within 700 feet of the launch point of the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one hour that will prohibit entry within 700 feet of the launch area for the fireworks display. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0481 to read as follows:

§ 165.T09–0481 Safety Zone; Cleveland Metroparks 100 Year Anniversary Fireworks Display; Lake Erie, Cleveland, OH.

(a) *Location.* This zone will encompass all U.S. waterways within a 700 foot radius of the fireworks launch site located at position 41°29′32.61″ N., 081°44′37.69″ W., Cleveland, OH (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 22, 2017 from 9:25 p.m. until 10:25 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 27, 2017.

J.S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2017–14029 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2017–OPE–0090]

Program Integrity: Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Announcement of applicable dates; request for comments.

SUMMARY: On January 6 and January 19, 2017, the Department announced dates by which institutions subject to the Department's gainful employment (GE) regulations must comply with certain provisions of the GE regulations relating to the submission of alternate earnings appeals and disclosure requirements. On March 6, 2017, the Department announced that it was allowing additional time, until July 1, 2017, to comply with those provisions. On June 15, 2017, the Department announced its intention to negotiate issues related to gainful employment. This document announces that the Department allows additional time, until July 1, 2018, for institutions to comply with certain disclosure requirements in the GE regulations and invites comment on this action. The Department also extends the deadline for all programs to file

alternate earnings appeals in light of the Court Order in American Association of Cosmetology Schools v. DeVos, Civil Action No. 17–0263, D.D.C. June 28, 2017 (Court Order). We will issue a **Federal Register** notice to specifically implement the Court Order, including establishing new deadlines, and anticipate doing so within 30 days from the publication date of this notice. We do not change the July 1, 2017, deadline for the requirement to provide a completed disclosure template, or a link thereto, on GE program Web pages.

DATES: The Department is allowing additional time—until July 1, 2018—for institutions to comply with 34 CFR 668.412(d) and (e). We must receive your comments on or before August 4, 2017.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *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 this site?''

U.S. Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202.

Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions 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 on the internet.

FOR FURTHER INFORMATION CONTACT: Scott Filter, U.S. Department of Education, 400 Maryland Ave., SW., Room 6W253, Washington, DC 20202. Telephone: (202) 453–7249 or by email at: *Scott.Filter@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: On January 6 and January 19, 2017, the Department announced dates by which institutions subject to the Department's GE regulations must comply with certain provisions of the GE regulations relating to the submission of alternate earnings appeals and disclosure requirements. On March 6, 2017, the Department announced that it was allowing additional time, until July 1, 2017, to comply with those provisions. On June 16, 2017, the Department announced its intention to negotiate issues related to gainful employment.

Consistent with the Department's March 6, 2017 announcement, by July 1, 2017, institutions must comply with the requirement in 34 CFR 668.412(c) to provide a completed disclosure template, or a link thereto, on its GE program Web pages. The revised template is available for use at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html.* The Department believes that it should evaluate the utility of these disclosures to students and the implementation of this requirement prior to requiring institutions to include the disclosure template, or a link thereto, in their GE program promotional materials and to directly distribute the disclosure template to prospective students under 34 CFR 668.412(d) and (e). Moreover, the Department expects to further review these requirements as part of its review of the GE regulations and their implementation, including through negotiated rulemaking. Accordingly, the Department is allowing institutions additional time—until July 1, 2018—to comply with the provisions in 34 CFR 668.412(d) and (e).

The Department also extends the deadline for all programs to file alternate earnings appeals in light of the Court Order. We will issue a **Federal Register** notice to specifically implement the Court Order, including establishing new deadlines, and anticipate doing so within 30 days from the publication date of this notice.

We are inviting your comments on this action. We will consider these comments in determining whether to take any future action in connection with the implementation of the disclosure requirements.

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: June 30, 2017.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2017–14186 Filed 6–30–17; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2016–0601; FRL–9964–41–Region 4]

Air Plan Approval and Designation of Areas; KY; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 26, 2016, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hour ozone nonattainment area (hereinafter referred to as the ''Cincinnati-Hamilton, OH-KY-IN Area'' or ''Area'') to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve the portions of the State Implementation Plan (SIP) revision containing a maintenance plan and base year emissions inventory for the Area. EPA is taking final action to

approve the Commonwealth's base year emissions inventory for the Kentucky portion of the Area; to approve the Commonwealth's plan for maintaining attainment of the 2008 8-hour ozone NAAQS in the Area, including motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2020 and 2030 for the Kentucky portion of the Area; and to redesignate the Kentucky portion of the Area to attainment for the 2008 8-hour ozone NAAQS. Through separate actions, EPA has approved the redesignation requests and maintenance plans for both the Ohio and Indiana portions of the Area.

DATES: This rule is effective July 5, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0601. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Richard Wong may be reached by phone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the background for EPA's proposed actions?

Effective July 20, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088 (May 21, 2012). The Cincinnati-Hamilton, OH-KY-IN Area was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area.[1] On May 4, 2016 (81 FR 26697), EPA issued a determination that the Area had attained the 2008 8-hour ozone NAAQS. On August 26, 2016, Kentucky requested that EPA redesignate the Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision containing the Commonwealth's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area through 2030, including 2020 and 2030 MVEBs for NO_X and VOC for the Cincinnati-Hamilton, OH-KY-IN Area. In addition, the Commonwealth requested approval of the base year emissions inventory for the 2008 8-hour ozone NAAQS pursuant to CAA section 182(a)(1).

In a notice of proposed rulemaking (NPRM) published on May 1, 2017 (82 FR 20297), EPA proposed to approve the base year emissions inventory; to approve the maintenance plan, including the 2020 and 2030 MVEBs for NO_X and VOC, and incorporate the plan into the Kentucky SIP; and to redesignate the Area to attainment for the 2008 8-hour ozone NAAQS. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO_X and VOC MVEBs for the Cincinnati-Hamilton, OH-KY-IN Area. No adverse comments were received on the May 1, 2017, proposed rulemaking. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM.

II. Final Action

EPA is taking three separate, but related, final actions. First, EPA is approving the 2008 8-hour ozone NAAQS base year emissions inventory for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area as meeting the requirements of CAA section 182(a)(1) and incorporating it into the SIP. Approval of the base year emissions inventory is a prerequisite to redesignating an ozone nonattainment area to attainment.

Second, EPA is approving the maintenance plan for the Cincinnati-Hamilton, OH-KY-IN Area, including the NO_X and VOC MVEBs for 2020 and 2030, as meeting the requirements of CAA section 175A and incorporating it into the Kentucky SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS through 2030, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

Third, EPA is approving Kentucky's redesignation request for the 2008 8-hour ozone NAAQS for the Cincinnati-Hamilton, OH-KY-IN Area pursuant to CAA section 107(d)(3)(E). Approval of the redesignation request changes the official designation of the portions of Boone County, Campbell County, and Kenton County in the Cincinnati-Hamilton, OH-KY-IN Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO_X and VOC MVEBs for the Cincinnati-Hamilton, OH-KY-IN Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

EPA has determined that these actions are effective immediately upon publication under the authority of 5 U.S.C. 553(d)(1) and (d)(3). The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule ''relieves a restriction.'' These actions qualify for the exception under section 553(d)(1) because they relieve the State of various requirements for the Area. Furthermore, section 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' EPA finds good cause to make these actions effective immediately pursuant to section 553(d)(3) because they do not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect.

III. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those

[1] The Cincinnati-Hamilton, OH-KY-IN Area is composed of portions of Boone, Campbell, and Kenton Counties in Kentucky; Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana.

imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: June 16, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding new entries for ''2008 8-hour ozone Maintenance Plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area'' and ''2008 8-hour ozone base year emissions inventory for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
*	*	*	*	
2008 8-hour ozone Maintenance Plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area.	Portions of Boone (2000 Census tracts: 702, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.01, 706.03, 706.04), Campbell (2000 Census tracts: 501, 502, 503, 504, 505, 506, 512, 513, 519.01, 519.03, 519.04, 520.01, 520.02, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531), and Kenton (2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671) Counties, KY.	8/26/2016	7/5/2017 ..... [Insert citation of publication].	

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS—Continued

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
2008 8-hour ozone base year emissions inventory for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area.	Portions of Boone, Campbell and Kenton Counties in Kentucky.	8/26/2016	7/5/2017 ..... [Insert citation of publication].	182(a)(1) base-year emissions inventory

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.318, the table entitled ''Kentucky-2008 8-Hour Ozone NAAQS (Primary and secondary)'' is amended by revising the entries for ''Cincinnati, OH-KY-IN'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati, OH-KY-IN: [2]	7/5/2017	Attainment.		
Boone County (part)	.....	Attainment.		
2000 Census tracts: 702, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.01, 706.03, 706.04.				
Campbell County (part)	.....	Attainment.		
2000 Census tracts: 501, 502, 503, 504, 505, 506, 512, 513, 519.01, 519.03, 519.04, 520.01, 520.02, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531.				
Kenton County (part)	.....	Attainment.		
2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671.				

* * * * * * *

[1] This date is July 20, 2012, unless otherwise noted.

[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2017–13994 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0099; FRL–9962–13]

Flubendiamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of flubendiamide in or on tea at 50 parts per million (ppm). Nichino America, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 5, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2007–0099, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0099 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2007–0099, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 12, 2016 (81 FR 53379) (FRL–9949–53), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announced the filing of a pesticide petition (PP 6E8463) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808–2951. This petition requested that 40 CFR 180.639 be amended by establishing an import tolerance for residues of flubendiamide, N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on the processed commodity of dried tea at 60 parts per million (ppm). This document referenced a summary of a petition prepared by Nichino America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* This tolerance was requested to cover residues of flubendiamide in or on tea resulting from uses of this pesticide on tea outside the United States; there is no current U.S. registration for use of flubendiamide on tea. In order to harmonize with Codex, EPA is establishing a tolerance for residues of flubendiamide in or on tea at 50 ppm. The available residue data supports this tolerance level. A revised Section F was submitted by Nichino America, Inc. to support this change to the petitioned-for tolerance. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

In the **Federal Register** of December 12, 2012 (77 FR 73940) (FRL–9373–3), EPA amended tolerances for residues of flubendiamide in or on apple, wet pomace and fruit, pome, group 11. EPA is relying upon significant portions of those risk assessments and the corresponding findings made in the December 12, 2012 **Federal Register** document in support of this action for the following reasons. The toxicity profile of flubendiamide has not changed. Much of the exposure profiled remains the same as well because there is no U.S. registration associated with the tea use (*i.e.,* the estimated drinking water exposures reported in 2012 are not expected to change nor is there any need to conduct a residential exposure assessment due to the lack of proposed or existing residential uses for flubendiamide). The Agency did take into consideration the potential additional dietary exposure to flubendiamide as a result of residues in or on imported tea. Aggregating that exposure with the dietary exposure estimated in the December 2012 tolerance assessment resulted in no change to the acute dietary exposure (3.1% of the aPAD for the general U.S. population and 5.5% of the aPAD for children 1–2 years old, the most highly exposed population subgroup) and only a 1% change in the chronic dietary risk (21% of the cPAD) for the general U.S. population and an increase of 9% in the chronic dietary risk (67% of the cPAD) for children 1–2 years old, the most highly exposed population subgroup. The Agency's findings concerning cumulative effects and the children's safety factor as reflected in the December 2012 tolerance rulemaking are also relied upon in this action.

Based upon the risk assessments supporting the December 12, 2012 **Federal Register** document, the findings therein, and the updated risk assessment accounting for the residues of flubendiamide on imported tea, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and

children from aggregate exposure to flubendiamide residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer to the December 12, 2012, **Federal Register** document and its supporting documents, available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2007–0099. Further information about EPA's determination that an updated risk assessment was not necessary may be found in the document, ''Flubendiamide: Human Health Risk Assessment for the Petition for a Tolerance Without U.S. Registration for Residues in/on Tea.'' in docket ID number EPA–HQ–OPP–2007–0099.

IV. Other Considerations

A. Analytical Enforcement Methodology

An independently validated liquid chromatography/tandem mass spectrometry (LC/MS/MS) method, Method 00816/M002, was previously submitted for the determination of residues of in/on samples of plant commodities. The validated limit of quantitation (LOQ) is 0.01 ppm for each analyte in each matrix.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. There is currently a Codex MRL for tea established at 50 ppm; therefore, the U.S. EPA is establishing a tolerance on tea at the same level to harmonize with Codex.

C. Revisions to Petitioned-For Tolerance

If only dried tea data are submitted for imported tea (data in/on the RAC are not required for imported tea) and the tolerance level based on these data is also meant to cover for detectable residues in instant tea (may be demonstrated by data depicting detectable residues in brewed tea), then the correct commodity definition for tolerance setting should be ''tea'' to cover incurred residues in or on all tea commodities and eliminate any regulatory ambiguity. In order to harmonize with Codex, EPA is establishing a tolerance for residues of flubendiamide in or on tea at 50 ppm. The available residue data supports this tolerance level. A revised Section F was submitted by Nichino America, Inc. to support this change to the petitioned-for tolerance.

V. Conclusion

Therefore, a tolerance is established for residues of flubendiamide, N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on tea at 50 ppm. At this time, there is no U.S. registration for use of flubendiamide on tea.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 23, 2017.

Donna S. Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.639, add alphabetically the entry ''Tea'' to the table in paragraph (a) to read as follows:

§ 180.639 Flubendiamide; tolerances for residues.

(a) * * *
(1) * * *

* * * * *	
Tea [1]	50
* * * * *	

[1] There are no U.S. registrations as of July 5, 2017, for use of flubendiamide on tea.

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[FR Doc. 2017–14108 Filed 7–3–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0166; FRL–9962–61]

Indaziflam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective July 5, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0166, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0166 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0166, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 19, 2016 (81 FR 31581) (FRL–9946–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8452) by IR–4, Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.653 be amended by establishing tolerances for residues of the herbicide indaziflam (*N*-[(1*R,2S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine) in or on bushberry, subgroup 13–07B at 0.01 parts per million (ppm); caneberry, subgroup 13–07A at 0.01 ppm; coffee, green bean at 0.01 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm; hop, dried cones at 0.03 ppm; fruit, stone, group 12–12 at 0.01 ppm; and nut, tree, group 14–12 at 0.01 ppm. Additionally, the petition requested that tolerances be established for the crops in the proposed crop subgroup 23A (small fruit, edible peel subgroup) at 0.01 ppm, including acerola; African plum; agritos, almondette; appleberry; arbutus berry; bayberry, red; bignay; breadnut; cabeluda; carandas-plum; Ceylon iron wood; Ceylon olive; cherry-of-the-Rio-Grande; Chinese olive, black; Chinese olive, white; chirauli-nut; cocoplum; desert-date; false sandalwood; fragrant manjack; gooseberry, Abyssinian; gooseberry, Ceylon; gooseberry,

otaheite; governor's plum; grumichama; guabiroba; guava berry; guava, Brazilian; guava, Costa Rican; guayabillo; illawarra plum; Indian-plum; Jamaica-cherry; jambolan; kaffir-plum; kakadu plum; kapundung; karnada; lemon aspen; mombin, yellow; monos plum; mountain cherry; olive; persimmon, black; pitomba; plum-of-Martinique; rukam; rumberry; sea grape; sete-capotes; silver aspen; water apple; water pear; water berry; and wax jambu.

Upon establishment of the tolerances referenced above, IR–4 requested to remove existing tolerances in 40 CFR 180.653 for residues of the herbicide indaziflam (*N*-[(1*R,*2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine) in or on fruit, stone, group 12 at 0.01 ppm; nut, tree, group 14 at 0.01 ppm; grape at 0.01 ppm; and pistachio at 0.01 ppm. That May 19, 2016 document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the level at which the tolerance is being established for hops. Other tolerances being established vary from the petition requests in minor ways. These differences and the reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The nervous system is the major target for toxicity in rats and dogs. Evidence of neurotoxicity (*e.g.,* decreased motor activity, clinical signs, and/or neuropathology) was observed in both species throughout the database, which included the dog subchronic and chronic toxicity studies; the rat acute, subchronic, and developmental neurotoxicity studies; the rat two-generation reproduction study; the rat chronic toxicity study; and the rat combined carcinogenicity/chronic toxicity study. In repeated-dose studies, the dog was the more sensitive species, showing the lowest no-observed-adverse-effect-levels (NOAELs) and lowest-observed-adverse-effect-levels (LOAELs) among all available studies, based on neuropathology (degenerative nerve fibers in the brain, spinal cord, and sciatic nerve). At higher doses, three dogs in the subchronic study were prematurely terminated due to excessive clinical signs including ataxia, tremors, decreased pupil response, seizures, and other findings.

In the rat, a marginal decrease in motor/locomotor activity was observed in females in the acute neurotoxicity study. Decreases in motor/locomotor activity were also seen in the subchronic neurotoxicity study in females and in the developmental neurotoxicity study in male offspring at post-natal day (PND) 21. Clinical signs of neurotoxicity were observed in the acute, subchronic, and developmental neurotoxicity studies and consisted primarily of tremors, changes in activity and reactivity, repetitive chewing, dilated pupils, and oral, perianal, and nasal staining. Similar clinical signs of neurotoxicity were observed in the 2-generation reproduction study, the rat chronic toxicity study, and the combined rat carcinogenicity/chronic toxicity study. Neuropathology findings were also observed in the rat manifested as focal/multifocal vacuolation of the median eminence of the brain and the pituitary *pars nervosa* and degenerative nerve fibers in the gasserian ganglion, sciatic nerve, and tibial nerve. Evidence of neurotoxicity was not seen in the mouse.

Other organs affected by indaziflam in mice and rats included the kidney, liver, thyroid, stomach, seminal vesicles, and ovaries. Effects on the kidney were observed following chronic exposure in rats and mice while effects on the liver were observed following chronic exposure in the rat. Effects on the thyroid were only observed in multiple dose rat studies and usually in the male only. Increased thyroid stimulating hormone (TSH) measured at 3 and 14 weeks in the 90-day and 1-year studies showed an increase in males at week 3. Histopathological alterations (thyroid follicular cell hypertrophy at 90 days and 1 year, as well as colloid alterations at chronic exposure times) were observed, but no increases in thyroid weight were noted. Thyroid histopathology was observed at a lower dose in the two-year study, compared to the 90-day and 1-year studies. Chronic exposures also led to atrophied or small seminal vesicles in male rats and glandular erosion/necrosis in the stomach and blood-filled ovarian cysts/follicles in female mice. However, these effects occurred at higher doses than those at which neurotoxicity was observed in the dog. In rats, effects observed on the liver, thyroid, kidney, and seminal vesicles occurred at doses that were similar to or higher than those that produced neurotoxicity. Decreased body weight gain was also observed in most studies following exposure to indaziflam. There was no evidence of immunotoxicity in the available studies, which included a guideline immunotoxicity study in the rat. No systemic effects were observed in the rat following a 28-day dermal exposure period.

No evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits, a developmental neurotoxicity study in rats, or in a reproduction study in rats. In the rat developmental toxicity study, decreased fetal weight was observed in the presence of maternal effects that included decreased body weight gain and food consumption. No developmental effects were observed in rabbits up to maternally toxic dose levels. Decreased pup weight and delays in sexual maturation (preputial

separation in males and vaginal patency in females) were observed in offspring in the rat two-generation reproductive toxicity study, along with clinical signs of toxicity, at a dose causing parental toxicity that included coarse tremors, renal toxicity and decreased weight gain. In the rat developmental neurotoxicity study, transiently decreased motor activity (PND 21 only) in male offspring was observed and was considered a potential neurotoxic effect. It was observed at a dose that also caused clinical signs of neurotoxicity along with decreased body weight in maternal animals.

Indaziflam showed no evidence of carcinogenicity in the two-year dietary rat and mouse bioassays. All genotoxicity studies that were conducted on indaziflam were negative.

Specific information on the studies received and the nature of the adverse effects caused by indaziflam as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Indaziflam—Aggregate Human Health Risk Assessment of Proposed New Uses, Crop Group Conversions, and Expansions from Representative Commodities to Crop Groups*'' on page 28 in docket ID number EPA–HQ–OPP–2016–0466.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for indaziflam used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of January 29, 2014 (79 FR 4624) (FRL–9903–88).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to indaziflam, EPA considered exposure under the petitioned-for tolerances as well as all existing indaziflam tolerances in 40 CFR 180.653. EPA assessed dietary exposures from indaziflam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for indaziflam. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture's 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute dietary risk assessment was based on tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's 2003–2008 NHANES/WWEIA. As to residue levels in food, the chronic dietary risk assessment was based on tolerance-level residues and 100 PCT.

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

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

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

Based on the Pesticide in Water Calculator (PWC) and the Tier 1 Rice model, the estimated drinking water concentrations (EDWCs) of indaziflam for acute exposures are estimated to be 84 parts per billion (ppb) for surface water and 3.7 ppb for ground water, and for chronic exposures are estimated to be 26 ppb for surface water and 3.7 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 84 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 26 ppb was used to assess the contribution to drinking water.

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

Indaziflam is currently registered for the following uses that could result in residential exposures: Turf, gardens, and trees. EPA assessed residential exposure using the following assumptions: Short-term dermal and inhalation handler exposure is expected for adults as a result of applying products containing indaziflam to lawns/turf and gardens/trees using a variety of application equipment. Short-term post-application dermal exposure is expected for adults, children 11<16, and children 6<11 years old as a result of playing, mowing and/or golfing on treated turf. Short-term dermal and incidental oral exposure (hand to mouth, object to mouth, incidental soil ingestion) is expected for children 1<2 years old as a result from playing on treated turf/lawns. Lastly, short-term post-application dermal exposure is expected for adults and children 6<11 years old as result of application to gardens and trees. The Agency selected only the most conservative, or worst case, residential adult and child scenarios to be included in the aggregate estimates, based on the lowest overall MOE (*i.e.,* highest risk estimates). The worst case residential exposure scenario for both adults and children resulted from short-term dermal and incidental oral (for children only) post-application exposure to treated turf. Further information regarding EPA standard

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

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits, a developmental neurotoxicity study in rats, or in a reproduction study in rats. In the rat developmental toxicity study, decreased fetal weight was observed in the presence of maternal effects that included decreased body weight gain and food consumption. No developmental effects were observed in rabbits up to maternally toxic dose levels. Decreased pup weight and delays in sexual maturation (preputial separation in males and vaginal patency in females) were observed in offspring in the rat two-generation reproductive toxicity study, along with clinical signs of toxicity, at a dose causing parental toxicity that included coarse tremors, renal toxicity and decreased weight gain. In the developmental neurotoxicity study, transiently decreased motor activity (PND 21 only) in male offspring was observed and was considered a potential neurotoxic effect. It was observed at a dose that also caused clinical signs of neurotoxicity along with decreased body weight in maternal animals.

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

i. The toxicity database for indaziflam is complete.

ii. Evidence of neurotoxicity was observed in dogs and rats throughout the database, which included the dog subchronic toxicity study, the rat subchronic toxicity, the rat acute, subchronic, and developmental neurotoxicity screening batteries, the rat two-generation reproduction study, the rat chronic toxicity study, and the rat combined carcinogenicity/chronic toxicity study. Evidence of neurotoxicity was manifested as neuropathology in dogs and as decreased motor activity and clinical signs (*e.g.,* tremors) in rats. Evidence of neurotoxicity was the most consistent effect (seen in dogs and rats), the most sensitive toxicological finding (based on neuropathology in dogs), and the basis for the risk assessment. The endpoints selected for risk assessment are based on and protective of the neurotoxic effects seen in the guideline studies.

iii. No developmental effects were observed in rabbits up to maternally toxic dose levels. Offspring effects in the developmental neurotoxicity study in rats and multi-generation toxicity studies only occurred in the presence of maternal toxicity and were not considered more severe than the parental effects. In addition, clear NOAELs/LOAELs were identified for these studies. Therefore, EPA concluded that there is no evidence of increased quantitative or qualitative susceptibility to rat or rabbit fetuses exposed *in utero* and/or postnatally to indaziflam.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to indaziflam will occupy 19% of the aPAD for all infants <1-year-old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to indaziflam from food and water will utilize 8% of the cPAD for all infants <1-year-old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of indaziflam is not expected.

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

Indaziflam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to indaziflam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1400 for adults and 580 for children. Because EPA's level of concern for indaziflam is a MOE of 100

or below, these MOEs are not of concern.

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

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

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectrometry detection [LC/MS/MS] method (DH–003–P07–02) for fruit and nut tree matrices for indaziflam and FDAT) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established any MRLs for indaziflam.

C. Response to Comments

Two comments were received in response to the Notice of Filing. The first comment was in support of the petition. The second comment was against the petition and stated in part that ''this product should not get approval'' and that ''no residue should be permitted on any food or other plant.'' The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops; however, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. EPA has assessed the effects of this chemical on human health and determined that aggregate exposure to it will be safe. The comment provides no information to support a different conclusion.

D. Revisions to Petitioned-For Tolerances

For hops, the proposed tolerance level of 0.03 ppm was based on residues from 4 field trials at levels below the level of quantitation (LOQ) (<0.01), and a residue of 0.02 ppm from one trial (13–QC06), being entered into the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedure. However, the FDAT (metabolite) portion of the residue from Trial 13–QC06 was not converted to parent equivalents by the petitioner. When this is converted, the combined residue is 0.033 ppm, and the result of the OECD tolerance calculation procedure is 0.06 ppm. Therefore, the tolerance level being established in/on hops, dried cones is 0.06 ppm.

The petition requested that a tolerance be established for ''coffee, green bean''. Since a tolerance already exists for that commodity at the level requested but with a notation that there are no U.S. registrations for use of indaziflam on coffee, the Agency is simply removing the footnote in 40 CFR 180.653 that states there are no U.S. registrations for coffee.

Lastly, the petition sought the establishment of tolerances covering all the crops listed in the proposed crop group 23A. Since the crop group has been established for tropical and subtropical, small fruit, edible peel subgroup 23A, EPA is establishing the crop subgroup tolerance rather than individual tolerances for each of the named commodities.

Although not requested, EPA is also removing the existing tolerance for ''olive'' because it is superseded by the new crop subgroup 23A tolerance.

V. Conclusion

Therefore, tolerances are established for residues of indaziflam, *N*-[(1*R,*2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the following: Bushberry subgroup 13–07B at 0.01 ppm; caneberry subgroup 13–07A at 0.01 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.01 ppm; fruit, stone, group 12–12 at 0.01 ppm; fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm; hop, dried cones at 0.06 ppm; and nut, tree, group 14–12 at 0.01 ppm.

Additionally, the footnote is removed from the existing tolerance for ''coffee, green bean'' and the following existing tolerances are removed as unnecessary since they are superseded by the newly established tolerances: Fruit, stone, group 12; grape; nut, tree, group 14; olive; and pistachio.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 12, 2017.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In the table in paragraph (a) of § 180.653;

■ a. Add alphabetically the entries ''Bushberry subgroup 13–07B''; ''Caneberry subgroup 13–07A''; ''Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F''; ''Fruit, stone, group 12–12''; ''Fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A''; ''Hop, dried cones''; and ''Nut, tree, group 14–12'';

■ b. Remove the footnote 1 from the entry for ''Coffee, green bean''; and

■ c. Remove the entries for ''Fruit, stone, group 12''; ''Grape''; ''Nut, tree, group 14''; ''Olive''; and ''Pistachio''.

The additions read as follows:

§ 180.653 Indaziflam; tolerances for residues.

(a) * * *

* * * * * * *	
Bushberry subgroup 13–07B	0.01
Caneberry subgroup 13–07A	0.01
Coffee, green bean	0.01
* * * * * * *	
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.01
Fruit, stone, group 12–12	0.01
Fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A	0.01
Hop, dried cones	0.06
Nut, tree, group 14–12	0.01
* * * * * * *	

* * * * *

[FR Doc. 2017–14107 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0066; FRL–9962–60]

Pyroxsulam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyroxsulam in or on teff, grain; teff, forage; teff, hay; and teff, straw. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 5, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0066, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP

Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0066 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0066, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 16, 2016 (81 FR 14030) (FRL–9942–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8439) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR 180.638 be amended by establishing tolerances for residues of the herbicide pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide, in or on teff, grain at 0.01 parts per million (ppm); teff, forage 0.06 ppm; teff, hay 0.01 ppm; and teff, straw 0.03 ppm. The published notice of filing (NOF) mistakenly listed the following incorrect tolerances for residues of pyroxsulam in or on the cereal crops: teff at 0.06 parts per million (ppm); teff, forage at 0.01 ppm; teff, grain at 0.03 ppm; teff, hay at 0.01 ppm; and teff, straw at 0.01 ppm. That document referenced a summary of the petition containing the correct tolerance amounts prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of February 27, 2008 (73 FR 10402) (FRL–8349–9), EPA established tolerances for residues of pyroxsulam in or on wheat, forage; wheat, grain; wheat, hay; and wheat, straw at the same levels as those requested for residues in or on corresponding teff commodities. Since these wheat tolerances were established in 2008, the toxicological profile and the endpoints for assessment have not changed. Moreover, as explained below, EPA has concluded that the new tolerances for teff commodities does not alter the previous conclusions about the potential aggregate exposure to pyroxsulam residues.

Although teff residue data were not submitted with this petition, EPA concluded that the level of pyroxsulam residues on teff commodities would be the same or similar to the level of pyroxsulam residues on wheat commodities, based on the similarity in application rates. Furthermore, EPA concluded that because teff is a likely substitute for wheat products, there would be no additional exposure to pyroxsulam residues beyond what was

previously assessed to support the wheat tolerances. Finally, because there is no corresponding request for a U.S. registration allowing use of pyroxsulam on teff, there are no additional drinking water or residential exposures beyond previous assessments.

Based on this assessment of potential exposure from use of pyroxsulam on teff and the findings supporting the February 27, 2008 tolerances established for wheat commodities, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyroxsulam residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for the proposed tolerances, please refer to the February 27, 2008 **Federal Register** document and its supporting documents as well as Human Health Risk Assessments D431295, D. Dotson, 3/25/2016 and D439358, D. Dotson, 4/21/2017 available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2006–0785.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology, Method GRM 04.17, an Liquid chromatography with tandem mass spectrometry (LC/MS/MS) method, is available to enforce the tolerance expression.

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

B. International Residue Limits

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

The Codex has not established a MRL for pyroxsulam.

C. Response to Comments

EPA received two comments to the published Notice of Filing. Both comments stated, in part and without any supporting information, that EPA should deny this petition because it is a harmful and toxic chemical with no benefits. The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops. The existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), however, states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. EPA has assessed the effects of this chemical on human health and determined that aggregate exposure to it will be safe. These comments provide no information to support an alternative conclusion.

D. Revisions to Petitioned-For Tolerances

EPA is revising the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of pyroxsulam not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide, in or on teff, forage 0.06 ppm; teff, grain at 0.01 ppm; teff, hay 0.01 ppm; and teff, straw at 0.03 ppm.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 19, 2017.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.638:

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

■ b. Add alphabetically the commodities ''teff, forage''; ''teff, grain''; ''teff, hay''; and ''teff, straw''; and footnote 1 to the table in paragraph (a).

The revision and additoins read as follows:

§ 180.638 Pyroxsulam; tolerances for residues.

(a) *General.* Tolerances are established for residues of pyroxsulam, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only pyroxsulam, N-(5,7-dimethoxy[l, 2,4]triazolo[l, 5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide, in or on the commodity.

Commodity	Parts per million
Teff, forage [1]	0.06
Teff, grain [1]	0.01
Teff, hay [1]	0.01
Teff, straw [1]	0.03

* * * * *

[1] There are no U.S. registrations on teff as of May 8, 2017.

* * * * *

[FR Doc. 2017–14091 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0780; FRL–9962–19]

Oxirane, 2-methyl, Polymer With Oxirane, Hydrogen Sulfate, Ammonium Salt and Potassium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, potassium salt; when used as an inert ingredient in a pesticide chemical formulation. Clariant Corporation, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, potassium salt on food or feed commodities.

DATES: This regulation is effective July 5, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0780, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0780 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0780, by one of the following methods.

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

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

II. Background and Statutory Findings

In the **Federal Register** of April 10, 2017 (82 FR 17175) (FRL–9959–61), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11004) filed by Clariant Corporation, 4000 Monroe Road, Charlotte NC 28205. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, potassium salt; CAS Nos. 57608–14–7 and 1838191–48–2, respectively. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

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

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

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

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

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

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

7. The polymers do not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

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

8. The polymers', oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt, number average MW of 1800 and 2100, respectively, are greater than 1,000 and less than 10,000 daltons. The polymers contain less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymers do not contain any reactive functional groups.

Thus, oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt meet the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt are 1800 and 2100 daltons, respectively. Generally, a polymer of this size would

be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that tolerances are not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt to share a common mechanism of toxicity with any other substances, and oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

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

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt.

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

There are no existing tolerances for oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt.

B. Analytical Enforcement Methodology

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

C. International Residue Limits

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

The Codex has not established a MRL for oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt.

IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt and potassium salt from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary

consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 18, 2017.

Donna Davis,

Acting Associate Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960, add alphabetically the polymers ''Oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt; average molecular weight (in amu), 1800'' and ''Oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, potassium salt; average molecular weight (in amu), 2100'' to the table to read as follows:

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

* * * * *

Polymer	CAS No.
* * * * * * *	
Oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, ammonium salt; average molecular weight (in amu), 1800	57608–14–7
Oxirane, 2-methyl, polymer with oxirane, hydrogen sulfate, potassium salt; average molecular weight (in amu), 2100	1838191–48–2
* * * * * * *	

[FR Doc. 2017–14111 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0252; FRL–9961–82]

Titanium Dioxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463–67–7) in honey when used as an inert ingredient (colorant) at a concentration of not more than 0.1% by weight in pesticide formulations intended for varroa mite control around bee hives. Bayer Healthcare, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of titanium dioxide resulting from this use.

DATES: This regulation is effective July 5, 2017. Objections and requests for hearings must be received on or before September 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0252, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0252 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or

before September 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0252, by one of the following methods:

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

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

II. Petition for Exemption

In the **Federal Register** of July 20, 2016 (81 FR 47150) (FRL–9948–45), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10888) by Technology Sciences Group Inc., on behalf of Bayer HealthCare, LLC, P.O. Box 390, Shawnee Mission, KS 66201. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463–67–7) in honey when used as an inert ingredient (colorant) at a concentration not more than 0.1% by weight in pesticide formulations intended for varroa mite control around bee hives. That document referenced a summary of the petition prepared by Technology Sciences Group Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing an exemption from the requirement of a tolerance in 40 CFR 180.1195, instead of 40 CFR 180.910 as requested. Exemptions under section 180.910 cover residues applied to growing crops and raw agricultural crops after harvest. Because the petitioner requested an exemption to cover residues only in honey resulting specifically from the use in hives, the Agency has determined that the broader exemption in section 180.910 is not appropriate. For ease of reference, the Agency is establishing this exemption in section 180.1195, which contains other limited exemptions for residues of titanium dioxide.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

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

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

A. Toxicological Profile

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

The available toxicity studies on titanium dioxide via the oral route of exposure clearly demonstrate a lack of toxicity. The several studies in mice, rats, dogs, cats, rabbits and other species of varying durations do not indicate toxicity, even at very high doses (*e.g.* 50,000 ppm or 2,500 mg/kg/day dietary exposure for two years in rats). There are no studies on the dermal toxicity of titanium dioxide and there is no expected toxicity via the dermal route of exposure because as an insoluble solid material, titanium dioxide is not absorbed via the skin.

The available inhalation studies indicate that the primary toxicity of

titanium dioxide is due to deposition of the inhaled particles. Although these studies suggest equivocal evidence of carcinogenicity due to prolonged exposure to titanium dioxide particles, EPA has determined that carcinogenicity is not a concern from exposure to titanium dioxide when used as an inert ingredient in pesticide formulations based on the following: First, tumors were only observed in two of the available studies and only in one species. In one study, those tumors were only observed in rats continually exposed to ultrafine particles of titanium dioxide. In the second study, tumors were only observed from exposure to fine particles of titanium dioxide at extremely high concentrations (250 mg/m^3), in which the animals experienced overloading of lung clearance, with chronic inflammation resulting in lung tumors. All but one of the tumors in the second study were subsequently reclassified as non-neoplastic or non-cancerous in nature. No tumors were observed in studies involving mice.

The titanium dioxide used in pesticide formulations is considered pigmentary grade, not ultrafine or nanoscale. Consequently, the tumors observed from exposure to ultrafine particles of titanium dioxide are not relevant for assessing exposure to the type of titanium dioxide used in pesticide formulations. Following the reclassification of the tumors observed in the second inhalation study, EPA does not consider these effects to be strong evidence of carcinogenicity from exposure to fine-particle-size titanium dioxide. Even assuming the study indicates the potential for carcinogenicity, EPA does not expect any reasonably foreseeable uses of titanium dioxide in pesticide formulations that might result in residential exposures to approach the levels of exposure necessary to elicit the effects seen in the available inhalation study. The levels at which effects were observed in that study greatly exceed any reasonable dose for toxicity testing and any likely residential exposure levels. Moreover, when used as an inert in pesticide formulations, titanium dioxide will be bound to other materials, which means there will not be significant inhalation exposure to titanium dioxide particles themselves.

This position is consistent with the National Institute of Occupational Health and Safety's (NIOSH) recent assessment that ultrafine but not fine titanium dioxide would be considered a ''potential occupational carcinogen''. The NIOSH Current Intelligence Bulletin ''Occupational Exposure to Titanium Dioxide'' concludes that ''*[t]he lung tumors observed in rats after exposure to 250 mg/m³ of fine TiO_2 [titanium dioxide] were the basis for the original NIOSH designation of TiO_2 [titanium dioxide] as a ''potential occupational carcinogen.'' However, because this dose is considered to be significantly higher than currently accepted inhalation toxicology practice, NIOSH concluded that the response at such a high dose should not be used in making its hazard identification.*'' NIOSH concluded that the data is insufficient to classify fine titanium dioxide as a potential occupational carcinogen.

Because the predominant form of titanium dioxide used commercially, and the form used as an inert ingredient in pesticide formulations is pigment grade, which is not in the ultrafine or nanoscale particle size range but rather in the fine particle size range, EPA concludes that carcinogenicity is not a concern from exposure to titanium dioxide resulting from its use as an inert ingredient in pesticides.

Specific information on the studies received and the nature of the adverse effects caused by titanium dioxide as well as the no-observed-adverse-effect level (NOAEL) and the lowest-observed-adverse-effect level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of July 27, 2012 (77 FR 44151) (FRL–9354–6) and in the Agency's risk assessment which can be found at *http://www.regulations.gov* in document Titanium Dioxide; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When used as an Inert Ingredient in Pesticide Formulations in docket ID number EPA–HQ–OPP–2016–0252.

B. Toxicological Points of Departure/ Levels of Concern

Because the available data indicate no toxicity via the oral route of exposure, no endpoint of concern for that route of exposure has been identified in the available database. This conclusion is in agreement with the conclusion of the World Health Organization (WHO) Committee on Food Coloring Materials that no Acceptable Daily Intake (ADI) need be set for the use of titanium dioxide based on the range of acute, sub-acute, and chronic toxicity assays, all showing low mammalian toxicity. Similarly, no significant toxicity of titanium dioxide is expected via the dermal route of exposure, so no endpoint was identified.

Because the effects seen in inhalation studies occurred at doses above the levels at which pesticide exposure is expected and for particle sizes that are different from the size of titanium dioxide used in pesticide formulations, the Agency has concluded that those risks are not relevant for assessing risk from pesticide exposure and therefore, did not identify an endpoint for assessing inhalation exposure risk.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to titanium dioxide, EPA considered exposure under the proposed exemption from the requirement of a tolerance and all other existing exemptions from the requirement of a tolerance for residues of titanium dioxide. EPA assessed dietary exposures from titanium dioxide in food as follows:

Residues of titanium dioxide are exempt from the requirement of a tolerance when used as an inert ingredient in many different circumstances: When used in pesticide formulations applied to growing crops (40 CFR 180.920); when used in pesticide formulations applied to animals (40 CFR 180.930); when used as a ultraviolet (UV) protectant in microencapsulated formulations of the insecticide lambda-cyhalothrin at no more than 3.0% by weight (40 CFR 180.1195); and when used as a UV stabilizer in pesticide formulations of napropamide at no more than 5% of the product formulation (40 CFR 180.1195). Titanium dioxide is also approved for use as a colorant in food (21 CFR 73.575); in drugs (21 CFR 73.1575); and in cosmetics (21 CFR 73.2575 and 73.3126).

Although dietary exposure may be expected from use of titanium dioxide in pesticide formulations applied to bee hives and on other crops (as well as from other non-pesticidal sources), a quantitative exposure assessment for titanium dioxide was not conducted because no endpoint of concern was identified in the database.

2. *Dietary exposure from drinking water.* Since a hazard endpoint of concern was not identified for the acute and chronic dietary assessment, a quantitative dietary exposure risk assessment for drinking water was not conducted, although exposures from drinking water may be expected from use on food crops.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers),

carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Titanium dioxide may be used in non-pesticide products such as paints, printing inks, paper and plastic products around the home. Additionally titanium dioxide may be used as an inert ingredient in pesticides that include residential uses, however based on the discussion in Unit IV.B., a quantitative residential exposure assessment for titanium dioxide was not conducted.

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

Because titanium dioxide does not have a toxic mode of action or a mechanism of toxicity, this provision does not apply.

D. Safety Factor for Infants and Children

Due to titanium dioxide's low potential hazard and the lack of a hazard endpoint, it was determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for titanium dioxide. For the same reasons that a quantitative risk assessment based on a safety factor approach is not appropriate for titanium dioxide, an FQPA SF is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on titanium dioxide, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to titanium dioxide under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.1195 for residues in honey of titanium dioxide, when used as an inert ingredient (colorant) in pesticide formulations intended for varroa mite control around bee hives at a maximum concentration of 0.1% by weight, is safe under FFDCA section 408.

V. Analytical Enforcement Methodology

Although EPA is establishing a limitation on the amount of titanium dioxide that may be used in pesticide formulations, an analytical enforcement methodology is not necessary for this exemption from the requirement of tolerance. The limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution for use in beehives with concentrations of titanium dioxide exceeding 0.1% by weight of the formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.1195 for titanium dioxide (CAS Reg. No. 13463–67–7) when used as an inert ingredient (colorant) in pesticide formulations intended for varroa mite control around bee hives at a maximum concentration of 0.1% by weight in the pesticide formulation.

VII. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 8, 2017.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.1195 is revised to read as follows:

§ 180.1195 Titanium dioxide.

(a) Titanium dioxide (CAS Reg. No. 13463–67–7) is exempted from the requirement of a tolerance for residues in or on growing crops, when used as an inert ingredient (UV protectant) in microencapsulated formulations of the insecticide lambda cyhalothrin at no more than 3.0% by weight of the formulation and as an inert ingredient (UV stabilizer) at no more than 5% in pesticide formulations containing the active ingredient napropamide.

(b) Residues of titanium dioxide (CAS Reg. No. 13463–67–7) in honey are exempted from the requirement of a tolerance, when used as an inert ingredient (colorant) in pesticide formulations intended for varroa mite control around bee hives at no more than 0.1% by weight in the pesticide formulation.

[FR Doc. 2017–14099 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[EPA–HQ–OW–2014–0693; FRL–9957–10–OW]

RIN 2040–AF26

Effluent Limitations Guidelines and Standards for the Dental Category

Correction

In rule document C1–2017–12338, beginning on page 28777, in the issue of Monday, June 26, 2017 make the following corrections:

§ 441.30 Pretreatment standards for existing sources (PSES) [Corrected]

1. On page 28777, in the second column, ''§ 441.20 General definitions [Corrected]'' should read ''§ 441.30 Pretreatment standards for existing sources (PSES) [Corrected]''.

2. On page 28777, in the second column, ''the 18th line of paragraph (iii)'' should read ''in the 9th line of paragraph (iii)''.

[FR Doc. C2–2017–12338 Filed 7–3–17; 8:45 am]

BILLING CODE 1301–00–D

SURFACE TRANSPORTATION BOARD

49 CFR Part 1152

[Docket No. EP 729]

Offers of Financial Assistance

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) adopts changes to its rules pertaining to Offers of Financial Assistance to improve the process and protect it against abuse.

DATES: This rule is effective on July 29, 2017.

ADDRESSES: Information or questions regarding this final rule should reference Docket No. EP 729 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995) (ICCTA), Congress revised the process for filing Offers of Financial Assistance (OFAs) for continued rail service, codified at 49 U.S.C. 10904. Under the OFA process, as implemented in the Board's regulations at 49 CFR 1152.27, financially responsible parties may offer to temporarily subsidize continued rail service over a line on which a carrier seeks to abandon or discontinue service, or offer to purchase a line and provide continued rail service on a line that a carrier seeks to abandon.

Upon request, the abandoning or discontinuing carrier must provide certain information required under 49 U.S.C. 10904(b) and 49 CFR 1152.27(a) to a party that is considering making an OFA. A party that decides to make an OFA (the offeror) must submit the OFA to the Board, including the information specified in 49 CFR 1152.27(c)(1)(ii). If the Board determines that the OFA is made by a ''financially responsible'' person, the abandonment or discontinuance authority is postponed to allow the parties to negotiate a sale or subsidy arrangement. 49 U.S.C. 10904(d)(2); 49 CFR 1152.27(e). If the parties cannot agree to the terms of a sale or subsidy, they may request that the Board set binding terms under 49 U.S.C. 10904(f)(1). After the Board has set the terms, the offeror can accept the terms or withdraw the OFA. When the operation of a line is subsidized to prevent abandonment or discontinuance of service, it may only be subsidized for up to one year, unless the parties mutually agree otherwise. 49 U.S.C. 10904(f)(4)(b). When a line is purchased pursuant to an OFA, the buyer must provide common carrier service over the line for a minimum of two years and may not resell the line (except to the carrier from which the line was purchased) for five years after the purchase. 49 U.S.C. 10904(f)(4)(A); 49 CFR 1152.27(i)(2).

On May 26, 2015, Norfolk Southern Railway Company (NSR) filed a petition to institute a rulemaking proceeding to address abuses of Board processes. In particular, NSR sought to have the Board establish new rules regarding the OFA process. NSR proposed that the Board establish new rules creating: A pre-approval process for filings submitted by parties deemed abusive filers; financial responsibility presumptions; and additional financial responsibility certifications. In a decision served on September 23, 2015, the Board denied NSR's petition, stating that the Board would instead seek to address the concerns raised in the petition through increased enforcement of existing rules and by instituting an Advance Notice of Proposed Rulemaking (ANPRM) to consider possible changes to the OFA process. *Pet. of Norfolk S. Ry. to Institute a Rulemaking Proceeding to Address Abuses of Board Processes* (*NSR Petition*), EP 727, slip op. at 4 (STB served Sept. 23, 2015).

The Board issued an ANPRM on December 14, 2015. In that ANPRM, the Board explained that its experiences have shown that there are areas where clarifications and revisions could enhance the OFA process and protect it against abuse. Accordingly, the Board requested public comments on whether and how to improve any aspect of the OFA process, including enhancing its transparency and ensuring that it is invoked only to further its statutory purpose of preserving lines for continued rail service. The Board also specifically requested comments on: Ensuring offerors are financially responsible; addressing issues related to the continuation of rail service; and clarifying the identities of potential offerors.

On September 30, 2016, the Board issued a Notice of Proposed Rulemaking (NPRM), addressing the comments on the ANPRM and proposing specific amendments to its regulations at 49 CFR 1152.27 based on those comments. The Board proposed four amendments intended to clarify the requirement that OFA offerors be financially responsible and to require offerors to provide additional evidence of financial responsibility to the Board; one amendment intended to require that potential offerors demonstrate the continued need for rail service over the

line sought to be acquired; and three amendments intended to clarify the identity of offerors in OFAs.

The Board sought comments on the proposed regulations by December 5, 2016, and replies by January 3, 2017. The Board received comments from six parties: The Association of American Railroads (AAR); the Army's Military Surface Deployment and Distribution Command (Army); the City of Jersey City, New Jersey (Jersey City); 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC (filing collectively as the LLCs); NSR; and Mr. James Riffin (Riffin). AAR, the LLCs, and Jersey City also filed reply comments.

Below the Board addresses the comments and suggestions submitted by parties in response to the NPRM, including discussion of clarifications and modifications being adopted in the final rule based on the comments. Even if not specifically discussed here, the Board has carefully reviewed all comments on the NPRM and has taken each comment into account in developing the final rule. The text of the final rule is below.

Most parties commenting on the NPRM were supportive of the Board's proposals, suggesting certain modifications to and clarifications of the Board's proposals. (*See* Army NPRM Comments 1; Riffin NPRM Comments 1; NSR NPRM Comments 9; AAR NPRM Comments 12; LLCs NPRM Comments 2.) One commenter suggested the changes proposed in the NPRM were insufficient to deter abuse of the OFA process and were ''misfocused.'' (*See* Jersey City NPRM Comments 2, 7–9.)

Financial Responsibility. As noted, the Board made four proposals in the NPRM intended to clarify the requirement that OFA offerors be financially responsible and to require offerors to provide additional evidence of financial responsibility to the Board. First, the Board proposed to further define financial responsibility in its regulations by including examples of the kinds of evidence the Board would and would not accept to demonstrate financial responsibility. Second, the Board proposed to require notices of intent to file an OFA (NOIs) in all abandonment or discontinuance proceedings. Third, the Board proposed to require a showing of preliminary financial responsibility with the filing of an NOI, based on a calculation using the information contained in the carrier's filing and other publicly-available information. And fourth, the Board proposed to require an offeror to demonstrate in its OFA that the offeror has placed in escrow 10% of the preliminary financial responsibility amount calculated at the NOI stage.

Examples of evidence of financial responsibility. In the NPRM, the Board proposed as examples of documentation that it would accept as evidence of financial responsibility at 49 CFR 1152.27(c)(1)(iv)(B) to include income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain adequate insurance. *Offers of Financial Assistance* (*NPRM*), EP 729, slip op. at 14 (STB served Sept. 30, 2016). In response, Riffin commented that the Board should clarify that ''account statements'' means ''financial institution account statements,'' and that the Board should revise the proposed regulations to allow as evidence of financial responsibility lines of credit that provide ''access to cash upon demand,'' verified statements of the dollar value of cash, stocks and bonds, and ''substantial quantities of precious metals.'' (Riffin NPRM Comments 1–2.)

The Board finds Riffin's suggested clarification of ''financial institution account statements'' is overly restrictive, as it is possible that potential offerors, particularly governmental offerors, may have funds in accounts other than financial institution accounts. Additionally, as stated in response to Riffin's comments on the ANPRM, the Board does not believe that some of the examples of the types of assets Riffin proposes to include in the regulations would sufficiently show an offeror's financial ability to purchase and operate, or subsidize, a railroad, which is the purpose of an OFA. *See NPRM,* EP 729, slip op. at 3. Specifically, non-liquid assets (such as precious metals) and lines of credit that provide ''access to cash upon demand'' like credit cards are problematic as evidence of an offeror's continuing financial ability to actually operate or subsidize a rail line as the OFA process requires. Credit card lines of credit tend to be temporary and are for relatively limited amounts, while non-liquid assets are not easily accessible by an offeror and may fluctuate in value. By contrast, the examples of assets the Board is including in the regulations, such as income statements and letters of credit,[1] do not suffer from these problems and provide evidence of an offeror's long-term and ongoing ability to finance the actual operation or subsidy of a rail line. The Board therefore declines to adopt Riffin's proposed changes.

As for stocks and bonds, which are relatively liquid assets, we find that these may be presented by an offeror in conjunction with other evidence of financial responsibility, and will be considered by the Board on a case-by-case basis, as will evidence of cash on hand. Because these will be considered on a case-by-case basis the Board does not find it necessary to include these examples in the regulations.

Notice of Intent filing. The Board proposed to require NOIs as a preliminary step in all OFA cases, with potential offerors being presumed preliminarily financially responsible if the Board does not issue a decision within 10 days of receiving an NOI. In response, AAR commented that the Board should require that a decision be issued on all NOIs, not just when the Board is rejecting an NOI or seeking more information. (AAR NPRM Comments 5.) AAR proposes that the Board could delegate the authority for issuing this decision to the Director of the Office of Proceedings and argues that a decision should be issued in all cases because ''the proposed rule would inappropriately create legal obligations on railroads [to provide valuation information] as a result of government inaction.'' (AAR NPRM Comments 5.) The LLCs commented in support of AAR's proposal. (LLCs NPRM Reply Comments 2.)

The Board disagrees with AAR's characterization of this proposal as creating legal obligations on railroads because of government inaction. In fact, no additional obligation is created for carriers by this proposed change. Under 49 CFR 1152.27(a), carriers are currently required to provide certain valuation information ''promptly upon request'' to any party considering filing an OFA. The only requirement potential offerors must currently meet to obtain this information is to request it. The changes proposed in the NPRM that would apply to potential offerors would give the Board a basis on which to relieve railroads of their legal obligations to provide valuation information to potential offerors in certain cases. But the failure of the Board to issue a decision on the filing of an NOI would not impose on a railroad any burden it would not already have under the rules as they currently exist.

The Board proposed those changes, which would require a potential offeror to make an initial showing of

[1] A letter of credit from a bank functions more like a guarantee of payment for a specific purchasing transaction, while a line of credit (such as a credit card or home equity line) is a borrowing limit from a financial institution.

preliminary financial responsibility before the carrier's obligation to turn over the valuation information outlined in section 1152.27(a) upon request is triggered, because the current approach requiring carriers to provide this information to any interested party upon request, is vulnerable to abuse and has led to significant delay in the past. Carriers receiving requests they do not believe to be legitimate have refused to respond, or only belatedly responded, to interested parties with the required information, delaying the OFA process. Those interested parties have then at times had to ask the Board to issue a decision requiring the carrier to provide the information, which requires the Board to adjudicate disputes about the legitimacy of a party's interest in an OFA at an early stage of the process. The new proposal should make this process more efficient and effective by requiring some initial information from potential offerors before carriers must provide them with valuation information, which in turn will encourage carriers to respond more promptly to requests for that information. Setting a defined time period after the filing of an NOI when the potential offeror is considered preliminarily financially responsible, rather than requiring the Board to issue a decision to that effect, is part of that efficiency. The Board does not agree that it is necessary for a decision to be issued in these instances, even if that authority were delegated, and therefore declines to impose such a requirement.

Regarding the Board's proposed changes to the NOI process, Riffin suggested that the failure to file an NOI should not bar a timely OFA, arguing that restricting OFAs to entities that have filed timely NOIs would contravene the language of 49 U.S.C. 10904. Instead, Riffin suggested that NOIs should be optional in all cases, though he suggests that if a NOI is late-filed, the OFA filing deadline not be tolled. (Riffin NPRM Comments 2–3.) In response to this suggestion, AAR commented that Riffin's proposal would ignore the stated intent of the rulemaking and that the Board has authority to issue regulations consistent with the rail transportation policy (RTP) at 49 U.S.C. 10101. (AAR NPRM Reply Comments 2–3.) Similarly, the LLCs commented that Riffin's approach would ''run directly counter to the purpose of avoiding abuse.'' (LLCs NPRM Reply Comments 7.)

The Board does not believe Riffin's proposed changes to the NOI process are necessary, but instead agrees with AAR and the LLCs that adopting Riffin's proposed changes would be contrary to the purpose of this rulemaking. As discussed in the NPRM, the purpose of requiring NOIs in all cases is to make the OFA process more efficient by providing carriers with earlier notice that parties may be interested in purchasing or subsidizing service over rail lines that may otherwise be abandoned or discontinued and providing identifying information about those parties. *See NPRM,* EP 729, slip op at 15. Additionally, as AAR states, these new requirements would not contravene the language of 49 U.S.C. 10904—nothing in that provision *bars* NOIs. In fact, the new requirements are consistent with the RTP. *See, e.g.,* 49 U.S.C. 10101(2) (minimizing the need for federal regulatory control over the rail transportation system); 10101(3) (promoting a safe and efficient rail transportation system); 10101(4) (ensuring the development and continuation of a sound rail transportation system); 10101(9) (encouraging honest and efficient management of railroads).

Preliminary showing of financial responsibility. In the NPRM, the Board proposed that a potential offeror be required to make a preliminary financial responsibility showing as part of the NOI, based on a calculation using information contained in the carrier's filing and publicly-available information. For a potential OFA to subsidize service, the Board proposed this calculation be a standard per-mile per-year maintenance cost, set by the Board at $4,000, multiplied by the length of the rail line in miles. For a potential OFA to purchase a line, the Board proposed this calculation be the sum of (a) the current rail steel scrap price per ton, multiplied by an assumed track weight of 132 tons-per-track-mile, multiplied by the total track length in miles, plus (b) the $4,000 minimum maintenance cost per mile described above, multiplied by the total track length in miles, multiplied by two, because an OFA purchaser is responsible for operating the acquired line for at least two years. Commenters generally supported the proposal to require this preliminary showing, while also suggesting some changes to the proposed calculations.

Criticisms of, and suggested changes to, the formula. Riffin suggested several minor clarifications to the calculations. He suggested that the Board specify whether the Board intended long tons, short tons, or metric tons be used in the regulations. (Riffin NPRM Comments 3.) The calculation in the NPRM used a 2,000 pound per ton weight to convert 264,000 pounds to 132 tons, and thus the Board intended short tons to be used in the calculation. *NPRM,* EP 729, slip op at 17 n.8. However, the Board will clarify the regulations by modifying the language in 49 CFR 1152.27(c)(1)(ii), as shown below, to include a weight of rail in both short tons and long tons. This will allow a potential offeror to use either measurement in its calculation, depending on whether the scrap rail cost it uses, discussed further below, is in short tons or long tons.

Riffin also commented that the final rule should address situations where there is no track left on a line subject to an OFA, suggesting that in such cases potential offerors should either calculate the track value at zero or show themselves financially responsible for 132 tons of track (*i.e.,* that offerors show themselves financially responsible to acquire one mile of track). (Riffin NPRM Comments 3–4.) Riffin suggested the Board adopt the latter option, as he argues this would at least show that a potential offeror has sufficient funds to re-install some of the track infrastructure. (Riffin NPRM Comments 4.) Jersey City commented that, because the Board's formula assumes track exists, it is ''wholly arbitrary'' in cases where railroads ''have engaged in illegal de facto abandonments.'' (Jersey City NPRM Comments 12.)

The Board will clarify 49 CFR 1152.27(c)(1)(ii) to provide that the length of the line listed in the carrier's abandonment or discontinuance filing (or the length the potential offeror seeks to purchase, as discussed further below) should be used in the calculation in place of the actual length of track. This language is reflected in below. Because this preliminary calculation is intended to identify an estimated theoretical base cost to the potential offeror to subsidize or purchase and operate a rail line, using the length of the line is an appropriate and non-arbitrary way to address situations even where there is no track left on the line, because the purpose of an OFA is to enable the provision of rail service. A party that cannot make the preliminary financial responsibility showing discussed here would not be able to replace the missing track needed to provide rail service, thus defeating the purpose of an OFA. Moreover, the preliminary financial responsibility calculation is intended to be a conservative estimate of what financial resources may be necessary for an OFA, not a valuation of the line.

Riffin further commented that the rule should address when a potential offeror does not want to subsidize or acquire the entire line. He suggests that, in such cases, offerors should calculate the track length that they wish to subsidize or acquire. (Riffin NPRM Comments 4.)

This is already allowed under the Board's regulations, and the changes to 49 CFR 1152.27(c)(1)(ii) proposed in the NPRM included a requirement that potential offerors demonstrate that they are financially responsible ''for the calculated preliminary financial responsibility amount of the rail line they seek to subsidize or purchase.'' However, as noted, the Board will further clarify here that when a potential offeror seeks to subsidize or acquire only a portion of the line (which the Board's regulations already permit), the offeror should use the length of line it seeks to acquire or subsidize in its preliminary financial responsibility calculation, rather than the length of the entire line subject to the proceeding. To further clarify this in the regulations, the Board will remove the word ''total'' from the description of the calculation contained in 49 CFR 1152.27(c)(1)(ii).

Riffin also suggested that more clarity is needed regarding the steel prices to be used in the preliminary financial responsibility calculation, suggesting that the Board identify the specific Web sites the Board has in mind as sources of scrap steel prices, and that the Board indicate specifically the type of steel being priced, as there are multiple categories of scrap steel. (Riffin NPRM Comments 4.) Jersey City commented that its counsel is ''unaware of any reliable generally available sites on the web to price rail steel,'' and that, if the Board is going to adopt a requirement related to rail steel prices, it should publish its own steel price for purposes of this calculation, or identify acceptable Web sites and receive public comment on those Web sites. (Jersey City NPRM Comments 11.)

The Board declines to publish its own steel price for purposes of this calculation, as this step is not necessary. A quote from a scrap dealer or a verified statement of a quote received telephonically, dated within 30 days of the submission of the notice of intent as required by this rule, would be acceptable sources for a scrap steel price for purposes of the preliminary calculation. If submitted as a verified statement, the potential offeror should describe the source of the quote, the price quoted, and the date of the conversation. In addition, though the Board does not endorse any specific Web site or source for scrap prices, there are both paid subscription services and free internet services that may also provide such prices.

Regarding the type of steel being priced, the Board declines to more specifically identify the category of scrap steel that a potential offeror should use in its calculation beyond what is already in the regulations: Rail steel scrap. While there are multiple categories of scrap steel, different scrap dealers may use different classifications of the sub-categories of rail scrap steel. The Board declines to be more specific in order to allow a potential offeror to use the available sub-category of rail scrap steel it finds most appropriate. As noted, the Board has not devised the formula to be a precise calculation of the value of the track assets. Accordingly, it is not essential that the category of steel that is used in the calculation be any one specific sub-category.

NSR and AAR both commented suggesting that the Board revise its proposed maintenance cost per mile and weight of rail in the preliminary calculation, respectively. NSR suggested that the Board should either evaluate current maintenance costs across the national rail system to determine a system-wide average, or use at least $5,000 per mile, rather than the $4,000 proposed in the NPRM. (NSR NPRM Comments 3–4. *See also* AAR NPRM Comments 8 n.4 (suggesting that the Board's $4,000 proposed maintenance cost is below averages the Board has relied on in past proceedings).) NSR argues this is necessary ''so as not to unintentionally encourage parties that clearly lack the financial capabilities to consummate an OFA.'' NSR also commented that the Board should update the maintenance cost number annually for inflation. (NSR NPRM Comments 3–4.) AAR similarly suggested that the Board should modify the weight of the rail used in the calculation to 115 pounds per yard (or 202.4 tons), which ''reflect[s] the predominant weight of rail currently in the national rail network and likely to be subject to the OFA process in the future.'' (AAR NPRM Comments 8–9.)

The Board declines to adopt these suggestions. Using a system-wide average for either or both of the per-mile per-year maintenance cost or the weight of the rail in the preliminary calculations could result in an overstated preliminary financial responsibility amount in some cases. This is particularly likely for rail lines subject to discontinuance or abandonment, which often have not been regularly used or highly maintained due to low traffic volumes, and may be composed of older rail materials. As the Board stated in the NPRM, the purpose of this calculation is not to attempt to estimate the eventual offer price of the line, but to discourage abuse of the OFA process by requiring a reasonable initial showing of financial capacity and interest. *See NPRM,* EP 729, slip op. at 18. For similar reasons, the Board finds it unnecessary to update the maintenance cost number annually for inflation. This number is intended to be a simple number for potential offerors to input into the overall calculation to arrive at an intentionally low-end estimate of the financial resources needed to subsidize or acquire the line. Thus, indexing this number for inflation would needlessly complicate this early step of the OFA process. Rather than updating it annually for inflation, the Board will issue a decision updating this number as needed in the future to prevent abuse of this process.

Jersey City asserted that the Board's formula for the preliminary financial responsibility calculation is ''totally arbitrary,'' arguing that there are many additional factors upon which salvage value depends, like transportation costs and the costs to remove bridges, that the Board has not considered in its proposed calculation, and that these factors also vary widely across the country. (Jersey City NPRM Comments 10.) Jersey City also argues that the proposed formula will ''vastly overstate salvage value for any line that has substantial bridges,'' as bridges can be costlier to salvage than the value of the steel they contain. (Jersey City NPRM Comments 12.) The LLCs also suggested modifications to the formula, suggesting that the formula should be modified to include the estimated cost of replacing any rail or infrastructure that has been removed from the line, and that would be reasonably required to carry freight on the line. (LLCs NPRM Comments 3–4.)

The Board declines to adopt these suggestions. As stated above, this calculation is not intended to result in an approximation of what an eventual offer will be, and it is not intended to consider every factor that may affect the cost of subsidizing or purchasing a line. Nor is it intended to identify the salvage cost of the line. The purpose of this calculation is to identify a conservative, low-end base number from which to determine a potential offeror's preliminary level of financial responsibility. As such, the Board believes this calculation properly balances the need to consider multiple factors with the need for a calculation simple enough that any potential offeror can participate in this process.

Certification and retroactivity. The LLCs also suggested that the submitted cost calculation should be certified by a licensed professional engineer experienced in railroad construction and that the Board should include language in the regulations requiring the preliminary financial responsibility

showing to be made for all OFAs filed after the adoption of the rule, even if an NOI was filed prior to the adoption of the rule. (LLCs NPRM Comments 3, 5, 10–11.) The Board will not adopt either of these suggestions. The purpose of laying out a clear formula in the regulations and requiring a potential offeror to submit evidence supporting its calculation is to enable any potential offeror to use the formula to participate in the OFA process, and to allow the Board to easily assess the resulting calculation. Requiring a potential offeror to have its calculation certified by a licensed professional engineer experienced in railroad construction would unnecessarily complicate the preliminary financial responsibility process, with little benefit to the integrity of the process. Additionally, requiring the preliminary financial responsibility showing to be made for offers filed after the adoption of the rule, even where a NOI was filed before the adoption of the rule, would be inappropriate. The preliminary financial responsibility calculation is a change to the NOI stage of the OFA process, and the Board will not retroactively impose this new requirement on NOIs filed before the effective date of this rule.

Escrow requirement. As noted, the Board proposed to require an offeror to demonstrate in its OFA that the offeror has placed in escrow 10% of the preliminary financial responsibility amount calculated at the NOI stage. The Army commented that federal government entities should be exempt from this proposed requirement. (Army NPRM Comments 1.) The Army argued that this requirement would be inordinately burdensome on government entities due to the appropriations process, and therefore suggests that section 1152.27(c)(iv)(D) apply only to an offeror that is a ''non-government entity.'' (Army NPRM Comments 3.) The LLCs, in response, argue that only federal government entities and state transportation agencies, not all governmental entities, should be exempt from the escrow requirement, because they are ''clearly responsible.'' (LLCs NPRM Reply Comments 6.) Jersey City also commented that ''it is difficult to understand what purpose [the escrow requirement] serves'' because it does not apply at the NOI stage, it is unlikely to deter abuse of the OFA process, and the Board's filing fees for OFAs are a more effective deterrent. (Jersey City NPRM Comments 12–13). Jersey City also argued that state and local governments frequently have hearing and budgeting requirements that would prevent them from being able to comply with the escrow requirement within the required time frame. For these reasons, it argued that the escrow requirement should not apply to these entities. (Jersey City NPRM Comments 12–13. *See also* Jersey City NPRM Reply Comments 18.) In response, AAR argued that Jersey City's comments mischaracterize the proposed escrow requirement and that the requirement should apply to state and local government entities because many of them obtain waivers of the Board's filing fees, and thus those fees are not acting as deterrents for those entities. (AAR NPRM Reply Comments 4.)

Upon review of the comments on the NPRM, the Board will exempt all governmental entities from the proposed escrow requirement, as reflected in the changes to 49 CFR 1152.27(c)(1)(iv)(D) in below. The Board agrees with the Army that this requirement is likely to be burdensome on the federal government because of the appropriations process, and the similar argument made by Jersey City that the hearing and budgeting requirements of state and local governments may cause this requirement to be unnecessarily burdensome on those entities as well. Additionally, the Board believes there is a low likelihood that this exclusion for governmental entities will lead to abuse because, as discussed in the NPRM, the presumption that governmental entities are financially responsible remains rebuttable, acting as a check on those entities. *See NPRM,* EP 729, slip op. at 5, 18. *See also Ind. Sw. Ry.—Aban. Exemption—in Posey & Vanderburgh Ctys., Ind.* (*Ind. Sw. Ry. Apr. 2011*), AB 1065X, slip op. at 5 (STB served Apr. 8, 2011) (finding government entity was not financially responsible, dismissing its OFA, and stating that the presumption that government entities are financially responsible, ''although entitled to significant weight, is not conclusive''). Accordingly, governmental entities will be required under this final rule to submit NOIs, but will not be required to complete the preliminary financial responsibility calculation or make the preliminary financial responsibility showing with an NOI, *see NPRM,* EP 729, slip op. at 5, 18, or submit evidence with their offer that they have placed 10% of that calculated preliminary financial responsibility amount in escrow.

Additionally, the Board disagrees with Jersey City's statements that the escrow requirement is unlikely to deter abuse of the OFA process overall, and as discussed in the NPRM, the Board believes that this requirement allows an offeror to make a concrete showing that its offer and interest in a line are legitimate. *See NPRM,* EP 729, slip op. at 18.

In addition to its other comments related to the escrow requirement, Jersey City also asserted that this requirement amounts to an effort to re-impose an arbitrary version of the ''bona fide'' requirement, a showing that used to be statutorily required but was removed by the passage of ICCTA. (Jersey City NPRM Reply Comments 18.) Under the bona fide requirement, the Board was required to find that an OFA was reasonable in relation to the likely value of the line, in addition to finding the offeror financially responsible. Contrary to Jersey City's assertion, the Board's escrow account proposal is not a re-imposition of that requirement. The Board is simply requiring an offeror to make a minimal showing of financial responsibility before initiating the OFA process. The Board clearly has authority under 49 U.S.C. 1321(a) to issue regulations to administer the OFA process under 49 U.S.C. 10904, including the requirement that an offeror be a ''financially responsible person.'' As noted, the preliminary financial responsibility amount is likely to be less than the eventual offer. A party that cannot place even 10% of this already conservative amount in escrow at the OFA stage is, in the Board's view, not likely to be found a ''financially responsible person.'' Accordingly, the escrow requirement, along with the other requirements that will be implemented under this final rule, will ensure that the Board carries out the OFA process effectively and efficiently.

Other Financial Responsibility Comments. In addition to responding to the specific proposals contained in the NPRM, commenters also suggested other changes to the Board's financial responsibility requirements. NSR proposed eliminating the presumption of financial responsibility that currently exists for state and municipal government entities. Instead, NSR proposes requiring those entities to satisfy the preliminary financial responsibility showing. (NSR NPRM Comments 2.) NSR argues that this would be appropriate because many municipalities have filed for bankruptcy since 2010, and that this would be a reasonable burden given that governmental entities would already be required to file NOIs and comply with the escrow requirement under this rule. (NSR NPRM Comments 5.) The LLCs also suggested the elimination of the presumption of financial responsibility for all government entities other than the federal government, state transportation agencies, and other government agencies ''specifically

created for the purpose of conducting rail freight operations.'' (LLCs NPRM Comments 6–7.) The LLCs suggest that these entities, along with providing evidence of financial responsibility, should be required to submit evidence of ''legal authorization to acquire the line, assume common carrier obligations, and available public financing for the specific operation and maintenance of any line'' sought to be acquired to ''weed out OFA abuse motivated by local political considerations and other improper motives.'' (LLCs NPRM Comments 7, 9.)

The Board declines to eliminate the presumption of financial responsibility for governmental entities. As discussed above, carriers already have recourse in situations where governmental entities are not financially responsible in that the governmental entities' presumption is rebuttable. *See Ind. Sw. Ry. Apr. 2011,* AB 1065X, slip op. at 5 (finding government entity was not financially responsible and dismissing its OFA). Moreover, situations such as the one that NSR and the LLCs are concerned about, in which the governmental entity turns out to not be financially responsible, are rare.[2] Accordingly, it is appropriate to continue to address governmental entities that may not be financially responsible on a case-by-case basis. This final rule effectively balances the need for information about an offeror with the unique appropriations issues governmental entities may face in the OFA process.

The Board also declines to require governmental entities to provide evidence of the additional authorizations suggested by the LLCs. To the extent a governmental entity's legal authorization to submit an OFA is disputed, a party is free to raise that during the OFA process, at which point the Board would take that into consideration. However, the Board has not been presented on a regular basis with situations where governmental entities have filed OFAs yet lacked the proper authority to do so. The Board therefore does not find it necessary to have regulations specifically requiring these showings from governmental entities.

The LLCs also proposed several changes to the offer stage of the process, including requiring offerors to identify all real property and other assets to be acquired from the carrier and any additional property or assets required to reinstitute rail service on the line. (LLCs NPRM Comments 11.) They also suggested that the Board include in the regulations a statement that the Board ''will not approve an offer that is contingent, or dependent for its implementation on the acquisition of property or other assets from anyone other than the applicant for abandonment without a clear showing that all steps necessary to provide rail service as a common carrier can be accomplished within a reasonable time.'' (LLCs NPRM Comments 11.) The LLCs argue that these additions are necessary ''to address the full scope of the [offeror's] proposal to provide rail service,'' and to make clear to offerors that OFA procedures are limited to the property and assets of the applicant for discontinuance or abandonment, and cannot be used ''to give an offeror more than can be obtained from the railroad seeking abandonment.'' (LLCs NPRM Comments 12.) The LLCs also suggest requiring an offeror (or in the case of a legal entity, an officer of the offeror with authority to bind the entity) to include in its offer a certification under penalty of perjury that the offer is made in good faith for the purpose of operating rail service on the line; that it is not made for any non-rail purpose; that the person certifying the offer is authorized to do so; and that the contents of the offer are true and correct. (LLCs NPRM Comments 12–13.)

The Board does not find it necessary to adopt the LLCs' proposed changes to the offer process. With regard to requiring offerors to identify real property and other assets to be acquired from the applicant for discontinuance or abandonment, or to reinstitute rail service, any acquisition of assets other than the line itself is outside of the OFA purchase process, and thus would not properly be included in the Board's regulations. Additionally, the Board already has the authority to reject an OFA when an offeror fails to demonstrate its ability to provide rail service as part of the Board's determination of financial responsibility at the offer stage.[3] Accordingly, the Board finds it unnecessary to include a requirement in these regulations that an offeror make a clear showing of its ability to complete all steps necessary to provide service, as the LLCs have suggested. The LLCs' suggested certifications to be included with an offer are also unnecessary. The Board's existing Rules of Practice direct ''*all persons* appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States.'' 49 CFR 1103.11 (emphasis added). By presenting a pleading, written motion, or other paper to a federal court, and by extension, to the Board, ''an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,'' the document ''is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,'' and that the factual contentions contained therein ''have evidentiary support.'' *See* Fed. R. Civ. P. 11(b)(1), (3). The Board does not believe that requiring a separate certification as proposed by the LLCs would act as any more effective a deterrent for abuse of the OFA process than these existing requirements.

In reply comments to the NPRM, AAR requested that the Board clarify that the preliminary financial responsibility requirement at the NOI stage is separate and distinct from the already existing financial responsibility determination at the offer stage. (AAR NPRM Reply Comments 3.) AAR made this request in response to a statement apparently made by Riffin in a court proceeding not involving the Board that

> the STB, in its EP 729 Decision, *did not* make it more difficult to prosecute an OFA in the 1189X proceeding [*Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J.,* Docket No. AB 167 (1189X) et al.]. The STB actually *made it easier.* (By eliminating its prior precedent requiring 'operation' of a line for two years.) Now one only has to demonstrate the financial ability to *maintain* a line for two years, at the minimal cost of $4,000 a year per mile of line.[4]

(Jersey City NPRM Comments 3–4.)

Based on this alleged quote from a court filing by Riffin, he appears to be conflating the preliminary financial responsibility requirement with the existing requirement in 49 U.S.C. 10904(d) and 49 CFR 1152.27(c)(1)(ii)(B) that an offeror be financially responsible for the full amount of its offer when it files an OFA. The Board clarifies here that the addition of the *preliminary* financial responsibility requirement to the Board's regulations does not eliminate or change the existing requirement at the OFA stage that an

[2] In addition, NSR's argument that requiring governmental entities to demonstrate that they are financial responsible is not burdensome because they must also comply with the Board's escrow account requirement is moot, given that the Board is also finding that governmental entities should be exempted from the escrow account requirement.

[3] *Consol. Rail Corp.—Aban. Exemption—in Phila., Pa.,* AB 167 (Sub-No. 1191X) et al., slip op. at 8 (STB served Oct. 26, 2012) (affirming Director's decision to reject an OFA because offeror did not have funds to both acquire the line and to rehabilitate the line and install safety equipment).

[4] Jersey City provided this quotation but did not submit a copy of the court pleading it quotes from with its comments. Riffin did not respond to Jersey City's comments.

offeror show themselves to be financially responsible for the full amount of its offer, and this final rule does not alter existing Board precedent regarding what constitutes financial responsibility or how the Board will evaluate an OFA after one is submitted.

Continuation of Rail Service. In the NPRM, the Board proposed to codify prior precedent requiring all offerors to demonstrate the need for and feasibility of continued rail service on the line and proposed to list in the regulations the following four examples of how an offeror may demonstrate that need: (1) Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); (2) evidence of community support for continued rail service; (3) evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and (4) evidence that continued service is operationally feasible. These criteria were laid out by the Board in *Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, California* (*LACMTA*), AB 409 (Sub-No. 5X), slip op. at 3 (STB served June 16, 2008).

In response to the Board's proposal, commenters expressed differing opinions about whether the Board should require all four elements of the *LACMTA* criteria to be met for offerors to make the showing of a continued need for rail service, or whether offerors should only be required to meet one element of the criteria. Riffin commented that the offerors should only be required to meet one of the four criteria, suggesting that the Board add language to the regulations ''to indicate that no one criteri[on] is dominant'' and that ''the STB will 'balance' the four criteria.'' (Riffin NPRM Comments 5.) In response, the LLCs commented that ''satisfying only one criterion is a meaningless exercise.'' (LLCs NPRM Reply Comments 8.) Similarly, NSR commented that the Board should ''require offerors to satisfy the *LACMTA* criteria in full in order to demonstrate a continued need for rail service,'' arguing that the criteria ''are not meant to operate in a piecemeal fashion,'' and that ''it is only the sum of the *LACMTA* criteria that allows the STB to make a reasoned decision as to whether there is a continued need for rail service.'' (NSR NPRM Comments 6.) NSR, with the LLCs' support, also argues that ''the *LACMTA* criteria themselves are broadly worded to provide offerors with some degree of flexibility in what is required to demonstrate a continued need for rail service.'' (NSR NPRM Comments 6; LLCs NPRM Reply Comments 5.)

Consistent with prior precedent, the Board's final rule will require that all offerors will be required to show a continued need for rail service. The criteria the Board laid out in *LACMTA,* AB 409 (Sub-No. 5X), are included in the regulations as examples of the types of evidence that offerors should present to the Board to illustrate a continued need for rail service, not requirements. Offerors will not be strictly required to meet any one of (or all) the criteria to show a continued need for rail service. The *LACMTA* criteria are intended to provide guidance to offerors as to the types of evidence the Board will examine when considering this element of an OFA. Although the Board agrees with NSR and the LLCs that an OFA proponent must make a strong showing of need, in conducting this evaluation, the Board will look at the totality of the circumstances to determine whether there is a continued need for rail service on the line. Because the regulations the Board proposed in the NPRM already state that the *LACMTA* criteria are included as examples, *NPRM,* EP 729, slip op. at 26, additional changes to the regulations are not necessary.

In the NPRM's discussion of this proposed requirement, the Board stated that ''where there has been no service for at least two years, an offeror would need to present concrete evidence of a continued need for rail service.'' *NPRM,* EP 729, slip op. at 19. AAR states that it understands this language to mean that there will be ''heightened scrutiny on claims that there is continued need for rail service in out-of-service exemption proceedings, not that particular and specific evidence would not be required in other proceedings,'' and suggests that the Board clarify that all offerors are required to show specific evidence of a continued need for rail service, not only offerors in two year out-of-service notice of exemption cases. (AAR NPRM Comments 6.) NSR also argued that the Board should clarify this statement by explicitly incorporating a heightened burden in the regulations for two-year out-of-service exemption proceedings. (NSR NPRM Comments 7.) The LLCs commented in support of NSR's proposal. (LLCs NPRM Reply Comments 5.)

The Board declines to adopt NSR's suggestion of a higher standard for notice of exemption proceedings and clarifies that it will not apply a heightened scrutiny standard to the continuation of service element of OFAs in those proceedings. In making the statement that ''where there has been no service for at least two years, an offeror would need to present concrete evidence of a continued need for rail service,'' the Board did not intend to imply a higher burden for notice of exemption proceedings or a lower burden for other proceedings. *See NPRM,* EP 729, slip op. at 19 (stating that ''the burden on the offeror to show the continued need for rail service would remain the same as in other proceedings.''). Rather, the Board simply intended to point out that an offeror is likely to have a more difficult time showing a continued need for service over a line where there has not been service in at least two years. All offerors in all OFA proceedings will be required to show specific and concrete evidence of a continued need for rail service to make the showing required by this rule, and in all proceedings the Board will consider the totality of circumstances in evaluating the evidence submitted by offerors.

As with the escrow account requirement, Jersey City opposes the proposed requirement that offerors demonstrate a continued need for rail service generally, on the ground that this showing amounts to a requirement that OFAs be bona fide, which conflicts with Congress' intent in removing such a requirement in ICCTA. (Jersey City NPRM Comments 14.) AAR argues that Jersey City is confusing ''the requirement that an offer be for continued rail service'' with ''the requirement, omitted in [ICCTA] that the Board find an OFA to be bona fide before proceeding.'' (AAR NPRM Reply Comments 3.) The LLCs commented that Jersey City is incorrect in its assertion that the Board's proposal to require a showing of a continued need for rail service amounts to a bona fide requirement. (LLCs NPRM Reply Comments 12–13.) The LLCs argue that in fact this proposal is consistent with current law and Board precedent. (LLCs NPRM Reply Comments 13–15.)

As discussed above, existing Board precedent requires that an OFA be for continued rail service. *See, e.g., LACMTA,* AB 409 (Sub-No. 5X), slip op. at 3. The proposal in the NPRM did not create an additional requirement, but simply proposed to formally codify the existing continued-rail-service requirement in the Board's regulations, so that the Board can ensure that it is addressed in all OFAs. *See NPRM,* EP 729, slip op. at 19. Additionally, although the Board, when it adopted regulations implementing ICCTA, indicated the statute as revised removed the requirement that an offer be ''bona fide,'' *Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C.*

10903, EP 537, slip op. at 15 (STB served Dec. 24, 1996), the continued-rail-service requirement is consistent with the statute. Section 10904(b)(1) and (3) of title 49 require a carrier applying for abandonment or discontinuance authority to provide financial information to a potential offeror related to the continued operation of the line, and 49 U.S.C. 10904(d) requires an offeror to prove itself financially responsible for the amount of its offer, which under 49 U.S.C. 10904(c) shall be based on the financial information provided by the carrier or shall explain the basis of any disparity between the offer and the information provided by the carrier. Indeed, after adopting its post-ICCTA regulations, the Board later concluded that an OFA nevertheless must be for continued rail service. *Roaring Fork R.R. Holding Auth.—Aban.—in Garfield, Eagle, & Pitkin Ctys., Colo.,* AB 547X, slip op. at 4 (STB served May 21, 1999) (finding that ''[t]he OFA process is designed for the purpose of continuing to provide freight rail service,'' and that ''an offeror must be able to demonstrate that its OFA is for continued rail freight service.''). That determination has been judicially affirmed. *See, e.g., Kulmer* v. *STB,* 236 F.3d 1255, 1256–57 (10th Cir. 2001); *Redmond-Issaquah R.R. Pres. Ass'n* v. *STB,* 223 F.3d 1057, 1061–63 (9th Cir. 2000). The Board therefore disagrees with Jersey City's assertion that this continued-rail-service requirement contravenes Congressional intent under ICCTA.

Jersey City further commented that the requirement to show a continued need for rail service should not apply to OFAs filed by governmental entities. In particular, Jersey City argues that governmental entities should not be required to show non-interference with transit projects or community support, because ''[w]hen a government files an OFA, the OFA embodies the public project.'' (Jersey City NPRM Comments 14.) It also notes that the Board did not specifically identify any instances in which governmental entities have abused the OFA process. (*Id.*) Jersey City further argues that to apply the *LACMTA* criteria to governmental entities would also be a departure from previous Board precedent, because applying these criteria to governmental OFAs would ''amount to substituting the STB's planning judgments for those of local and state governments,'' even though the Board's predecessor, the Interstate Commerce Commission, stated in a 1991 decision that it is not a planning agency. (Jersey City NPRM Comments 15–16.) Jersey City does, however, support ''requiring private parties invoking the OFA process to show an overriding freight rail need when their OFA will interfere with a public project of any sort.'' (Jersey City NPRM Comments 9.) AAR commented in response that Jersey City's statements that the NPRM amounts to substituting the Board's planning judgments for those of state and local governments are incorrect. (AAR NPRM Reply Comments 4.) Instead, AAR argues, ''the NPRM reflects the limited jurisdiction of the STB to impose restrictions on the use of private property by railroads.'' (AAR NPRM Reply Comments 4.) The LLCs also commented in response to Jersey City that governmental entities should be required to make the showing of a continued need for service, and that the Board's proposal does not ''usurp the function of local governments' control over land use matters.'' (LLCs NPRM Reply Comments 17.)

The Board disagrees with Jersey City's suggestion that governmental entities should not be required to show a continued need for rail service because an OFA by a governmental entity ''embodies the public project.'' Congress did not give the Board unfettered authority in administering abandonments to force the sale of a rail line for any public purpose.[5] The purpose of the OFA process is not to preserve rail corridors for any public use or to assist with non-rail public projects, but rather, as explained above, to ensure continued rail service.

Nor is the Board persuaded by Jersey City's argument that to consider the *LACMTA* criteria when governmental entities file OFAs would be to substitute the Board's planning judgments for those of local governmental entities. The *LACMTA* criteria are not general planning criteria—they are all rail-oriented. As noted, the requirement that the OFA be for continued rail service already exists and has been judicially affirmed, and the *LACMTA* criteria are merely a means for the Board to determine if that standard has been met. Moreover, a determination by the Board regarding whether there is a need for continued rail service does not necessarily create a conflict with a local entity's planning; applying the *LACMTA* criteria when government entities file OFAs leaves the planning authority of state and local governmental entities intact but properly subject to Congress's terms for a forced sale under 49 U.S.C. 10904.

The Board has authority under 49 U.S.C. 1321(a) to issue these regulations to carry out the OFA process. While Jersey City points out that the Board has not identified any instances in which governmental entities have abused the OFA process, it is not necessary for the Board to have done so to make these changes to our regulations. The purpose of this proceeding is not only to protect the OFA process from abuse, but, after 20 years of experience, to identify ways in which the Board can improve the OFA process. The Board believes the continued-rail-service requirement, along with the other changes contained in this final rule, will improve the OFA process overall, including when the potential offeror is a governmental entity.

Finally, Jersey City also commented that ''the showings that the agency proposes as a precondition for rail use appear all to deal solely with freight,'' which it argues is problematic because the proposed language does not acknowledge that the OFA process may be used for passenger rail purposes. (Jersey City NPRM Comments 17–18.) But as the Board discussed in the NPRM, '' 'nothing in section 10904 precludes a line from being acquired under the OFA procedures to provide combined passenger/freight service and indeed there are situations where . . . it is the inclusion of passenger operations that would seem to make it financially viable for an operator to offer continued (or restored) freight service.' '' *NPRM,* EP 729, slip op. at 13, quoting *Trinidad Ry.—Acquis. & Operation Exemption—in Las Animas Cty., Colo.,* AB 573X et al., slip op. at 8 (STB served Aug. 13, 2001). *See also Union Pac. R.R.—Aban. Exemption—in Rio Grande & Mineral Ctys., Colo.,* AB 33 (Sub-No. 132X), slip op. at 3 (STB served Apr. 22, 1999). Thus, as explained in these prior Board decisions, even if the OFA process is used primarily for passenger rail purposes, the carrier acquiring the line must still be willing to provide freight rail service over the line for two years. Moreover, as discussed above, the *LACMTA* criteria are included as examples of the types of evidence the Board will look for when considering the totality of the circumstances surrounding the continued need for rail service, not specific requirements; offerors will not be strictly required to meet any one of (or all) the criteria to show a continued need for rail service.

Identity of the Offeror. The Board proposed to require an offeror or an

[5] Indeed, even the Board's public use provision at 49 U.S.C. 10905 does not provide for the forced sale of a rail line for non-rail public purposes. Instead, that section contains a process by which an abandoning carrier can be required to postpone for 180 days disposal of the properties it seeks to abandon so that parties may *negotiate* with the carrier for the possible disposition of the property for some other public purpose.

offeror's representative to provide a mailing address and other contact information, and to require an offeror that is a legal entity to provide its full legal name, state of organization or incorporation, and a description of the ownership of the entity. In addition, for multiple parties filing one OFA, the Board proposed requiring that the parties provide clear identification of which entity or individual would assume the common carrier obligation and clear identification of how the parties would allocate financing and, if purchased, the operation of the line.

NSR expressed support for the Board's proposals to require this identifying information, saying that it is important for the Board and carriers receiving OFAs to be able to identify the party or parties involved. (NSR NPRM Comments 7.) The LLCs commented that, in addition to the information proposed in the NPRM, the Board should also require a legal entity to provide a certificate of good standing from its state of incorporation and, where necessary, a certification that it is authorized to do business in the state or states where the rail line subject to an OFA is located. (LLCs NPRM Reply Comments 2–3.) The Board's purpose for requiring the additional information proposed is to assist the Board and carriers in identifying the parties involved in an OFA. However, the Board believes that requiring certifications of good standing or authorizations to do business from an offeror would go beyond that purpose, and thus the Board will not adopt the LLCs' proposal here. To the extent that the LLCs are concerned about potential offerors being in good standing, these concerns should be addressed by the fact that the Board will now require potential offerors to demonstrate preliminary financial responsibility and a continued need for rail service.

Other Comments. Parties also commented on other ways to prevent abuse of the OFA process, and on the OFA process and this proceeding generally. NSR commented that it continues to strongly support increased enforcement of 49 CFR 1104.8, which allows the Board to strike irrelevant or immaterial pleadings. (NSR NPRM Comments 1.) AAR similarly suggested that in addition to adopting the changes proposed in this proceeding the Board ''should also vigilantly enforce its existing rules to protect against abuse of the OFA process.'' (AAR NPRM Comments 12.) In denying NSR's 2015 petition to institute a rulemaking proceeding to address abuses of Board processes, the Board stated that, in addition to instituting this OFA rulemaking proceeding, it would increase enforcement of 49 CFR 1104.8. *NSR Petition,* EP 727, slip op. at 4. The Board has done so. *See, e.g., Riffin—Pet. for Declaratory Order,* FD 36078, slip op. 5 (STB served Apr. 27, 2017); *Norfolk S. Ry. Co.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry.,* FD 35873, slip op. at 5–6 (STB served Oct. 18, 2016); *R. J. Corman R.R./Allentown Lines, Inc.—Aban. Exemption—in Lehigh Cty., Pa.,* AB 550 (Sub-No. 3X), slip op. at 1–2 (STB served Nov. 25, 2015). The Board restated this commitment in the NPRM. *NPRM,* EP 729, slip op. at 9. In this decision, the Board again reiterates its commitment to increasing enforcement of 49 CFR 1104.8 to prevent abuse of the OFA process and the Board's processes generally.

Jersey City commented that it believes the chief abuses of the OFA process are delay and the use of OFAs to prevent public projects. (Jersey City NPRM Reply Comments 8, 11.) With regard to delays in the OFA process, Jersey City argues that the proper remedy is ''for the agency to adhere to the statutory and regulatory deadlines.'' (Jersey City NPRM Comments 8. *See also* Jersey City NPRM Reply Comments 9.) Where delay is caused by railroads not making financial information promptly available to potential offerors, Jersey City suggests the Board should consider sanctioning such carriers, ''including barring the carrier from relying on information it does not promptly provide, or dismissing the proceeding in appropriate cases.'' (Jersey City NPRM Reply Comments 11.)

In addition, Jersey City suggests that the Board's focus in addressing abuse of the OFA process should be protecting public projects, even when those public projects are not rail projects. (Jersey City NPRM Comments 9.) Jersey City argues that ''the only real 'abuse' of the OFA statute that merits examination for possible new regulations is situations in which this Board's OFA remedy is invoked to prevent or to inhibit a public project.'' (Jersey City NPRM Reply Comments 15.) Instead of the Board's proposed rule, Jersey City proposes that any offeror filing an OFA ''aimed at thwarting public projects'' should be required to show ''an overriding public need for rail service.'' (Jersey City NPRM Reply Comments 19. *See also* Jersey City NPRM Comments 14, 19.) In response to Jersey City's comments, AAR argues that ''states and municipalities have no right to railroad rights of way for public projects, absent a desire and ability to obtain the line for continued rail service.'' (AAR NPRM Reply Comments 4.)

The Board is aware that the OFA process has been inefficient in some past cases. The proposals adopted in this final rule and discussed above, however, are geared to address delays associated with the OFA process. For example, requiring all offerors to file NOIs and make a preliminary financial responsibility showing should prompt rail carriers to assemble and provide the required valuation information more quickly for OFAs. The Board notes, however, that the OFA process is intended to promote continued rail service. *See Roaring Fork R.R. Holding Auth.,* AB 547X, slip op. at 4. *See also Kulmer,* 236 F.3d at 1256–57; *Redmond-Issaquah R.R. Preservation Ass'n,* 223 F.3d at 1061–63. The Board, therefore, rejects Jersey City's repeated suggestion that the OFA process may be invoked for public projects unrelated to the continuation of rail service.

To the extent that Jersey City is concerned that public projects may be thwarted by abuse of the OFA process, the regulations proposed here should help in that regard, as they will ensure that OFAs are being sought for a legitimate need for continued rail service and by parties that possess the means to acquire the line. However, to the extent Jersey City is arguing that even OFAs that do not abuse the process (*i.e.,* OFAs intended for continued rail service) should not be able to thwart public projects, the Board rejects that argument. The aim of the OFA statute is to preserve rail service where possible, *see Redmond-Issaquah R.R. Preservation Ass'n,* 223 F.3d at 1061, and as a result, the Board will grant exemptions from the OFA provisions for a valid public purpose only when there is no overriding public need for continued freight rail service. *See, e.g., Kessler* v. *STB,* 635 F.3d 1, 5 (D.C. Cir. 2011).[6]

In addition to its comments discussed above regarding the escrow requirement and the requirement to show a continued need for rail service, Jersey City also generally states throughout its comments that it believes the Board's proposals are ''difficult to square with past precedent,'' referring to ICCTA's removal of the requirement that an OFA be ''bona fide'' from 49 U.S.C. 10904. (Jersey City NPRM Comments 5. *See also* Jersey City NPRM Reply Comments 4–7 (''Some of the proposals . . . appear to be outside the Board's power given Congressional omission of the bona fide

[6] Accordingly, carriers that believe that an OFA would needlessly interfere with a public project can seek an OFA exemption, and, as the Board explained in the NPRM, it will address these requests on a case-by-case basis. *See NPRM,* EP 729, slip op. at 11.

requirement.'').) Jersey City argues that ''the law has not changed to permit the agency as a general matter to apply new requirements to potential offerants wholesale.'' (Jersey City NPRM Comments 6.) As noted elsewhere in this final rule, contrary to Jersey City's assertion, the Board's proposals are not a re-imposition of the bona fide requirement, nor are they in conflict with Congressional intent under ICCTA. The Board has authority under 49 U.S.C. 1321(a) to issue regulations to carry out its statutory obligations, including its obligations to carry out the OFA process under 49 U.S.C. 10904. The requirements under this final rule will ensure that the Board can meet those obligations effectively and efficiently, and will ensure that OFAs are initiated for continued rail service—which is the statutory objective embodied in 49 U.S.C. 10904. Moreover, as discussed throughout this proceeding, the Board does not believe these changes to the regulations will be unnecessarily burdensome on potential participants in the OFA process. Rather, the Board believes that these requirements will benefit participants in the OFA process by improving the efficiency, transparency, and reliability of the OFA process.

The final rule is set forth in full below. This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 603(a), or certify that the final rule would not have a ''significant impact on a substantial number of small entities.'' section 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the NPRM, the Board stated that it was possible that the proposed rule could have a significant economic impact on certain small entities,[7] and issued an initial regulatory flexibility analysis (IRFA) and request for comments in order to explore further the impact, if any, of the proposed rule on small rail carriers. The Board did not receive any comments regarding the IRFA. The Board now publishes this final regulatory flexibility analysis.

Description of the reasons why the action by the agency is being considered.

On May 26, 2015, NSR filed a petition to institute a rulemaking proceeding to address abuses of Board processes. In a decision served on September 23, 2015, the Board denied NSR's petition but stated it would institute a separate rulemaking proceeding to examine the OFA process. On December 14, 2015, the Board instituted this proceeding, issuing an ANPRM requesting comments from the public and stating that, based on NSR's petition and on the Board's experiences with OFAs under 49 U.S.C. 10904 (as revised by ICCTA in 1995), there are areas where clarifications and revisions to the Board's OFA process could enhance the process and protect it against abuse. On September 30, 2016, the Board issued an NPRM proposing specific changes to the OFA process. Those changes proposed in the NPRM, with the modifications discussed above, are adopted in this final rule.

Succinct statement of the objectives of, and legal basis for, the final rule.

The objectives of this rule are to revise the Board's outdated regulations regarding the OFA process and make changes to streamline the OFA process and protect it from abuse. The Board believes the changes detailed in this final rule achieve this by ensuring that parties that seek to acquire lines through the OFA process satisfy the requirement that they be ''financially responsible persons'' and that OFA sales promote the statutory purpose of preserving rail service. The legal basis for the final rule is 49 U.S.C. 1321.

Description of, and, where feasible, an estimate of the number of small entities to which the final rule will apply.

The rule will apply to all entities making OFAs to subsidize or purchase rail lines subject to abandonment or discontinuance under the Board's regulations. In the past 20 years since ICCTA was enacted, the Board has received approximately 100 OFAs, or an average of five per year. Of those, the Board estimates that about 80, or 80%, were filed by small entities. Over the last six years, the Board has received six OFAs, or an average of one per year. Of those, the Board estimates that about four, or 66%, were filed by small entities. The majority of these small entities have been small businesses, including shippers and Class III railroads, but this has also included small governmental jurisdictions and small nonprofits. The Board therefore estimates that this rule may affect up to four small entities per year.[8]

Description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The final rule will require additional information from entities interested in or submitting OFAs at two stages. First, an entity will have to file a notice of intent (NOI) soon after the railroad files for abandonment or discontinuance authority (the NOI stage). Second, entities will have to provide new information when the actual offer is submitted (the offer stage), which occurs soon after the railroad has obtained abandonment or discontinuance authority from the Board. The Board is seeking approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA) for these requirements through a revision to a broader, existing OMB-approved collection.

At the NOI stage, a potential offeror will be required to submit an NOI in all notice of exemption, petition for exemption, and application proceedings, rather than only in notice of exemption proceedings as was previously required. This NOI will be a notice to the Board and the carrier involved in the proceeding that a party is interested in making an OFA to subsidize or purchase the rail line. A potential offeror will also be required to calculate a preliminary financial responsibility amount for the line using information contained in the carrier's filing and other publicly available

[7] Effective June 30, 2016, for the purpose of RFA analysis, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $35,809,698 or less when adjusted for inflation using 2016 data. Class II rail carriers have annual operating revenues of less than $250 million in 1991 dollars or less than $447,621,226 when adjusted for inflation using 2016 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

[8] The Board does not mean to suggest that four small entities per year by itself constitutes a ''substantial number'' under the RFA. However, because a high percentage of OFAs are filed by small entities, and out of an abundance of caution, the Board provides this RFA analysis.

information, and provide to the Board evidence of its financial responsibility at that level. This calculation will require research on the part of the potential offeror to determine the current scrap price of steel, which is publicly-available at no cost: Under the final rule potential offerors may obtain a quote from a scrap dealer or a recent scrap price from a free internet source, as explained above in the discussion of comments on the Board's proposed formula for determining preliminary financial responsibility. This calculation will not require professional expertise, however, as it is intended to be relatively simple.

At the offer stage, an offeror will be required to provide additional relevant identifying information depending on whether the offeror is an individual, a legal entity, or multiple parties seeking to submit a joint OFA. An offeror will also be required to address the continued need for rail service in its offer, to place 10% of the minimum subsidy or purchase price of the line (taken from the calculation done at the NOI stage) in an escrow account, and to provide evidence with its offer that it has completed the escrow requirement.

All small entities participating in the OFA process will be subject to these requirements, other than small governmental entities, which are exempt from some financial responsibility requirements.[9] As discussed above, in the past these small entities have included small businesses, Class III railroads, and small nonprofits. Many, but not all, entities participating in the OFA process are represented by legal counsel, though such representation is not required. These new requirements may take additional time, as detailed in the Paperwork Reduction Act analysis in the NPRM, but the Board does not believe they will require additional professional expertise beyond that already required by the OFA process.

The Board estimates these new requirements will add a total annual hour burden of 42 hours and no total annual ''non-hour burden'' cost under the Paperwork Reduction Act, as detailed in the NPRM.

[9] In response to comments regarding the ability of government entities to comply with the escrow requirement, as discussed above this final rule exempts all government entities from placing 10% of the preliminary financial responsibility amount in escrow, as otherwise required by the final rule. This exemption includes any government entities that may qualify as small entities under the RFA. Governmental entities, including those that are small entities, are also exempt from conducting the preliminary financial responsibility calculation and providing evidence of their financial responsibility at the NOI stage.

Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule.

The Board is unaware of any duplicative, overlapping, or conflicting federal rules.

Description of any significant alternatives to the final rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

Under the final rule, offerors and potential offerors participating in the OFA process will be required to submit additional information as described above at the NOI stage and at the offer stage of the process. The Board considered alternatives to several of the requirements proposed in the NPRM. One alternative to the NOI requirements that was considered was to exempt small entities from the preliminary financial responsibility showing. An alternative to the escrow requirement that was considered was to require small entities to place a smaller percentage of the of the minimum subsidy or purchase price of the line in escrow, or to exempt small entities from the escrow requirement altogether. But because many of the problems with OFAs have involved parties that could be classified as small entities, selecting these alternatives would have defeated the purpose of the rule.

Indeed, exempting small entities from compliance with the rule would have significantly weakened the effect of the rule because, as discussed above, approximately 66% to 80% of OFAs, depending on sample size, are filed by small entities. The Board also considered taking no action to revise the OFA regulations, but this would not have allowed the Board to meet its objectives of improving the OFA process and protecting it from abuse.

A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act. In this proceeding, the Board is modifying an existing collection of information that is currently approved by the Office of Management and Budget (OMB) through January 31, 2019, under OMB Control No. 2140–0022. In the NPRM, the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, and OMB regulations at 5 CFR 1320.11 regarding: (1) Whether the collection of information associated with the proposed changes to the OFA regulations is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. No comments were received pertaining to the collection of this information under the PRA.

This modification to an existing collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

It is ordered:

1. The Board adopts the final rule as set forth in this decision. Notice of the adopted rule will be published in the **Federal Register.**

2. This decision is effective 30 days after the day of service.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: June 28, 2017.

By the Board, Board Member Begeman, Elliott, and Miller.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, subchapter B, part 1152 of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for part 1152 is revised to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 1301, 1321(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.27 as follows:

■ a. In paragraph (a) introductory text, add the words ''that has proven itself preliminarily financially responsible under paragraph (c)(1)(ii) of this section'' after the word ''service''.
■ b. Redesignate paragraphs (c)(1)(i) and (ii) as paragraphs (c)(1)(iii) and (iv) and add new paragraphs (c)(1)(i) and (ii).
■ c. Revise newly redesignated paragraph (c)(1)(iv)(B), and add new paragraphs (c)(1)(iv)(D), (E), (F), (G), and (H).
■ d. In paragraph (c)(2)(i), add the words ''and demonstrating that they are preliminarily financially responsible as described in paragraph (c)(1)(ii) of this section'' after the words ''(*i.e.,* subsidy or purchase)''.
■ e. In paragraph (c)(2)(iii), remove ''(c)(1)(ii)'' and add in its place ''(c)(1)(iv)''.
■ f. In paragraph (d), remove ''or a formal expression of intent under paragraph (c)(2)(i) of this section indicating an intent to offer financial assistance'' and add in its place '', or satisfaction of the preliminary financial responsibility requirement under paragraph (c)(1)(ii) of this section''.
■ g. In paragraph (e)(1), remove ''(c)(1)(i)(C)'' and add in its place ''(c)(1)(iii)(C)''.
■ h. In paragraph (e)(2), remove ''(c)(1)(i)(C)'' and add in its place ''(c)(1)(iii)(C)''.

The revisions and additions read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(c) * * *

(1) * * *

(i) *Expression of intent to file offer.* Persons with a potential interest in providing financial assistance must, no later than 45 days after the **Federal Register** publication described in paragraph (b)(1) of this section or no later than 10 days after the **Federal Register** publication described in paragraph (b)(2)(i) of this section, submit to the carrier and the Board a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible as described in paragraph (c)(1)(ii) of this section. Such submissions are subject to the filing requirements of § 1152.25(d)(1) through (d)(3).

(ii) *Preliminary financial responsibility.* Persons submitting an expression of intent to file an offer of financial assistance as described in paragraph (c)(1)(i) or paragraph (c)(2)(i) of this section must demonstrate that they are financially responsible, under the definition set forth in paragraph (c)(1)(iv)(B) of this section, for the calculated preliminary financial responsibility amount of the rail line they seek to subsidize or purchase. If they seek to subsidize, the preliminary financial responsibility amount shall be $4,000 (representing a standard annual per-mile maintenance cost) times the number of miles of track. If they seek to purchase, the preliminary financial responsibility amount shall be the sum of the rail steel scrap price per ton (dated within 30 days of the submission of the expression of intent), times 132 short tons per track mile or 117.857 long tons per track mile, times the length of the line in miles, plus $4,000 times the number of miles of track times two. Persons submitting an expression of intent must provide evidentiary support for their calculations. If the Board does not issue a decision regarding the preliminary financial responsibility demonstration within 10 days of receipt of the expression of intent, the party submitting the expression of intent will be presumed to be preliminarily financially responsible and, upon request, the applicant must provide the information required under paragraph (a) of this section. This presumption does not create a presumption that the party will be financially responsible for an offer submitted under paragraph (c)(1)(iv) of this section.

* * * * *

(iv) * * *

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations. Examples of documentation the Board will accept as evidence of financial responsibility include income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain adequate insurance. Examples of documentation the Board will not accept as evidence of financial responsibility include the ability to borrow money on credit cards and evidence of non-liquid assets an offeror intends to use as collateral. Governmental entities will be presumed to be financially responsible;

* * * * *

(D) Demonstrate that the offeror has placed in escrow with a reputable financial institution funds equaling 10% of the preliminary financial responsibility amount calculated pursuant to paragraph (c)(1)(ii) of this section. Governmental entities are exempt from this requirement;

(E) Demonstrate that there is a continued need for rail service on the line, or portion of the line, in question. Examples of evidence to be provided include: Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible;

(F) Identify the offeror and provide a mailing address, either business or personal, and other contact information including phone number and email address as available, for the offeror or a representative;

(G) If the offeror is a legal entity, include the entity's full name, state of organization or incorporation, and a description of the ownership of the entity; and

(H) If multiple parties seek to make a single offer of financial assistance, clearly identify which entity or individual will assume the common carrier obligation if the offer is successful, and clearly describe how the parties will allocate responsibility for financing the subsidy or purchase of the line and, if purchased, the operation of the line.

* * * * *

[FR Doc. 2017–14044 Filed 7–3–17; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 82, No. 127
Wednesday, July 5, 2017

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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA81

2018–2020 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a proposed rule with request for comments on the housing goals for Fannie Mae and Freddie Mac (the Enterprises) for 2018 through 2020. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Safety and Soundness Act) requires FHFA to establish annual housing goals for mortgages purchased by the Enterprises. The housing goals include separate categories for single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families, among other categories.

The existing housing goals for the Enterprises include benchmark levels for each housing goal through the end of 2017. This proposed rule would establish benchmark levels for each of the housing goals and subgoals for 2018 through 2020. In addition, the proposed rule would make a number of clarifying and conforming changes, including revisions to the requirements for the housing plan that an Enterprise may be required to submit in response to a failure to achieve one or more of the housing goals.

DATES: FHFA will accept written comments on the proposed rule on or before September 5, 2017.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA81, by any one 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 FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA81.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA81, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA81, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Manager, Housing & Community Investment, Division of Housing Mission and Goals, at (202) 649–3157. This is not a toll-free number. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing the final rule. Copies of all comments will be posted without change, including any personal information you provide such as your name, 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, 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.

Commenters are encouraged to review and comment on all aspects of the proposed rule, including the single-family benchmark levels, the multifamily benchmark levels, and other changes to the regulation.

II. Background

A. Statutory and Regulatory Background for the Existing Housing Goals

The Safety and Soundness Act requires FHFA to establish annual housing goals for several categories of both single-family and multifamily mortgages purchased by Fannie Mae and Freddie Mac.[1] The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.'' [2]

The housing goals provisions of the Safety and Soundness Act were substantially revised in 2008 with the enactment of the Housing and Economic Recovery Act, which amended the Safety and Soundness Act.[3] Under this revised structure, FHFA established housing goals for the Enterprises for 2010 and 2011 in a final rule published on September 14, 2010.[4] FHFA established housing goals levels for the Enterprises for 2012 through 2014 in a final rule published on November 13, 2012.[5] In a final rule published on September 3, 2015, FHFA announced the housing goals for the Enterprises for 2015 through 2017, including a new small multifamily low-income housing subgoal.[6]

Single-family goals. The single-family goals defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] Housing and Economic Recovery Act of 2008, Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

[4] *See* 75 FR 55892.

[5] *See* 77 FR 67535.

[6] *See* 80 FR 53392.

in low-income areas. Performance on the single-family home purchase goals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualify for each goal or subgoal. There is also a separate goal for refinancing mortgages for low-income families, and performance on the refinancing goal is determined in a similar way.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. The single-family goals cover conventional, conforming mortgages, defined as mortgages that are not insured or guaranteed by the Federal Housing Administration (FHA) or another government agency and with principal balances that do not exceed the loan limits for Enterprise mortgages.

Two-part approach. The performance of the Enterprises on the housing goals is evaluated using a two-part approach, which compares the goal-qualifying share of the Enterprise's mortgage purchases to two separate measures: A benchmark level and a market level. FHFA considered alternatives to this method in the 2015–2017 housing goals rulemaking and determined that the two-part approach continued to be the most appropriate method for evaluating performance on the single-family goals. FHFA is proposing to continue that approach in this rule.

In order to meet a single-family housing goal or subgoal, the percentage of mortgage purchases by an Enterprise that meet each goal or subgoal must exceed either the benchmark level or the market level for that year. The benchmark level is set prospectively by rulemaking based on various factors, including FHFA's forecast of the goal-qualifying share of the overall market. The market level is determined retrospectively each year, based on the actual goal-qualifying share of the overall market as measured by FHFA based on Home Mortgage Disclosure Act (HMDA) data for that year. The overall mortgage market that FHFA uses for both the prospective market forecasts and the retrospective market measurement consists of all single-family owner-occupied conventional conforming mortgages that would be eligible for purchase by either Enterprise. It includes loans actually purchased by the Enterprises as well as comparable loans held in a lender's portfolio. It also includes comparable loans that are part of a private label security (PLS), although very few such securities have been issued for conventional conforming mortgages since 2008.

While both the benchmark and the retrospective market measure are designed to measure the current year's mortgage originations, the performance of the Enterprises on the housing goals includes all Enterprise purchases in that year, regardless of the year in which the loan was originated. This provides housing goals credit when the Enterprises acquire qualified seasoned loans. (Seasoned loans are loans that were originated in prior years and acquired by the Enterprise in the current year.) The Enterprises' acquisition of seasoned loans provides an important source of liquidity for this market segment.

Recent changes to the HMDA regulations will result in the HMDA data covering a greater portion of the single-family mortgage market.[7] The changes will also provide more detailed information about the loans included in the HMDA data. The changes to the HMDA regulations generally take effect at the start of 2018, so the new, more detailed information will not be available until after the 2018 performance year.

For example, the Enterprise housing goals currently count all loans purchased by an Enterprise with original principal balances that are within the conforming loan limits. The conforming loan limits are different for single-family properties depending on the number of units in the property. However, the definition of the retrospective market excludes all loans with original principal balances above the conforming loan limits for single unit properties because the current HMDA data do not identify the number of units for each loan. Starting with the new HMDA data reported, it will be possible to identify the number of units for each loan. This may allow FHFA to revise the definition of the retrospective market to exclude only those loans above the conforming loan limits applicable to the size of the property, instead of excluding all loans above the conforming loan limit applicable to a single unit property.

FHFA has considered the possible impact that certain changes to the HMDA regulations may have on the Enterprise housing goals. However, at this time the impact that such changes might have on the retrospective measure of the market is uncertain. FHFA is not proposing to make any changes to the Enterprise housing goals in anticipation of the upcoming changes to the HMDA data. FHFA will assess the impact of the changes and, if necessary, may propose changes to the housing goals regulation at a later date.

Multifamily goals. The multifamily goals defined under the Safety and Soundness Act include separate categories for mortgages on multifamily properties (properties with five or more units) with rental units affordable to low-income families and on multifamily properties with rental units affordable to very low-income families, as well as a small multifamily low-income subgoal for properties with 5–50 units. The multifamily goals established by FHFA in 2010, 2012, and 2015 evaluated the performance of the Enterprises based on numeric targets, not percentages, for the number of affordable units in properties backed by mortgages purchased by an Enterprise. FHFA has not established a retrospective market level measure for the multifamily goals and subgoals, due in part to a lack of comprehensive data about the multifamily market such as that provided by HMDA for single-family mortgages. As a result, FHFA currently measures Enterprise multifamily goals performance against the benchmark levels only. The expanded HMDA fields that will be available for the 2018 performance year are expected to include information on the number of units for each multifamily loan and should be helpful in evaluating performance for this market segment.

B. Adjusting the Housing Goals

Under the housing goals regulation first established by FHFA in 2010, as well as under this proposed rule, FHFA may reduce the benchmark levels for any of the single-family or multifamily housing goals in a particular year without going through notice and comment rulemaking based on a determination by FHFA that (1) market and economic conditions or the financial condition of the Enterprise require a reduction, or (2) ''efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts.'' [8] The proposal also takes into account the possibility that achievement of a particular housing goal may or may not have been feasible for the Enterprise. If FHFA determines that a housing goal was not feasible for the Enterprise to achieve, then the regulation provides for no further enforcement of that housing goal for that year.[9]

[7] *See* Home Mortgage Disclosure Act final rule, 80 FR 66128 (Oct. 28, 2015).

[8] 12 CFR 1282.14(d).

[9] 12 CFR 1282.21(a).

If, after publication of a final rule establishing the housing goals for 2018 through 2020, FHFA determines that any of the single-family or multifamily housing goals should be adjusted in light of market conditions, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take steps as necessary and appropriate to adjust that goal. Such steps could include adjusting the benchmark levels through the processes in the existing regulation or establishing revised housing goal levels through notice and comment rulemaking.

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

III. Summary of Proposed Rule

A. Benchmark Levels for the Single-Family Housing Goals

This proposed rule would establish the benchmark levels for the single-family housing goals and subgoal for 2018–2020 as follows:

Goal	Criteria	Current benchmark level for 2015–2017	Proposed benchmark level for 2018–2020
Low-Income Home Purchase Goal ..	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	24 percent	24 percent.
Very Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 50 percent of area median income.	6 percent	6 percent.
Low-Income Areas Home Purchase Subgoal.	Home purchase mortgages on single-family, owner-occupied properties with: • Borrowers in census tracts with tract median income of no greater than 80 percent of area median income; or • Borrowers with income no greater than 100 percent of area median income in census tracts where (i) tract income is less than 100 percent of area median income, and (ii) minorities comprise at least 30 percent of the tract population.	14 percent	15 percent.
Low-Income Refinancing Goal	Refinancing mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	21 percent	21 percent.

B. Multifamily Housing Goal Levels

The proposed rule would establish the levels for the multifamily goal and subgoals for 2018–2020 as follows:

Goal	Criteria	Current goal level for 2017	Proposed goal level for 2018–2020
Low-Income Goal	Units affordable to families with incomes no greater than 80 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	300,000 units	315,000 units.
Very Low-Income Subgoal	Units affordable to families with incomes no greater than 50 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	60,000 units	60,000 units.
Low-Income Small Multifamily Subgoal.	Units affordable to families with incomes no greater than 80 percent of area median income in small multifamily rental properties (5 to 50 units) with mortgages purchased by an Enterprise.	10,000 units	10,000 units.

C. Other Proposed Changes

The proposed rule would make changes and clarifications to the existing rules, including minor technical changes to some regulatory definitions. The proposed rule also would revise the requirements applicable to the housing plan an Enterprise may be required to submit based on a failure to achieve one or more of the housing goals.

IV. Single-Family Housing Goals

This proposed rule sets out FHFA's views about benchmark levels for the single-family housing goals from 2018–2020. In making this proposal, FHFA has considered the required statutory factors described below. FHFA's analysis and goal setting process includes developing market forecast models for each of the single-family housing goals, as well as considering a number of other variables that impact affordable homeownership. Many of these variables indicate that low-income and very low-income households are facing, and will continue to face, difficulties in achieving homeownership or in refinancing an existing mortgage. These factors, such as rising property values and stagnant household incomes, also impact the Enterprises' ability to meet their mission and facilitate

affordable homeownership for low-income and very low-income households. Nevertheless, FHFA expects and encourages the Enterprises to work toward meeting their housing goal requirements in a safe and sound manner. This may include steps the Enterprises take to fulfill FHFA's access to credit expectations expressed in the most recent Conservatorship Scorecard, which requires the Enterprises to undertake a number of research and related efforts including the development of pilots and initiatives.[10]

A. Setting the Single-Family Housing Goal Levels

FHFA process for setting the single-family benchmark levels. Section 1332(e)(2) of the Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;
2. Economic, housing, and demographic conditions, including expected market developments;
3. The performance and effort of the Enterprises toward achieving the housing goals in previous years;
4. The ability of the Enterprises to lead the industry in making mortgage credit available;
5. Such other reliable mortgage data as may be available;
6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and
7. The need to maintain the sound financial condition of the Enterprises.[11]

FHFA has considered each of these seven statutory factors in setting the proposed benchmark levels for each of the single-family housing goals and subgoal.

Recognizing that some of the factors required by statute to be considered can be readily captured using reliable data series while others cannot, FHFA implemented the following approach: FHFA's statistical market models considered factors that are captured through well-known and established data series and these are then used to generate a point forecast for each goal as well as a confidence interval for the point forecast. FHFA then considered the remaining statutory factors, as well as other relevant policy factors, in selecting the specific point forecast within the confidence interval as the proposed benchmark level. FHFA's market forecast models incorporate four of the seven statutory factors: national housing needs; economic, housing, and demographic conditions; other reliable mortgage data; and the size of the purchase money conventional mortgage market or refinance conventional mortgage market for each single-family housing goal. The market forecast models generate a point estimate, as well as a confidence interval. FHFA then considered the remaining three statutory factors (historical performance and effort of the Enterprises toward achieving the housing goal; ability of the Enterprises to lead the industry in making mortgage credit available; and need to maintain the sound financial condition of the Enterprises), as well as other relevant policy factors in selecting the specific point forecast within the confidence interval as the proposed benchmark level for the goal period.

Market forecast models. The purpose of FHFA's market forecast models is to forecast the market share of the goal-qualifying mortgage originations in the market for the 2018–2020 period. The models are intended to generate reliable forecasts rather than to test various economic hypotheses about the housing market or to explain the relationship between variables. Following standard practice among forecasters and economists at other federal agencies, FHFA estimated a reduced-form equation for each of the housing goals and fit an Autoregressive Integrated Moving Average (or ARIMA) model to each goal share. The models look at the statistical relationship between (a) the historical market share for each single-family housing goal or subgoal, as calculated from monthly HMDA data, and (b) the historical values for various factors that may influence the market shares, *e.g.* interest rates, inflation, house prices, home sales, the unemployment rate, and other factors. The models then project the future value of the affordable market share using forecast values of the model inputs. Separate models were developed for each of the single-family housing goals and subgoals.

FHFA has employed similar models in past housing goals rulemakings to generate market forecasts. The models were developed using monthly series generated from HMDA and other data sources, and the resulting monthly forecasts were then averaged into an annual forecast for each of the three years in the goal period. The models rely on 12 years of HMDA data, from 2004 to 2015, the latest year for which HMDA data are available. Additional discussion of the market forecast models can be found in a research paper, available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/*.[12]

In the final rule establishing the housing goals for 2015–2017, FHFA stated that it would engage directly with commenters to obtain detailed feedback on FHFA's econometric models for the housing goals. Throughout 2016, FHFA met with industry modeling experts about potential improvements to the econometric models. Considering input received, FHFA has revised the market forecast models to include better specifications and new variables for all goal-qualifying shares, while still following and adhering to generally accepted practices and standards adopted by economists, including those at other federal agencies. During the model development process, FHFA grouped factors that are expected by housing market economists to have an impact on the market share of affordable housing into seven broad categories. For each category of variables, many variables were tested but only retained when they exhibited predictive power. The new set of models includes new driver variables that reflect factors that impact the affordable housing market—for example, household debt service ratio, labor force participation rate, and underwriting standards.

As is the case with any forecasting model, the accuracy of the forecast will vary depending on the accuracy of the inputs to the model and the length of the forecast period. FHFA has attempted to minimize the first variable by using third party forecasts published by Moody's and other accredited mortgage market forecasters. The second variable is harder to address. The proposed rule relies on the most up-to-date data available as of December 2016, and uses forecasted input values for 2017 to produce the forecasts for 2018–2020. The confidence intervals for the benchmark levels become wider as the forecast period lengthens. In other words, it becomes more likely that the actual market levels will be different from the forecasts the farther into the future the forecasts attempt to make predictions. Predicting four years out is not the usual practice in forecasting. A number of industry forecasters, including Fannie Mae, Freddie Mac,

[10] See *2017 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions,* December 2016, available at *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-CSS.pdf.*

[11] 12 U.S.C. 4562(e)(2).

[12] Details on FHFA's single-family market models will be available in the technical paper ''The Size of the Affordable Mortgage Market: 2018–2020 Enterprise Single-Family Housing Goals.''

and the Mortgage Bankers Association (MBA), do not publish forecasts beyond two years because accuracy of forecasts decreases substantially beyond a two year period.

Market outlook. There are many factors that impact the affordable housing market as a whole, and changes to any one of them may significantly impact the ability of the Enterprises to meet the goals. In developing our market models, FHFA used Moody's forecasts, where available, as the source for macroeconomic variables.[13] In cases where Moody's forecasts were not available (for example, the share of government-guaranteed home purchases and the share of government-guaranteed refinances), FHFA generated and tested its own forecasts.[14] Elements that impact the models and the determination of benchmark levels are discussed below.

Interest rates are arguably one of the most important variables in determining the trajectory of the mortgage market. The Federal Reserve launched its interest rate normalization process in December 2015 with a 0.25-percentage point increase. At the July 2016 meeting of the Federal Open Market Committee (FOMC), policymakers indicated their commitment to a low federal funds rate for the time being, signaling a pause in the interest rate normalization path. However, there is broad consensus among economists that the Federal Reserve will resume rate hikes if the economy performs as expected. Based on Moody's January 2017 forecast, mortgage interest rates—in particular the 30-year fixed rate, which is closely tied to the federal funds rate and the 10-year Treasury note yield—are projected to rise gradually from the current historic low of 3.6 percent in 2016 to 5.5 percent by 2020.

The unemployment rate has steadily fallen over the last few years and according to Moody's is expected to remain at 4.7 percent over the next four years, given expected growth of the economy at the modest range of 1.5 to 2.9 percent per year (January 2017 forecast). Moody's also forecasts a modest increase in per capita disposable nominal income growth—from $43,100 in 2016 to $50,300 in 2020. Moody's estimates that the inflation rate will remain flat at 2.0 percent throughout the same period, although this also depends on Federal Reserve policy.

Industry analysts generally expect the overall housing market to continue its recovery, although the growth of house prices may slow down, assuming continued increases in interest rates. According to Moody's forecast (as of January 2017) based on FHFA's purchase-only House Price Index (HPI), house prices are expected to increase at the annual rates of 3.9, 1.8, and 2.0 percent in 2018, 2019, and 2020, respectively.

The expected increase in mortgage interest rates and house prices will likely impact the ability of low- and very low-income households to purchase homes. Housing affordability, as measured by Moody's forecast of the National Association of Realtors' Housing Affordability Index, is projected to decline from an index value of 162.2 in 2016 to 152.5 in 2020. Low interest rates coupled with rising house prices usually create incentives for homeowners to refinance, and the refinance share of overall mortgage originations increased from 39.9 percent in 2014 to 50 percent in 2016. However, assuming that interest rates rise in the near future, the refinance rate is expected to fall below 21.4 percent by 2019, according to the Moody's forecast.

Additional factors reflecting affordability challenges in the single-family market. While FHFA's models can address and forecast many of the statutory factors that can make affordability for single-family homeownership more challenging for low-income and very low-income households, including increasing interest rates and rising property values, some factors are not captured in the models. FHFA, therefore, considers additional factors when selecting the benchmark point within the model-generated confidence interval for each of the single-family housing goals. Some of these factors may affect a subset of the market rather than the market as a whole. Some of these additional factors include an uneven economic recovery, stagnant wages even where unemployment is decreasing, demographic trends, and the Enterprises' share of the mortgage market. Variability in these factors can also have substantial impacts on the ability of the Enterprises to meet housing goals. Consequently, as discussed further below, FHFA will carefully monitor these factors and consider the potential impact of market shifts or larger trends on the ability of the Enterprises to achieve the housing goals.

Throughout 2016, the economy and the housing market continued to recover from the financial crisis, but the recovery has been uneven across the country. In some areas, economic growth, job gains, and demand are outpacing housing supply, sparking rapidly rising property values, while other areas of the country have not regained pre-crisis home values and are not projected to do so in the near future.

Trends in factors such as area median income (AMI) point to an uneven recovery. FHFA uses census-tract level AMIs published by the U.S. Department of Housing and Urban Development (HUD) to determine affordability for the Enterprise single-family and multifamily mortgage acquisitions. AMI is a measure of median family income derived from the Census Bureau's American Community Survey (ACS). Since the 1990s, AMIs have been used widely by HUD, state housing finance agencies, the Federal Deposit Insurance Corporation (FDIC), the U.S. Department of Treasury, and local governments across the nation to determine eligibility for various affordable housing and public assistance programs. The HUD-published AMIs are considered the standard benchmark in the affordable housing industry. HUD changed the methodology for determining AMIs in 2015 because of changes in the Census Bureau's data collection methodology and changes in the reporting schedules of the ACS data.

AMI shifts reflect changes in borrower income levels at the census tract level. In general, a decrease in an area's AMI represents a decline in housing affordability in the area because the households will have relatively less income with which to purchase a home where property values have either remained the same or increased during the same time period.[15] This can make it more challenging for the Enterprises to meet the housing goals. Conversely, increases in AMIs would make it easier for the Enterprises to meet the housing goals. Overall, while there are annual fluctuations in AMI, the trends over a longer period (for instance, over four years) indicate that the economy is recovering, albeit in an uneven manner. For instance, from 2014 to 2016, over 80 percent of census tracts experienced an AMI increase. Over the four-year period from 2012 to 2016, AMI increased in about 51 percent of census tracts. This unevenness of the economic recovery is particularly evident geographically. For instance, the census tracts that experienced more than a 10 percent

[13] The macroeconomic outlook described here is based on Moody's and other forecasts as of September 2016.

[14] This refers to the mortgages insured/guaranteed by government agencies such as the FHA, Department of Veterans Affairs (VA), and the Rural Housing Service (RHS).

[15] The supply of single-family homes at the more affordable end of the market also impacts a low-income or very low-income household's ability to purchase a home. See *The State of the Nation's Housing 2017,* Joint Center on Housing Studies, June 2017.

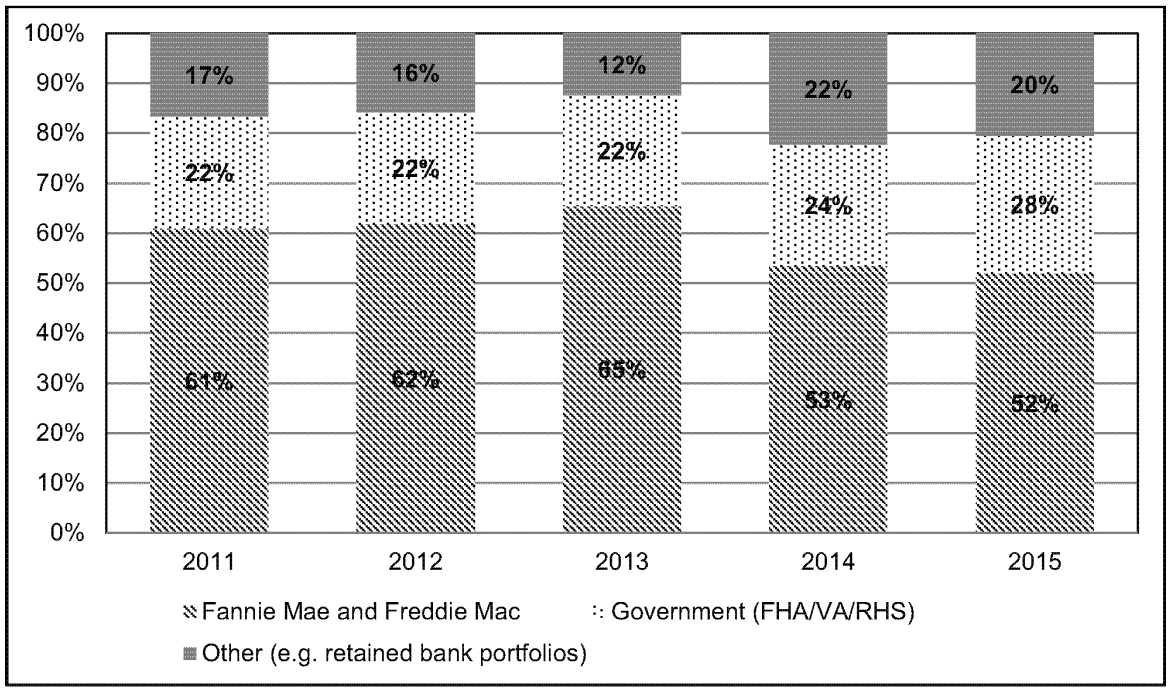
decline in AMIs in 2016 are concentrated in the southern and midwestern regions of the country.

In addition to the uneven recovery reflected in changing AMI levels, many households have experienced stagnant wages or limited wage growth even though unemployment levels have decreased significantly since the peak of the financial crisis. Data released by the U.S. Census Bureau last year for the most recent year available reflected that while median household income increased by 5.2 percent in 2015, the first annual increase in median household income since 2007, median wages remained 1.6 percent lower than the median in 2007, the year before the most recent recession, and 2.4 percent lower than the median household income peak that occurred in 1999.[16] Constrained wages, in addition to rising interest rates and increasing property values, could make it difficult for many low-income and very low-income households to achieve homeownership.

Demographic changes, such as the housing patterns of millennials or the growth of minority households, also reflect challenges in the affordable homeownership market. The homeownership rate among millennials is lower than other demographic groups, but household formation will likely increase as this group ages. However, many millennials will face multiple challenges, including difficulty finding affordable homes to buy and building enough wealth for a down payment and closing costs, particularly in light of student loan and other debt burdens. In addition, another continuing demographic trend is the growth of minority households, which is projected to be over 70 percent of net household growth through 2025.[17] In light of the fact that the median net worth of minority households has been historically low, building the necessary wealth to meet down payment and closing costs will likely also be a challenge for many of these new households. FHFA is committed to identifying new market conditions and challenges and working with the Enterprises to identify solutions to help meet these challenges. The effectiveness of these solutions, however, cannot be accounted for in a model.

Another factor that can affect the Enterprises' ability to support affordable homeownership for low-income and very low-income households is the Enterprises' overall share of the mortgage market. The Enterprises' share of the market is continually subject to fluctuation. During the mortgage market bubble, the Enterprises' share of the market dropped to about 46 percent in the last quarter of 2005. The other significant low point occurred in 2008, when the Enterprises' acquisitions accounted for less than 45 percent of the mortgage market. Since then, the Enterprises' share has risen overall but declined slightly in recent years, accounting for about 52 percent of the market in 2015. As shown in Graph 1, over the same time period, the total government share of the mortgage market (including FHA, VA, and RHS) has been expanding. In 2015, the total government share accounted for 28 percent of overall mortgage originations, up from 24 percent in 2014. This is likely an impact of the FHA mortgage insurance premium reduction announced in January 2015. As seen in Graph 1, the increase in government share came from decreases in the other two segments.

Graph 1: Distribution of Mortgage Originations by Market Segment



Source: HMDA Plus, Fannie Mae, Freddie Mac, FHA, VA, and RHS

[16] See *Income and Poverty in the United States: 2015,* United States Census Bureau, September 2016 *https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf.*

[17] Daniel McCue, Christopher Herbert, *Working Paper: Updated Household Projections, 2015–2035: Methodology and Results,* Harvard Joint Center for Housing Studies, December 2016.

Both Enterprises' charter acts require that all mortgages the Enterprises acquire have mortgage insurance (or one of the other forms of credit enhancement specified in the charter acts) if the loan-to-value (LTV) ratio for the loan at acquisition is greater than 80 percent. Private mortgage insurance rates are dependent on characteristics of the mortgage such as loan term, type of mortgage (purchase, type of refinance), LTV ratio, and credit score of the borrower. Lenders may also be able to negotiate and obtain lower private mortgage insurance directly from the mortgage insurer. Therefore, for certain market segments, the choice between government mortgage insurance or private mortgage insurance depends on the net impact of these factors.

In recent years private mortgage insurance rates have increased relative to government mortgage insurance rates, but the increase has not been uniform across the credit score and LTV spectrum. Changes in the mortgage insurance market can impact the cost of mortgage insurance and, consequently, may influence whether the mortgage is originated with private mortgage insurance or with FHA insurance. For example, FHA decreased its rates for mortgage insurance from 1.35 percent to 0.85 percent in January 2015. If FHA decreased or increased its mortgage insurance premiums, it would be reasonable to expect further shifts in the market that would not be uniform across the credit score and LTV spectrum. Reductions in the FHA insurance premium are likely to have two impacts on the conforming segment of the market: (1) The substitution effect—some borrowers will switch from private mortgage insurance to FHA insurance due to the lower premium rate; and (2) the expanded homeownership effect—new borrowers, especially those with lower credit scores seeking higher LTV loans, will enter the mortgage market because they are now able to meet the debt-to-income threshold due to the lower monthly mortgage payment. Analysis conducted by Federal Reserve Board staff indicates that both effects existed after the last FHA reduction.[18] Increases in FHA premiums would likely result in reverse shifts.

As discussed above, multiple factors impact the Enterprises' ability to meet their mission and support affordable homeownership through the housing finance market. Nevertheless, FHFA expects the Enterprises to continue efforts in a safe and sound manner to support affordable homeownership under the single-family housing goals categories.

B. Proposed Single-Family Benchmark Levels

1. Low-Income Home Purchase Goal

The low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The proposed rule would set the annual low-income home purchase housing goal benchmark level for 2018–2020 at 24 percent, the same as the current 2015–2017 benchmark level. FHFA believes that, despite the various challenges to affordability highlighted above, the Enterprises will be able to take steps to maintain or increase their performance on this goal.

TABLE 1—ENTERPRISE LOW-INCOME HOME PURCHASE GOAL

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Actual Market	24.0%	22.8%	23.6%	.....	.....	.....	.....	.....
Benchmark	23%	23%	24%	24%	24%	.....	.....	.....
Current Market Forecast	.....	.....	.....	23.9%	24.9%	25.5%	24.0%	23.0%
	.....	.....	.....	+/−2.5%	+/−4.3%	+/−5.6%	+/−6.6%	+/−7.4%
Fannie Mae Performance:								
Low-Income Home Purchase Mortgages	193,712	177,846	188,891	221,249	.....	.....	.....	.....
Total Home Purchase Mortgages	814,137	757,870	802,432	964,847	.....	.....	.....	.....
Low-Income % of Home Purchase Mortgages	23.8%	23.5%	23.5%	22.9%	.....	.....	.....	.....
Freddie Mac Performance:								
Low-Income Home Purchase Mortgages	93,478	108,948	129,455	153,435	.....	.....	.....	.....
Total Home Purchase Mortgages	429,158	519,731	579,340	644,991	.....	.....	.....	.....
Low-Income % of Home Purchase Mortgages	21.8%	21.0%	22.3%	23.8%	.....	.....	.....	.....

As shown in Table 1, performance at both Enterprises has fallen short of the market in the low-income purchase goal almost every year since 2013 (with the exception of Fannie Mae in 2014), although the Enterprises have sometimes missed the market look-back goal only by one- or two-tenths of a percentage point. Performance at both Enterprises fell short of both the benchmark and the market level in 2015. The past performance of the Enterprises indicates that it has been difficult for the Enterprises to consistently lead this market segment in making credit available.

From 2013 to 2014, the low-income home purchase market decreased from

[18] Bhutta, Neil and Ringo, Daniel (2016). ''Changing FHA Mortgage Insurance Premiums and the Effects on Lending,'' FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 29, 2016, *http://dx.doi.org/10.17016/2380-7172.1843*.

24.0 percent to 22.8 percent. In 2015, the actual market rebounded to 23.6 percent. FHFA's current model forecasts that the market for this goal will increase slightly to 23.9 percent in 2016 and then to 24.9 percent in 2017. (Actual market levels for 2016 will not be available until HMDA data are published in September 2017.) Although the Enterprises have been challenged in meeting the percentage single-family housing goal levels in recent years, FHFA notes that each Enterprise has increased the number of single-family home purchase loans made to low-income households. Fannie Mae's eligible single-family loan purchases increased from 193,712 loans in 2013 to 221,249 in 2016. Freddie Mac's eligible single-family loan purchases increased from 93,478 in 2013 to 153,435 in 2016.

From 2018 to 2020, the proposed goals period, the current forecast peaks at 25.5 percent in 2018, before decreasing to 24.0 percent in 2019 and 23.0 percent in 2020. The average of these projections is 24.1 percent. This forecast is based on the latest data available and will be updated before the release of the final housing goals rule. The confidence intervals for the 2018–2020 goal period are wide, but they will narrow before the final rule is published.

FHFA is proposing a benchmark level for the low-income home purchase housing goal that is close to the market forecast, to encourage the Enterprises to continue to find ways to support lower income borrowers while not compromising safe and sound lending standards. FHFA notes that the proposed benchmark is close to the average of its market forecast for this goal. FHFA recognizes that there may be challenges to meeting this goal, including uneven growth in AMI and the relative affordability of private mortgage insurance, that may be beyond the control of the Enterprises and impact their ability to achieve these goals. FHFA will continue to monitor the Enterprises, both as regulator and as conservator, and if FHFA determines in later years that the benchmark level for the low-income home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions or for any other reason, FHFA can take appropriate steps to adjust the benchmark level.

2. Very Low-Income Home Purchase Goal

The very low-income home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for very low-income families, defined as families with incomes less than or equal to 50 percent of the area median income. The proposed rule would set the annual very low-income home purchase housing goal benchmark level for 2018 through 2020 at 6 percent, also unchanged from the current 2015 to 2017 benchmark level.

TABLE 2—VERY LOW-INCOME HOME PURCHASE GOAL

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Actual Market	6.3%	5.7%	5.8%					
Benchmark	7%	7%	6%	6%	6%			
Current Market Forecast				5.9%	6.4%	6.7%	6.3%	6.2%
				+/−0.8%	+/−1.4%	+/−1.8%	+/−2.1%	+/−2.4%
Fannie Mae Performance:								
Very Low-Income Home Purchase Mortgages	48,810	42,872	45,022	49,852				
Total Home Purchase Mortgages	814,137	757,870	802,432	964,847				
Very Low-Income % of Home Purchase Mortgages	6.0%	5.7%	5.6%	5.2%				
Freddie Mac Performance:								
Very Low-Income Home Purchase Mortgages	23,705	25,232	31,146	36,838				
Total Home Purchase Mortgages	429,158	519,731	579,340	644,991				
Very Low-Income % of Home Purchase Mortgages	5.5%	4.9%	5.4%	5.7%				

Since 2013, the market for very low-income home purchase loans has also been declining, as reflected in HMDA data, although there was a slight uptick in 2015. FHFA has gradually lowered the benchmark for this goal from 8 percent in 2010 to 6 percent in 2015. Despite this reduction, the performance of both Enterprises has fallen below the benchmark and the market levels in each year since 2013. In addition, both Enterprises are projected to fall below the 6 percent benchmark level in 2016.

FHFA market analysis reflects a relatively flat trend for this segment, at 5.7 percent in 2014 and 5.8 percent in 2015. FHFA's current model forecasted the market to increase slightly to 5.9 percent in 2016 and then to 6.4 percent in 2017. For the 2018–2020 goal period, FHFA's forecast indicates an increase to 6.7 percent in 2018, followed by declines to 6.3 percent and 6.2 percent in 2019 and 2020, respectively. As noted earlier, the confidence intervals widen as the forecast period lengthens, and will reduce somewhat as FHFA incorporates more information before publishing the final rule.

Similar to the low-income home purchase goal, FHFA is proposing a benchmark level that is near the market forecast to encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-

income families. As noted in the low-income purchase goal discussion, FHFA believes that there are significant challenges to housing affordability that may be beyond the control of the Enterprises that could make the proposed benchmark a challenge for the Enterprises. As each Enterprise has been struggling to meet the current benchmark and market levels, the proposed benchmark will continue to encourage the Enterprise to safely and soundly innovate in this area. FHFA, as regulator and as conservator, will continue to monitor the Enterprises' performance, and if FHFA determines in later years that the benchmark level for the very low-income areas home purchase housing goal is no longer feasible for the Enterprises to achieve in light of market conditions or for any other reason, FHFA may take appropriate steps to adjust the benchmark level.

3. Low-Income Areas Home Purchase Subgoal

Background. The low-income areas home purchase subgoal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are either: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of AMI; or (2) for families with incomes less than or equal to AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI). Borrowers could qualify under either or both conditions. As noted in Table 3, mortgages satisfying condition (1) above (borrowers in low-income areas) are almost typically double the share of mortgages satisfying condition (2) (moderate-income borrowers in minority census tracts). For example, in 2015, 12.2 percent of mortgages met only condition (1), 7.6 percent met only condition (2), and 4.6 percent of mortgages met both conditions.

TABLE 3—COMPOSITION OF LOW-INCOME AREAS HOME PURCHASE SUBGOAL BASED ON HMDA DATA

Year	Low-income area goal (%) (A) Grand Total	All low-income areas (%) (B) LI	Low-income census tracts that are not high minority areas (%) (C) LI, not HM	High minority areas that are also low-income census tracts (%) (D) HM and LI	High minority areas that are not low-income census tracts (%) (E) HM, not LI	All high minority areas (%) (F) HM
Distribution of HMDA Borrowers by Census Tract Location:						
2004	16.8	13.3	8.1	5.3	3.5	8.7
2005	15.3	12.5	8.3	4.2	2.8	7.0
2006	15.8	13.1	8.9	4.3	2.7	6.9
2007	16.2	13.3	8.5	4.8	3.0	7.7
2008	14.3	11.6	7.4	4.2	2.7	6.9
2009	13.1	10.0	5.9	4.1	3.0	7.2
2010	12.1	9.2	5.6	3.6	2.9	6.5
2011	11.4	8.8	5.5	3.3	2.6	5.9
2012	13.5	10.3	6.0	4.3	3.2	7.5
2013	14.1	10.9	6.6	4.3	3.1	7.4
2014	15.0	12.0	7.5	4.6	3.0	7.5
2015	15.1	12.2	7.6	4.6	2.9	7.5
Enterprises' Performance:						
2010	11.6	8.7	5.2	3.5	2.9	6.4
2011	10.7	8.1	5.1	3.1	2.6	5.7
2012	12.6	9.3	5.4	3.9	3.3	7.2
2013	13.4	10.2	6.2	4.0	3.2	7.2
2014	14.7	11.6	7.0	4.5	3.2	7.7
2015	15.1	12.1	7.4	4.6	3.0	7.7

Source: FHFA's tabulation of Home Mortgage Disclosure Act (HMDA) and Enterprises' data. Conventional conforming single-family owner-occupied 1st lien non-HOEPA originations.

The forecast for this subgoal is obtained by generating separate forecasts for the two sub-populations (the low-income areas component and the high-minority income component). For this proposed rulemaking, FHFA has tested alternate model specifications for this subgoal and determined that aligning the overlapping portion with the low-income area component yields forecast estimates that are more precise (in terms of a narrower confidence interval).[19]

FHFA sought to understand how the markets in low-income areas and high minority census tracts have evolved in recent years and who was being served by the Enterprises' efforts in these areas. FHFA's analysis found that the mortgage market in both low-income areas and in high-minority census tracts has been moving towards borrowers with higher incomes in recent years. As noted in Table 4, HMDA data show that both the low-income areas and the high-minority areas have increasing shares of borrowers with incomes at or above 100 percent of AMI, although loans to borrowers with incomes over 100 percent of AMI do not qualify for the minority areas component of the goal. For instance, the share of loans made to borrowers with incomes less than 50 percent of AMI and residing in low-income areas decreased from 17.8 percent in 2010 to 14.1 percent in 2015, after peaking at 19 percent in 2012. Over the same period, the share of loans made to borrowers with incomes greater than 100 percent of AMI and residing in these low-income census tracts increased from 38.8 percent in 2010 to

[19] Details are available in the market model paper, ''The Size of the Affordable Mortgage Market: 2018–2020 Enterprise Single-Family Housing Goals,'' available at *http://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Market-Estimates_2018-2020.pdf.*

42.1 percent in 2015, after dipping to 36.5 percent in 2012. Thus, borrowers with higher incomes have made up an increasing share of the mortgage market in the low-income areas. A similar trend exists among borrowers residing in high minority census tracts. While borrowers with incomes greater than 100 percent of AMI represented 42.5 percent of borrowers in these census tracts in 2010, the share increased to 49.2 percent in 2015.

TABLE 4—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL

[HMDA]

	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Borrowers Residing in Low-Income Census Tracts:						
Borrower Income ≤50% AMI	17.8	17.7	19.0	15.4	14.1	14.1
Borrower Income >50% and ≤60% AMI	9.6	9.0	10.5	9.8	9.3	9.3
Borrower Income >60% and ≤80% AMI	18.4	17.6	18.8	18.6	18.6	18.6
Borrower Income >80% and ≤100% AMI	14.3	13.9	13.9	14.7	14.9	14.9
Borrower Income >100% and ≤120% AMI	10.1	10.0	10.0	10.8	11.3	11.3
Borrower Income >120% AMI	28.7	30.5	26.5	29.3	30.9	30.8
Income Missing	1.0	1.4	1.3	1.3	0.9	1.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Borrowers Residing in High-Minority Census Tracts:						
Borrower Income ≤50% AMI	14.9	15.0	14.6	11.3	10.1	10.3
Borrower Income >50% and ≤60% AMI	9.0	8.7	9.1	8.1	7.6	7.6
Borrower Income >60% and ≤80% AMI	18.0	17.7	17.7	16.9	16.8	17.0
Borrower Income >80% and ≤100% AMI	14.6	14.3	14.1	14.7	14.8	14.9
Borrower Income >100% and ≤120% AMI	10.9	10.6	11.0	11.7	12.0	12.2
Borrower Income >120% AMI	31.6	32.4	32.3	36.0	37.8	37.0
Income Missing	1.0	1.3	1.3	1.4	0.9	1.0
Total	100.0	100.0	100.0	100.0	100.0	100.0

Definitions:
Low-income census tracts = Census tracts with median income ≤80% Area Median Income (AMI).
High-minority census tracts = Census tracts where (i) tract median income ≤100% Area Median Income (AMI); and (ii) minorities comprise at least 30 percent of the tract population.
Source: FHFA's tabulation of HMDA data.

The presence of higher income borrowers in lower income and higher minority areas may be a sign of economic diversity in those areas and may be related to the possibility of improved economic indicators for the community, but there is nevertheless some concern that such a trend could displace lower income households in these areas. Change in the mix of renters to owner-occupied households often precedes and accompanies these trends. FHFA is aware that this particular subgoal may encourage the Enterprises to focus on purchasing loans for higher income households in low-income and high-minority areas, and FHFA is also aware of concerns about the impact of rising housing costs on existing households in lower-income or higher-minority areas. FHFA welcomes input on all aspects of the low-income areas goal and subgoal, and in particular how best to satisfy the policy objectives of the various components of the goal and subgoal.

Table 5 shows similar trends in Enterprise acquisitions of mortgages in low-income areas and high-minority areas. In 2015, 42.5 percent of Enterprise acquisitions were of loans made to borrowers with incomes greater than or equal to 100 percent of the AMI, up from 40.7 percent in 2010. Also in 2015, 48.3 percent of Enterprise acquisitions in high-minority census tracts were acquisitions of loans made to borrowers with incomes greater than or equal to 100 percent of AMI, up from 45.4 percent in 2010.

TABLE 5—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL

[Enterprise Loans Only]

	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Borrowers Residing in Low-Income Census Tracts:						
Borrower Income ≤50% AMI	16.7	16.3	18.2	14.5	13.4	13.4
Borrower Income >50% and ≤60% AMI	9.2	8.8	10.0	9.6	9.4	9.4

TABLE 5—BORROWER INCOME RELATIVE TO AMI FOR LOW-INCOME AREAS SUBGOAL—Continued

[Enterprise Loans Only]

	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Borrower Income >60% and ≤80% AMI	18.4	17.5	18.6	18.6	19.0	19.1
Borrower Income >80% and ≤100% AMI	14.8	14.4	14.6	15.3	15.5	15.6
Borrower Income >100% and ≤120% AMI	10.8	10.9	10.8	11.5	11.7	11.8
Borrower Income >120% AMI	29.9	32.0	27.7	30.5	31.0	30.7
Income Missing	0.2	0.0	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Borrowers Residing in High-Minority Census Tracts:						
Borrower Income ≤50% AMI	13.3	12.9	15.2	11.5	10.3	10.3
Borrower Income >50% and ≤60% AMI	8.4	8.0	9.0	8.3	8.0	7.9
Borrower Income >60% and ≤80% AMI	17.7	16.9	18.0	17.7	17.7	17.7
Borrower Income >80% and ≤100% AMI	15.1	14.7	14.9	15.5	15.7	15.9
Borrower Income >100% and ≤120% AMI	11.6	11.4	11.5	12.4	12.6	12.8
Borrower Income >120% AMI	33.8	36.2	31.3	34.6	35.7	35.5
Income Missing	0.2	0.1	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0

Definitions:
Low-income census tracts = Census tracts with median income ≤80% Area Median Income (AMI).
High-minority census tracts = Census tracts where (i) tract median income ≤100% Area Median Income (AMI); and (ii) minorities comprise at least 30 percent of the tract population.
Source: FHFA's tabulation of Enterprises' data.

Proposed rule. The proposed rule would raise the annual low-income areas home purchase subgoal benchmark level for 2018 through 2020 to 15 percent from the 14 percent level set for the current goal period (2015–2017).

TABLE 6—LOW-INCOME AREAS HOME PURCHASE SUBGOAL

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Actual Market	14.2%	15.2%	15.2%					
Benchmark	11%	11%	14%	14%	14%			
Current Market Forecast				14.7%	15.6%	15.8%	16.1%	15.7%
				+/−1.2%	+/−2.0%	+/−2.6%	+/−3.1%	+/−3.5%
Fannie Mae Performance:								
Low-Income Area Home Purchase Mortgages	86,430	91,691	99,723	n/a				
High-Minority Area Home Purchase Mortgages	27,425	25,650	25,349	n/a				
Subgoal-Qualifying Total Home Purchase Mortgages	113,855	117,341	125,072	156,441				
Total Home Purchase Mortgages	814,137	757,870	802,432	964,847				
Low-Income Area % of Home Purchase Mortgages	14.0%	15.5%	15.6%	16.2%				
Freddie Mac Performance:								
Low-Income Area Home Purchase Mortgages	40,444	55,987	67,172	n/a				
High-Minority Area Home Purchase Mortgages	12,177	14,808	16,601	n/a				

TABLE 6—LOW-INCOME AREAS HOME PURCHASE SUBGOAL—Continued

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Subgoal-Qualifying Total Home Purchase Mortgages ...	52,621	70,795	83,773	100,608	.....	.....	.....	.....
Total Home Purchase Mortgages	429,158	519,731	579,340	644,991	.....	.....	.....	.....
Low-Income Area % of Home Purchase Mortgages	12.3%	13.6%	14.5%	15.6%	.....	.....	.....	.....

Both Enterprises have met this subgoal every year since 2013, regularly exceeding both the market and the benchmark levels. Fannie Mae's performance exceeded both the market and the benchmark in 2014 and 2015, although its performance was lower than that of the market in 2013. From 2013 through 2015, Freddie Mac's performance exceeded the benchmark but was below the market level. FHFA's forecast indicates that the market will increase slightly in the coming years, reaching a maximum level of 16.1 in 2019.

FHFA is proposing only a modest increase in the benchmark level that reflects the recent performance levels of the Enterprises while FHFA continues to evaluate whether the measure meets policy objectives. FHFA, as regulator and as conservator, will continue to monitor the Enterprises' performance, and if FHFA determines in later years that the benchmark level for the low-income areas home purchase housing subgoal is no longer feasible for the Enterprises to achieve in light of market conditions or for other reasons, FHFA may take appropriate steps to adjust the benchmark level.

4. Low-Income Areas Home Purchase Goal

The low-income areas home purchase goal covers the same categories as the low-income areas home purchase subgoal, but it also includes moderate income families in designated disaster areas. As a result, the low-income areas home purchase goal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are: (1) For families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of AMI; (2) for families with incomes less than or equal to AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI); or (3) for families with incomes less than or equal to 100 percent of AMI who reside in designated disaster areas.

The low-income areas goal benchmark level is established by a two-step process. The first step is setting the benchmark level for the low-income areas subgoal, as established by this proposed rule. The second step is establishing an additional increment for mortgages to families located in federally-declared disaster areas with incomes less than or equal to AMI.[20] Each year, FHFA sets the disaster area increment separately from this rule and notifies the Enterprises by letter of the benchmark level for that year. The proposed rule would set the annual low-income areas home purchase goal benchmark level for 2018 through 2020 at the subgoal benchmark level of 15 percent plus a disaster areas increment that FHFA will set separately each year.

TABLE 7—LOW-INCOME AREAS HOME PURCHASE GOAL

Year	Historical performance						
	2010	2011	2012	2013	2014	2015	2016
Actual Market	24.0%	22.0%	23.2%	22.1%	22.1%	19.8%	n/a
Benchmark	24%	24%	20%	21%	18%	19%	17%
Fannie Mae Performance:							
Subgoal-Qualifying Home Purchase Mortgages	59,281	54,285	83,202	113,855	117,341	125,072	156,441
Disaster Areas Home Purchase Mortgages	56,076	50,209	58,085	62,314	54,548	38,885	38,545
Goal-Qualifying Total Home Purchase Mortgages	115,357	104,494	141,287	176,169	171,889	163,957	194,986
Total Home Purchase Mortgages	479,200	467,066	633,627	814,137	757,870	802,432	964,847
Goal Performance	24.1%	22.4%	22.3%	21.6%	22.7%	20.4%	20.2%
Freddie Mac Performance:							
Subgoal-Qualifying Home Purchase Mortgages	32,089	23,902	32,750	52,621	70,795	83,773	100,608
Disaster Areas Home Purchase Mortgages	38,898	26,232	26,486	33,123	33,923	26,411	27,709
Goal-Qualifying Total Home Purchase Mortgages	70,987	50,134	59,236	85,744	104,718	110,184	128,317
Total Home Purchase Mortgages	307,555	260,796	288,007	429,158	519,731	579,340	644,991

[20] Disaster declarations are listed on the Federal Emergency Management Agency (FEMA) Web site at *https://www.fema.gov/disasters.*

TABLE 7—LOW-INCOME AREAS HOME PURCHASE GOAL—Continued

Year	Historical performance						
	2010	2011	2012	2013	2014	2015	2016
Goal Performance	23.1%	19.2%	20.6%	20.0%	20.1%	19.0%	19.9%

5. Low-Income Refinancing Goal

The low-income refinancing goal is based on the percentage of all single-family, owner-occupied refinance mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. The proposed rule would set the annual low-income refinancing housing goal benchmark level for 2018 through 2020 at 21 percent. While this proposed benchmark level is unchanged from the current 2015 to 2017 benchmark level, FHFA believes that this level will nevertheless be challenging for the Enterprises given the current level of interest rates (which are at historic low levels) and the likelihood of interest rate hikes. Because of the significant impacts interest rate changes have on this market, Enterprise and market performance on this goal are particularly susceptible to fluctuation. Moderation in the setting of this goal is also supported by the fact that many borrowers have already refinanced during the recent extended period of historically low interest rates.

TABLE 8—LOW-INCOME REFINANCING GOAL

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Actual Market	24.3%	25.0%	22.5%					
Benchmark	20%	20%	21%	21%	21%			
Current Market Forecast				21.1%	23.4%	24.3%	25.5%	24.8%
				+/−2.9%	+/−4.9%	+/−6.2%	+/−7.3%	+/−8.3%
Fannie Mae Performance:								
Low-Income Refinance Mortgages	519,753	215,826	227,817	247,663				
Total Refinance Mortgages	2,170,063	831,218	1,038,663	1,268,648				
Low-Income % of Refinance Mortgages	24.0%	26.0%	21.9%	19.5%				
Low-Income HAMP Modification Mortgages	11,858	6,503	3,563	n/a				
Total HAMP Modification Mortgages	16,478	9,288	6,595	n/a				
Low-Income % of HAMP Modification Mortgages	72.0%	70.0%	54.0%	n/a				
Low-Income Refinance & HAMP Modification Mortgages	531,611	222,329	231,380	n/a				
Total Refinance & HAMP Modification Mortgages	2,186,541	840,506	1,045,258	n/a				
Low-Income % of Refinance & HAMP Modification Mortgages	24.3%	26.5%	22.1%	n/a				
Freddie Mac Performance:								
Low-Income Refinance Mortgages	306,205	131,921	179,530	174,664				
Total Refinance Mortgages	1,309,435	514,936	795,936	830,824				
Low-Income % of Refinance Mortgages	23.4%	25.6%	22.6%	21.0%				
Low-Income HAMP Modification Mortgages	14,757	6,795	3,064	n/a				
Total HAMP Modification Mortgages	21,599	10,335	4,433	n/a				
Low-Income % of HAMP Modification Mortgages	68.3%	65.7%	69.1%	n/a				

TABLE 8—LOW-INCOME REFINANCING GOAL—Continued

Year	Historical performance				Projected performance			
	2013	2014	2015	2016	2017	2018	2019	2020
Low-Income Refinance & HAMP Modification Mortgages	320,962	138,716	182,594	n/a				
Total Refinance & HAMP Modification Mortgages	1,331,034	525,271	800,369	n/a				
Low-Income % of Refinance & HAMP Modification Mortgages	24.1%	26.4%	22.8%	n/a				

Both Enterprises have met this goal since 2013. The performance of the Enterprises on this goal has historically been very close to actual market levels. In 2014, when the market figure was at its highest point, both Enterprises met the goal and exceeded the market. In 2015, Freddie Mac exceeded the market and the benchmark level, and Fannie Mae exceeded the benchmark level.

The low-income share of the refinance market as measured by HMDA data has changed dramatically in recent years, increasing from 20.2 percent in 2010 to a peak of 25.0 percent in 2014. FHFA's model for this goal forecasts that this market will decrease in 2016, with a sharp rise in 2017–2019, followed by slight moderation in 2020. However, the confidence intervals around the forecasts are very wide, reflecting the uncertainty about interest rates. Recent macroeconomic forecasts have predicted interest rate hikes that have not materialized.

Since 2010 the low-income refinancing housing goal has included modifications under the Home Affordable Modification Program (HAMP).[21] HAMP modifications, however, are not included in the data used to calculate the market levels. Including HAMP modifications in the Enterprise performance numbers increases the measured performance of the Enterprises on the low-income refinancing housing goal because lower income borrowers make up a greater proportion of the borrowers receiving HAMP modifications than the low-income share of the overall refinancing mortgage market. However, HAMP modifications have been declining over time, and the program stopped taking applications at the end of 2016.[22] The expiration of the HAMP program may make it slightly more difficult for the Enterprises to meet the low-income refinancing goal.

FHFA, as regulator and conservator, will continue to monitor the Enterprises and if FHFA determines in later years that the benchmark level for the low-income refinancing housing goal needs to be revised, FHFA may take appropriate steps to adjust the benchmark level.

V. Multifamily Housing Goals

This proposed rule also sets out FHFA's views about benchmark levels for the multifamily housing goals from 2018–2020. FHFA has considered the required statutory factors described below. Despite the strength of the multifamily mortgage market, data indicates a continued supply gap of units affordable to lower-income households. However, FHFA expects and encourages the Enterprises to fully support affordable multifamily housing, in part by fulfilling the multifamily housing goals in a safe and sound manner.

A. Factors Considered in Setting the Proposed Multifamily Housing Goal Levels

In setting the proposed benchmark levels for the multifamily housing goals, FHFA has considered the statutory factors outlined in Section 1333(a)(4) of the Safety and Soundness Act. These factors include:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;

2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;

3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

5. The availability of public subsidies; and

6. The need to maintain the sound financial condition of the Enterprises.[23]

Unlike the single-family housing goals, performance on the multifamily housing goals is measured solely against a benchmark level, without any retrospective market measure. The absence of a retrospective market measure for the multifamily housing goals results, in part, from the lack of comprehensive data about the multifamily mortgage market. Unlike the single-family market, for which HMDA provides a reasonably comprehensive dataset about single-family mortgage originations each year, the multifamily market (including the affordable multifamily market segment) has no comparable source. Consequently, it can be difficult to correlate different datasets that usually rely on different reporting formats. For example, some data are available by dollar volume while other data are available by unit production. [24]

Another difference between the single-family and multifamily goals is that there are separate single-family housing goals for home purchase and

[21] The goal has included permanent HAMP modifications to low-income borrowers in the numerator and all HAMP permanent modifications in the denominator.

[22] The HAMP program expired at the end of 2016. There will be some HAMP modifications that will count toward the Enterprise housing goals in 2017 as applications that were initiated before the end of the program are converted to permanent modifications.

[23] 12 U.S.C. 4563(a)(4).

[24] CFPB is planning to collect and release additional data fields (including the number of units for each multifamily loan that is reported) beginning in 2018 that likely will be useful in creating a retrospective market measure for the multifamily market.

refinancing mortgages, while the multifamily goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan. In addition, unlike the single-family housing goals, the multifamily housing goals are measured based on the total volume of affordable multifamily mortgage purchases rather than on a percentage of multifamily mortgage purchases. The use of total volumes, which FHFA measures by the number of eligible units, rather than percentages of each Enterprises' overall multifamily purchases, requires that FHFA take into account the expected size of the overall multifamily mortgage market and the affordable share of the market, as well as the expected volume of the Enterprises' overall multifamily purchases and the affordable share of those purchases.

The lack of comprehensive data for the multifamily mortgage market is even more acute with respect to the segments of the market that are targeted to low-income families, defined as families with incomes at or below 80 percent of AMI, and very low-income families, defined as families with incomes at or below 50 percent of AMI. As required by the Safety and Soundness Act, FHFA determines affordability of multifamily units based on a unit's rent and utility expenses not exceeding 30 percent of the area median income standard for low- and very low-income families.[25] While much of the analysis that follows discusses trends in the overall multifamily mortgage market, FHFA recognizes that these general trends may not apply to the same extent to all segments of the multifamily market. Notwithstanding these challenges, FHFA has considered each of the required statutory factors (a number of which are related) as discussed below.

Multifamily mortgage market. FHFA's consideration of the multifamily mortgage market addresses the size of and competition within the multifamily mortgage market, as well as the subset of the multifamily market affordable to low-income and very low-income families. In 2015, the multifamily mortgage origination market experienced remarkable growth—year-over-year origination volume grew 28 percent over the prior year to nearly $250 billion, fueled largely by a recovery in multifamily construction. The overall market grew modestly in 2016. Forecasts from various industry experts indicate that overall multifamily growth in mortgage market volumes and mortgage originations are expected to increase only modestly in 2017, both for refinancing activity and for financing new multifamily units, and remain level in 2018.

According to the National Multifamily Housing Council's tabulation of American Community Survey microdata, in 2015 about 43 percent of renter households (18.7 million households) lived in multifamily properties, defined as structures with five or more rental units.[26] More generally, the population of renters continued to grow from 35 million in 2005 to 44 million in 2015, an increase of about one quarter.[27] This growth led to an increase in demand for rental units that has only partially been met by expansions in supply. Vacancy rates hit a 30-year low in 2016, and are especially low in lower-priced segments of the market, while climbing in the high-end segment of many markets.[28] As a result of these factors, rents continued to rise nationally and outpaced inflation in 2016.[29]

Affordability in the multifamily market. There are several factors that make it difficult to accurately forecast the affordable share of the multifamily mortgage market. First, the portion of the overall multifamily mortgage market that provides housing units affordable to low-income and very low-income families varies from year to year. Second, competition between purchasers of mortgages within the multifamily market overall may differ from the competition within the affordable multifamily market segment. Finally, the volume for the affordable multifamily market segment will depend on the availability of affordable housing subsidies.

Using the measure under which affordable rent and utilities do not exceed 30 percent of AMI, affordability for families living in rental units has decreased for many households in recent years. The Joint Center for Housing Studies (JCHS) 2016 State of the Nation's Housing Report notes some concerning trends in the supply of affordable multifamily units. For example, the report found that the majority of growth in the multifamily housing stock has been the result of new construction. Moreover, most of the new construction consists of apartments with fewer bedrooms and has been concentrated in urban areas with higher median rents. In the same report, JCHS also noted, ''the steep rent for new units reflect rising land and development costs, which push multifamily construction to the high end of the market.'' [30]

JCHS has also noted the significant prevalence of cost-burdened renters. In 2015, nearly half of all tenants paid more than 30 percent of household income for rental housing, especially in high-cost urban markets where most renters reside and where Fannie Mae and Freddie Mac have focused their multifamily lending. Among lower-income households, cost burdens are especially severe.[31] In addition, a recent study showed that the median incomes of renter households have experienced slight declines in some large metropolitan areas in recent years, leading to increased cost burdens for these households.[32]

One source of growth in the stock of lower-rent apartments is ''filtering,'' a process by which existing units become more affordable as they age. However, in recent years, this downward filtering of rental units has occurred at a slow pace in most markets. Coupled with the permanent loss of affordable units, as these units fall into disrepair or units are demolished to create new higher-rent or higher-valued ownership units, this trend has severely limited the supply of lower rent units. As a result, there is an acute shortfall of affordable units for extremely low-income renters (earning up to 30 percent of AMI) and very low-income renters (earning up to 50 percent of AMI). This supply gap is especially wide in certain metropolitan areas in the southern and western United States.[33]

The combination of the supply gap in affordable units which resulted in significant increases in rental rates, and the prevalence of cost-burdened renters resulting from largely flat real incomes has led to an erosion of affordability with fewer units qualifying for the

[25] 12 U.S.C. 4563(c).

[26] Accessed on 9/22/2016 at *http://www.nmhc.org/Content.aspx?id=4708#Type_of_Structure.*

[27] ''America's Rental Housing: Expanding Options for Diverse and Growing Demand'' Joint Center on Housing Studies of Harvard University, December 2015.

[28] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[29] *Id.*

[30] ''The State of the Nation's Housing 2016,'' Joint Center for Housing Studies of Harvard University, June 2016, available at *http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_2016_state_of_the_nations_housing_lowres.pdf.*

[31] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[32] ''Renting in America's Largest Metropolitan Areas,'' NYU Furman Center, March 2016.

[33] ''The Gap: The Affordable Housing Gap Analysis 2017,'' National Low Income Housing Coalition, March 2017.

housing goals.[34] This challenge of affordability is also reflected in the falling share of low-income multifamily units financed by loans purchased by the Enterprises. While 77 percent of the multifamily units financed by Fannie Mae in 2011 were low-income, that ratio dropped steadily in the intervening years to 64 percent in 2016. At Freddie Mac, the low-income share also peaked in 2011 and 2012 at 79 percent, and decreased gradually to 68 percent in 2016. For the very low-income goal, the share at Fannie Mae peaked in 2012 at 22 percent before falling to 12 percent in 2016, and at Freddie Mac the share peaked at 17 percent in 2013 before falling to 12 percent in 2016.

Small multifamily properties with 5 to 50 units are also an important source of affordable rental housing and represent approximately one-third of the affordable rental market. Because they have different operating and ownership characteristics than larger properties, small multifamily properties often have different financing needs. For example, small multifamily properties are more likely to be owned by an individual or small investor and less likely to be managed by a third party property management firm.[35] Likewise, the affordability of small multifamily units means they generate less revenue per unit than larger properties. These factors can make financing more difficult to obtain for small multifamily property owners. While the volume of Enterprise-supported loans on small multifamily properties has been inconsistent in recent years, each Enterprise continues to refine its approach to serving this market.

Availability of public subsidies. Multifamily housing assistance is primarily available in two forms—demand-side subsidies that either assist low-income tenants directly (*e.g.,* Section 8 vouchers) or provide project-based rental assistance (Section 8 contracts), and supply-side subsidies that support the creation and preservation of affordable housing (*e.g.,* public housing and Low-Income Housing Tax Credit (LIHTC)). The availability of public subsidies impacts the overall affordable multifamily housing market, and changes to historic programs could significantly impact the ability of the Enterprises to meet the goals.

Financing for affordable multifamily buildings—particularly those affordable to very low-income families—often uses an array of state and federal supply-side housing subsidies, such as LIHTC, tax-exempt bonds, project-based rental assistance, or soft subordinate financing.[36] In recent years, competition for affordable housing subsidy has been intense and investor interest in tax credit equity projects of all types and in all markets has been strong, especially in markets in which bank investors are seeking to meet Community Reinvestment Act (CRA) goals. By contrast, in recent months, the subsidy provided by the LIHTC program has been volatile and much more uncertain, as policymakers consider a broader range of potential tax reform legislation that could adversely impact the LIHTC program.

Subject to the continuing availability of these subsidies, there should continue to be opportunities in the multifamily market to provide permanent financing for properties with LIHTC during the 2018–2020 period. There should also be opportunities for market participants, including the Enterprises, to purchase mortgages that finance the preservation of existing affordable housing units (especially for restructurings of older properties that reach the end of their initial 15-year LIHTC compliance periods and for refinancing properties with expiring Section 8 rental assistance contracts).

In recent years, demand-side public subsidies and the availability of public housing have not kept pace with the growing number of low-income and very low-income households in need of federal housing assistance. As a result, the number of renter households with ''worst case needs'' has grown to 8.19 million, an increase of one-third since 2005.[37]

Role of the Enterprises. In setting the proposed multifamily housing goals, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available. The share of the overall multifamily market purchased by the Enterprises increased in the years immediately following the financial crisis but has declined more recently in response to growing private sector participation. The Enterprise share of the multifamily origination market was approximately 70 percent of the market in 2008 and 2009 compared to 38 percent in 2015.[38] The total share is expected to remain at around the 2015 level in 2016, 2017, and 2018 in light of the Scorecard cap imposed by FHFA in its role as conservator (discussed below).

Despite the Enterprises' reduced market share in the overall multifamily market, FHFA expects the Enterprises to continue to demonstrate leadership in multifamily affordable housing by providing liquidity and supporting housing for tenants at different income levels in various geographic markets and in various market segments.

Conservatorship limits on multifamily mortgage purchases (Conservatorship Scorecard cap). As conservator of the Enterprises, FHFA has established a yearly cap in the Conservatorship Scorecard that limits the amount of conventional (market-rate) multifamily loans that each Enterprise can purchase. The multifamily lending cap is intended to further FHFA's conservatorship goal: Maintaining the presence of the Enterprises as a backstop for the multifamily finance market, while not impeding the participation of private capital. This target for the Enterprise share of the multifamily origination market reflect what is generally considered by the industry as an appropriate market share for the Enterprises during normal market conditions. The cap prevents the Enterprises from crowding out other capital sources and restrains the rapid growth of the Enterprises' multifamily businesses that started in 2011.[39]

In 2015, FHFA established a cap of $30 billion on new conventional multifamily loan purchases for each Enterprise in response to increased participation in the market from private sector capital. In 2016, the cap was initially set at $30 billion, raised in May 2016 to $35 billion, and further increased to $36.5 billion in August, in response to growth of the overall multifamily origination market throughout the year. These increases maintained the Enterprises' current market share at about 40 percent. FHFA has announced that for 2017, the cap will remain at $36.5 billion.

FHFA reviews the market size estimates quarterly, using current market data provided by Fannie Mae,

[34] ''State of the Nation's Housing 2017,'' Joint Center on Housing Studies of Harvard University, June 2017.

[35] ''2012 Rental Housing Finance Survey,'' U.S. Census Bureau and U.S. Department of Housing and Urban Development, Tables 2b, 2c, 2d and 3.

[36] LIHTC is a supply-side subsidy created under the Tax Reform Act of 1986 and is the main source of new affordable housing construction in the United States today. Tax credits are used for the acquisition, rehabilitation, and/or new construction of rental housing for low-income households. LIHTC has facilitated the creation or rehabilitation of approximately 2.4 million affordable units since inception in 1986.

[37] ''Preview of 2015 Worst Case Housing Needs,'' U.S. Department of Housing and Urban Development, January 2017. Renters with worse case needs have very low incomes, lack housing assistance, and have either severe rent burdens or severely inadequate housing (or both).

[38] Urban Institute, ''The GSEs' Shrinking Role in the Multifamily Market,'' April 2015.

[39] MBA, 2015 Annual Report on Multifamily Lending, October 2016.

Freddie Mac, the MBA, and the National Multifamily Housing Council. If FHFA determines that the actual market size is greater than was projected, the agency will consider an approximate increase to the capped (conventional market-rate) category of the Conservatorship Scorecard for each Enterprise. In light of the need for market participants to plan sales of mortgages during long origination processes, if FHFA determines that the actual market size is smaller than projected, there will be no reduction to the capped volume for the current year from the amount initially established under the Conservatorship Scorecard.

In order to encourage affordable lending activities, FHFA excludes many types of loans in underserved markets from the Conservatorship Scorecard cap on conventional loans. The Conservatorship Scorecard has no volume targets in the market segments excluded from the cap. There is significant overlap between the types of multifamily mortgages that are excluded from the Conservatorship Scorecard cap and the multifamily mortgages that contribute to the performance of the Enterprises under the affordable housing goals. The 2017 Conservatorship Scorecard excludes either the entirety of the loan amount or a *pro rata* share of the loan on the following categories: (1) Targeted affordable housing; (2) small multifamily properties; (3) blanket loans on manufactured housing communities; (4) blanket loans on senior housing and assisted living communities; (5) loans in rural areas; (6) loans to finance energy or water efficiency improvements; and (7) market rate affordable units in standard (60 percent AMI), high cost (80 percent AMI), and very high cost (100 percent AMI) markets. By excluding the underserved market categories from the cap, the Conservatorship Scorecard continues to encourage the Enterprises to support affordable housing in their purchases of multifamily mortgages.[40]

B. Proposed Multifamily Housing Goal Benchmark Levels

In setting the proposed multifamily housing goals, FHFA encourages the Enterprises to provide liquidity and to support various multifamily finance market segments while doing so in a safe and sound manner. The Enterprises have served as a stabilizing force in the multifamily market in the years since the financial crisis. During the conservatorship period, the Enterprise portfolios of loans on multifamily affordable housing properties have experienced low levels of delinquency and default, similar to the performance of Enterprise loans on market rate properties. In light of this performance, the Enterprises should be able to sustain or increase their volume of purchases of loans on affordable multifamily housing properties without adversely impacting the Enterprises' safety and soundness or negatively affecting the performance of their total loan portfolios.

FHFA continues to monitor the activities of the Enterprises, both in FHFA's capacity as regulator and as conservator. If necessary, FHFA will make appropriate changes in the multifamily housing goals to ensure the Enterprises' continued safety and soundness.

The proposed rule establishes benchmark levels for the multifamily housing goals for the Enterprises. Before finalizing the benchmark levels for the low-income and very low-income multifamily goals in the final rule, FHFA will review any additional data that become available about the multifamily performance of the Enterprises in 2016, updated projections of the size of the multifamily market and affordable market share, and any public comments received on the proposed multifamily housing goals.

1. Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.

TABLE 9—MULTIFAMILY LOW-INCOME HOUSING GOAL

Year	Historical performance				
	2012	2013	2014	2015	2016
Fannie Mae Goal	285,000	265,000	250,000	300,000	300,000
Freddie Mac Goal	225,000	215,000	200,000	300,000	300,000
Fannie Mae Performance:					
Low-Income Multifamily Units	375,924	326,597	260,124	307,510	351,235
Total Multifamily Units	501,256	430,751	372,089	468,798	551,666
Low-Income % Total	75.0%	75.8%	69.9%	65.6%	63.7%
Freddie Mac Performance:					
Low-Income Multifamily Units	298,529	254,628	273,807	379,043	407,340
Total Multifamily Units	377,522	341,921	366,377	514,275	597,033
Low-Income % of Total Units	79.1%	74.5%	74.7%	73.7%	68.2%

From 2012 through 2016, both Enterprises exceeded their low-income multifamily goals. Prior to 2015, Fannie Mae had higher goals than Freddie Mac. For the 2015–2017 goal period, FHFA set the same goal level for both Enterprises for the first time, reflecting parity between Freddie Mac and Fannie Mae multifamily market share in terms of unit counts.

In 2016, the goal for each Enterprise was 300,000 units. Fannie Mae purchased mortgages financing 351,235 low-income units, and Freddie Mac purchased mortgages financing 407,340 low-income units. While total volumes have increased, the share of low-income units financed at each Enterprise has been declining from peak levels in 2012.

As noted above, the forecast for the multifamily originations market increases slightly and then levels off after 2017. The Conservatorship Scorecard cap for each Enterprise was raised from an initial $30 billion cap to $36.5 billion in August 2016 in response to growth of the multifamily origination market throughout the year. This change allowed the Enterprises to pursue purchases of a greater volume of multifamily originations and support the overall market and may seem to

[40] For more information on the Conservatorship Scorecard, see *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-CSS.pdf.*

support an increase in the proposed goal levels for both Enterprises. However, the gap between the supply of low-income and very low-income units and the needs of low-income households, as described in the affordability discussion above, is expected to continue in the next goal period. Moreover, the forecast for the multifamily originations market for 2017 and 2018 is relatively flat, and securing housing subsidies will likely continue to be challenging. These trends suggest moderation in any increase in the proposed goal levels. Therefore, balancing these considerations, the proposed rule sets the annual low-income multifamily housing goal for each Enterprise at 315,000 units in each year from 2018 through 2020, a modest increase from the 300,000 unit goal for each Enterprise in 2015–2017.

2. Multifamily Very Low-Income Housing Subgoal

The multifamily very low-income housing subgoal includes units affordable to very low-income families, defined as families with incomes no greater than 50 percent of AMI.

TABLE 10—MULTIFAMILY VERY LOW-INCOME SUBGOAL

Year	Historical performance				
	2012	2013	2014	2015	2016
Fannie Mae Goal	80,000	70,000	60,000	60,000	60,000
Freddie Mac Goal	59,000	50,000	40,000	60,000	60,000
Fannie Mae Performance:					
Very Low-Income Multifamily Units	108,878	78,071	60,542	69,078	65,445
Total Multifamily Units	501,256	430,751	372,089	468,798	551,666
Very Low-Income % of Total Units	21.7%	18.1%	16.3%	14.7%	11.9%
Freddie Mac Performance:					
Very Low-Income Multifamily Units	60,084	56,752	48,689	76,935	73,032
Total Home Purchase Mortgages	377,522	341,921	366,377	514,275	597,033
Very Low-Income % of Total Units	15.9%	16.6%	13.3%	15.0%	12.2%

From 2012 through 2016, both Enterprises met and exceeded their very low-income multifamily goals. In 2016, the goal for each Enterprise was 60,000 units. Fannie Mae purchased mortgages financing 65,445 very low-income units, while Freddie Mac purchased mortgages financing 73,032 very low-income units. Similar to the low-income multifamily goal, the share of very low-income units financed at each Enterprise has been declining in recent years.

The market for very low-income multifamily housing faces even larger challenges than the market for low-income multifamily housing, given the need for lower rents—often requiring deeper subsidies—to make units affordable to these households. These factors suggest moderation in the setting of the very low-income multifamily subgoal for the Enterprises. Therefore, the proposed rule maintains the annual very low-income multifamily subgoal for each Enterprise at 60,000 units each year from 2018 through 2020.

3. Small Multifamily Low-Income Housing Subgoal

A small multifamily property is defined as a property with 5 to 50 units. The small multifamily low-income housing subgoal is based on the total number of units in small multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.

TABLE 11—SMALL MULTIFAMILY LOW-INCOME SUBGOAL

Year	Historical performance				
	2012	2013	2014	2015	2016
Small Low-Income Multifamily Goal	.....	.....	.....	6,000	8,000
Fannie Mae Performance:					
Small Low-Income Multifamily Units	16,801	13,827	6,732	6,731	9,310
Total Small Multifamily Units	26,479	21,764	11,880	11,198	15,230
Low-Income % of Total Small Multifamily Units	63.5%	63.5%	56.7%	60.1%	61.1%
Freddie Mac Performance:					
Small Low-Income Multifamily Units	829	1,128	2,076	12,802	22,101
Total Small Multifamily Units	2,194	2,375	4,659	21,246	33,984
Low-Income % of Total Small Multifamily Units	37.8%	47.5%	44.6%	60.3%	65.0%

This was a new subgoal created in the 2015–2017 goal period. The goal was set at 6,000 units in 2015, 8,000 units in 2016, and 10,000 units in 2017. In 2016, both Enterprises exceeded the goal of 8,000 units. Fannie Mae purchased mortgages financing 9,310 units, and Freddie Mac purchased mortgages financing 22,101 units.

The proposed rule would set the annual small multifamily subgoal for each Enterprise at 10,000 units for each year from 2018 through 2020, the same as the 2017 goal. The Enterprises continue to innovate in their approaches to serving this market. FHFA is still monitoring the trends in this market segment as well as Enterprise performance for this new subgoal, and will consider all input in preparation of the final rule. However, FHFA is proposing to maintain the same benchmark level for 2018 through 2020 as the 2017 benchmark level for both Enterprises. Maintaining the current goal should continue to encourage the Enterprises' participation in this market and ensure the Enterprises have the expertise necessary to serve this market

should private sources of financing become unable or unwilling to lend on small multifamily properties.

VI. Section-by-Section Analysis of Other Proposed Changes

The proposed rule would also revise other provisions of the housing goals regulation, as discussed below.

A. Changes to Definitions—Proposed § 1282.1

The proposed rule includes changes to definitions used in the current housing goals regulation. The proposed rule would revise the definitions of ''median income,'' ''metropolitan area,'' and ''non-metropolitan area'' and would remove the definition of ''AHS.''

1. Definition of ''Median Income''

The current regulation defines ''median income'' as the unadjusted median family income for an area as most recently determined by HUD. While this definition accurately identifies the source that FHFA uses to determine median incomes each year, the definition does not reflect the longstanding practice FHFA has followed in providing the Enterprises with the median incomes that the Enterprises must use each year. The proposed rule would revise the definition to be clear that the Enterprises are required to use the median incomes provided by FHFA each year in determining affordability for purposes of the housing goals.

The proposed rule would also make two additional technical changes to the definition of ''median income.'' First, the proposed rule would add a reference to ''non-metropolitan areas'' in the definition because FHFA determines median incomes for both metropolitan areas and non-metropolitan areas each year. Second, the proposed rule would remove the word ''family'' in one place so that the term ''median income'' is used consistently throughout the regulation.

The revised definition would read: ''Median income means, with respect to an area, the unadjusted median family income for the area as determined by FHFA. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan and non-metropolitan areas are to be applied for purposes of determining median income.''

2. Definitions of ''Metropolitan Area'' and ''Non-Metropolitan Area''

The proposed rule would revise the definitions of ''metropolitan area'' and ''non-metropolitan area'' to be consistent with each other and to reflect the proposed changes to the definition of ''median income'' discussed above.

The current regulation defines both ''metropolitan area'' and ''non-metropolitan area'' based on the areas for which HUD defines median family incomes. The definition of ''metropolitan area'' refers to median family incomes ''determined by HUD,'' while the definition of ''non-metropolitan area'' refers to median family incomes ''published annually by HUD.''

To be consistent with the proposed changes to the definition of ''median income,'' the proposed rule would revise the definition of ''metropolitan area'' by replacing the phrase ''for which median family income estimates are determined by HUD'' with the phrase ''for which median incomes are determined by FHFA.'' For the same reason, the proposed rule would revise the definition of ''non-metropolitan area'' by replacing the phrase ''for which median family income estimates are published annually by HUD'' with the phrase ''for which median incomes are determined by FHFA.''

3. Definition of ''AHS'' (American Housing Survey)

The proposed rule would remove the definition of ''AHS'' from § 1282.1 because the term is no longer used in the Enterprise housing goals regulation.

Prior to the 2015 amendments to the Enterprise housing goals regulation, the term ''AHS'' was used to specify the data source from which FHFA derives the utility allowances used to determine the total rent for a rental unit which, in turn, is used to determine the affordability of the unit when actual utility costs are not available. The 2015 amendments consolidated and simplified the definitions applicable to determining the total rent and eliminated the reference to AHS in the part of the definition related to utility allowances, providing FHFA with flexibility in how it determines the nationwide utility allowances. The current nationwide average utility allowances are still fixed numbers based on AHS data, but the regulation does not require FHFA to rely solely on AHS data to determine those utility allowances. The term ''AHS'' is not used anywhere else in the regulation, so the proposed rule would remove the definition from § 1282.1.

B. Data Source for Estimating Affordability of Multifamily Rental Units—Proposed § 1282.15(e)(2)

The proposed rule would revise § 1282.15(e)(2) to update the data source used by FHFA to estimate affordability where actual information about rental units in a multifamily property is not available.

Section 1282.15(e) permits the Enterprises to use estimated affordability information to determine the affordability of multifamily rental units for up to 5 percent of the total multifamily rental units in properties securing mortgages purchased by the Enterprise each year when actual information about the units is not available. The estimations are based on the affordable percentage of all rental units in the census tract in which the property for which the Enterprise is estimating affordability is located.

The current regulation provides that the affordable percentage of all rental units in the census tract will be determined by FHFA based on the most recent decennial census. However, the 2000 decennial census was the last decennial census that collected this information. The U.S. Census Bureau now collects this information through the ACS. Since 2011, FHFA has used the most recent data available from the ACS to determine the affordable percentage of rental units in a census tract for purposes of estimating affordability. The proposed rule would revise § 1282.15(e)(2) to reflect this change. To take into account possible future changes in how rental affordability data is collected, the revised sentence would not refer specifically to data derived from the ACS. Section 1282.15(e)(2) would be revised to replace the phrase ''as determined by FHFA based on the most recent decennial census'' with the phrase ''as determined by FHFA.''

C. Determination of Median Income for Certain Census Tracts—Proposed § 1282.15(g)(2)

The proposed rule would revise § 1282.15(g) to remove paragraph (g)(2), an obsolete provision describing the method that the Enterprises were required to use to determine the median income for a census tract where the census tract was split between two areas with different median incomes.

Current § 1282.15(g)(2) requires the Enterprises to use the method prescribed by the Federal Financial Institutions Examination Council to determine the median income for certain census tracts that were split between two areas with different median incomes. This provision was put in place by the 1995 final rule published by HUD to establish the

Enterprise housing goals under the Safety and Soundness Act.[41]

As discussed above regarding the definition of ''median income,'' the process of determining median incomes has changed over the years, so that the Enterprises are now required to use median incomes provided by FHFA each year when determining affordability for purposes of the housing goals. Because FHFA provides median incomes for every location in the United States, it is no longer necessary for the regulation to set forth a process for the Enterprises to use when it is not certain what the applicable median income would be for a particular location. Consequently, the proposed rule would remove § 1282.15(g)(2) from the regulation.

D. Housing Plan Timing—Proposed § 1282.21(b)(3)

The proposed rule would revise § 1282.21(b)(3) to provide the Director with discretion to determine the appropriate period of time that an Enterprise may be subject to a housing plan to address a failure to meet a housing goal.

Section 1336 of the Safety and Soundness Act provides for the enforcement of the Enterprise housing goals. If FHFA determines that an Enterprise has failed to meet a housing goal and that achievement of the goal was feasible, FHFA may require the Enterprise to submit a housing plan describing the actions it will take ''to achieve the goal for the next calendar year.'' [42] The Safety and Soundness Act has similar provisions for requiring a housing plan if FHFA determines, during the year in question, that there is a substantial probability that an Enterprise will fail to meet a housing goal and that achievement of the goal is feasible. In such cases, the housing plan would describe the actions the Enterprise will take ''to make such improvements and changes in its operations as are reasonable in the remainder of such year.'' The current regulation generally mirrors the statutory language on the requirements for a housing plan, except that the regulation makes clear that the housing plan must also ''[a]ddress any additional matters relevant to the plan as required, in writing, by the Director.'' [43]

FHFA required an Enterprise to submit a housing plan for the first time in late 2015 in response to Freddie Mac's failure to achieve the single-family low-income and very low-income home purchase goals in 2014. FHFA required Freddie Mac to submit a housing plan setting out the steps Freddie Mac would take in 2016 and 2017 to achieve the two goals that it failed to achieve in 2013 and 2014. The requirement for the plan to address actions taken in both 2016 and 2017 was based on FHFA's authority under § 1282.21(b) to require a housing plan to address any additional matters required by the Director and was intended to address an issue of timing.

FHFA's final determination on Freddie Mac's performance on the housing goals for 2014 was issued on December 17, 2015. As described in more detail below, that timing was driven by procedural steps required by the Safety and Soundness Act and FHFA's own regulation. If FHFA interpreted narrowly the statutory and regulatory provisions stating that the housing plan should address the steps the Enterprise would take in the following year, the housing plan itself would become irrelevant because the year it would cover would have ended before the housing plan was even submitted to FHFA.

The extended time required to reach a final determination housing goals performance will occur every year as a result of the procedural steps required by the Safety and Soundness Act. Under those procedures, if FHFA determines that an Enterprise has failed to achieve a housing goal in a particular year, FHFA is first required to issue a preliminary determination that generally provides at least 30 days for the Enterprise to respond. FHFA must then consider any information submitted by the Enterprise before making a final determination on whether the Enterprise failed to meet the goal and whether achievement of the goal was feasible. If FHFA determines that the Enterprise should be required to submit a housing plan, the statute provides for up to 45 days for the Enterprise to submit its housing plan.[44] FHFA must then evaluate the housing plan, generally within 30 days. The time necessary for FHFA's review and determination at each step of this procedural process is generally four to six months.

These procedural steps cannot begin until FHFA has the information necessary to make a determination on whether the Enterprise has met the housing goals. The Enterprises are required to submit their official performance numbers to FHFA within 75 days after the end of the year, usually March 15 of the following year. Therefore, the earliest that FHFA would be able to approve a housing plan from an Enterprise would be mid-July of the year following the performance year. For the single-family housing goals, this time period is extended even further because the HMDA data necessary to determine if an Enterprise met the retrospective market measurement portion of the single-family housing goals are not available until September of the year following the performance year.

Based on (1) FHFA's experience in overseeing the housing goals, in particular the experience in requiring Freddie Mac to submit a housing plan based on its failure to achieve certain housing goals in 2014, (2) the inherent conflict in the timeframes set out in the Safety and Soundness Act, and (3) the importance of ensuring that any housing plans are focused on sustainable improvements in Enterprise goals performance, FHFA is proposing to amend § 1282.21(b)(3) to state explicitly that a housing plan that is required based on an Enterprise's failure to achieve a housing goal will be required to address a time period determined by the Director. If FHFA requires an Enterprise to submit a housing plan, FHFA will notify the Enterprise of the applicable time period in FHFA's final determination on the performance of the Enterprise for a particular year.

VII. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities

[41] *See* 60 FR 61846 (Dec. 1, 1995).

[42] *See* 12 U.S.C. 4566(c)(2).

[43] *See* 12 CFR 1282.21(b).

[44] *See* 12 U.S.C. 4566(c)(3).

because the regulation applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, under the authority of 12 U.S.C. 4511, 4513 and 4526, FHFA proposes to amend part 1282 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter E—Housing Goals and Mission

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

§ 1282.1 [Amended]

■ 2. Amend § 1282.1 as follows:

■ a. Remove the definition of ''AHS''; and

■ b. Revise the definitions of ''Median income,'' ''Metropolitan area,'' and ''Non-metropolitan area.''

The revisions read as follows:

§ 1282.1 Definitions.

* * * * *

Median income means, with respect to an area, the unadjusted median family income for the area as determined by FHFA. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan and non-metropolitan areas are to be applied for purposes of determining median income.

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median incomes are determined by FHFA.

* * * * *

Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area, for which median incomes are determined by FHFA.

* * * * *

■ 3. Revise § 1282.12 to read as follows:

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal; or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 150 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 24 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Very low-income families housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 6 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income areas housing goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) A benchmark level which shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income areas housing subgoal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income census tracts or for moderate-income families in minority census tracts shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 15 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) *Refinancing housing goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2018, 2019 and 2020 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

■ 4. Revise § 1282.13 to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoals.

(a) *Multifamily housing goal and subgoals.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal or subgoal, respectively.

(b) *Multifamily low-income housing goal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing

affordable to low-income families shall be at least 315,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

(c) *Multifamily very low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

(d) *Small multifamily low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be at least 10,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by the Enterprise in each year for 2018, 2019, and 2020.

§ 1282.15 [Amended]

■ 5. Amend § 1282.15 as follows:

■ a. In paragraph (e)(2) remove the phrase ''based on the most recent decennial census''; and

■ b. Revise paragraph (g).

The revisions read as follows:

§ 1282.15 General counting requirements.

* * * * *

(g) *Application of median income.* For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(1) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(2) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

* * * * *

■ 6. Amend § 1282.21 by revising paragraph (b)(3), to read as follows:

§ 1282.21 Housing plans.

* * * * *

(b) * * *

(3) Describe the specific actions that the Enterprise will take in a time period determined by the Director to improve the Enterprise's performance under the housing goal; and

* * * * *

Dated: June 28, 2017.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2017–14039 Filed 7–3–17; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0391; Airspace Docket No. 17–ANM–13]

Proposed Amendment of Class E Airspace; Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR, to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before August 21, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0391; Airspace Docket No. 17–ANM–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR, to support IFR operations under standard instrument approach procedures.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0391/Airspace Docket No. 17–ANM–13''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES**; section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR. The airspace would remain within the 4.3 mile radius of Bend Municipal Airport, with the segments extending northwest and south of the airport enlarged to 7 miles wide (from 5.2 miles) extending to 8.5 miles northwest (from 6.5 miles), and 5.8 miles wide (from 2.9 miles) extending to 8.8 miles southeast of the airport (from 9.3 miles south of the airport).

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ANM OR E5 Bend, OR [Amended]

Bend Municipal Airport, OR
(Lat. 44°05′40″ N., long. 121°12′01″ W.)

That airspace upward from 700 feet above the surface within a 4.3 mile radius of Bend Municipal Airport, and within the area bounded by a line starting at the point where a 300° bearing from the airport intersects the 4.3 mile radius from the airport to lat. 44°11′07″ N., long. 121°20′35″ W., to lat. 44°15′41″ N., long. 121°12′11″ W., to the point where a 054° bearing from the airport intersects the 4.3 mile radius from the airport, thence counter clockwise along the airport 4.3 mile radius to the point of beginning, and within 3.1 miles west and 2.8 miles east of a 167° bearing from the airport extending to 8.8 miles south of the airport.

Issued in Seattle, Washington, on June 24, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–13984 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0392; Airspace Docket No. 16–ANM–4]

Proposed Establishment of Class E Airspace, Big Timber, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Big Timber Airport, Big Timber, MT, to accommodate the development of instrument flight rules (IFR) operations under standard instrument approach and departure procedures at the airport, for the safety and management of aircraft within the National Airspace System.

DATES: Comments must be received on or before August 21, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0392; Airspace Docket No. 16–ANM–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy

Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Big Timber Airport, Big Timber, MT, to support IFR operations in standard instrument approach and departure procedures at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0392/Airspace Docket No. 16–ANM–4''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Big Timber, MT. Class E airspace would be established within an 8-mile radius of the Big Timber Airport with a 12-mile wide segment extending to 27.4 miles east of the airport, and a 7.6-mile wide segment extending to 12.5 miles west of the airport. This airspace is necessary to support IFR operations in standard instrument approach and departure procedures at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, and is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Big Timber, MT [New]

Big Timber Airport, MT
(Lat. 45°48′23″ N., long. 109°58′42″ W.)

That airspace upward from 700 feet above the surface within an 8-mile radius of Big Timber Airport, and within 8 miles north and 4 miles south of the 074° bearing from the airport extending to 27.4 miles east of the airport, and within 3.8 miles each side of a 253° bearing from the airport extending to 12.5 miles west of the airport.

Issued in Seattle, Washington, on June 24, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–13985 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0616; Airspace Docket No. 17–ANM–26]

Proposed Amendment of Class E Airspace; Prineville, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Prineville Airport, Prineville, OR, to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before August 21, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0616; Airspace Docket No. 17–ANM–26, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Prineville Airport, Prineville, OR, in support of IFR operations under standard instrument approach procedures.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0616/Airspace Docket No. 17–ANM–26''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Prineville Airport, Prineville, OR. Class E airspace extending upward from 700 feet above the surface would be modified to within an 8-mile radius (from a 6.9-mile radius) of Prineville airport with a 4.2 mile (from 10 miles) wide segment extending to 11.4 miles (from 12.3 miles) west of the airport. Additionally, Class E airspace extending upward from 1,200 feet above the surface designated to Prineville Airport would be removed since this airspace area duplicates the larger Bend Class E en route airspace area.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 Prineville, OR [Amended]

Prineville Airport, OR

(Lat. 44°17′16″ N., long. 120°54′19″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Prineville Airport, and within 2.1 miles each side of a 288° bearing extending from the airport to 11.4 miles west of the airport.

Issued in Seattle, Washington, on June 26, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–13987 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0617; Airspace Docket No. 17–ANM–27]

Proposed Amendment of Class E Airspace; Sunriver, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Sunriver Airport, Sunriver, OR, to accommodate airspace redesign for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before August 21, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0617; Airspace Docket No. 17–ANM–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface

at Sunriver Airport, Sunriver, OR, in support of IFR operations under standard instrument approach procedures.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0617/Airspace Docket No. 17–ANM–27''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Sunriver Airport, Sunriver, OR. The airspace would be modified to within 4 miles each side of a line extending from Sunriver Airport to 14.3 miles north of the airport, and within 2.5 miles each side of a line extending from the airport to 7 miles south of the airport. This action would slightly reduce the airspace area east and west of the airport due to the new airspace configuration.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 Sunriver, OR [Amended]

Sunriver Airport, OR
(Lat. 43°52′35″ N., long. 121°27′11″ W.)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the 016° bearing extending from Sunriver Airport to 14.3 miles north of the airport, and within 2.5 miles each side of a 196° bearing from the airport extending to 7 miles south of the airport.

Issued in Seattle, Washington, on June 24, 2017.

Sam S.L. Shrimpton,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2017–13986 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1245

[Docket No. CPSC–2011–0074]

Safety Standard Addressing Blade-Contact Injuries on Table Saws; Notice of Opportunity for Oral Presentation of Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral presentation of comments.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission) announces that there will be an opportunity for interested persons to present oral comments on the notice of proposed rulemaking (NPR) the Commission issued to address blade-contact injuries on table saws. The NPR proposed a standard that requires table saws limit the depth of cut to 3.5 millimeters when a test probe, acting as surrogate for a human body/finger, contacts the spinning blade at a radial approach rate of 1 meter per second (m/s). Any oral comments will be part of the rulemaking record.

DATES: The meeting will begin at 10 a.m., August 9, 2017, in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (EST) on August 2, 2017.

ADDRESSES: The meeting will be in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations, and texts of oral presentations, should be captioned: ''Table Saws NPR; Oral Presentation'' and submitted by email to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, not later than 5 p.m. EST on August 2, 2017.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting, contact Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2225; *cpaul@cpsc.gov.* For information about the procedure to make an oral presentation, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

SUPPLEMENTARY INFORMATION:

A. Background

On October 11, 2011, the Commission published an advance notice of proposed rulemaking (ANPR) to consider whether there may be an unreasonable risk of blade-contact injuries associated with table saws. 76 FR 62678. On May 12, 2017, the Commission published an NPR finding preliminarily that there is an unreasonable risk of blade-contact injuries associated with table saws. 82 FR 22190. To address the risk, the NPR proposed a performance requirement for table saws that would limit the depth of cut to 3.5 mm or less, when a test probe, acting as surrogate for a human body/finger, contacts the spinning blade at a radial approach rate of 1 m/s. The proposed requirement would be issued under the Consumer Product Safety Act (CPSA). The NPR is available at: *https://www.gpo.gov/fdsys/pkg/FR-2017-05-12/pdf/2017-09098.pdf.* The staff's briefing package is available at: *https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Blade-Contact%20Injuries%20on%20Table%20Saws%20-%20January%2017%202017.pdf.*

B. The Public Meeting

The CPSA requires that the Commission provide an opportunity for the ''oral presentation of data, views, or arguments,'' in addition to written comments, when the Commission develops a consumer product safety standard. 15 U.S.C. 2058(d)(2). Thus, the Commission is providing this forum for oral presentations concerning the proposed standard addressing blade-contact injuries on table saws. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this document for information on making requests to give oral presentations at the meeting.

Participants should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or CPSC staff. To prevent duplicative presentations, groups will be directed to designate a spokesperson. The Commission reserves the right to limit the time further for any presentation and impose restrictions to avoid excessive duplication of presentations, if necessary.

Dated: June 29, 2017.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017–14035 Filed 7–3–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0162]

RIN 1625–AA09

Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the SR 13 Bridge across the Nanticoke River, mile 39.6, in Seaford, DE. This proposal will require the bridge to open on signal every Saturday and Sunday during the winter season, if at least 24 hours notice is given. This action is necessary to balance bridge operations and maintenance with the existing needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0162 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The US 13 Bridge across the Nanticoke River, Mile 39.6, in Seaford, DE, owned and operated by the Delaware Department of Transportation, has a vertical clearance of three feet above mean high water in the closed-to-navigation position. There is a monthly average of three bridge openings on Saturdays and Sundays, from 7:30 a.m. to 3:30 p.m., from November 1 through March 31, which allow one or more vessels to transit through the bridge

during each opening. The bridge is normally maintained in the closed position, due to the volume of vehicular traffic crossing the bridge. The current operating schedule is published in 33 CFR 117.243(b). The Coast Guard's authority to make a permanent change to a drawbridge operating schedule is contained in 33 CFR 117.8.

The Nanticoke River is predominately used by recreational vessels and pleasure craft. Data contained in the bridge tender logs provided by the Delaware Department of Transportation documenting the three-year average number of bridge openings, maximum number of bridge openings, and weekend bridge openings between 7:30 a.m. and 3:30 p.m., by month and overall for 2014 through 2016, is presented below.

Month	Average openings	Maximum openings	Proposed weekends average openings 7:30 a.m.–3:30 p.m.
January	11	31	3
February	1	3	1
March	21	53	4
April	72	91	N/A
May	138	192	N/A
June	150	168	N/A
July	280	175	N/A
August	198	223	N/A
September	144	214	N/A
October	51	66	N/A
November	8	13	5
December	1	4	1
Monthly	89	223	3
Daily	3	7	<1

This proposed modification of the operating schedule for the bridge is designed to balance bridge operations and maintenance with the existing needs of navigation.

III. Discussion of Proposed Rule

The Delaware Department of Transportation requested to modify the operating regulation for the bridge, due to the limited number of requested openings of the bridge on Saturday and Sunday, from 7:30 a.m. to 3:30 p.m., from November 1 through March 31, over approximately the past three years. The data presented in the table above demonstrates that the requested modification may be implemented with de minimis impact to navigation. The modification requested will require the bridge to open on signal on Saturday and Sunday; from 7:31 a.m. to 3:29 p.m., from November 1 through March 31, if at least 24 hours notice is given. All other provisions of 33 CFR 117.243(b) will remain the same.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This is not considered a significant regulatory action. This determination is based on the findings that: (1) The potential impact is small, given the limited number of vessels requiring a bridge opening during the time frame of the proposed modification, and (2) vessels will be able to transit through the bridge during the time frame of the proposed modification, given the bridge will open on signal, if at least 24 hours notice is given.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605 (b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The potential impact to all vessels is small, given the limited number of vessels requiring a bridge opening during the time frame of the proposed modification. All vessels will be able to transit through the bridge during the time frame of the proposed modification, given the bridge will open on signal, if at least 24 hours notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.l (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32) (e), of the Instruction.

Under figure 2–1, paragraph (32) (e), of the Instruction, a Record of Environmental Consideration (REC) and a Memorandum for the Record (MFR) are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.243(b) to read as follows:

§ 117.243 Nanticoke River.

* * * * *

(b) The draw of the SR 13 Bridge, mile 39.6, in Seaford shall:

(1) Open on signal, except from 6 p.m. to 8 a.m., from April 1 through October 31; from November 1 through March 31, Monday to Friday and on Saturday and Sunday from 3:30 p.m. to 7:30 a.m., if at least four hours notice is given.

(2) Open on signal, on Saturday and Sunday, from 7:31 a.m. through 3:29 p.m., from November 1 through March 31, if at least 24 hours notice is given.

Dated: June 21, 2017.

M.L. Austin,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2017–14068 Filed 7–3–17; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 82, No. 127
Wednesday, July 5, 2017

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted two recommendations at its Sixty-seventh Plenary Session. The appended recommendations are titled: Adjudication Materials on Agency Web sites; and Negotiated Rulemaking and Other Options for Public Engagement.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2017–1, Daniel Sheffner; and for Recommendation 2017–2, Cheryl Blake. For both of these actions the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.* At its Sixty-seventh Plenary Session, held June 16, 2017, the Assembly of the Conference adopted two recommendations.

Recommendation 2017–1, *Adjudication Materials on Agency Web sites.* This recommendation provides guidance regarding the online dissemination of administrative adjudication materials. It offers best practices and factors for agencies to consider as they seek to increase the accessibility of adjudication materials on their Web sites and maintain comprehensive, representative online collections of adjudication materials, consistent with the transparency objectives and privacy considerations of the Freedom of Information Act and other relevant laws and directives.

Recommendation 2017–2, *Negotiated Rulemaking and Other Options for Public Engagement.* This recommendation offers best practices to agencies for choosing among several possible methods—among them negotiated rulemaking—for engaging the public in agency rulemakings. It also offers best practices to agencies that choose negotiated rulemaking on how to structure their processes to enhance the probability of success.

The Appendix below sets forth the full texts of these two recommendations. The Conference will transmit them to affected agencies, Congress, and the Judicial Conference of the United States. The recommendations are not binding, so the entities to which they are addressed will make decisions on their implementation.

The Conference based these recommendations on research reports that are posted at: *https://www.acus.gov/67thPlenary.*

Dated: June 29, 2017.

David M. Pritzker,

Deputy General Counsel.

APPENDIX—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Recommendation 2017–1

Adjudication Materials on Agency Web Sites

Adopted June 16, 2017

In contrast to federal court records, which are available for download from the judiciary's Public Access to Court Electronic Records (PACER) program (for a fee), or records produced during notice-and-comment rulemaking, which are publicly disseminated on the rulemaking Web site *www.regulations.gov,* there exists no single, comprehensive online clearinghouse for the public hosting of decisions and other materials generated throughout the course of federal administrative adjudication.[1] Instead, to the extent a particular adjudication record is digitally available, it is likely to be found on the relevant agency's Web site.

This recommendation is confined to records issued or filed in adjudicative proceedings in which a statute, executive order, or regulation mandates an evidentiary hearing.[2] Specifically, this recommendation applies to (a) ''[a]djudication that is regulated by the procedural provisions of the Administrative Procedure Act (APA) and usually presided over by an administrative law judge'' and (b) ''[a]djudication that consists of legally required evidentiary hearings that are not regulated by the APA's adjudication provisions in 5 U.S.C. 554 and 556–557 and that is presided over by adjudicators who are often called administrative judges.'' [3]

Federal administrative adjudication affects an enormous number of individuals and businesses engaged in a range of regulated activities or dependent on any of the several government benefits programs. The many orders, opinions, pleadings, motions, briefs, petitions, and other records generated by agencies and parties involved in adjudication bespeak the procedural complexities and sophistication of many proceedings.

Many federal laws and directives mandate or encourage the online disclosure of important government materials, including certain adjudication records. The Freedom of Information Act (FOIA) requires that agencies make available in an electronic format ''final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.'' [4] The prevailing interpretation of this provision limits its ambit to ''precedential'' decisions.[5] Nonetheless, other laws and policies, including most recently the FOIA Improvement Act of 2016,[6] encourage more expansive online disclosure of federal records.[7]

[1] The Administrative Conference currently takes no position in this recommendation as to whether there should be such a tool, but will consider whether the issue merits attention in the future. In the meantime, the research underlying this recommendation is limited to an examination of agencies' existing Web sites.

[2] *See* Administrative Conference of the United States, Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* 81 FR 94314 (Dec. 23, 2016).

[3] *Id.* (referring to these two types of proceedings as ''Type A'' and ''Type B'' adjudication, respectively).

[4] 5 U.S.C. 552(a)(2)(A).

[5] *See* U.S. Dep't of Justice, Office of Information Policy, Guide to the Freedom of Information Act, Proactive Disclosures 10 (2009 ed.); U.S. Dep't of Justice, Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, at 15 (Aug. 17, 1967).

[6] Public Law 114–185, 130 Stat. 538 (2016). The Act, for instance, amended the Federal Records Act, 44 U.S.C. 3101 *et seq.,* by adding a requirement that agencies' records management programs provide ''procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.'' *Id.* § 3102(2).

[7] *See, e.g.,* Office of Mgmt. & Budget Circular A–130, § 5.e.2.a (directing agencies to publish ''public

Continued

When, as is often the case, adjudicative proceedings involve the application of governmental power to resolve disputes involving private parties, the associated records are of public importance. Further, administrative adjudication records can serve as ready-made models for private parties (especially those who are self-represented) [8] in drafting their own materials and may provide insight into the relevant substantive law and procedural requirements. Easy availability of these materials can save staff time or money through a reduction in the volume of FOIA requests or printing costs, or an increase in the speed with which agency staff will be able to respond to remaining FOIA requests. In addition, there may also be more intangible benefits engendered by increased public trust and Web site user satisfaction.

In the absence of a comprehensive, government-wide platform akin to PACER or *www.regulations.gov,* agencies generally rely on their individual Web sites to comply with online transparency laws and initiatives, disclosing the binding orders, opinions, and, in some cases, supporting records produced during adjudicative proceedings. Some agencies host relatively accessible, comprehensive libraries of decisions and supporting adjudication materials. Not all agency Web sites, however, are equally navigable or robust. Additionally, in providing online access to adjudication materials, agencies utilize navigational and organizational tools and techniques in various ways.

This recommendation offers best practices and factors for agencies to consider as they seek to increase the accessibility of adjudication materials on their Web sites and maintain comprehensive, representative online collections of adjudication materials, consistent with a balancing of the transparency objectives and privacy considerations of FOIA and other relevant laws and directives.[9] It is drafted with recognition that all agencies are subject to unique programming and financial constraints, and that the distinctiveness of agencies' respective adjudicative schemes limits the development of workable standardized practices. To the extent agencies are required to expend additional resources in implementing this recommendation, any upfront costs incurred may be accompanied by offsetting benefits.

Recommendation

Affirmative Disclosure of Adjudication Materials

1. Agencies should consider providing access on their Web sites to decisions and supporting materials (*e.g.,* pleadings, motions, briefs) issued and filed in adjudicative proceedings in excess of the affirmative disclosure requirements of the Freedom of Information Act (FOIA). In determining which materials to disclose, agencies should ensure that they have implemented appropriate safeguards to protect relevant privacy interests implicated by the disclosure of adjudication materials. Agencies should also consider the following factors in deciding what to disclose:

a. the interests of the public in gaining insight into the agency's adjudicative processes;

b. the costs to the agency in disclosing adjudication materials in excess of FOIA's requirements;

c. any offsetting benefits the agency may realize in disclosing these materials; and

d. any other relevant considerations, such as agency-specific adjudicative practices.

2. Agencies that adjudicate large volumes of cases that do not vary considerably in terms of their factual contexts or the legal analyses employed in their dispositions should consider disclosing on their Web sites a representative sampling of actual cases and associated adjudication materials.

Access to Adjudication Materials

3. Agencies that choose to post all or nearly all decisions and supporting materials filed in adjudicative proceedings should endeavor to group materials from the same proceedings together, for example, by providing a separate docket page for each adjudication.

4. Subject to considerations of cost, agencies should endeavor to ensure that Web site users are able to locate adjudication materials easily by:

a. displaying links to agency adjudication sections in readily accessible locations on the Web site;

b. maintaining a search engine and a site map or index, or both, on or locatable from the homepage;

c. offering relevant filtering and advanced search options in conjunction with their main search engines that allow users to specify with greater detail the records or types of records for which they are looking, such as options to sort, narrow, or filter searches by record type, action or case type, date, case number, party, or specific words or phrases; and

d. offering general and advanced search and filtering options specifically within the sections of their Web sites that disclose adjudication materials to sort, narrow, or filter searches in the ways suggested in subparagraph (c).

information online in a manner that promotes analysis and reuse for the widest possible range of purposes, meaning that the information is publicly accessible, machine-readable, appropriately described, complete, and timely'').

[8] The Conference recently adopted a recommendation that offers best practices for agencies to consider in assisting self-represented parties in administrative hearings. *See* Administrative Conference of the United States, Recommendation 2016–6, *Self-Represented Parties in Administrative Hearings,* 81 FR 94319 (Dec. 23, 2016).

[9] For the report undergirding this recommendation, see Daniel J. Sheffner, Adjudication Materials on Agency Web sites (April 10, 2017) (report to the Admin. Conf. of the U.S.), *available at https://www.acus.gov/report/adjudication-materials-agency-websites-final-report-0.*

Administrative Conference Recommendation 2017–2

Negotiated Rulemaking and Other Options for Public Engagement

Adopted June 16, 2017

Since the enactment of the Administrative Procedure Act (APA) in 1946, public input has been an integral component of informal rulemaking. The public comment process gives agencies access to information that supports the development of quality rules and arguably enhances the democratic accountability of federal agency rulemaking. As early as the 1960s, however, many agencies reported that notice-and-comment rulemaking ''had become increasingly adversarial and formalized.'' [1]

Starting in the late 1970s, as legal reform advocates sought to expand the use of alternative dispute resolution (ADR) to reduce the incidence of litigation in the civil courts, administrative law scholars began to consider whether importing ADR norms into the rulemaking process might promote a more constructive, collaborative dynamic between agencies and those persons interested in or affected by agency rules. Eventually, the Administrative Conference conducted a study and recommended an alternative procedure that came to be known as ''negotiated rulemaking.'' Negotiated rulemaking brings together an advisory committee [2] composed of representatives of identifiable affected interests,[3] agency officials, and a ''neutral'' [4] trained in mediation and facilitation techniques who would meet to try to reach consensus on a proposed rule.[5] The Administrative

[1] Administrative Conference of the United States, Recommendation 85–5, *Procedures for Negotiating Proposed Regulations,* 50 FR 52893, 52895 (Dec. 27, 1985).

[2] Negotiated rulemaking committees are advisory committees that must comply with the Federal Advisory Committee Act (FACA), unless otherwise provided by statute. 5 U.S.C. 565(a).

[3] The Negotiated Rulemaking Act provides that an agency, when determining the need for negotiated rulemaking, should among other factors consider whether ''there are a limited number of identifiable interests that will be significantly affected by the rule.'' *Id.* § 563(a)(2). The Act further defines an ''interest'' to mean ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' *Id.* § 562(5).

[4] Here, a ''neutral'' refers to an expert with experience in ADR techniques who actively supports the negotiation and consensus-building process, without taking a position on the substantive outcome. Both convenors and facilitators are neutrals who may support the process at various stages. As defined by the Negotiated Rulemaking Act of 1996, a convenor is ''a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking,'' whereas a facilitator is ''a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule.'' *Id.* § 562.

[5] In practice, negotiated rulemaking committees may work to reach consensus on the text of a proposed rule or may instead seek consensus on a term sheet or other document covering the major issues of the rulemaking. Although negotiated rulemaking committees meet to seek consensus on

Conference twice issued recommendations supporting the use of negotiated rulemaking in appropriate circumstances. The first, Recommendation 82–4, *Procedures for Negotiating Proposed Regulations,* represented an early effort to articulate the steps agencies should take to use the process successfully.[6] The second, Recommendation 85–5, which had the same title, identified suggested practices based on agency experience with negotiated rulemaking in the preceding years.[7]

Congress formally authorized the use of regulatory negotiation where it would enhance rulemaking by enacting the Negotiated Rulemaking Act of 1990.[8] Congress had found that traditional informal rulemaking ''may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation.'' [9] Congress found that negotiated rulemaking could ''increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court'' and that negotiation could ''shorten the amount of time needed to issue final rules.'' [10]

Executive Order 12,866, signed by President Clinton and retained by subsequent presidents, directs agencies to ''explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.'' [11] In addition, Congress has occasionally mandated the use of negotiated rulemaking when passing new legislation that directs agencies to address certain problems.[12] However, negotiated rulemaking was never designed to be used by agencies in the vast majority of agency rulemaking.[13] By the early 2000s, negotiated rulemaking was being used less frequently than anticipated.[14] Over the past few years, the process appears to have received a modest increase in attention and use by some agencies.

In part, the infrequent use of negotiated rulemaking may be due to the availability of alternative public engagement options, such as advance notices of proposed rulemaking, requests for input, technical workshops, or listening sessions, that allow agencies to gain many of the benefits of direct feedback early in the policymaking process while retaining greater procedural flexibility. Indeed, such alternatives can effectively elicit public input while avoiding the delays and procedural complexities associated with chartering a negotiated rulemaking committee under the Federal Advisory Committee Act (FACA).[15] In addition, over the years, some criticisms about the effectiveness of negotiated rulemaking in practice have been raised. For example, agencies need to ensure that representatives of affected interests can be selected in a way that does not give unequal power to one or more members.[16] There are clearly instances in which negotiated rulemaking should not be used. Nevertheless, where an agency concludes that its goals would best be served by developing a consensus-based proposed rule—or where the relevant policy issues, or relationships with interested persons or groups, are suitably complex—negotiated rulemaking may very well be a worthwhile procedural option to consider.

To guide agencies in choosing among the various kinds of public engagement methods they may use to meet their goals, and to offer suggestions on how agencies might enhance the probability of success when choosing to undertake negotiated rulemaking, the Administrative Conference recommends the considerations and practices outlined below.[17] These recommendations begin with the initial choice agencies confront—namely selecting from among various public engagement options and deciding when to use negotiated rulemaking—before turning to recommendations for those occasions when agencies use negotiated rulemaking.

Recommendation

Selecting the Optimal Approach to Public Engagement in Rulemaking

1. Negotiated rulemaking is one option of several that agencies should consider when seeking input from interested persons on a contemplated rule. In addition to negotiated rulemaking, agencies should consider the full range of public engagement options to best meet their objectives. For example:

a. Notice-and-comment rulemaking by itself is often effective to obtain documentary information and other input from a wide array of interested persons.

b. When seeking to facilitate a two-way exchange of information or ideas, agencies should consider meeting with a variety of interested persons reflecting a balance of perspectives.

c. In situations in which an agency is interested in input from various interested persons or entities but does not seek collective advice or a consensus position, the agency should consider gathering groups of interested persons to provide individual input through more than one public or private meeting, dialogue session, or other forum.

d. Where an agency seeks collective advice, the agency should use an advisory

proposed rules, they may remain constituted until the promulgation of the final rule. *Id.* § 567. Some agencies have used committee meetings to obtain further feedback during the development of the final rule.

[6] Administrative Conference of the United States, Recommendation 82–4, *Procedures for Negotiating Proposed Regulations,* 47 FR 30701 (July 15, 1982). These recommendations were based on Professor Philip Harter's report to the Administrative Conference (Philip J. Harter, *Negotiating Regulations: A Cure for Malaise,* 71 Geo. L.J. 1 (1982)). The procedural steps proposed in Recommendation 82–4 formed the basis of the Negotiated Rulemaking Act.

[7] Recommendation 85–5, *supra* note 1. The present recommendation is intended to supplement, rather than supersede, the Conference's prior recommendations on negotiated rulemaking.

[8] Negotiated Rulemaking Act of 1990, Public Law 101–648, 104 Stat. 4969 (codified as amended by Pub. L. 104–320, 110 Stat. 3870 (1996) at 5 U.S.C. 561–70).

[9] 5 U.S.C. 561.

[10] *Id.*

[11] Exec. Order 12866, § 6(a)(1), 58 FR 51735 (Oct. 4, 1993). In addition, President Clinton directed each agency to identify at least one rulemaking to develop through negotiated rulemaking or to explain why negotiated rulemaking would not be feasible. *See* Presidential Memorandum for Exec. Dept's & Selected Agencies, Administrator, Office of Info. & Reg. Affairs, Negotiated Rulemaking (Sept. 30, 1993), *available at http://govinfo.library.unt.edu/npr/library/direct/memos/2682.html.*

[12] Cary Coglianese, *Assessing Consensus: The Promise and Performance of Negotiated Rulemaking,* 46 Duke L.J. 1255, 1256, 1268 (1997) [hereinafter Coglianese, *Assessing Consensus*]. Over a dozen such statutes were passed before 1997, including the Student Loan Reform Act of 1993 (Pub. L. 103–66, 4021, 107 Stat. 341, 353) and the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, 106(b), 110 Stat. 4016, 4029). Congress has continued to mandate that agencies use negotiated rulemaking under some programs. For a list of statutes mandating or strongly encouraging negotiated rulemaking, see Cary Coglianese, *Is Consensus an Appropriate Basis for Regulatory Policy?, in* Environmental Contracts: Comparative Approaches to Regulatory Innovation in the United States and Europe 93–113 (Eric Orts & Kurt Deketeaere eds., 2001). More recent examples include the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 7212, 118 Stat. 3638, 2829) and the Patient Protection and Affordable Care Act (Pub. L. 111–148, 5602, 124 Stat. 119, 677). For a case study of the congressionally mandated use of negotiated rulemaking by the U.S. Department of Education, see Jeffrey S. Lubbers, *Enhancing the Use of Negotiated Rulemaking by the U.S. Department of Education* (Dec. 5, 2014), *in Recalibrating Regulation of Colleges and Universities, Report of the Task Force on Federal Regulation of Higher Education* 90 (2015), *available at http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.*

[13] Coglianese, *Assessing Consensus, supra* note 12, at 1276.

[14] Documentation of the early use, decline, and recent uptick in the use of negotiated rulemaking can be found in Cheryl Blake & Reeve T. Bull, Negotiated Rulemaking (June 5, 2017), 3–12, *available at https://www.acus.gov/sites/default/files/documents/Negotiated%20Rulemaking_Final%20Report_June%205%202017.pdf. See also* Jeffrey S. Lubbers, *Achieving Policymaking Consensus: The (Unfortunate) Waning of Negotiated Rulemaking,* 49 S. Tex. L. Rev. 987, 1001 (2008); Peter H. Schuck & Steven Kochevar, *Reg Neg Redux: The Career of a Procedural Reform,* 15 Theoretical Inquiries in Law 417, 439 (2014); Reeve T. Bull, *The Federal Advisory Committee Act: Issues and Proposed Reforms* 52 & app. A (Sept. 12, 2011), *available at https://www.acus.gov/sites/default/files/documents/COCG-Reeve-Bull-Draft-FACA-Report-9-12-11.pdf.*

[15] Agencies have cited FACA's chartering and other procedural requirements as a challenge to undertaking negotiated rulemaking. See Lubbers, *supra* note 14, at 1001; Blake & Bull, *supra* note 14, at 28–31. Of course, agencies should be aware that even alternative public input forums that are not formally designated as advisory committees could nevertheless become subject to FACA should the dynamic of any meetings with members of the public trend toward ''group advice'' rather than individual input. Blake & Bull, *supra* note 14, at 21.

[16] Blake & Bull, *supra* note 14, at 8–11.

[17] When gathering input outside of the notice-and-comment process, agencies should consider the best practices outlined in Administrative Conference of the United States, Recommendation 2014–4, ''*Ex Parte*'' *Communications in Informal Rulemaking,* 79 FR 35988 (June 25, 2014).

committee, observing all applicable requirements prescribed by FACA.

Deciding When To Use Negotiated Rulemaking

2. An agency should consider using negotiated rulemaking when it determines that the procedure is in the public interest, will advance the agency's statutory objectives, and is consistent with the factors outlined in the Negotiated Rulemaking Act. Specifically, such factors include whether:

- ''there are a limited number of identifiable interests that will be significantly affected by the rule;'' [18]
- ''there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (a) can adequately represent the [identifiable and significantly affected] interests and (b) are willing to negotiate in good faith to reach a consensus on the proposed rule;'' [19]
- there is adequate time to complete negotiated rulemaking and the agency possesses the necessary resources to support the process; [20] and
- ''the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.'' [21]

3. In light of the broad range of highly specific factors that need to be considered when determining whether to use negotiated rulemaking, the choice should generally reside within the agency's discretion.

Structuring a Negotiated Rulemaking Committee To Maximize the Probability of Success

4. As a general matter, agency officials should clearly define the charge of the negotiated rulemaking committee at the outset. This involves explicitly managing expectations and stating any constraints on the universe of options the committee is authorized to consider, including any legal prohibitions or non-negotiable policy positions of the agency. Agency officials should inform the committee members of the use to which the information they provide will be put and should notify them that negotiated rulemaking committee meetings will be made open to the public and documents submitted in connection therewith generally will be made available to the public.

5. Agencies should appoint an official with sufficient authority to speak on behalf of the agency to attend all negotiated rulemaking committee meetings and to participate in them to the extent the agency deems suitable.

6. Agencies should work with convenors or facilitators to define clearly the roles they should play in negotiated rulemakings.[22] Generally, agencies should draw upon the convenor's expertise in selecting committee members, defining the issues the committee will address, and setting the goals for the committee's work. Similarly, agencies should use a facilitator to assist the negotiation impartially and to make that impartiality clear to the members of the committee.

7. Agencies should keep in mind the role of the Office of Information and Regulatory Affairs (OIRA) in the rulemaking process when conducting negotiated rulemaking and inform committee members of that role. An agency should notify its OIRA desk officer of the opportunity to observe the committee meetings and, upon request, provide him or her with briefings on the meetings. An agency should also discuss whether or how the committee process might be used to support the development of the elements needed to comply with relevant analytical requirements, including the rule's regulatory impact analysis.

Considerations Associated With FACA

8. Congress should exempt negotiated rulemaking committees from FACA's chartering and reporting requirements.[23] If Congress exempts negotiated rulemaking committees from FACA entirely, it should amend the Negotiated Rulemaking Act to require comparable transparency, such as by requiring that negotiated rulemaking committee meetings be noticed in advance and open to the public.

9. For greater flexibility within the framework of FACA, agencies should consider maintaining standing committees from which a negotiated rulemaking subcommittee or working group can be formed on an as-needed basis to obviate the need to charter a new committee each time the agency undertakes a negotiated rulemaking.[24] Regardless of whether Congress exempts negotiated rulemaking from certain FACA requirements, agencies should strive to minimize unnecessary procedural burdens associated with the advisory committee process.

[FR Doc. 2017–14060 Filed 7–3–17; 8:45 am]

BILLING CODE 6110–01–P

[18] 5 U.S.C. 563(a)(2).

[19] *Id.* § 563(a)(3).

[20] *See id.* §§ 563(a)(4)–(6) (providing that ''there is a reasonable likelihood that the committee will reach consensus on the proposed rule within a fixed period of time''; ''the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule''; and ''the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee'').

[21] *Id.* § 563(a)(7).

[22] Notably, while such neutrals may be hired by an agency, they support the overall process impartially (rather than on behalf of, or in favor of, the agency). For more details on the roles of convenors and facilitators, see Recommendation 85–5, *supra* note 1, at recommendations 5–8 and the discussion in note 4, *supra.* The roles may be filled by the same person or by two different individuals, who may be agency employees or external professionals.

[23] Administrative Conference of the United States, Recommendation 2011–7, *The Federal Advisory Committee Act—Issues and Proposed Reforms,* 77 FR 2257 (Jan. 17, 2012).

[24] Both the Department of Energy and Department of Transportation (Federal Aviation Administration and Federal Railroad Administration) have standing committees that at times have been used to support negotiated rulemaking or other rulemaking activities. When seeking to negotiate a proposed rule, these agencies will form subcommittees or working groups (sometimes wholly comprising standing committee members, while other times comprising both standing committee and new members). For more details on the structure of these arrangements and their potential benefits, see Blake & Bull, *supra* note 14, at 29–30. Note, however, that some components in the Department of Transportation do prepare FACA charters for each new negotiated rulemaking committee, rather than using the standing committee/subcommittee model just described.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 29, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 4, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Procurement and Property Management

Title: Voluntary Labeling Program for Biobased Products.

OMB Control Number: 0503–0020.

Summary of Collection: Section 9002(h) of the Farm Security and Rural Investment Act (FSRIA) of 2002, as amended by the Food, Conservation, and Energy Act (FCEA) of 2008 and the Agricultural Act of 2014, requires the Secretary of Agriculture to implement a voluntary labeling program that would enable qualifying biobased products to be certified with a ''USDA Certified Biobased Product'' label. The voluntary labeling program is required to be consistent, where possible, with the guidelines implementing the preferred procurement of biobased products by Federal agencies (referred to hereafter as the preferred procurement program), which is also authorized under section 9002 of FSRIA. Under the preferred procurement program, Federal agencies are required to purchase with certain exceptions, biobased products that are identified, by rulemaking, for preferred procurement. The BioPreferred Program is implemented by USDA's Office of Procurement and Property Management (OPPM).

Need and Use of the Information: Under the voluntary labeling program, manufacturers and vendors must complete an application for each stand-alone biobased product or biobased product family for which they wish to use the label. The application process is electronic and is accessible through the voluntary labeling program Web site. In addition manufacturers and vendors whose applications have been conditionally approved must provide to OPPM certain information for posting by OPPM on the voluntary labeling program Web site. For each product approved by the Agency for use of the label, the manufacturer or vendor must keep that information for each certified product up-to-date. The information requested for inclusion in the application are: (1) Contact information (of the manufacturer or vendor and preparer of application) and (2) product identification information, including brand name(s), the applicable designated item category or categories or equivalent, and the biobased content of the product.

Description of Respondents: Business or other for-profit.

Number of Respondents: 150.

Frequency of Responses: Recordkeeping; Reporting: Other (once).

Total Burden Hours: 1,350.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–14031 Filed 7–3–17; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of Currently Approved Information Collections

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request a revision for currently approved information collections in support of the foreign donation of agricultural commodities under the section 416(b) program, the Food for Progress Program, and the McGovern-Dole International Food for Education and Child Nutrition Program.

DATES: Comments on this notice must be received by September 5, 2017.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* Benjamin Muskovitz, Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034;
- *Email: Benjamin.Muskovitz@fas.usda.gov;* or
- *Telephone:* (202) 720–0886.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Benjamin Muskovitz, Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034; or by email at *Benjamin.Muskovitz@fas.usda.gov;* or by telephone at (202) 720–0886.

SUPPLEMENTARY INFORMATION:

Title: Foreign Donation of Agricultural Commodities (section 416(b) and Food for Progress programs) and McGovern-Dole International Food for Education and Child Nutrition Program.

OMB Number: 0551–0035.

Expiration Date of Approval: November 30, 2017.

Type of Request: Revision of currently approved information collections.

Abstract: Under the section 416(b) and Food for Progress programs (the ''Foreign Donation Programs'') and the McGovern-Dole International Food for Education and Child Nutrition (''McGovern-Dole'') Program, information will be gathered from applicants desiring to receive federal awards under the programs to determine the viability of requests for resources to implement activities in foreign countries. Recipients of awards under the programs must submit compliance reports until activities carried out with donated commodities or funds, or local currencies generated from the sale of donated commodities, are completed. Recipients that use the services of freight forwarders must submit certifications from the freight forwarders regarding their activities and affiliations. Documents are used to develop effective grant and cooperative agreements for awards under the programs and assure that statutory requirements and objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collections under the Foreign Donation Programs or the McGovern-Dole Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the Foreign Donation Programs is 45.24 hours per response and for the McGovern-Dole Program is 45.24 hours per response.

Respondents: Private voluntary organizations, cooperatives, foreign governments, intergovernmental organizations, freight forwarders, ship owners and brokers, and survey companies.

Estimated Number of Respondents: 61 per annum.

Estimated Number of Responses per Respondent: 32 per annum.

Estimated Total Annual Burden of Respondents: 88,308.5 hours.

Request for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

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.

Dated: June 15, 2017.

Holly Higgins,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2017–14045 Filed 7–3–17; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–15–2017]

Foreign-Trade Zone (FTZ) 265—Conroe, Texas; Authorization of Production Activity; Bauer Manufacturing LLC dba NEORig; (Stationary Oil/Gas Drilling Rigs); Conroe, Texas

On February 24, 2017, the City of Conroe, Texas, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board on behalf of Bauer Manufacturing LLC dba NEORig, within Site 1, in Conroe, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 12788–12789, March 7, 2017). On June 26, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 29, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–14051 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–101–2017]

Foreign-Trade Zone 29—Louisville, Kentucky; Application for Subzone Expansion; Hitachi Automotive Systems Americas, Inc.; Berea, Kentucky

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Louisville & Jefferson County Riverport Authority, grantee of FTZ 29, requesting an expansion of Subzone 29F on behalf of Hitachi Automotive Systems Americas, Inc., in Berea, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on June 29, 2017.

The subzone currently consists of the following sites in Harrodsburg, Kentucky: *Site 1* (50 acres) 955 Warwick Road; *Site 2* (1.56 acres) 601 Robinson Road; and, *Site 3* (1.4 acres) 110 Morgan Soaper Road.

The applicant is now requesting authority to include an additional site: Proposed *Site 4* (20 acres), 1150 Mayde Road, Berea. No additional production authority is being requested at this time. As requested, the entire subzone would be subject to the existing activation limit of FTZ 29.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 29, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 29, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–14052 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–99–2017]

Foreign-Trade Zone 283—West Tennessee Area Application for Subzone, MTD Consumer Group Inc., Martin, Tennessee

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northwest Tennessee Regional Port Authority, grantee of FTZ 283, requesting subzone status for the facility of MTD Consumer Group Inc. (MTD), located in Martin, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on June 29, 2017.

The proposed subzone (89 acres) is located at 116, 136 and 181 Industrial Park Drive, Martin, Tennessee. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–41–2017). The proposed subzone would be subject to the existing activation limit of FTZ 283.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 29, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW.,

Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: June 29, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–14053 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–860]

100- to 150-Seat Large Civil Aircraft From Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987, or (202) 482–4952, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2017, the Department of Commerce (the Department) initiated a countervailing duty investigation on 100- to 150-Seat Large Civil Aircraft from Canada.[1] Currently, the preliminary determination is due no later than July 21, 2017.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1) of the Act permits the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) the Department concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless it finds compelling reasons to deny the request.

On June 26, 2017, the petitioner submitted a timely request that we postpone the preliminary CVD determination. In its request, the petitioner cited the number of subsidy programs provided by three different government entities, and the need for the Department to have sufficient time to investigate each of the alleged subsidies thoroughly.[3] In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and the Department finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* to September 25, 2017.[4] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: June 27, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–14057 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See 100- to 150-Seat Large Civil Aircraft from Canada: Initiation of Countervailing Duty Investigation,* 82 FR 24292 (May 26, 2017).

[2] In this investigation, the petitioner is The Boeing Company.

[3] *See* Letter from the petitioner, ''100- to 150-Seat Large Civil Aircraft from Canada: Request to Postpone Preliminary Determination,'' (June 26, 2017).

[4] The actual deadline is September 24, 2017, which is a Sunday. The Department's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–057]

Certain Tool Chests and Cabinets From the People's Republic of China: Postponement of Preliminary Determination in Countervailing Duty Investigation

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

DATES: Effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3477 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2017, the Department of Commerce (the Department) initiated the countervailing duty (CVD) investigation of imports of certain tool chests and cabinets (tool chests) from the People's Republic of China.[1] Currently, the preliminary determination in this investigation is due no later than July 5, 2017.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for an extension of the period within which the determination must be made, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

On June 7, 2017, the petitioner[2] submitted a timely request, pursuant to section 703(c)(1)(A) of the Act, that the Department postpone the preliminary determination in this CVD

[1] *See Certain Tool Chests and Cabinets from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 82 FR 21516 (May 9, 2017).

[2] The petitioner is Waterloo Industries Inc.

investigation.[3] In accordance with 19 CFR 351.205(e), the petitioner stated the reasons for its request. Specifically, the petitioner states that additional time is necessary for the Department and interested parties to fully analyze all questionnaire responses and to issue supplemental questionnaires as necessary.[4] The Department finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* to September 8, 2017. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 12, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–14056 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–602; A–428–602; A–475–601; A–588–704]

Brass Sheet and Strip From France, Germany, Italy, and Japan: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty (AD) orders on brass sheet and strip from France, Germany, Italy and Japan would likely lead to a continuation or recurrence of dumping. Further, the magnitude of the margins of dumping that are likely to prevail is identified in the ''Final Results of Review'' section of this notice.

DATES: Effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0697.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department published the AD orders on brass sheet and strip from France and Italy.[1] On May 21, 1991, the Department published the amended AD order with respect to brass sheet and strip from Italy.[2] On January 9, 1987, the Department published the final determination of the less-than-fair value investigation with respect to brass sheet and strip from Germany and on September 23, 1987, the Department published the amended AD order with respect to imports of brass sheet and strip from Germany.[3] On August 12, 1988, the Department issued an AD order on imports of brass sheet and strip from Japan.[4] On March 3, 2017, the Department published the notice of initiation of the fourth sunset reviews of these AD orders on brass sheet and strip [5] from France, Germany, Italy, and Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

On March 17, 2017, the Department received a notice of intent to participate on behalf of Aurubis Buffalo, Inc., GBC Metals, LLC (doing business as, Olin Brass), Heyco Metals, Inc., PMX Industries, Inc. and Revere Copper Products, Inc. (collectively, the domestic interested parties) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On March 31, 2017, the Department received complete substantive responses to the *Initiation* from the domestic interested parties within the 30-day period, specified in 19 CFR 351.218(d)(3)(i).[6] We received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the AD orders on brass sheet and strip from France, Germany, Italy and Japan.

Scope of the Orders

The product covered by the orders is brass sheet and strip, other than leaded and tinned brass sheet and strip, from France, Germany, Italy, and Japan. The chemical composition of the covered product is currently defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. The orders do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by the orders has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7409.21.00 and 7409.29.00.

Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the orders remains dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the orders are revoked, are addressed in the Issues and Decision Memorandum.[7] The Issues

[3] *See* the petitioner's Letter dated June 7, 2017, requesting postponement of the preliminary determination.

[4] *Id.*

[1] *See Antidumping Duty Order: Brass Sheet and Strip from France,* 52 FR 6995 (March 6, 1987); *Antidumping Duty Order: Brass Sheet and Strip from Italy,* 52 FR 6997 (March 6, 1987).

[2] *See Amendment to Final Determination of Sales at Less Than Fair Value and Amendment of Antidumping Duty Order in Accordance with Decision Upon Remand: Brass Sheet and Strip from Italy,* 56 FR 23272 (May 21, 1991).

[3] *See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Federal Republic of Germany,* 52 FR 822 (January 9, 1987), amended at *Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany,* 52 FR 35750 (September 23, 1987).

[4] *See Antidumping Duty Order of Sales at Less Than Fair Value: Brass Sheet and Strip from Japan,* 53 FR 30454 (August 12, 1988).

[5] *See Initiation of Five-Year (''Sunset'') Reviews,* 82 FR 12438 (March 3, 2017) (*Initiation*).

[6] *See* Letters from domestic interested parties regarding ''Brass Sheet and Strip From France—Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated March 31, 2017; ''Brass Sheet and Strip From Germany—Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated March 31, 2017; ''Brass Sheet and Strip From Italy—Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated March 31, 2017; and ''Brass Sheet and Strip From Japan—Domestic Interested Parties' Substantive Response to Notice of Initiation,'' dated March 31, 2017.

[7] *See* Memorandum from Deputy Assistant Secretary Gary Taverman to Acting Assistant Secretary Ronald K. Lorentzen entitled, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the

and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the AD orders on brass sheet and strip from France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail if the AD orders are revoked would be up to 42.24 percent, 55.60 percent, 22.00 percent, and 57.98 percent, respectively.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: June 28, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary For Enforcement and Compliance.

[FR Doc. 2017–14055 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping Duty Order on Brass Sheet and Strip from France (A–427–602), Germany (A–428–602), Italy (A–475–601), and Japan (A–588–704)'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Office of Education Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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: Written comments must be submitted on or before September 5, 2017.

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 *pracomments@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Seaberry Nachbar, (831) 647–4204 or *fosterscholars@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) collects, evaluates and assesses student data and information for the purpose of selecting successful scholarship candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The Dr. Nancy Foster Scholarship Program is available to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography and maritime archaeology. The ONMS requires applicants to the Dr. Nancy Foster Scholarship Program to complete an application and to supply references (*e.g.,* from academic professors and advisors) in support of the scholarship application. Scholarship recipients are required to conduct a pre- and post-evaluation of their studies through the scholarship program to gather information about the level of knowledge, skills and behavioral changes that take place with the students before and after their program participation. The evaluation results support ONMS performance measures.

II. Method of Collection

All forms are electronic, and the primary methods of submittal are email and Internet transmission. Approximately 1% of the application and reference forms may be mailed.

III. Data

OMB Number: 0648–0432.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Annual Responses: 621.

Estimated Time per Response: Dr. Nancy Foster application form: 8 hours; Letter of Recommendation: 45 minutes; Bio/Photograph Submission: 1 hour; Annual Report: 1 hour, 30 minutes; and Evaluation: 15 minutes.

Estimated Total Annual Burden Hours: 1,919.

Estimated Total Annual Cost to Public: $4,000 in recordkeeping/reporting costs.

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: June 29, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–14033 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE283

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean

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

ACTION: Proposed incidental harassment authorizations; extension of public comment period.

SUMMARY: On June 6, 2017, NMFS published a **Federal Register** notice of five proposed incidental harassment authorizations (IHAs), pursuant to the Marine Mammal Protection Act (MMPA), to incidentally harass marine mammals during the conduct of geophysical survey activity in the Atlantic Ocean, with comments due by July 6, 2017. In response to requests to extend the public comment period, NMFS has extended the public comment period by an additional 15 calendar days. Comments are now due no later than July 21, 2017.

DATES: The deadline for receipt of comments on the proposed IHA notice that was published on June 6, 2017 (82 FR 26244), is extended to July 21, 2017. NMFS must receive written comments and information on or before July 21, 2017.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Information Solicited: NMFS is seeking public input on these requests for authorization as outlined below and request that interested persons submit information, suggestions, and comments concerning the applications. We will only consider comments that are relevant to marine mammal species that occur in U.S. waters of the Mid- and South Atlantic and the potential effects of geophysical survey activities on those species and their habitat.

Comments indicating general support for or opposition to hydrocarbon exploration or any comments relating to hydrocarbon development (*e.g.,* leasing, drilling) are not relevant to this request for comments and will not be considered. Comments should indicate whether they are general to the proposed authorizations described herein or are specific to one or more of the five proposed authorizations, and should be supported by data or literature citations as appropriate.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.* In case of problems accessing these documents, please call the contact listed above.

Background

On June 6, 2017, NMFS published a notice of five proposed IHAs in response to five different requests for such authorization pursuant to MMPA section 101(a)(5)(D), with a 30-day public comment period (82 FR 26244). The 30-day public comment period on the proposed IHAs ends on July 6, 2017. Since then, NMFS has received multiple requests for extension of the public comment period. In consideration of these requests, NMFS has extended the comment period an additional 15 days, to July 21, 2017.

NMFS refers readers to the June 6, 2017, **Federal Register** notice of the proposed IHAs and the accompanying analysis (82 FR 26244) for details and background information concerning the proposed actions, as this notice does not repeat the information.

Request for Public Comments

We request comment on our analyses, the draft authorizations, and any other aspect of our original Notice of Proposed IHAs for the proposed geophysical survey activities (82 FR 26244; June 6, 2017). Please include with your comments any supporting data or literature citations to help inform our final decision on the individual requests for MMPA authorization.

Dated: June 29, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–14077 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–C–2017–0024]

Notice of Public Meeting on Voluntary Initiatives To Combat Infringement of Intellectual Property in the Online Environment; Cancellation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The United States Patent and Trademark Office published a notice in the **Federal Register** of June 22, 2017, concerning a public meeting on measuring the impact of voluntary initiatives undertaken to reduce intellectual property infringement, scheduled for July 17, 2017, at its headquarters in Alexandria, Virginia. This notice announces that the July 17, 2017 meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Peter Fowler, Charisma Hampton, or Nadine Herbert at the Office of Policy and International Affairs, by telephone at (571) 272–9300, or by email at *peter.fowler@uspto.gov, charisma.hampton@uspto.gov,* and *nadine.herbert@uspto.gov.* Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272–8400.

Dated: June 29, 2017.

Joseph Matal,

Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2017–14072 Filed 7–3–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

2017 Public Interface Control Working Group and Forum for the NAVSTAR GPS Public Documents

AGENCY: Global Positioning System Directorate (GPSD), Department of the Air Force, Department of Defense.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems (GPS) Directorate will host the 2017 Public Interface Control Working Group and Open Public Forum on September 6–7, 2017 for the following NAVSTAR GPS public documents: IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), ICD–GPS–240 (NAVSTAR GPS Control Segment to User Support Community Interfaces), and ICD–GPS–870 (NAVSTAR GPS Control Segment to User Support Community Interfaces). Additional logistical details can be found below.

The purpose of this meeting is to update the public on GPS public document revisions and collect issues/comments for analysis and possible integration into future GPS public document revisions. All outstanding comments on the GPS public documents will be considered along with the comments received at this year's open forum in the next revision cycle. The 2017 Interface Control Working Group and Open Forum are open to the general public. For those who would like to attend and participate, we request that you register no later than August 30, 2017. Please send the registration information to *SMCGPER@us.af.mil,* providing your name, organization, telephone number, email address, and country of citizenship.

Comments will be collected, catalogued, and discussed as potential inclusions to the version following the current release. If accepted, these changes will be processed through the formal directorate change process for IS–GPS–200, IS–GPS–705, ICD–GPS–240, and ICD–GPS–870. All comments must be submitted in a Comments Resolution Matrix (CRM). This form along with current versions of the documents and the official meeting notice are posted at: *http://www.gps.gov/technical/icwg/meetings/2017/.*

Please submit comments to the SMC/GPS Requirements (SMC/GPER) mailbox at *SMCGPER@us.af.mil* by August 10, 2017. Special topics may also be considered for the Public Open Forum. If you wish to present a special topic, please submit any materials to SMC/GPER no later than August 1, 2017. For more information, please contact 2Lt Irvin Vazquez at 310–653–4191 or Mr. Daniel Godwin at 310–653–3640.

DATES: 0830—1600 PST, September 6–7, 2017

ADDRESSES: TASC/Engility, 100 N Sepulveda Blvd., El Segundo, CA 90245, The Great Room.

FOR FURTHER INFORMATION CONTACT: 2Lt Irvin Vazquez (*irvin.vazquezcalderon@us.af.mil/310-653-4191*) or Capt Jenny Ji (*jenny.ji@us.af.mil/310-653-3163*)

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2017–14048 Filed 7–3–17; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0093]

Agency Information Collection Activities; Comment Request; Master Generic Plan for Customer Surveys and Focus Groups

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 5, 2017.

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–2017–ICCD–0093. 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 216–36, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–401–0526.

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: Master Generic Plan for Customer Surveys and Focus Groups.

OMB Control Number: 1800–0011.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 451,216.

Total Estimated Number of Annual Burden Hours: 115,344.

Abstract: Surveys to be considered under this generic will only include those surveys that improve customer service or collect feedback about a service provided to individuals or entities directly served by ED. The results of these customer surveys will help ED managers plan and implement program improvements and other customer satisfaction initiatives. Focus groups that will be considered under the generic clearance will assess customer satisfaction with a direct service, or will be designed to inform a customer satisfaction survey ED is considering. Surveys that have the potential to influence policy will not be considered under this generic clearance.

Dated: June 28, 2017.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–14010 Filed 7–3–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 17–79–LNG]

Eagle LNG Partners Jacksonville II LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on June 15, 2017, by Eagle LNG Partners Jacksonville II LLC (Eagle Maxville), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to 7.7 million cubic feet per day of natural gas, or approximately 0.01 billion cubic feet (Bcf) per day (2.8 Bcf per year). Eagle Maxville seeks authorization to export this LNG from its LNG production and storage facility in Jacksonville, Duval County, Florida (the Maxville Facility), which is anticipated to begin commercial operation in September 2017. Eagle Maxville requests authorization to export this LNG to countries with which trade is not prohibited by U.S. law or policy, including both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and all other countries (non-FTA countries). At the Maxville Facility, Eagle Maxville anticipates it will process domestically produced natural gas into LNG, temporarily store the produced LNG, and load the LNG into cryogenic transport trailers or approved ISO IMO7–TVAC–ASME LNG (ISO) containers for transportation by truck to port facilities for transfer into vessels or other ocean-going container ships. Eagle Maxville is requesting this authorization on its own behalf and as agent for other entities who hold title to the natural gas at the time of export. Eagle Maxville requests the authorization for a 20-year term to commence on the earlier date of the first export or five years from the date of a final order granting export authorization. Eagle Maxville filed the Application under section 3 of the Natural Gas Act (NGA). Additional details can be found in Eagle Maxville's Application, posted on the DOE/FE Web site at *https://www.energy.gov/fe/downloads/eagle-lng-partners-jacksonville-ii-llc-fe-dkt-no-17-79-lng.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 4, 2017.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Kyle W. Moorman or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7970; (202) 586–9478.

R.J. Colwell, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–8499.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

In the Application, Eagle Maxville requests authorization to export LNG from the Maxville Facility to both FTA countries and non-FTA countries. This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE separately will review the portion of the Application requesting authority to export LNG to FTA countries pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

In reviewing Eagle Maxwell's request for a non-FTA export authorization, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the following two studies examining the cumulative impacts of exporting domestically produced LNG:

- *Effect of Increased Levels of Liquefied Natural Gas on U.S. Energy Markets,* conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study); [1] and
- *The Macroeconomic Impact of Increasing U.S. LNG Exports,* conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study).[2]

Additionally, DOE will consider the following environmental document: *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014).[3] Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the non-FTA portion of the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the Application, Eagle Maxville states that it has received all state and local permits required for construction and operation of the Maxville Facility (with the exception of a routine occupancy permit that Eagle Maxville anticipates will be issued in due course), and that all major construction has been completed.[4] No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

[1] The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: *https://www.eia.gov/analysis/requests/fe/.*

[2] The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: *http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.*

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The status of the various environmental, land use, and safety-related permits required by the Maxville Facility are discussed in the Application on pages 7–8 and in Attachment 2.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, regarding the non-FTA export portion of the Application. Interested persons will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 17–79–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 17–79–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on June 28, 2017.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2017–14061 Filed 7–3–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1909–000]

Bayshore Solar C, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Bayshore Solar C, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 17, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14023 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–841–000.

Applicants: Black Hills Shoshone Pipeline, LLC.

Description: Black Hills Shoshone Pipeline, LLC submits tariff filing per 154.203: Cost and Revenue Study—Re Docket No. CP15–32–000 and CP15–33–000.

Filed Date: 06/26/2017.

Accession Number: 20170626–5003.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–842–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Replacement Ex As for N/C Agmts due to Meter Change to be effective 7/1/2017.

Filed Date: 06/26/2017.

Accession Number: 20170626–5007.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–843–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Replacement Ex A for Neg Rate Agmt due to Meter Change to be effective 7/1/2017.

Filed Date: 06/26/2017.

Accession Number: 20170626–5008.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14019 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–848–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Housekeeping Filing June 2017 to be effective 8/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5039.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–849–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: Negotiated Rate—Chevron to ConocoPhillips—contract 8946463 to be effective 7/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5071.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–850–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jul 2017 to be effective 7/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5078.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–851–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Request for Service Waiver to be effective 8/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5123.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–852–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.601: Non-Conforming OPASA Update (APS) to be effective 8/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5130.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–853–000.

Applicants: Big Sandy Pipeline, LLC.

Description: Big Sandy Pipeline, LLC submits tariff filing per 154.403: Big Sandy EPC 2017 to be effective 8/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5141.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–854–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line LLC submits tariff filing per 154.204: Sabine Address Update Tariff Filing to be effective 6/28/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5167.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–855–000.

Applicants: Chandeleur Pipe Line, LLC.

Description: Chandeleur Pipe Line, LLC submits tariff filing per 154.204: Chandeleur Address Update Tariff Filing to be effective 6/28/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5171.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–856–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.601: Negotiated Rate Agreement Update (APS July 2017) to be effective 7/1/2017.

Filed Date: 06/28/2017.

Accession Number: 20170628–5193.

Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–857–000.

Applicants: ConocoPhillips Company.

Description: Joint Petition of ConocoPhillips Company, et al. for Limited Waiver and Request for Expedited Action under RP17–857.

Filed Date: 06/28/2017.

Accession Number: 20170628–5197.

Comment Date: 5:00 p.m. Eastern Time on Friday, July 07, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 29, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14082 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–824–001.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.205(b): Amended Cash-Out Adjustment to be effective 7/1/2017.
Filed Date: 06/27/2017.
Accession Number: 20170627–5068.
Comment Date: 5:00 p.m. Eastern Time on Thursday, July 06 2017.

Docket Numbers: RP17–844–000.
Applicants: Southern LNG Company, L.L.C.
Description: Southern LNG Company, L.L.C. submits tariff filing per 154.204: Housekeeping Filing to be effective 8/1/2017.
Filed Date: 06/27/2017.
Accession Number: 20170627–5037.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–845–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—Tallgras Interstate Gas Transmission to be effective 7/1/2017.
Filed Date: 06/27/2017.
Accession Number: 20170627–5046.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–846–000.
Applicants: Cargill, Incorporated, Macquarie Energy LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release of Cargill, Incorporated, et al.
Filed Date: 06/27/2017.
Accession Number: 20170627–5078.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 10, 2017.

Docket Numbers: RP17–847–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.204: Cash Out Adjustment—Alternate Case to be effective 7/1/2017.
Filed Date: 06/27/2017.
Accession Number: 20170627–5082.
Comment Date: 5:00 p.m. Eastern Time on Thursday, July 6, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14081 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2780–002.
Applicants: TransCanada Power Marketing Ltd.
Description: Notice of Non-Material Change in Status of TransCanada Power Marketing Ltd.
Filed Date: 6/27/17.
Accession Number: 20170627–5177.
Comments Due: 5 p.m. ET 7/18/17.

Docket Numbers: ER11–1850–007; ER11–1846–007; ER11–1847–007; ER11–1848–007; ER11–2598–010; ER13–1192–004.
Applicants: Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Gateway Energy Services Corporation, Energy America, LLC.
Description: Northeast Region Triennial Report of the Direct Energy Sellers.
Filed Date: 6/28/17.
Accession Number: 20170628–5080.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER11–2370–006.
Applicants: Cambria CoGen Company.
Description: Triennial MBR Report for the Northeast Region of Cambria CoGen Company.
Filed Date: 6/28/17.
Accession Number: 20170628–5011.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER16–1134–001.
Applicants: TransCanada Power Marketing Ltd.
Description: TransCanada Power Marketing Ltd. submits tariff filing per 385.602: Revised Electric Tariff Settlement Compliance Filing [ER08–462 and EL16–32] to be effective 2/5/2016.
Filed Date: 6/27/17.
Accession Number: 20170627–5079.
Comments Due: 5 p.m. ET 7/18/17.

Docket Numbers: ER12–161–017; ER10–2460–013; ER10–2461–014; ER10–2463–013; ER10–2466–014; ER11–2201–017; ER11–4029–013; ER12–1311–013; ER12–2068–013; ER12–682–014; ER13–17–011.
Applicants: Bishop Hill Energy LLC, Blue Sky East, LLC, Canandaigua Power Partners, LLC, Erie Wind, LLC, Canandaigua Power Partners II, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Niagara Wind Power, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.
Description: Market Power Update for the Northeast region of Bishop Hill Energy LLC, et al.
Filed Date: 6/27/17.
Accession Number: 20170627–5185.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1370–001; ER10–2636–011; ER10–2638–009; ER16–2271–001; ER16–2549–001; ER16–581–002; ER16–582–002; ER16–806–002.
Applicants: ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, Mt. Tom Generating Company, LLC, Pinetree Power-Tamworth, LLC, Waterbury Generation LLC, Nassau Energy, LLC.
Description: Updated Market Power Analysis for the Northeast Region of the ENGIE Northeast MBR Sellers under ER17–1370, et al.
Filed Date: 6/28/17.
Accession Number: 20170628–5070.
Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1917–000.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.
Description: § 205(d) Rate Filing: 2017–06–27_SA 3021 Upland Prairie-MidAmerican E&P (J455) to be effective 6/14/2017.
Filed Date: 6/27/17.
Accession Number: 20170627–5130.
Comments Due: 5 p.m. ET 7/18/17.

Docket Numbers: ER17–1918–000.
Applicants: TransCanada Power Marketing Ltd.

Description: § 205(d) Rate Filing: TransCanada Power Marketing Ltd to be effective 6/28/2017.

Filed Date: 6/27/17.

Accession Number: 20170627–5155.

Comments Due: 5 p.m. ET 7/18/17.

Docket Numbers: ER17–1919–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.RVL to be effective 10/1/2017.

Filed Date: 6/27/17.

Accession Number: 20170627–5167.

Comments Due: 5 p.m. ET 7/18/17.

Docket Numbers: ER17–1920–000.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company.

Description: § 205(d) Rate Filing: 2017–06–28_SA 3026 METC-City of Holland SIFA to be effective 8/31/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5019.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1921–000.

Applicants: Castleton Energy Services, LLC.

Description: Tariff Cancellation: Castleton Energy Services MBR Tariff Cancellation to be effective 6/30/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5043.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1922–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4333, Queue No. AA1–139 to be effective 6/6/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5063.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1923–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised SA Nos. 2274 and 2275—NITSAs among PJM and Allegheny Elec Cooperative to be effective 1/1/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5064.

Comments Due: 5 p.m. ET 7/19/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14021 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1586–006; ER12–2511–009; ER10–1630–006.

Applicants: Big Sandy Peaker Plant, LLC, C.P. Crane LLC, Wolf Hills Energy, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Big Sandy Peaker Plant, LLC, et al.

Filed Date: 6/28/17.

Accession Number: 20170628–5147.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER10–2627–011; ER10–2629.

Applicants: FirstLight Hydro Generating Company, FirstLight Power Resources Management, LLC.

Description: Updated Market Power Analysis for the Northeast Region of FirstLight Hydro Generating Company, et al.

Filed Date: 6/28/17.

Accession Number: 20170628–5142.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER11–1850–007.

Applicants: Direct Energy Business, LLC.

Description: Northeast Region Triennial Report of the Direct Energy Sellers.

Filed Date: 6/28/17.

Accession Number: 20170628–5080.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER13–1641–004.

Applicants: Chestnut Flats Lessee, LLC.

Description: Market-Based Triennial Review Filing: 2017 Triennial Market Power Update for Northeast Region—Chestnut Flats Lessee to be effective 7/1/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5173.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1370–001.

Applicants: ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, Mt. Tom Generating Company, LLC, Pinetree Power-Tamworth, LLC, Waterbury Generation LLC, Nassau Energy, LLC.

Description: Updated Market Power Analysis for the Northeast Region of the ENGIE Northeast MBR Sellers.

Filed Date: 6/28/17.

Accession Number: 20170628–5070.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1594–001.

Applicants: Archer Energy, LLC.

Description: Tariff Amendment: Amend Application for Market Based Rate Authority to be effective 7/15/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5122.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1924–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4656, Queue No. AA1–138 to be effective 6/6/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5098.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1925–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4645, Queue No. AA1–049/AA1–132 to be effective 6/1/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5099.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1926–000.

Applicants: Entegra Power Services LLC.

Description: Tariff Cancellation: Complete Cancellation of FERC Electric Tariff to be effective 6/29/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5106.

Comments Due: 5 p.m. ET 7/19/17.

Docket Numbers: ER17–1927–000.

Applicants: Grays Ferry Cogeneration Partnership.

Description: Market-Based Triennial Review Filing: Northeast Triennial & Order No. 819 to be effective 6/29/2017.

Filed Date: 6/28/17.

Accession Number: 20170628–5120.

Comments Due: 5 p.m. ET 8/28/17.

Docket Numbers: ER17–1928–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX Notice of Succession Pt 1 of 2 over AEP Texas Central and North Companies to be effective 6/30/2017.

Filed Date: 6/28/17.
Accession Number: 20170628–5124.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1929–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX Notice of Succession Pt 2 of 2 over AEP Texas Central and North Companies to be effective 6/30/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5126.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1930–000.
Applicants: Public Service Company of Oklahoma.
Description: Compliance filing: PSO CSW Operating Companies MBR Filing to be effective 6/30/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5134.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1931–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX CSW Operating Companies MBR Concurrence to be effective 6/30/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5135.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1932–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: SWEPCO CSW Oper Cos MBR Concurrence Revision to be effective 6/30/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5136.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1933–000.
Applicants: CSW Energy Services, Inc.
Description: Tariff Cancellation: CSW ES RS FERC No. 1 MBR Tariff DB Cancellation to be effective 6/30/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5139.
Comments Due: 5 p.m. ET 7/19/17.
Docket Numbers: ER17–1934–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2881R4 City of Chanute, KS NITSA NOA to be effective 9/1/2017.
Filed Date: 6/28/17.
Accession Number: 20170628–5140.
Comments Due: 5 p.m. ET 7/19/17.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF17–1135–000.
Applicants: Prestage AgEnergy of NC, LLC.
Description: Form 556 of Prestage AgEnergy of NC, LLC.
Filed Date: 6/28/17.
Accession Number: 20170628–5087.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 28, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–14022 Filed 7–3–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0729; FRL–9961–05]

Registration Review Proposed Interim Decisions for Aliphatic Esters, Mepiquat Chloride and Mepiquat Pentaborate, Propylene Glycol and Dipropylene Glycol, Triethylene Glycol, Bromuconazole, and Case Closures for ADAO, DMHMP, and Nuosept 145; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

This document also announces the closure of the registration review cases for Amines, C10-16-alkyldimethyl, N-oxides (ADAO) (Case 5003, and Docket ID Number: EPA–HQ–OPP–2011–0616); 1H-Pyrazole-1-methanol, 3,5-dimethyl (DMHMP) (Case 5035, and Docket ID Number: EPA–HQ–OPP–2011–0619); and Nuosept (Cosan) 145 (Case 3052, and Docket ID Number: EPA–HQ–OPP–2008–0335) because all of the registrations in the U.S. have been cancelled.

DATES: Comments must be received on or before September 5, 2017.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.

For general information on the registration review program, contact: Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the

Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the table in Unit II.

B. What should I consider as i prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in the following table, and opens a 60-day public comment period on the proposed interim decisions.

TABLE 1—REGISTRATION REVIEW PROPOSED INTERIM DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Aliphatic Esters, Case 4005	EPA–HQ–OPP–2016–0084	Brian Kettl, *kettl.brian@epa.gov*, 703–347–0535.
Mepiquat Chloride and Mepiquat Pentaborate, Case 2375.	EPA–HQ–OPP–2012–0083	Caitlin Newcamp, *newcamp.caitlin@epa.gov*, 703–347–0325.
Propylene Glycol and Dipropylene Glycol, Case 3126	EPA–HQ–OPP–2013–0218	Megan Block, *block.megan@epa.gov*, 703–347–0671.
Triethylene Glycol, Case 3146	EPA–HQ–OPP–2013–0219	Megan Block, *block.megan@epa.gov*, 703–347–0671.
Bromuconazole, Case 7035	EPA–HQ–OPP–2015–0535	Thomas Harty, *harty.thomas@epa.gov*, 703–347–0338.

This document also announces the closure of the registration review case for Amines, C10-16-alkyldimethyl, N-oxides (ADAO) (Case 5003, and Docket ID Number: EPA–HQ–OPP–2011–0616); 1H-Pyrazole-1-methanol, 3,5-dimethyl (DMHMP) (Case 5035, and Docket ID Number: EPA–HQ–OPP–2011–0619); and Nuosept (Cosan) 145 (Case 3052, and Docket ID Number: EPA–HQ–OPP–2008–0335) because all of the registrations in the U.S. have been cancelled.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the table in Unit II, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents.

Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in the table in Unit II.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(g)) required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in Unit II. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 23, 2017.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2017–14096 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0009; FRL–9962–59]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as

listed in this notice. The exemptions were granted during the period January 1, 2017 to March 31, 2017 to control unforeseen pest outbreaks.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0009, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U.S. States and Territories

Alabama

Department of Agriculture and Industries

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 45,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 9, 2017 to October 31, 2017.

EPA authorized the use of sulfoxaflor on a maximum of 75,000 acres of cotton to control tarnished plant bugs. Tolerances in connection with a previous action have been established in 40 CFR 180.668(a); Effective June 1, 2017 to October 31, 2017.

Arkansas

State Plant Board

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 420,000 acres of cotton to control tarnished plant bugs. Tolerances in connection with a previous action have been established in 40 CFR 180.668(a); Effective June 1, 2017 to October 31, 2017.

EPA authorized the use of sulfoxaflor on a maximum of 50,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 9, 2017 to September 15, 2017.

Florida

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the uses of streptomycin and oxytetracycline on a maximum of 388,534 acres of citrus to manage HLB or citrus greening disease caused by the bacteria, *Candidatus Liberibacter Asiaticus.* Time-limited tolerances in connection with these actions have been established at 40 CFR 180.337(b) (oxytetracycline) and 180.245(b) (streptomycin). Effective January 10, 2017 to December 31, 2017.

EPA authorized the use of tolfenpyrad on a maximum of 51,600 acres of fruiting vegetables to control various thrips. A time-limited tolerance in connection with this action have been established in 40 CFR 180.675(b); Effective March 1, 2017 to March 1, 2018.

Louisiana

Department of Agriculture and Forestry

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 180,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 9, 2017 to November 30, 2017.

EPA authorized the use of sulfoxaflor on a maximum of 175,000 acres of cotton to control tarnished plant bugs. Tolerances in connection with a previous action have been established in 40 CFR 180.668(a); Effective May 15, 2017 to October 31, 2017.

Quarantine exemption: EPA authorized the use of triclopyr on a maximum of 382,467 acres of sugarcane

to control Merrill's nightshade. A time-limited tolerance in connection with this action will be established in 40 CFR 180.417(b); Effective February 10, 2017 to May 31, 2020.

Pennsylvania

Department of Agriculture

Specific exemptions: EPA authorized the use of thiabendazole on mushroom spawn and supplement equivalent to a maximum of 83,750,000 square feet of crop to control Trichoderma green mold. A time-limited tolerance in connection with a previous action is established at 40 CFR 180.242(a); Effective March 17, 2017 to March 17, 2018.

Texas

Department of Agriculture

Crisis exemption: On March 17, 2017, the Texas Department of Agriculture declared a crisis exemption to allow the use of tolfenpyrad on a maximum of 10,000 acres of dry bulb onions to control onion thrips. The need for this use is expected beyond the 15 days allowed under a crisis exemption, and a specific exemption request was submitted to the Agency. A time-limited tolerance in connection with this action will be established in 40 CFR 180.675(b); Effective March 14, 2017 to March 31, 2017.

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 3,000,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 9, 2017 to November 30, 2017.

EPA authorized the use of clothianidin on a maximum of 4,000 acres of immature citrus trees to manage the transmission of Huanglongbing (HLB) disease vectored by the Asian citrus psyllid. A time-limited tolerance in connection with this action was established in 40 CFR 180.668(b); Effective May 1, 2017 to May 1, 2018.

B. Federal Department and Agency

U.S. Department of Agriculture

Animal and Plant Health Inspector Service

Quarantine exemptions: EPA authorized the use of methyl bromide on post-harvest unlabeled imported/domestic commodities to prevent the introduction/spread of any new or recently introduced foreign pest(s) to any U.S. geographical location; March 1, 2017 to March 1, 2020.

EPA authorized the planting of 100% of cotton acreage to transgenic (Bt) cotton as a component of the Pink Bollworm (PBW) Eradication Program in the PBW eradication area of California. A potential maximum of an additional 1,600 acres could be planted to Bt cotton under this quarantine exemption. Effective: March 9, 2017 to March 9, 2020.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 26, 2017.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2017–14089 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9962–88]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a June 8, 2016 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the June 8, 2016 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–1014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellations and/or amendment to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 and Table 2 of this unit. The following registration numbers that were listed in the **Federal Register** of June 8, 2016 (81 FR 36913) (FRL–9943–68) have already been cancelled in previous **Federal Register** notices: 81002–1 on September 18, 2015 (80 FR 56457); 9198–205 on October 3, 2016 (81 FR 68013); and 3525–71, 3525–91, 3525–96, 3525–109, CA–030012, MA–080001, OR–080035, OR–100010 and TX–100019 on March 22, 2017 (82 FR 14717).

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Product name	Chemical name
100–1244	Banner Dry Maxx	Propiconazole.
10324–56	Maquat 256	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) and Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14).
35935–41	Dithiopyr Technical	Dithiopyr.
35935–49	Dynamo Dithiopyr Technical	Dithiopyr.
35935–75	Dithiopyr Technical	Dithiopyr.
53883–207	Dithiopyr 0.13% Plus Fertilizer	Dithiopyr.
53883–208	Dithiopyr 0.25% Plus Fertilizer	Dithiopyr.
53883–209	Dithiopyr 0.172% Plus Fertilizer	Dithiopyr.
53883–210	Dithiopyr 0.107% Plus Fertilizer	Dithiopyr.
53883–211	Dithiopyr 0.06% Plus Fertilizer	Dithiopyr.
53883–212	Dithiopyr 0.086% Plus Fertilizer	Dithiopyr.
53883–213	Dithiopyr 0.1% Plus Fertilizer	Dithiopyr.
53883–268	Dithiopyr Concentrate for Fertilizer	Dithiopyr.
53883–311	Dithiopyr 0.13% Plus Fertilizer	Dithiopyr.
66222–143	Alias 4F Flowable Insecticide	Imidacloprid.
AZ–080006	Brigade 2EC Insecticide/Miticide	Bifenthrin.
ND–110002	Moncut 70–DF	Flutolanil.
ND–130003	F7583–3 Herbicide	S-Metolachlor and Sulfentrazone.
OR–100003	TOPSIN M WSB	Thiophanate-methyl.
SD–130008	SC 547 Herbicide	Tembotrione and Thiencarbazone-methyl.
WA–090003	Topsin M 70WP	Thiophanate-methyl.
WA–930026	Rovral 4 Flowable Fungicide	Iprodione.
WA–940006	Rovral 4 Flowable Fungicide	Iprodione.
WA–960027	Rovral 4 Flowable Fungicide	Iprodione.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE ONE OR MORE USES

Registration No.	Product name	Chemical name	Uses to be deleted
524–475	Roundup Ultra Herbicide.	Glyphosate-isopropylammonium	Seed production of creeping bentgrass with a Roundup Ready Gene.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, PO Box 18300, Greensboro, NC 27419.
524	Monsanto Company, 1300 I Street, NW., Suite 450 East, Washington, DC 20005–7211.
10324	Mason Chemical Company, 723 W. Algonquin Road, Suite B, Arlington Heights, IL 60005.
35935	Nufarm Limited (Agent to Nufarm Americas, Inc.), 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
AZ–080006, ND–130003	FMC Corp., 1735 Market Street, Room 1971, Philadelphia, PA 19103.
ND–110002	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
OR–100003, WA–090003	Nippon Soda Co., Ltd., 88 Pine Street, 14th Floor, New York, NY 10005.
SD–130008, WA–930026, WA–940006, WA–960027.	Baryer Cropscience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received two general comments concerning the chemical, glyphosate. The Agency does not believe that the comments submitted during the comment periods merits further review or the denial of the requests for the voluntary cancellations of products listed in Table 1 of Unit II or the request for the amendment to terminate uses in Table 2 or Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations and/or amendment to terminate uses of the registrations identified in Table 1 and Table 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled and/or amended to terminate the effective uses. The effective date of the cancellations that are the subject of this notice is July 5, 2017. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the

provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of June 8, 2016 (81 FR 36913) (FRL–9943–68). The comment period closed on December 5, 2016.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrant(s) may continue to sell and distribute existing stocks of product(s) listed in Table 1 of Unit II. until July 5, 2018, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 25, 2017.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2017–14088 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0141; FRL–9962–66]

Certain New Chemicals or Significant New Uses; Statements of Findings for March 2017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from March 1, 2017 to March 31, 2017.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8469; email address: *schweer.greg@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0141, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from March 1, 2017 to March 31, 2017.

III. What is the agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined

by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Web site link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA Case Number: P–16–0592; *Chemical identity:* Fatty acids, C8–10, diesters with alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-47.*

EPA Case Number: P–17–0008; *Chemical identity:* Modified 1,3-isobenzofurandione, polymer with 1,2-ethanediol, 2-ethyl-2-(alkoxyalkyl)-1,3-propanediol and 1,3-Isobenzofurandione, alkanoate (generic name); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-48.*

EPA Case Number: P–17–0014; *Chemical identity:* Fatty acids, C8–10, mixed esters with C18-unsatd. fatty acid dimers and alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-49.*

EPA Case Number: P–17–0194; *Chemical identity:* Hydrogenated dihalo dialkyl diindolotriphenodioxazine, dihydrodisubstituted isoindolyl alkyl derivs (generic name); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-52.*

EPA Case Number: P–17–0214; *Chemical identity:* 2-Propenoic acid, polymer with alkene and alkenyl acetate, alkyl 2-alkyl isoalkyl esters (generic name); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-50.*

EPA Case Number: P–17–0215; *Chemical identity:* Copolymer of alpha-olefin and dibutyl maleate (generic name); *Web site link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-51.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 30, 2017.

Greg Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2017–14084 Filed 7–3–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. 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.: 011931–006.

Title: CMA CGM/Marfret Vessel Sharing Agreement.

Parties: CMA CGM S.A; and Compagnie Maritime Marfret S.A.

Filing Party: Draughn B. Arbona, Esq.; Senior Counsel; CMA CGM (America), LLC., 5701 Lake Wright Drive, Norfolk, VA 23502–1868.

Synopsis: The amendment would provide for ad hoc space charters from CMA CGM to Marfret in the event of service disruptions due to port omissions.

Agreement No.: 012339–002.

Title: Sealand/APL West Coast of Central America Slot Charter Agreement.

Parties: APL Co. Pte Ltd/American President Lines, Ltd. (collectively ''APL''); and Maersk Line A/S dba Sealand.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment revises Article 5.1 to change the amount of space being chartered.

By Order of the Federal Maritime Commission.

Dated: June 29, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–14066 Filed 7–3–17; 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 July 31, 2017.

A. Federal Reserve Bank of Minneapolis (Brendan S. Murrin, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Kirkwood Bancorporation Co.* Bismarck, North Dakota; to acquire up to 33 percent of the voting shares of Kirkwood Bancorporation of Nevada, Inc., Las Vegas, Nevada, and thereby indirectly acquire shares of Kirkwood Bank of Nevada, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, June 29, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–14054 Filed 7–3–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. Op–1567]

Announcement of Financial Sector Liabilities

Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, implemented by the Board's Regulation XX, prohibits a merger or acquisition that would result in a financial company that controls more than 10 percent of the aggregate consolidated liabilities of all financial companies (''aggregate financial sector liabilities''). Specifically, an insured depository institution, a bank holding company, a savings and loan holding company, a foreign banking organization, any other company that controls an insured depository institution, and a nonbank financial company designated by the Financial Stability Oversight Council (each, a ''financial company'') is prohibited from merging or consolidating with, acquiring all or substantially all of the assets of, or acquiring control of, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate financial sector liabilities.[1]

Pursuant to Regulation XX, the Federal Reserve will publish the aggregate financial sector liabilities by July 1 of each year. Aggregate financial sector liabilities equals the average of the year-end financial sector liabilities figure (as of December 31) of each of the preceding two calendar years.

For Further Information Contact: Sean Healey, Supervisory Financial Analyst, (202) 912–4611; Matthew Suntag, Senior Attorney, (202) 452–3694; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

Aggregate Financial Sector Liabilities

Aggregate financial sector liabilities is equal to $21,010,053,985,500.[2] This measure is in effect from July 1, 2017 through June 30, 2018.

Calculation Methodology

Aggregate financial sector liabilities equals the average of the year-end financial sector liabilities figure (as of December 31) of each of the preceding two calendar years. The year-end financial sector liabilities figure equals the sum of the total consolidated liabilities of all top-tier U.S. financial companies and the U.S. liabilities of all top-tier foreign financial companies, calculated using the applicable methodology for each financial company, as set forth in Regulation XX and summarized below.

Consolidated liabilities of a U.S. financial company that was subject to consolidated risk-based capital rules as of December 31 of the year being measured, equal the difference between its risk-weighted assets (as adjusted upward to reflect amounts that are deducted from regulatory capital elements pursuant to the Federal banking agencies' risk-based capital rules) and total regulatory capital, as calculated under the applicable risk-based capital rules. For the year ending on December 31, 2016, companies in this category include (with certain exceptions listed below) bank holding companies, savings and loan holding companies, and insured depository institutions. The Federal Reserve used information collected on the Consolidated Financial Statements for Holding Companies (FR Y–9C) and the Bank Consolidated Reports of Condition and Income (Call Report) to calculate liabilities of these institutions.

Consolidated liabilities of a U.S. financial company not subject to consolidated risk-based capital rules as of December 31 of the year being measured, equal liabilities calculated in accordance with applicable accounting standards. For the year ending on December 31, 2016, companies in this category include nonbank financial companies supervised by the Board, bank holding companies and savings and loan holding companies subject to the Federal Reserve's Small Bank Holding Company Policy Statement, savings and loan holding companies substantially engaged in insurance underwriting or commercial activities, and U.S. companies that control depository institutions but are not bank holding companies or savings and loan holding companies. ''Applicable accounting standards'' is defined as GAAP, or such other accounting standard or method of estimation that the Board determines is appropriate.[3] The Federal Reserve used information collected on the FR Y–9C, the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), and the Financial Company Report of Consolidated Liabilities (FR XX–1) to calculate liabilities of these institutions.

Section 622 provides that the U.S. liabilities of a ''foreign financial company'' equal the risk-weighted assets and regulatory capital attributable to the company's ''U.S. operations.'' Under Regulation XX, liabilities of a foreign banking organization's U.S. operations are calculated using the risk-weighted asset methodology for subsidiaries subject to risk-based capital rules, plus the assets of all branches, agencies, and nonbank subsidiaries, calculated in accordance with applicable accounting standards. Liabilities attributable to the U.S. operations of a foreign financial company that is not a foreign banking organization are calculated in a similar manner to the method described for foreign banking organizations, but liabilities of a U.S. subsidiary not subject to risk-based capital rules are calculated based on the U.S.

[1] 12 U.S.C. 1852(a)(2), (b).

[2] This number reflects the average of the financial sector liabilities figure for the year ending December 31, 2015 ($21,940,911,695,000) and the year ending December 31, 2016 ($20,079,196,276,000). The decrease in liabilities between year-end 2015 and 2016 was primarily caused by the status change of General Electric Company and Metlife, Inc. As of year-end 2015, both companies met the definition of financial company under Regulation XX and were included in the financial sector liability calculation for that year. As of year-end 2016, neither General Electric Company nor Metlife, Inc. met the definition of financial company and, thus, both were excluded from the financial liability calculation. A further decrease in liabilities resulted from certain foreign banking organizations holding more risk-based capital against their U.S.-based assets in year-end 2016, compared to year-end 2015.

[3] A financial company may request to use an accounting standard or method of estimation other than GAAP if it does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws). 12 CFR 251.3(e).

subsidiary's liabilities under applicable accounting standards. The Federal Reserve used information collected on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q), the FR Y–9C and the FR XX–1 to calculate liabilities of these institutions.

The Board granted a request from one financial company to use an accounting standard or method of estimation other than GAAP to calculate liabilities. The requesting company is an insurance company that reports financial information under Statutory Accounting Principles (''SAP''). The Board approved a method of estimation for this company that is based on line items from SAP reports, with adjustments to reflect certain differences in accounting treatment between GAAP and SAP.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of Supervision and Regulation under delegated authority, June 28, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–14011 Filed 7–3–17; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MK–2017–01; Docket No. 2017–0002; Sequence 11]

The Presidential Commission on Election Integrity (PCEI); Upcoming Public Advisory Meeting

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: The Presidential Advisory Commission on Election Integrity (Commission), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App., and Executive Order 13799, (*https://www.federalregister.gov/documents/2017/05/16/2017-10003/establishment-of-presidential-advisory-commission-on-election-integrity*) will hold its first meeting on Wednesday, July 19, 2017. This meeting will consist of a ceremonial swearing in of Commission members, introductions and statements from members, a discussion of the Commission's charge and objectives, possible comments or presentations from invited experts, and a discussion of next steps and related matters.

DATES: *Meeting Date:* The first Commission meeting will be held on Wednesday, July 19, 2017, from 11:00 a.m., Eastern Daylight Time (EDT) until no later than 5:00 p.m., EDT.

ADDRESSES: The meeting will be held at the Eisenhower Executive Office Building, Room 350, located at 1650 Pennsylvania Avenue NW., Washington, DC 20502. It will be open to the public through livestreaming on *https://www.whitehouse.gov/*live.

FOR FURTHER INFORMATION CONTACT: To obtain information about the Commission or to submit written comments for the Commission's consideration, contact the Commission's Designated Federal Officer, Andrew Kossack, via email at *ElectionIntegrityStaff@ovp.eop.gov* or telephone at 202–456–3794. Please note the Commission may post written comments publicly, including names and contact information, in accordance with the provisions of FACA. There will not be oral comments from the public at this initial meeting.

The Commission will provide individuals interested in providing oral comments the opportunity to do so at subsequent meetings. Requests to accommodate disabilities with respect to livestreaming or otherwise should also be sent to the email address listed above, preferably at least 10 days prior to the meeting to allow time for processing.

SUPPLEMENTARY INFORMATION: The Commission was established in accordance with E.O. 13799 of March 11, 2017, the Commission's charter, and the provisions of FACA. The Commission will, consistent with applicable law and E.O. 13799, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President of the United States that identifies the following:

a. Those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;

b. those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of voting processes used in Federal elections; and

c. those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.

Dated: June 30, 2017.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2017–14210 Filed 7–3–17; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–1146]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Survey of Surveillance Records of *Aedes aegypti* and *Aedes albopictus* from 1960 to Present (OMB Control Number 0920–1146, expiration date 11/30/2019)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Zika virus response necessitates the collection of county and sub-county level records for Aedes aegypti and Ae. albopictus, the vectors of Zika virus. This information will be used to update species distribution maps for the United States and to develop a model aimed at identifying where these vectors can survive and reproduce. CDC is seeking to revise the collection approved under OMB Control number 0920–1146 for clearance to collect information for three years.

In February 2016, OMB issued emergency clearance for a county-level survey of vector surveillance records for a limited number of years (2006–2015) (OMB Control No. 0920–1101, expiration date 8/31/2016). OMB then issued clearance for a follow-up information collection similar to the first (OMB Control No. 0920–1146, expiration date 11/30/2019) but expanded the years that were evaluated. The information collection in this request will be very similar of those surveys, but will collect these data monthly going forward.

The previous two surveys aimed to describe the reported distribution of the Zika virus vectors Aedes aegypti and Ae. albopictus from 1960 until late 2016 at county and sub-county spatial scales. The 56 year data review was necessary because many recent records for these species of mosquitos were lacking, likely because from 2004–2015 most vector surveillance focused on vectors of West Nile virus (Culex spp.) rather than Zika vectors. The surveys yielded important data allowing CDC, states, and partners to understand the spread of these mosquitos in the U.S. as well as the environmental conditions necessary for them to survive. The surveys reviewed data records from 1960–2016 and resulted in a complete assessment of historical records of mosquito surveillance but were not designed to collect these types of data routinely over time.

In this revision, we will also seek information on locations of the mosquito traps at sub-county spatial scales through an online data portal called MosquitoNET (*https://www.cdc.gov/Arbonet/MosquitoNET*) and will be expanded to include insecticide susceptibility and resistance data on local populations of mosquitos. Data will be collected monthly through the expiration date of this OMB approval. Such information will aid in (1) targeting vector control efforts to prevent mosquito-borne Zika virus transmission in the continental U.S. and (2) targeting future vector surveillance efforts. The resulting maps and models will inform the public and policy makers of the known distribution of these vectors, identify gaps in vector surveillance, and target allocation of surveillance and prevention resources.

As part of the Zika response, efforts to identify Ae. aegypti and Ae. albopictus in the continental U.S. were substantially enhanced during 2016 and funding will be provided to states to continue to enhance surveillance for these vectors through the longstanding Epidemiology and Laboratory Capacity Program that was expanded to now include mosquito surveillance.

Respondents will include public health professionals who are recipients of ELC funding or their designated points of contact. The respondents will be contacted via ELC primary recipients and instructed to set up accounts on the MosquitoNET Web site via a simple process. Data collection from ELC recipients will then begin. In order to limit the burden of data entry on respondents who may be entering information for their state, they will have the option of submitting the data via email to CDC using an excel survey.

This information collection request is authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241). The total estimated annualized number of burden hours is 189. There will be no anticipated costs to respondents other than time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public health professionals	MosquitoNET entry of monthly surveillance records of Aedes aegypti and Aedes albopictus.	64	12	15/60

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. 2017–14027 Filed 7–3–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Revised ORR–5.

OMB No.: 0970–0043.

Description: The Refugee Data submission of Formula Funds Allocations (ORR–5); (0970–0043) is required by Immigration and Nationality Act as stated at Chapter 2 Refugee Assistance, (C)—submit to the Director, within a reasonable period of time after the end of each fiscal year, a report on the uses of funds provided under this chapter which the State is responsible for administering. ORR has added additional data fields to the existing tool/vehicle which is submitted by states and state replacement designees on an annual basis and elected to use 10/1 as the submission date that provides a reasonable period of time.

Respondents: States, state replacement designees, District of Columbia.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Refugee Data Submission for Formula Funds Allocations	50	1	22	1,100

Annual Burden Estimates

Estimated Total Annual Burden Hours:

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–14032 Filed 7–3–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Small Health Care Provider Quality Improvement Program, OMB No. 0915–0387—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. OMB will accept comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than August 4, 2017.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

Information Collection Request Title: Small Health Care Provider Quality Improvement Program, OMB No. 0915–0387 − Extension

Abstract: This program is authorized by Title III, Public Health Service Act, Section 330A(g) (42 U.S.C. 254c(g)), as amended by Section 201, Public Law 107–251, and Section 4, Public Law 110–355. This authority directs the Federal Office of Rural Health Policy (FORHP) to support grants that expand access to, coordinate, contain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of health care networks in rural and frontier areas and regions. The authority allows HRSA to provide funds to rural and frontier communities to support the direct delivery of health care and related services, expand existing services, or enhance health service delivery through education, promotion, and prevention programs.

The purpose of the Small Health Care Provider Quality Improvement Grant (Rural Quality) Program is to provide support to rural primary care providers for implementation of quality improvement activities. The program promotes the development of an evidence-based culture and delivery of coordinated care in the primary care setting. Additional objectives of the program include improved health outcomes for patients, enhanced chronic disease management, and better engagement of patients and their caregivers. Organizations participating in the program are required to use an evidence-based quality improvement model; develop, implement and assess effectiveness of quality improvement initiatives; and use health information technology (HIT) to collect and report data. HIT may include an electronic patient registry or an electronic health record, and is a critical component for improving quality and patient outcomes. With HIT, it is possible to generate timely and meaningful data, which helps providers track and plan care.

Need and Proposed Use of the Information: FORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. FORHP uses the data for program improvement, and grantees use the data for performance tracking. No changes are proposed from the current data collection effort. A 60-day notice was published in the **Federal Register** (81 FR 95621, (December 28, 2016)). There were no public comments.

Likely Respondents: Grantees of the Small Health Care Provider Quality Improvement Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain,

disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. Burden is decreasing from 480 to 256 hours due to a decrease in number of respondents, while the amount of time per respondent (8 hours) remains the same. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Small Health Care Provider Quality Improvement Program Performance Improvement and Measurement System Measures	32	1	32	8	256
Total	32		32		256

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2017–14038 Filed 7–3–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or proposals 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 and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Center for Genomic Studies on Mental Disorders (U24).

Date: July 21, 2017.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; 93.281)

Dated: June 28, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–14012 Filed 7–3–17; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Friday, July 21, 2017. The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC, starting at 8:30 a.m. EST.

DATES: The quarterly meeting will take place on Friday, July 21, 2017, starting at 8:30 a.m.

ADDRESSES: The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, 202–517–0202, *cbienvenue@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into their decision making. For more information on the ACHP, please visit our Web site at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

I. Chairman's Welcome
II. Presentation of Joint ACHP–HUD Award
III. Section 106 Issues
  A. Administration Infrastructure Initiatives
  B. ACHP Report to the President Pursuant to Executive Order 13287
  C. Administration Regulatory and Organizational Reform Initiatives and Their Impact on Historic Preservation
IV. Historic Preservation Policy and Programs
  A. Building a More Inclusive Preservation Program: Youth Initiatives
  B. Building a More Inclusive Preservation Program: Implementation of Recommendations
  C. ACHP Recommendations for the Future of the National Historic Preservation Program
  D. Historic Preservation Legislation in the 115th Congress
V. New Business
VI. Adjourn

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202–517–0202 or *cbienvenue@achp.gov,* at least seven (7) days prior to the meeting.

Authority: 54 U.S.C. 304102.

Dated: June 28, 2017.

Javier E. Marques,

General Counsel.

[FR Doc. 2017–14080 Filed 7–3–17; 8:45 am]

BILLING CODE 4310–K6–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1380 (Preliminary)]

Tapered Roller Bearings From Korea; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1380 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of tapered roller bearings from Korea, provided for in subheadings 8482.20, 8482.91, and 8482.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.[1] Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by August 14, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 21, 2017.

DATES: Effective June 28, 2017.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on June 28, 2017, by The Timken Company, North Canton, Ohio.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 9:30 a.m. on Wednesday, July 19, 2017, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before Monday, July 17, 2017. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2017, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–14058 Filed 7–3–17; 8:45 am]

BILLING CODE 7020–02–P

[1] Tapered roller bearings include finished cup and cone assemblies entering as a set, finished cone assemblies entering separately, and finished parts (cups, cones, and tapered rollers).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Fourth Review)]

Gray Portland Cement and Cement Clinker From Japan; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on November 1, 2016 (81 FR 75848) and determined on February 6, 2017 that it would conduct an expedited review (82 FR 12465, March 3, 2017).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on June 29, 2017. The views of the Commission are contained in USITC Publication 4704 (June 2017), entitled *Gray Portland Cement and Cement Clinker from Japan: Investigation No. 731–TA–461 (Fourth Review).*

By order of the Commission.

Issued: June 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–14059 Filed 7–3–17; 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 X-Ray Breast Imaging Devices and Components Thereof, DN 3233;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

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 *https://edis.usitc.gov,* 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 *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Hologic, Inc. on June 28, 2017. 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 x-ray breast imaging devices and components thereof. The complaint names as respondents FUJIFILM Corporation of Japan; FUJIFILM Medical Systems USA, Inc. of Stamford, CT; and FUJIFILM Techno Products Co., Ltd. of Japan. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

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 § 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 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 § 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. 3233'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). 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

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

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 such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

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 §§ 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: June 29, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–14041 Filed 7–3–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Safety Communications 7 Consortium

Notice is hereby given that, on May 31, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Vehicle Safety Communications 7 Consortium (''VSC7 Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: General Motors Holdings LLC, Warren, MI; Ford Motor Company, Dearborn, MI; Honda R&D Americas, Inc., Torrance, CA; Hyundia-Kia America Technical Center, Inc., Superior Township, MI; Mazda Motor of America, Inc., Farmington Hills, MI; Nissan Technical Center North America, Farmington Hills, MI; Toyota Motor Engineering & Manufacturing North America, Plano, TX; and Volkswagen/ Audi of America, Auburn Hills, MI. The general area of VSC7 Consortium's planned activity is collaboration to conduct or facilitate cooperative research, development, testing, and evaluation procedures to gain further knowledge and understanding of a security credential management system for use in a connected vehicle environment. VSC7 Consortium's objectives are to promote the interests of the automotive sector while maintaining impartiality, the independence of its members, and vendor neutrality.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–14071 Filed 7–3–17; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Safety Communications 6 Consortium

Notice is hereby given that, on May 31, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Vehicle Safety Communications 6 Consortium (''VSC6 Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: General Motors Holdings LLC, Warren, MI; Ford Motor Company, Dearborn, MI; Honda R&D Americas, Inc., Torrance, CA; Hyundia-Kia America Technical Center, Inc., Superior Township, MI; Nissan Technical Center North America, Farmington Hills, MI; and Volkswagen/ Audi of America, Auburn Hills, MI.

The general area of VSC6 Consortium's planned activity is collaboration to conduct or facilitate cooperative research, development, testing, and evaluation procedures to gain further knowledge and understanding of connected vehicle interactions and/or applications for vehicles that are intended to transform surface transportation safety, mobility, and environmental performance through a connected vehicle environment. VSC6 Consortium's objectives are to promote the interests of the automotive sector while maintaining impartiality, the independence of its members, and vendor neutrality.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–14074 Filed 7–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on June 6, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HP Inc., Houston, TX, and Tata Sky Limited, Mumbai, INDIA, have been added as parties to this venture. Also, The DIRECTV Group, Inc., El Segundo, CA; Arcelik AS Electronics Plant, Istanbul, TURKEY; DreamWorks

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Animation L.L.C., Glendale, CA; Microsoft Corporation, Redmond, WA; Tongfang Global, Ltd. (Seiki), Diamond Bar, CA; and Walt Disney Pictures, Burbank, CA, have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on March 9, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 10, 2017 (82 FR 17280).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–14073 Filed 7–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 16–31]

Phong Tran, M.D.; Decision and Order

On June 29, 2016, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Phong Tran, M.D. (hereinafter, Respondent), the holder of 19 Certificates of Registration.[1] Order to Show Cause, at 1–3. Citing 21 U.S.C. 823(f) and 824(a)(3), the Show Cause Order proposed the revocation of Respondent's 19 Certificates of Registration on the ground that Respondent does not have authority to dispense controlled substances in the State of California, the State in which he is registered. *Id.* at 4.

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that each of Respondent's 19 Certificates of Registration ''are current and unexpired.'' Order to Show Cause, at 4. Respondent's registrations authorize him to dispense controlled substances in Schedules II through V. Government's Motion for Summary Disposition, Attachment 1, at 5–23.

As the substantive grounds for the proceeding, the Show Cause Order alleged that on or about December 9, 2015, Respondent was criminally charged in the County of San Diego Superior Court (hereinafter, Superior Court) with 45 counts related to unlawful billing under the California Workers' Compensation System and that the charges were pending resolution. *Id.* at 4. The Show Cause Order further alleged that, in response to the criminal charges, the Medical Board of California (hereinafter, MBC) petitioned the Superior Court for an order suspending Respondent's medical license during the pendency of the criminal proceedings. *Id.* The Show Cause Order alleged that, on May 13, 2016, the Superior Court issued an Order granting the MBC's petition ''and thereby . . . indefinitely suspended . . . [Respondent's] California medical license effective June 3, 2016.'' *Id.* The Order to Show Cause alleged that Respondent's medical license remained suspended and, ''therefore, DEA must revoke . . . [Respondent's] DEA . . . [registrations] based upon . . . [his] lack of authority to handle controlled substances in the State of California.'' *Id.* (citing 21 U.S.C. 802(21), 823(f)(1), and 824(a)(3)).

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequences for failing to elect either option. *Id.* at 4–5 (citing 21 CFR 1301.43). It also notified Respondent of his right to submit a corrective action plan. *Id.* at 5 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated August 25, 2016, Respondent requested a hearing stating that ''Dr. Tran's medical license is still active and valid, and not suspended as alleged.'' Hearing Request (August 25, 2016), at 1.

On August 29, 2016, Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ) issued an order setting September 9, 2016 as the date for the Government to submit evidence supporting the lack of state authority allegation and for any party's motion for summary disposition to be due. Order Directing the Filing of Proof of Service, Evidence of Lack of State Authority Allegation, and Briefing Schedule, at 2.[2]

On September 9, 2016, the Government filed its proof of service evidence and Motion for Summary Disposition. Government's Proof of Service Evidence and Motion for Summary Disposition (hereinafter, Government's Motion). The Government's Motion argued that Respondent was ''without state authorization to handle controlled substances in California, and as [sic] result, is not entitled to maintain his DEA Certificates of Registration.'' *Id.* at 1.

As support for its Motion, the Government provided a sworn Certification by the Chief of DEA's Registration and Program Support Section concerning each of Respondent's DEA registrations in California. Government's Motion, at Attachment 1 (Certification of Registration History dated June 29, 2016). The Certification attached a copy of each of Respondent's DEA registrations. *Id.* at 5–23. The Government also provided the MBC's Notice ''to recommend that the [Superior] Court issue an Order prohibiting . . . Phong Hung Tran, M.D. . . . from practicing or attempting to practice medicine as a physician in the State of California, as a condition of any bail or own recognizance release, during the pendency of . . . criminal proceedings.'' Government's Motion, at Attachment 2 (Notice of PC23 Appearance and Recommendation at PC1275 Bail Hearing dated April 12, 2016) (hereinafter, MBC Notice), at 2. The Government's Motion also attached the MBC's brief in support of the MBC Notice. Government's Motion, at Attachment 3 (Memorandum in Support of Penal Code Section 23 Appearance

[1] The 19 Certificates of Registration referenced in the Order to Show Cause are: FT4325242 in Vista, California (expiration date: November 30, 2016); FT4123422 in Garden Grove, California (expiration date: November 30, 2016); FT4086888 in Chula Vista, California (expiration date: November 30, 2016); FT4086876 in Escondido, California (expiration date: November 30, 2016); FT4086698 in San Diego, California (expiration date: November 30, 2016); FT4086686 in San Bernardino, California (expiration date: November 30, 2016); FP4086864 in Long Beach, California (expiration date: November 30, 2016); FT4046707 in Van Nuys, California (expiration date: November 30, 2018); FT3965540 in Anaheim, California (expiration date: November 30, 2018); FT4046543 in Temecula, California (expiration date: November 30, 2018); BT3239945 in Westminster, California (expiration date: November 30, 2018); FT4083111 in Downey, California (expiration date: November 30, 2016); FT4932097 in Rialto, California (expiration date: November 30, 2017); FT4946957 in Indio, California (expiration date: November 30, 2017); FT4946971 in Palmdale, California (expiration date: November 30, 2017); FT4963117 in Pasadena, California (expiration date: November 30, 2017); FT4963129 in Pomona, California (expiration date: November 30, 2017); FT4963131 in Hemet, California (expiration date: November 30, 2017); and FT3933593 in San Bernardino, California (expiration date: November 30, 2018). Order to Show Cause, at 1–3.

[2] The Order also set the date and time for the Government to furnish proof of when it served the Order to Show Cause on Respondent. *Id.* at 1.

and Recommendation to the Court dated April 12, 2016) (hereinafter, MBC Memorandum).

Attached to the Government's Motion were two Orders of the Superior Court. The first Order concerned Respondent's Condition of Bail Release and the second denied reconsideration of the first Order. Government's Motion, Attachment 4 (Conditions of Bail Order dated May 13, 2016) (hereinafter, Conditions of Bail Order) and Government's Motion, Attachment 5, (Denial of Reconsideration of Conditions of Bail Order dated August 17, 2016). Also attached to the Government's Motion were a ''Public Document List'' and ''Notification of Court Order'' concerning Respondent's license from the California Department of Consumer Affairs. Government's Motion, Attachment 6. The September 8, 2016 Declaration of a DEA Diversion Investigator from the San Diego Field Division, also attached to the Government's Motion, described the status of Respondent's license as ''indefinitely suspended'' by the Superior Court. Government's Motion, Attachment 8 (Declaration of Drug Enforcement Administration Diversion Investigator, dated September 8, 2016) (hereinafter DI Declaration), at 2.[3]

As further support for the Government's Motion, the Government provided the Declaration of a California Deputy Attorney General who represented the MBC. Government's Motion, Attachment 9 (hereinafter, MBC Attorney Declaration).[4] The MBC Attorney Declaration's heading, ''United States Department of Justice Drug Enforcement Administration,'' and docket number, ''16–31,'' suggested that it was created specifically for this proceeding. *Id.* at 1.

The last attachment to the Government's Motion was Respondent's request for a hearing. Government's Motion, Attachment 10 (Hearing Request dated August 25, 2016). Attached to the Hearing Request was a two-page printout from the California Department of Consumer Affairs (''*https://www.breEZe.ca.gov*'') titled ''License Details'' and dated August 25, 2016 (hereinafter, BreEZe License Details). The printout showed Respondent's license status as ''License Renewed & Current'' and secondary status as ''Limits On Practice.'' The document did not, however, state what limits were imposed on Respondent's practice.

On September 27, 2016, Respondent filed his opposition to the Government's Motion (hereinafter, Respondent's Opposition). Attached to Respondent's Opposition were the transcripts of two Superior Court hearings. Respondent's Opposition, Exhibits 11 and 12 (Reporter's Transcript of Proceedings for the April 8, 2016 and May 13, 2016 hearings) (hereinafter, April Transcript and May Transcript, respectively).[5]

Respondent stated that the MBC had not suspended his medical license. He asserted that, ''The limitation on his practice arises from a Court Order issued by Judge Eyherabide on May 13, 2016, prohibiting respondent from practicing medicine during the pendency of his criminal matter as a condition of his bail.'' Respondent's Opposition, at 1.

By Order dated October 4, 2016, the CALJ denied the Government's Motion. Order Denying the Government's Motion for Summary Disposition (hereinafter, Order Denying Government's Motion). The Order stated that ''the . . . [Superior Court] clearly imposed the prohibition on practice *as a condition of bail release*—not as a suspension or restriction on the Respondent's professional license itself.'' Order Denying Government's Motion, at 5. The Order cited ''[v]erification information available on the California Department of Consumer Affairs BreEZe Web site'' as providing ''further support for the proposition that the Superior Court's proscription against practicing medicine did not change . . . [Respondent's] medical licensure status.'' *Id.* at 5–6 (footnote omitted). The Order concluded that, ''Respondent (albeit at the peril of his release conditions) maintains the state authority requisite to retain his DEA . . . [registrations]'' and ''the Government has not met its burden to prove that the Respondent lacks state authority to handle controlled substances in California, the sole basis for its Motion.'' *Id.* at 8. Thus, it denied the Government's Motion for Summary Disposition noting that ''the Respondent has (inexplicably) not filed a motion for summary disposition.'' *Id.* at 8 n.20.[6]

On October 17, 2016, the CALJ conducted a status conference by telephone with the Government and counsel for Respondent. Order Granting Respondent's Request for a Continuance, at 1. During the status conference, counsel for Respondent sought, and was granted with the consent of the Government, a continuance until the afternoon of October 20, 2016 to file a motion for summary disposition. *Id.* at 1.

By motion dated October 17, 2016, Respondent requested dismissal of the Order to Show Cause. Respondent's Motion for Summary Disposition (hereinafter, Respondent's Motion), at 1. Attached to the Respondent's Motion were the April and May Superior Court hearing transcripts, an updated but substantively identical version of the BreEZe License Details, and ''License Details—Public Record Actions—Court Order'' from the California Department of Consumer Affairs concerning Respondent's license (hereinafter, BreEZe License Details—Court Order). The ''Description of Action'' section of the BreEZe License Details—Court Order stated that the ''Superior Court of California, County of San Diego, issued an Order . . . . Dr. Tran shall not practice medicine during the pendancy [sic] of this case beginning 06/03/16.''

In further support of his Motion, Respondent stated that, ''The Superior Court of California's Order of May 13, 2016 prohibited Respondent from practicing medicine *as a condition of bail release* pursuant to Penal Code § 1275, and not as a suspension or restriction on his professional medical license.'' Respondent's Motion, at 1. Respondent's Motion also stated that ''Respondent's professional medical license itself is currently active and is not restricted by the Court's Order,'' and alleged that his medical license ''entitles him to handle controlled substances in California.'' *Id.*

The Government opposed the Respondent's Motion. Government's Response to Respondent's Motion dated October 27, 2016 (hereinafter, Government's Opposition). In its Opposition, the Government admitted that ''Respondent currently retains his state authority to practice medicine.'' *Id.* at 2. Referencing the second prong of 21 U.S.C. 824(a)(3), the Government posited that ''DEA is authorized to revoke a DEA . . . [registration] even '. . . where suspension or revocation of a practitioner's state license or

[3] The seventh attachment to the Government's Motion was a Declaration of a DEA Diversion Investigator from the Los Angeles Field Division concerning service of the Show Cause Order on Respondent.

[4] The MBC Attorney Declaration referenced five attachments. None, however, was provided.

[5] The cover sheet for the May Transcript mistakenly attributed its contents to the hearing on April 8, 2016. The first page of the May transcript, however, noted the actual May date of the transcribed proceedings.

[6] The CALJ also granted leave to the Government, ''to the extent it is inclined to do so,'' to file and serve on Respondent a superseding Order to Show Cause no later than October 14, 2016 ''to allow the Government to pursue administrative enforcement in *these proceedings*.'' *Id.* at 8 n.21 (emphasis in original). By its filing dated October 14, 2016, the Government stated that it was not issuing a superseding Order to Show Cause concerning Respondent. Government's Notice Regarding the Filing of Superseding Order to Show Cause, at 1.

registration has merely been recommended by state authority,' and that DEA is not '. . . required to await a final decision from the State before acting to revoke' '' a DEA registration. *Id.* at 2 (citing *Joseph Giacchino, M.D.,* 76 FR 71,374 (2011)); *see also id.* at 4.

The Government's Opposition further stated that ''the State of California (on behalf of the Board) not only sought to have the criminal court suspend Respondent's medical license during pendency of criminal proceedings, but by the express wording of its April 12, 2016 court filing recommended that the court take this course of action.'' [7] *Id.* at 6. The Government's Opposition concluded that ''[t]he Board's recommendation of licensure suspension as a condition of bail clearly fits within the recommendation of 'competent State authority' wording of section 824(a)(3).'' *Id.*

On November 7, 2016, the CALJ granted the Respondent's Motion and recommended that the Government's petition for revocation of Respondent's certificates of registration be denied. Order Granting the Respondent's Motion for Summary Disposition (hereinafter, Order Granting Respondent's Motion), at 15. In the Order Granting Respondent's Motion, the CALJ, among other things, noted the Government's acknowledgement that Respondent had state authority to practice medicine, stated that the Order to Show Cause was insufficient to notice revocation of Respondent's registrations based on the second prong of 21 U.S.C. 824(a)(3), concluded that the ''recommendation'' in the second prong of 21 U.S.C. 824(a)(3) relates only to a practitioner's DEA registration, and determined that the MBC had not recommended a ''suspension'' of Respondent's registrations. *Id.* at 3, 10, 12–13, and 13, respectively.

On November 25, 2016, the Government filed Exceptions to the Order Granting Respondent's Motion. Government's Exceptions to Order Granting Summary Disposition Motion (hereinafter, Exceptions). In its Exceptions, the Government addressed whether the Order to Show Cause sufficiently noticed action against Respondent based on the second prong of 21 U.S.C. 824(a)(3),[8] whether a prerequisite to invocation of the second prong of 21 U.S.C. 824(a)(3) is a recommendation concerning a ''DEA registration,'' and whether the California State Medical Board recommended that the Superior Court ''suspend'' Respondent's medical license. *Id.* at 1–9.

On December 2, 2016, the record was forwarded to my Office for Final Agency Action. Having considered the record and the Order Granting Respondent's Motion in light of all relevant statutory, regulatory, and case law authorities, I conclude that there is no basis for revoking Respondent's registration on the record before me.[9] Thus, I agree with the CALJ's ultimate conclusions that Respondent continues to have the State authority required for his registrations, and that the Government has not established the predicates under 21 U.S.C. 824(a)(3) to warrant revocation of Respondent's registrations.[10]

I make the following factual findings.

Findings of Fact

Respondent's DEA Registrations

The Order to Show Cause alleged that Respondent has held 19 registrations, all with addresses in California. Order to Show Cause, at 1–3. Based on the evidence submitted by the Government, I find that at least one of Respondent's registrations, FT3933593 in San Bernardino, California (expiration date November 30, 2018), is currently active. Government's Motion, at Attachment 1, at 10.

Indictment of Respondent

On January 28, 2016, Respondent was criminally charged with 45 felony counts related to kickbacks, including 21 counts of workers' compensation fraud and 24 counts of insurance fraud. MBC Memorandum, at 2, 3; May Transcript, at 4–5, lines 23–2; DI Declaration, at 2. According to a State prosecutor, Respondent paid kickbacks for access to patients on a per patient basis. May Transcript, at 5, lines 12–28; at 6, lines 9–10; at 7, lines 24–26. At the May Superior Court hearing, the prosecutor represented that the individual to whom Respondent paid the kickbacks was a chiropractor working off Federal charges. *Id.* at 5, lines 12–20. One of Respondent's Physician's Assistants, the prosecutor further alleged, would see up to 100 patients a day, once a month, and provide the patients with prescription medications and compound creams. *Id.* at 6, lines 2–9. Respondent would bill the insurance companies for the visits and for the prescription medications and compound creams, according to the prosecutor. *Id.* at 6, lines 2–9, 16–25. The prosecutor explained that billing for compound creams was particularly lucrative because there was no limit on how much could be billed for a compound cream. *Id.* at 7, lines 1–20.

The Evidence Offered by the Parties in Support of Their Respective Motions

The Superior Court Hearing in April, 2016

On April 8, 2016, the Superior Court held a hearing at the request of the MBC. Attendees included State prosecutors and attorneys for the MBC and Respondent. According to its attorney, the MBC ''provided notice to Respondent back in February that they will be appearing at the . . . [California Penal Code] 23 to make a recommendation to provide information . . ., *not to ask for suspension,* but to place a condition on . . . [Respondent's] bail O.R. release.'' [11] April Transcript, at 30, lines 21–28 (emphasis added). A prosecutor explained that the California Attorney General decided, on behalf of the MBC, that ''this is so important to public safety that they are literally putting their reputation on the line.'' *Id.* at 23, lines 19–22. According to the prosecutor, ''the Medical Board is basically here telling you look, we may have to go through a certain number of procedures to do this, but we are asking you, in the interim, tell this individual not to practice medicine.'' [12] *Id.* at 23, lines 22–26; *see also id.* at 30, lines 16–18 (Respondent's counsel stating that ''the

[7] The Government's Opposition did not provide the page number on which this ''express wording'' appeared. I carefully reviewed the document the Government referenced multiple times and did not locate the ''express wording.''

[8] ''. . . has had the suspension, revocation, or denial of his registration recommended by competent State authority . . .''

[9] It is noted, however, that the issuance of a new Order to Show Cause would be appropriate if the MBC were to suspend or revoke Respondent's state license, or if Respondent's plea to, or conviction of, criminal charges resulted in mandatory exclusion under 42 U.S.C. 1320a–7(a). Further, the issuance of a new Order to Show Cause based on 21 U.S.C. 824(a)(4) would be appropriate if properly supported by evidence, including evidence gleaned from the criminal proceedings against Respondent.

[10] This matter raises novel issues, and my analysis differs from the analysis in the Order Granting Respondent's Motion. Thus, I do not adopt the Order Granting Respondent's Motion.

[11] The MBC's February Notice to Respondent was not put in the record of this proceeding.

California Penal Code 23 states, in pertinent part, ''In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code . . ., the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee.''

''O.R. release'' refers to a bail release on one's own recognizance.

[12] The prosecutor did not elaborate on what he meant by to do ''this.''

Medical Board has never once independently tried to suspend . . . [Respondent's] license.'').

The Superior Court began the April 8, 2016 hearing by stating that ''apparently there is a motion to continue.'' *Id.* at 1, lines 22–23. One of Respondent's attorneys acknowledged the motion ''due to the unavailability of . . . a witness allowed him to confront.'' *Id.* at 1, lines 24–26. As the hearing proceeded, Respondent's counsel argued that his client was entitled to due process because placing a no-medical-practice bail condition on Respondent's medical license was tantamount to placing it under interim suspension. He stated that he brought a ''motion'' because ''basically we are talking about an interim suspension, it's another way of saying . . . a restriction on someone's license, and . . . that . . . requires that the evidence . . . be shown through affidavit . . . that the . . . licensee [ ] have . . . an effective right to confront those evidence.'' [13] *Id.* at 4–5, lines 28–14.

The Superior Court stated that a co-defendant of Respondent had previously raised the issue of ''whether or not this court should or has the power to actually suspend'' a doctor's medical license. *Id.* at 2, lines 7–8. The Court indicated the response it had given to the co-defendant:

> I am not the Medical Board. I am not an attorney licensing board, I am not a real estate licensing board. The way I have framed this, frankly, is whether or not as a condition, . . . if somebody has a fourth DUI, and is asking for their own recognizance, as a part of bail there are conditions, one, they can't drive . . . if they make bail or are released.

Id. at 2, lines 16–25. At the hearing, the Superior Court consistently indicated that ''the real issue here [ ] is whether or not, as a condition of Dr. Tran's O.R. release, . . . he should be practicing medicine, not that I would be suspending a license. I don't have any power to suspend a license.'' *Id.* at 3, lines 4–8. Stating that ''[t]here is no right to confront . . . for the Court considering safety purposes,'' the Superior Court rejected the due process arguments of Respondent's counsel and invited them to appeal her ruling. *Id.* at 12, lines 2–4; *see also id.* at 7, lines 21–24; *id.* at 11, lines 24–25. Throughout the April hearing, the Superior Court continuously and consistently stated that she was not able to suspend a license, whether the license in question was a truck driver's license, a license to practice law, or a medical license. *Id.* at 3, lines 22–23; at 4, lines 22–23; at 6, lines 12–15; at 9, lines 7–8.

The Superior Court explained the extent of her authority with an analogy to a person put on probation. She stated, ''as a condition of probation, the Court can impose, you can't practice accounting, you can't drive a truck, you can't practice medicine . . . [and if] the person doesn't wish to accept it, they go to prison.'' *Id.* at 9, lines 10–14. She provided another example:

> [E]ven if I was placing a person on probation, a lawyer, who committed fraud, I can't say and a condition of probation is I am taking away your license. I don't have a power to take away a license. The State Bar only has the power to take away a license. I can say as a condition of probation, you are not to practice law. He can still pay his Bar dues. It means when he's done with probation in two years, he's still a practicing attorney.

Id. at 9, lines 15–23. The Superior Court reiterated that she was not able to ''yank'' a person's license and ''[w]hether it's as a condition of bail, or probation, it's a condition one can accept or not accept.'' *Id.* at 9, lines 24–26.

In the criminal case against Respondent, according to the Superior Court, she was able to place a no-medical-practice condition on Respondent's own recognizance release and she continued the hearing to May 13, 2016 for the purpose of determining whether to do so. *Id.* at 29, lines 8–25; *see also id.* at 10, lines 9–12.

Some statements at the April hearing suggested that the MBC had filed a pre-hearing statement recommending the suspension of Respondent's medical license. The Superior Court had stated, ''Through the Attorney General's office, they [14] have requested, pursuant to Penal Code Section 23, to bring me the information . . . and in the moving papers everybody talks about whether or not this Court should or has the power to actually suspend Dr. Tran's license.'' *Id.* at 2, lines 3–8; *see also id.* at 21, lines 21–27 (A prosecutor stating that ''[c]ommonly these questions are initiated by a request by the Attorney General, a recommendation as it's termed, . . . to take some action on a person's license. Just to be clear, . . . we are not joining in the request that any action be taken on the defendant's license.''); May Transcript, at 2, lines 11–14 (Superior Court noting that ''[t]here are numerous briefs here from the People'' and Respondent's counsel suggesting that, ''That's probably from the prior set of P[enal] C[ode] 23 brief [sic].'').

Other statements tended to oppose that possibility. April Transcript, at 19–20, lines 26–3 (Superior Court stating that, under Penal Code section 23, the State agency that issued a license to a criminal defendant may voluntarily appear to ''furnish pertinent information, make recommendation [sic], regarding specific conditions of probation''); *id.* at 30, lines 21–28 (MBC provided notice to Respondent of its appearance ''to make a recommendation to provide information . . . not to ask for suspension, but to place a condition on his bail O.R. release.'').

If there were any written submission by the MBC or a party in connection with the April Superior Court hearing recommending the suspension of Respondent's medical license or registration, it is not in the record before me.

Thus, based on the evidence in the April Transcript, I conclude that the Superior Court did not suspend or revoke Respondent's California medical license at the Superior Court April hearing, and that the suspension, revocation, or denial of Respondent's medical license or registration was not recommended by competent California State authority in connection with the Superior Court April hearing.

The Medical Board of California Notice and Memorandum

In advance of the May Superior Court hearing, the MBC filed the MBC Notice and the MBC Memorandum. *Supra.* The MBC Notice stated, in pertinent part, that the MBC will appear before the Superior Court ''to recommend that the Court issue an Order prohibiting . . . [Respondent] from practicing or attempting to practice medicine as a physician in the State of California, as a condition of any bail or own recognizance release, during the pendency of . . . [the] criminal proceedings.'' MBC Notice, at 2. The MBC Notice explained the grounds for its recommendation, stating that ''if allowed to continue to practice medicine as a physician, . . . [Respondent] poses a continuing danger to the public health, safety, and welfare.'' *Id.* It referenced the Superior Court's statutory authority to consider public protection when imposing bail and own recognizance release conditions. *Id.* The MBC Notice did not state that the MBC was recommending the suspension, revocation, or denial of Respondent's medical license or registration.

The MBC Memorandum made multiple points. First, it reiterated the

[13] The motion Respondent's counsel referenced was not put in the record of this proceeding.

[14] The reference to ''they'' is not specified.

MBC's recommendation to, and request of, the Superior Court that Respondent, ''as a condition of any bail or own recognizance release, . . . be prohibited from practicing medicine until resolution of the . . . criminal proceedings.'' MBC Memorandum, at 2; *see also id.* at 4, 8.

Second, it stated that Respondent held a valid physician's license that ''will expire on January 31, 2018, unless renewed.'' *Id.* at 2. The MBC Memorandum further explained that Respondent's physician's license enabled Respondent ''to provide medical services including issuing prescriptions for controlled substances to patients and conducting serious surgeries.'' *Id.*

Third, the MBC Memorandum stated that the MBC was responsible for enforcing the disciplinary and criminal provisions of the California Medical Practice Act, and that protecting the public was its highest priority in exercising its licensing, regulatory, and disciplinary functions. *Id.* at 3. It explained that it had the ''power to suspend, revoke, or otherwise limit physicians and surgeons from practicing medicine for, among other things, unprofessional conduct and criminal convictions substantially related to the qualifications, functions, or duties of a physician and surgeon.'' *Id.*

Fourth, the MBC Memorandum cited California Penal Code § 23, *supra,* as authority for the MBC to appear in a criminal proceeding against a person to whom the MBC had issued a license to ''furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interest of the public.'' *Id.* at 4. It also cited California law to support the reasonableness of a bail condition prohibiting Respondent from practicing medicine during the pendency of the criminal case.[15] MBC Memorandum, at 5–8.

Fifth, the MBC Memorandum stated that, ''The felony charges in this case are extremely serious and are substantially related to the qualifications, functions, and duties of a physician and surgeon.'' *Id.* at 6; *see also id.* at 8. It stated that Respondent's alleged conduct ''is not only unprofessional, but also dangerous, and evinces poor character, a lack of integrity and an inability or unwillingness to follow the law.'' *Id.*

Nowhere in the MBC Notice or the MBC Memorandum did the MBC recommend the suspension, revocation, or denial of Respondent's medical license or registration.

The Superior Court Hearing in May, 2016

On May 13, 2016, the Superior Court resumed the hearing it began in April. The May Transcript contained more information about the criminal charges against Respondent and the MBC's request of the Superior Court.

The prosecutor stated that Respondent was indicted for giving kickbacks for access to patients and filing fraud-based insurance claims based on those kickbacks. May Transcript, at 4–7, 11–12. The attorney representing the MBC stated that, ''[i]n setting[,] reducing[,] and denying bail, . . . [t]he public safety shall be the primary consideration.'' *Id.* at 13, lines 22–28. He argued:

> When patients are sold for money, . . . [Respondent is] going after patients, patients aren't coming after him, to seek medical help. He's seeking patients to make money. When patients are sold as commodities, does that pose a risk . . . to the public? Patient care? And when their patient's safety is at risk, is that a risk of the public safety? Well of course it is, Your Honor.

Id. at 14, lines 6–12. The MBC attorney asserted that ''[t]his was one of the largest insurance and worker's compensation fraud cases in the history of this county . . . , a sophisticated large scale criminal enterprise.'' *Id.* at 14, lines 24–28. He summarized what the MBC sought from the Superior Court when he stated, ''We ask the Court, as a condition of bail, to prohibit . . . [Respondent] from practicing medicine during the pendency of this case.'' *Id.* at 15, lines 22–24.

The Superior Court ruled that ''until the case is resolved, . . . [Respondent] not be allowed to practice medicine. . . . So that will be a condition of his continued bail.'' *Id.* at 20, lines 11–14. On August 17, 2016, the Court denied Respondent's request for reconsideration of this ruling. Government's Motion, Attachment 5, *supra.*

Thus, the Superior Court, at its May hearing, conditioned Respondent's own-recognizance bail release on his not practicing medicine. At the May hearing, the Superior Court did not suspend or revoke Respondent's California medical license, and no competent California State authority recommended the suspension, revocation, or denial of Respondent's medical license or registration.

The MBC Attorney Declaration

The MBC Attorney Declaration contained five numbered paragraphs. The first paragraph stated that its declarant worked in the California Attorney General's Health Quality Enforcement Unit. MBC Attorney Declaration, at 1. Its second paragraph stated that Respondent was charged with 45 counts of felony crimes related to workers' compensation and insurance fraud. *Id.* Its third paragraph stated that, in April of 2016, the MBC attorney declarant ''voluntarily appeared'' on behalf of the MBC and recommended that the Superior Court issue an order, as a condition of bail, prohibiting Respondent from practicing medicine during the pendency of the criminal proceedings. *Id.* The fourth paragraph stated that the Superior Court, ''as a condition of bail, . . . issued an order prohibiting Dr. Tran from practicing medicine, effective June 3, 2016, during pendency of above criminal proceedings.'' *Id.* at 2. The last paragraph stated that the Superior Court denied Respondent's request for modification and/or removal of the bail condition. *Id.* While the MBC Attorney Declaration stated that it was sworn under penalty of perjury, neither the day of its execution in September, 2016 nor the signature on it was visible. For these reasons, I cannot give any credit to the MBC Attorney Declaration.[16]

The Status of Respondent's California Medical License

According to the evidence in the record, Respondent and the Government eventually agreed that Respondent's California medical license was current.[17] Respondent's Motion, at 1 (''Respondent's professional medical license itself is currently active . . . .''); Government's Opposition, at 2 (''[T]his tribunal, as well as the Respondent in his pending summary disposition motion, have correctly pointed out that Respondent currently retains his state authority to practice medicine.''); *see also id.* at 5. Thus, there ended up being no dispute that Respondent's California medical license was current. As of the date of this Decision and Order, Respondent's California medical license

[15] The MBC Memorandum cited Penal Code § 1275 (the public safety is the primary consideration for judges in setting, reducing, or denying bail) and California Penal Code § 1318 (interpreted to require defendants released on their own recognizance to promise to obey all reasonable conditions related to public safety).

[16] Even if the date and signature on it were visible, the MBC Attorney Declaration contained no evidence tending to show that competent California State authority recommended the suspension, revocation, or denial of Respondent's medical license or registration.

[17] California medical license number 74233.

is current; it has not been suspended or revoked.[18]

Discussion [19]

Under Section 304 of the Controlled Substances Act (hereinafter, CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be . . . revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances . . . or has had the suspension, revocation, or denial of his registration recommended by competent State authority . . . .'' 21 U.S.C. 824(a)(3).

Moreover, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a registration. This rule derives from the text of two provisions of the CSA. First, Congress defined ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted . . . by the . . . jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice . . . .'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever a practitioner is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *Frederick Marsh Blanton,* 43 FR 27,616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.''). *See also James L. Hooper,* 76 FR 71,371 (2011) (collecting cases), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012).

Registrant's California Medical License Has Not Been Suspended or Revoked

In this case, the Government and Respondent eventually agreed that Respondent's California medical license was neither suspended nor revoked. Respondent's Motion, 1 (''Respondent's professional medical license itself is currently active . . . .''); Government's Opposition, 2 (''[T]his tribunal, as well as the Respondent in his pending summary disposition motion, have correctly pointed out that Respondent currently retains his state authority to practice medicine.''); *see also* Government's Opposition, 5. Thus, there was no dispute between the parties concerning the status of Respondent's California medical license. I, therefore, conclude that the first prong of 21 U.S.C. 824(a)(3) does not support revocation of any of Registrant's registrations.

Competent State Authority Suspension or Revocation Recommendation

The Government's Opposition argues that revocation of Respondent's registrations is appropriate under the second prong of 21 U.S.C. 824(a)(3). However, the Government cites no case interpreting that provision. Given the clear factual record before me, there is no need to opine on it, including on the requisite ''recommendation'' and whether ''registration'' refers to a State license/controlled substance registration or a DEA registration. In other words, the record simply contains no evidence that a ''competent State authority'' ''recommended'' the ''suspension, revocation, or denial'' of any ''registration.'' *Supra.*

Having thoroughly examined all of the evidence in the record, including the evidence from the MBC, the Superior Court, and every attorney representing California, I found evidence only that the MBC recommended a no-medical-practice condition on Respondent's own recognizance bail release. While the record hints at the possibility that the MBC made a suspension or revocation recommendation, the record contains no evidence of such a recommendation.

The evidence in the record is clear that the Superior Court did not believe she had authority to suspend or revoke a license of any sort, let alone a DEA registration, and that she did not intend her orders to do so. The evidence in the record is equally clear that neither the Superior Court, the prosecutor, nor the MBC attorney recommended any suspension, revocation, or denial of any registration. Finally, the Government did not cite any decision holding that a no-medical-practice bail condition constitutes a recommendation of suspension, revocation, or denial.

In sum, viewing the evidence in the record in the light most favorable to the Government, the non-moving party, I find no evidence, let alone substantial evidence, that the factual predicates for applying either prong of 21 U.S.C. 824(a)(3) have been established.[20] Thus, in this case, the record does not support revocation of Respondent's registrations under either the first or second prong of 21 U.S.C. 824(a)(3).

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), I grant Respondent's Motion for Summary Disposition. I further order the dismissal of the Order to Show Cause. This order is effective August 4, 2017.

Dated: June 24, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–14070 Filed 7–3–17; 8:45 am]

BILLING CODE 4410–09–P

[18] According to the Web site *https://www.breEZe.ca.gov,* Respondent's medical license has practice limits due to the Superior Court's imposition of an ''own recognizance'' bail condition.

[19] I need not address, and therefore decline to address, much of the content of the Recommended Decision, including most of the matters with which the Government took exception: Whether the Government sufficiently noticed action against Respondent based on the second prong of 21 U.S.C. 824(a)(3) and whether a prerequisite for invocation of the second prong of 21 U.S.C. 824(a)(3) is a recommendation concerning a ''DEA registration.'' I need not reach either of these matters because I find that the Government has not established that there was a suspension, revocation, or denial recommendation by competent State authority.

[20] Although the Government cited 21 U.S.C. 823(f) and 21 U.S.C. 823(f)(1) in the Order to Show Cause, it did not squarely present, let alone develop, the theory that Respondent's registrations should be revoked based on 21 U.S.C. 823(f)(1) in conjunction with 21 U.S.C. 824(a)(4). Further, the cases the Government cited in the Order to Show Cause as providing ''a summary of the legal basis for this action'' did not rely on 21 U.S.C. 824(a)(4) and 823(f)(1) as legal bases.

When invited by the CALJ to amend the Order to Show Cause, which included the possibility of developing a revocation theory under 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(1), the Government explicitly declined. Order Denying Government's Motion, at 8; Government's Notice Regarding the Filing of Superseding Order to Show Cause. As warranted with the passage of time and the garnering of relevant evidence, the Government is free to issue a new Order to Show Cause concerning Respondent's registrations based on appropriate legal authority. *Supra.*

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities: New Information Collection Instrument: Diversity in Law Enforcement Recruitment Survey

ACTION: 30-Day Notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is a new instrument.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 5, 2017 after this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* New information collect.

(2) *Title of the Form/Collection:* Diversity in Law Enforcement Recruitment Survey.

(3) *The agency form number 1103–**** U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law Enforcement Agencies and community partners.

Abstract: The purpose of this project is to improve the practice of community policing throughout the United States by supporting the development of a series of tools that will allow law enforcement agencies to gain better insight into the depth and breadth of their community policing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 1 respondent will respond with an average of 50 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated time burden is 50 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E, Room 405A, Washington, DC 20530.

Dated: June 29, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–14024 Filed 7–3–17; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on May 2, 2017, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until August 4, 2017.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, General Counsel, USDOJ–EOIR–OGC, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 20530; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

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

Overview of this information collection:

1 *Type of Information Collection:* Revision and extension of a currently approved collection.

2 *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

3 *The agency form number:* EOIR–27 (OMB #1125–0005).

4 *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board.

Other: None.

Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20,669 respondents will complete each form within approximately 6 minutes.

6 *An estimate of the total public burden (in hours) associated with the collection:* 2,066 annual burden hours.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 29, 2017.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–14025 Filed 7–3–17; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On June 28, 2017, the Department of Justice lodged a proposed Consent Decree (''Consent Decree'') with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States and Commonwealth of Puerto Rico* v. *Suez Shipping North America LLC and Hoegh LNG Fleet Management AS,* Civil Action No. 3:17–cv–01741.

In a Complaint, the United States, on behalf of the Department of Commerce, National Oceanic and Atmospheric Association (''NOAA''), and the Commonwealth of Puerto Rico, on behalf of the Puerto Rico Department of Natural and Environmental Resources (''DNER''), seek to recover damages for the injury to, destruction of, loss of, or loss of use of natural resources under the Oil Pollution Act, 33 U.S.C. 2701, *et seq.* The Complaint alleges that on December 15, 2009, Suez Shipping North America LLC and Hoegh LNG Fleet Management AS (the ''Defendants''), caused damage to a coral reef habitat in the Caribbean Sea on the south shore of Puerto Rico near Guaynilla due to the grounding of the *LNGC Matthew,* a liquefied natural gas tanker owned/operated by them. The proposed Consent Decree in this case requires that Defendants pay a total of $1,900,000 for the damage, which includes $1,708,000 to restore injured coral reefs in the area, and $182,000 in reimbursement of NOAA costs and $10,000 in reimbursement of DNER costs in assessing the damage.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Puerto Rico* v. *Suez Shipping North America LLC and Hoegh LNG Fleet Management AS,* D.J. Ref. No. 90–5–1–1–11554. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.00 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2017–14020 Filed 7–3–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1739]

Special Technical Committee on Civil Disturbance Unit Personal Protective Equipment

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Notice.

SUMMARY: The National Institute of Justice (NIJ) is seeking qualified individuals to serve on a Special Technical Committee (STC) on Civil Disturbance Unit (CDU) Personal Protective Equipment (PPE). The purpose of the STC will be to oversee the development of performance standards for CDU PPE that meet the needs of U.S. law enforcement.

DATES: Individuals wishing to submit an application to NIJ must do so by 5:00 p.m. Eastern Time September 5, 2017, as instructed below.

How to Respond and What to Include: To apply to serve on the Special Technical Committee on Civil Disturbance Unit Personal Protective Equipment, please email a resume or curriculum vitae to the point of contact listed below by the deadline listed above. Please put ''Special Technical Committee on Civil Disturbance Unit Personal Protective Equipment'' in the subject line. If submitting hardcopy application materials, please send to the attention of the point of contact listed below at the address provided. Hardcopy application materials must be postmarked by the date listed above. There is no page limit or limit to the amount of information that an interested applicant may submit to demonstrate his or her qualifications. More information on the individuals sought for the STC is provided below. No materials will be returned. All materials submitted will be treated confidentially and discreetly and may be shared with U.S. Government staff or U.S. Government contractors for evaluation purposes related to selection for the STC only, subject to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mark Greene, Office of Science and Technology, National Institute of Justice, 810 7th Street NW., Washington, DC 20531; telephone number: (202) 307–3384; email address: *mark.greene2@usdoj.gov.*

SUPPLEMENTARY INFORMATION: NIJ hosted a convening of state and local law enforcement agencies and technical organizations in Washington, DC, on

May 16, 17, and 18, 2017, to discuss a range of issues related to CDU with a particular focus on standardization of equipment. As an outcome of that workshop, NIJ plans to facilitate the development of baseline performance requirements, standardized test methods, and certification requirements for equipment used by U.S. law enforcement civil disturbance units. NIJ anticipates that these standards will be developed through the consensus process through one or more accredited Standards Development Organizations (SDO), with the participation of U.S. law enforcement CDU practitioners, testing laboratories, product certifiers, as well as manufacturers and industry. A scan of current standards revealed a gap in performance standards regarding equipment related to civil disturbances that address specific U.S. law enforcement requirements. For U.S. law enforcement agencies planning to procure new or certified CDU PPE, NIJ has identified either British Standard 7971, *Protective clothing and equipment for use in violent situations and in training,* or standards developed by the U.K. Home Office [*i.e., HOSDB Blunt Trauma Protector Standard for UK Police* (2007), *PSDB Protective Headwear Standard for UK Police* (2004), and *HOSDB Flame Retardant Overalls Standard for UK Police* (2008)] as performance standards that may meet agencies' needs until such time as U.S. standards can be developed.

NIJ develops and publishes voluntary equipment standards that specifically address the needs of law enforcement, corrections, and other criminal justice agencies to ensure that equipment is safe, reliable, and performs according to established minimum performance requirements. When practical and appropriate, NIJ supports the development of standards by outside SDOs to meet the needs of the criminal justice community. NIJ promulgates standards that are consensus-based and designed to articulate the criminal justice end user community's operational requirements regarding equipment performance. They are designed to provide a level of confidence in a product's fitness for purpose and allow comparison of products based on standardized test methods. NIJ maintains active standards for a variety of equipment, including ballistic-resistant body armor; stab-resistant body armor; restraints; bomb suits; chemical, biological, radiological, and nuclear (CBRN) protective ensembles; and offender tracking systems and makes use of other external standards that meet the needs of the criminal justice community. More information on NIJ standards is available at *http://www.nij.gov/standards.*

NIJ is seeking qualified individuals to serve on a STC on CDU PPE. The purpose of the STC will be to oversee the development of performance standards for CDU PPE that meet the needs of U.S. law enforcement. NIJ anticipates that the STC should expect to discuss product certification and conformity assessment in general during the development of performance standards. NIJ anticipates the Committee will be comprised of approximately 25 individual CDU practitioners from federal, state, and local law enforcement agencies; test laboratories; and other relevant technical or governmental organizations. Individuals will be selected to achieve the best possible balance of knowledge and expertise. Due to the practitioner-driven nature of the STC and its limited size, manufacturers will not be permitted to serve on the STC. However, manufacturers may participate in the standards development process through private-sector SDOs that may be involved.

Submitted materials must clearly demonstrate the applicant's qualifications to serve on the STC. Law enforcement practitioners must be active sworn personnel, should have experience with CDU PPE, and should have specialized civil disturbance operational responsibilities in his or her respective agency that would especially qualify him or her to serve on the STC. This may fall under the responsibility of a special operations division, special emergency response team, disorder control unit, or similarly named organizational entity within a law enforcement agency. Individuals operating at all levels of a law enforcement agency are encouraged to apply, however, individuals at the level of sergeant and above are preferred. Laboratory representatives should have a level of experience with mechanical testing to be considered an expert in testing methodology. If provisionally selected to serve on the STC, candidates should expect to disclose any financial conflicts of interest with manufacturers for assessment prior to final selection. NIJ anticipates that the STC will meet for two to three days in the Washington, DC area approximately four to five times over the course of approximately 18–24 months starting sometime in late 2017. The remainder of the work will be conducted by telephone and email. It is expected that travel and per diem expenses for travel originating outside the local Washington, DC area will be reimbursed. However, participation time will not be reimbursed. Any potential reimbursements are subject to, inter alia, the availability of appropriated funds, and to any modifications or additional requirements that may be imposed by law.

Howard Spivak,

Acting Director, National Institute of Justice.

[FR Doc. 2017–14037 Filed 7–3–17; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2017–053]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, we announce an upcoming SLTPS–PAC committee meeting.

DATES: The meeting will be July 26, 2017, from 10:00 a.m. to 12:00 noon EDT.

ADDRESSES: Location—National Archives and Records Administration, 700 Pennsylvania Avenue NW., Jefferson Room; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, Senior Program Analyst, ISOO, by mail at National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, by phone at (202) 357–5398, or by email at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss matters relating to the Classified National Security Information Program for state, local, tribal, and private sector entities.

Procedures: This meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of people planning to attend. Please submit the information to ISOO no later than Wednesday, July 19, 2017.

ISOO will provide additional instructions for entry to the meeting.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2017–14036 Filed 7–3–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–045]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration.

ACTION: Notice and request for comments.

SUMMARY: As part of the Federal Government-wide ongoing effort to streamline how agencies request feedback from the public on services (also called ''service delivery''), we are proposing to renew a generic information collection request (generic ICR) entitled Generic Clearance for Collecting Qualitative Feedback on Agency Services (previously entitled Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery). This notice announces our intent to submit this generic ICR plan to OMB for renewed approval for another three years and solicits comments on specific aspects of the collection plan.

DATES: The deadline to submit comments is September 5, 2017.

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

- *Federal eRulemaking portal at http://www.regulations.gov (follow the instructions on the Web site for submitting comments and include NARA–2017–045 in the title of your response).*
- *Email: regulation_comments@nara.gov (include NARA–2017–045 in the subject line).*
- *Fax:* 301–713–7409 *(include NARA–2017–045 in the subject line or on the cover sheet).*

We may make comments available to the public through the internet. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, the system will automatically your capture your email address and include it as part of the comment, which could be made available on the internet. Please note that, because this is a public comment process, we will disregard any routine notice about the confidentiality of the communication that might be included with the comment.

FOR FURTHER INFORMATION CONTACT: Please contact Tamee Fechhelm by phone at 301–713–1694, or by fax at 301–713–7409, with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION:

Information Collection Process

NARA invites the public and other Federal agencies to comment on information collections we propose to renew, including generic ones. We submit proposals to renew information collections first through a public comment period and then to OMB for review and approval pursuant to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et. seq.*). We will summarize or include in our request for OMB approval any comments you submit in response to this notice.

Request for Comments

We invite comments on: (a) Whether collecting this information is necessary for proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, 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 people need to provide the information, including time to review instructions, process and maintain the information, search data sources, and respond.

Explanation of Generic ICRs

A generic ICR is a request for OMB to approve a plan for conducting more than one information collection using very similar methods when (1) we can evaluate the need for and the overall practical utility of the data in advance, as part of the review of the proposed plan, but (2) we cannot determine the details of the specific individual collections until a later time. Most generic clearances cover collections that are voluntary, low-burden (based on a consideration of total burden, total respondents, or burden per respondent), and uncontroversial. This notice, for example, describes a general plan to gather views from the public through a series of customer satisfaction surveys in which we ask the public about certain agency activities or services and how well we are providing them. As part of this plan, we construct, distribute, and analyze the surveys in a similar manner, but customize each survey for the type of service it is measuring.

Because we seek public comment on the plan, we do not need to seek public comment on each specific information collection that falls within the plan when we later develop the individual information collection. This saves the Government time and burden, and it streamlines our ability to gather performance feedback. However, we still submit each specific information collection (*e.g.,* each survey) to OMB for review, in accordance with the terms of clearance set upon approval of the plan. OMB assesses the individual surveys for PRA requirements, ensures that they fit within the scope of this generic ICR plan, and includes the specific surveys in the PRA public docket prior to our use of them.

Specifics on This Information Collection

Title: Generic Clearance for Collecting Qualitative Feedback on Agency Services.

Description: This generic information collection request allows us to gather qualitative customer and stakeholder feedback in an efficient, timely manner as part of our commitment to improve service delivery. By qualitative feedback, we mean information that provides useful insights into customers' or stakeholders' perceptions and opinions, but not statistical surveys that yield quantitative results that we could generalize to the population. Qualitative feedback provides insights into perceptions, experiences, and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training, or operational changes might improve delivery of products or services. We will not use this qualitative generic clearance for quantitative information collections designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Purpose: Collecting this information allows us to receive ongoing, collaborative, and actionable communications from our customers and stakeholders. We use customer feedback to plan efforts to improve or maintain the quality of service we offer

to the public. If we do not collect this information, vital feedback from customers and stakeholders on our services will be unavailable. The feedback we collect about our services include assessments of timeliness, appropriateness, accuracy of information, plain language, courtesy, efficiency, and issue resolution.

Conditions: We will submit a specific information collection for approval under this generic clearance only if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current actions: We currently have 18 surveys that have been approved by OMB under this generic ICR that are ongoing and will continue through the renewal period. Some of these surveys include the OGIS Customer Service Assessment, NPRC Survey of Customer Satisfaction, Training and Event Evaluation, Public Vaults Exhibition Survey, Boeing Learning Center Visit Drivers, History Hub Survey, Agency Assistance Project Feedback Survey, National Archives and Records Administration Customer Survey, and the National Outreach Program Initiative (NOPI) Master Survey.

Type of review: Regular.

Potential affected public: Anyone who uses NARA's services, programs, or facilities, including requesting personnel records, requesting historical, genealogical, or other archival records, using research rooms, requesting research or asking research questions, ordering and receiving reproductions, using FOIA dispute resolution services, using records management services, working with records management schedules, renting facilities, attending exhibitions, events, or open houses, using learning centers or educational materials, attending training, etc. This can include individuals and households, businesses and organizations, or state, local, or Tribal governments.

Estimated number of respondents: We currently have approximately 25,000 respondents annually to our 18 surveys. We are completely restructuring one of the surveys, the NPRC Survey of Customer Satisfaction, and migrating it from paper to online form. We anticipate that this will substantially increase the number of potential respondents to that survey from about 10,000 to 100,000 potential respondents. In addition, we expect to add and remove some additional surveys during the next three years, which might also result in a net decrease or increase in potential respondents. Therefore, we are projecting that between 120,000 and 150,000 respondents annually.

Projected average estimates for the next three years:

Average expected annual number of surveys: 12.

Average projected number of respondents per survey: 12,994.

Annual responses per respondent: 1.

Frequency of response: Once per request.

Average minutes per response: 10–30 minutes, depending on the survey.

Burden hours: 20,000–25,000.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–14003 Filed 7–3–17; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Awards and Facilities Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference on short notice for the transaction of National Science Board business, as follows:

DATE & TIME: July 13, 2017, from 1:00–2:00 p.m. EDT.

SUBJECT MATTER: (1) Committee Chair's opening remarks; (2) Discussion of NEON's Science, Technology, & Education Advisory Committee's assessment of budget scenarios for NEON operations & maintenance.

STATUS: Closed.

This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. You can find meeting information and updates (time, place, subject or status of meeting) at *https://www.nsf.gov/nsb/meetings/index.jsp.* The point of contact for this meeting is: Elise Lipkowitz, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2017–14168 Filed 6–30–17; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0142]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Virgil C. Summer Nuclear Station, Units 2 and 3, and Wolf Creek Generating Station (WCGS). For each amendment request, the NRC proposes to determine that they involve no

significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI) an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by August 4, 2017. A request for a hearing must be filed by September 5, 2017. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by July 17, 2017.

ADDRESSES: You may submit comments by any of the following:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0142. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: T–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0142, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0142.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0142, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

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

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the

action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be

submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: May 1, 2017. A publicly-available version is in ADAMS under Accession No. ML17121A317.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment request proposes changes to the combined operating licenses (COL), Appendix C (and to plant-specific Tier 1 information), and associated Tier 2 information to address mitigation of fire protection system flooding of the Auxiliary Building identified during completion of the pipe rupture hazards analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with Nuclear Regulatory Commission (NRC) staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building [radiologically controlled area (RCA)], and the associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any essential safety-related equipment or function. The changes and affected levels of the Auxiliary Building RCA do not involve any accident, initiating event or component failure; thus, the probabilities of the accidents previously evaluated are not affected. The maximum allowable leakage rate specified in the Technical Specifications is unchanged, and radiological material release source terms are not affected; thus, the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building RCA and the associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any safety-related equipment or function. The changes do not change the condition of any essential safety-related equipment or structure; therefore, no new accident initiator or failure mode is created. The proposed changes do not create

a new fault or sequence of events that could result in a radioactive release. The proposed changes will not affect any safety-related mitigating function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building RCA and associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any essential safety-related equipment or function. The proposed changes do not have any effect on the ability of safety-related structures, systems, or components to perform their design basis functions. The changes ensure that the capability to achieve safe shutdown is maintained. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50–482, Wolf Creek Generating Station (WCGS), Coffey County, Kansas

Date of amendment request: January 17, 2017, as supplemented by letters dated March 22 and May 4, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17054C103, ML17088A635, and ML17130A915, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specification (TS) 2.1.1, ''Reactor Core SLs [Safety Limits]''; add new TS Limiting Condition for Operation (LCO) 3.1.9, ''RCS [Reactor Coolant System] Boron Limitations < 500 F [degrees Fahrenheit]''; and revise TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation''; TS 3.4.1, ''RCS Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits''; TS 3.7.1, ''Main Steam Safety Valves (MSSVs)''; and TS 5.6.5, ''CORE OPERATING LIMITS REPORT (COLR),'' to replace the existing WCNOC methodology for performing core design, non-loss-of-coolant-accident (non-LOCA) and LOCA safety analyses (for Post-LOCA Subcriticality and Cooling only) with standard Westinghouse developed and NRC approved analysis methodologies at WCGS.

In addition, the proposed amendment would revise TS 1.1, Definitions,'' to revise definitions of DOSE EQUIVALENT I–131 and DOSE EQUIVALENT XE–133; TS 3.3.7, ''Control Room Envelope Ventilation System (CREVS) Actuation Instrumentation''; 3.7.13, ''Emergency Exhaust System (EES)''; TS 5.5.12, ''Explosive Gas and Storage Tank Radioactivity Monitoring Program''; and TS 5.5.18, ''Control Room Envelope Habitability Program,'' to revise the WCGS licensing basis by adopting the Alternative Source Term (AST) as described in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluation Design Basis Accidents at Nuclear Power Reactors,'' July 2000 (ADAMS Accession No. ML003716792).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The new core design, non-loss-of-coolant-accident (non-LOCA) and Post-LOCA Subcriticality and Cooling analyses and resulting TS changes will continue to ensure the applicable safety limits are not exceeded during any conditions of normal operation, for design basis accidents (DBAs) as well as any Anticipated Operational Occurrence (AOO). The methods used to perform the affected safety analyses are based on methods previously found acceptable by the NRC and conform to applicable regulatory guidance. Application of these NRC approved methods will continue to ensure that acceptable operating limits are established to protect the integrity of the Reactor Coolant System (RCS) and fuel cladding during normal operation, DBAs, and any AOOs. The requested TS changes proposed to conform to the new methodologies do not involve any operational changes that could affect system reliability, performance, or the possibility of operator error. The proposed changes do not affect any postulated accident precursors, or accident mitigation systems, and do not introduce any new accident initiation mechanisms.

Adoptions of the AST and pursuant TS changes and the changes to the atmospheric dispersion factors have no impact to the initiation of DBAs. Once the occurrence of an accident has been postulated, the new accident source term and atmospheric dispersion factors are an input to analyses that evaluate the radiological consequences. The proposed changes do not involve a revision to the design or manner in which the facility is operated that could increase the probability of an accident previously evaluated in Chapter 15 of the Updated Safety Analysis Report (USAR).

The structures, systems and components affected by the proposed changes act to mitigate the consequences of accidents. Based on the AST analyses, the proposed changes do revise certain performance requirements; however, the proposed changes do not involve a revision to the parameters or conditions that could contribute to the initiation of an accident previously discussed in Chapter 15 of the USAR. Plant specific radiological analyses have been performed using the AST methodology and new atmospheric dispersion factors. Based on the results of these analyses, it has been demonstrated that the control room dose consequences of the limiting events considered in the analyses meet the regulatory guidance provided for use with the AST, and the offsite doses are within acceptable limits. This guidance is presented in 10 CFR 50.67 [''Accident source term''] and RG 1.183.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

Implementation of the new core design, non-loss-of-coolant-accident (non-LOCA) and Post-LOCA Subcriticality and Cooling analyses and resulting TS changes do not alter or involve any design basis accident initiators and do not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not adversely affect the design function or mode of operations of structures, systems and components in the facility important to safety. The structures, systems and components important to safety will continue to operate in the same manner as before, therefore, no new failure modes are created by this proposed change. As such, the proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally the proposed change does not involve a change in the methods governing normal plant operation and all safety functions will continue to perform as previously assumed in accident analyses. Thus, the proposed change does not adversely affect the design function or operation of any structures, systems, and components important to safety. The proposed change does not involve changing any accident initiators.

Implementation of AST and the associated proposed TS changes and new atmospheric dispersion factors do not alter or involve any

design basis accident initiators. A design modification will be implemented in support of the proposed AST change that will eliminate the need for local operator action to isolate a failed CREVS train. The proposed change does not adversely affect the design function or mode of operations of structures, systems and components in the facility important to safety. The structures, systems and components important to safety will continue to function in the same manner as before after the AST is implemented. Therefore, no new failure modes are created by this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed methodology and TS changes will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis. The proposed changes do not adversely affect the design and performance of the structures, systems, and components important to safety. Therefore, the required safety functions will continue to be performed consistent with the assumptions of the applicable safety analyses. In addition, operation in accordance with the proposed TS change will continue to ensure that the previously evaluated accidents will be mitigated as analyzed. The NRC approved safety analysis methodologies include restrictions on the choice of inputs, the degree of conservatism inherent in the calculations, and specified event acceptance criteria. Analyses performed in accordance with these methodologies will not result in adverse effects on the regulated margin of safety. As such, there is no significant reduction in a margin of safety.

The results of the AST analyses are subject to the acceptance criteria in 10 CFR 50.67. The analyzed events have been carefully selected, and the analyses supporting these changes have been performed using approved methodologies to ensure that analyzed events are bounding and safety margin has not been reduced. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67 and RG 1.183. Thus, by meeting the applicable regulatory limits for AST, there is no significant reduction in a margin of safety. New control room atmospheric dispersion factors (χ/Qs) based on site specific meteorological data, calculated in accordance with the guidance of RG 1.194, utilizes more recent data and improved calculation methodologies.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Robert J. Pascarelli.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

South Carolina Electric & Gas Company, Docket Nos. 50–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50–482, Wolf Creek Generating Station (WCGS), Coffey County, Kansas

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 19th of June, 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2017–13112 Filed 7–3–17; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting

DATE: Weeks of July 3, 10, 17, 24, 31, August 7, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 3, 2017

There are no meetings scheduled for the week of July 3, 2017.

Week of July 10, 2017—Tentative

There are no meetings scheduled for the week of July 10, 2017.

Week of July 17, 2017—Tentative

There are no meetings scheduled for the week of July 17, 2017.

Week of July 24, 2017—Tentative

There are no meetings scheduled for the week of July 24, 2017.

Week of July 31, 2017—Tentative

There are no meetings scheduled for the week of July 31, 2017.

Week of August 7, 2017—Tentative

There are no meetings scheduled for the week of August 7, 2017.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 30, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–14226 Filed 6–30–17; 4:15 pm]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03036194; EA–16–255; NRC–2017–0155]

In the Matter of Somascan Incorporated

AGENCY: Nuclear Regulatory Commission.

ACTION: Imposition order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Imposition Order to Somascan Incorporated, imposing a civil penalty of $7,000. On April 5, 2017, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$7,000 to Somascan Incorporated, for failing to comply with regulatory requirements regarding the decommissioning of its site and securing the licensed material that is stored in an unrestricted area.

DATES: The Imposition Order was issued on June 27, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0155 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–2017–0155. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about this Imposition Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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: Leelavathi Sreenivas, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9249; email: *Leelavathi.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Imposition Order is attached.

Dated at Rockville, Maryland, this 27th of June, 2017.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of Somascan Incorporated

San Juan, Puerto Rico

Docket No. 03036194

License No. 52–25617–01 (expired)

EA–16–255

ORDER IMPOSING CIVIL MONETARY PENALTY

I.

Somascan, Inc. (Somascan or the Licensee) is the holder of expired Materials License No. 52–25617–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on April 16, 2003, pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). Somascan was a private outpatient medical licensee authorized to possess and use radiopharmaceuticals and sealed sources for diagnostic and therapeutic medical procedures permitted by 10 CFR 35.100, 35.200, 35.300, 35.400, and 35.500; and pre-packaged kits authorized by 10 CFR 31.11.

II.

Onsite inspections of Somascan's activities were conducted between December 10, 2014 and November 16, 2016. The results of these inspections

indicated that Somascan had not conducted its activities in full compliance with NRC requirements, in that Somascan has neither begun nor completed decommissioning within the timeframes required by NRC regulations in 10 CFR 30.36(d) and 30.36(h) or secured from unauthorized removal or access licensed material that is stored in an unrestricted area. As a result, on April 5, 2017, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Somascan (ADAMS Accession No. ML17094A537). The Notice states the nature of the violations, the provisions of the NRC's requirements that Somascan violated, and the amount of the civil penalty proposed for the violations. As of the date of this Order, Somascan has not responded to the Notice.

III.

The NRC staff has determined that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed. In reaching this determination, the NRC staff considered that Somascan allowed its license to expire on April 30, 2013, and was previously informed that an expired license precluded Somascan from performing any licensed activities except those required for securing licensed radioactive material and decommissioning. Additionally, Somascan was informed of the need to properly dispose of its radioactive material and to request termination of its license. To date, Somascan has not acknowledged the Notice and has not taken any action to address the violations.

IV.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee shall pay a civil penalty in the amount of $7,000 within 30 days of the issuance date of this Order, in accordance with NUREG/BR–0254, ''Payment Methods'' (*see http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/*). In addition, at the time payment is made, Somascan shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V.

In accordance with 10 CFR 2.205(d), Somascan and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the issuance date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's Web site at *http://www.nrc.gov/site-help/esubmittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's Public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's Public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's Public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the

Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *https://adams.nrc.gov/ehd/,* unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Somascan requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). If a hearing is requested by Somascan or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing or alternative dispute resolution (ADR), or written approval of an extension of time in which to request a hearing or ADR, the provisions specified in Section IV above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing or ADR has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or ADR request has not been received. If ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an Order. If payment has not been made by the time specified above, the matter may be referred to the Attorney General for collection.

Dated at Rockville, Maryland, this 27th day of June 2017.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Office of Enforcement.

[FR Doc. 2017–14069 Filed 7–3–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0152]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 3, 2017 to June 19, 2017. The last biweekly notice was published on June 19, 2017.

DATES: Comments must be filed by August 4, 2017. A request for a hearing must be filed by September 5, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0152. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0152, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0152.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0152, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place

after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded

pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 3, 2017, as supplemented by letters dated April 3, 2017, and May 2, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17093A787, ML17093A796, and ML17122A223, respectively.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to extend the required frequency of certain 18-month Surveillance Requirements (SRs) to 24 months to accommodate a 24-month refueling cycle. In addition, the proposed amendment would revise certain programs in TS Section 5.5, ''Programs and Manuals,'' to change 18-month frequencies to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment changes the surveillance frequency from 18 months to 24 months for SRs in the TSs that are normally a function of the refueling interval. Duke Energy Progress, LLC's evaluations have shown that the reliability of protective instrumentation and equipment will be preserved for the maximum allowable surveillance interval.

The proposed change does not involve any change to the design or functional requirements of the associated systems. That is, the proposed TS change neither degrades the performance of, nor increases the challenges to any safety systems assumed to function in the plant safety analysis. The proposed change will not give rise to any increase in operation power level, fuel operating limits or effluents. The proposed change does not affect any accident precursors since no accidents previously evaluated relate to the frequency of surveillance testing and the revision to the frequency does not introduce any accident initiators. The proposed change does not impact the usefulness of the SRs in evaluating the operability of required systems and components or the manner in which the surveillances are performed.

In addition, evaluation of the proposed TS change demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected because of the availability of redundant systems and equipment or the high reliability of the equipment. Since the impact on the systems is minimal, it is concluded that the overall impact on the plant safety analysis is negligible.

Furthermore, an historical review of surveillance test results and associated maintenance records indicates there is no evidence of any failure that would invalidate the above conclusions. Therefore, the proposed TS change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not require a change to the plant design nor the mode of plant operation. No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. In addition, the proposed change does not impact the usefulness of the SRs in evaluating the operability of required systems and components or the manner in which the surveillances are performed. Furthermore, an historical review of surveillance test results and associated maintenance records indicates there is no evidence of any failure that would invalidate the above conclusions. Therefore, the implementation of the proposed change will not create the possibility for an accident of a new or different type than previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment changes the surveillance frequency from 18 months to 24 months for SRs in the TSs that are normally a function of the refueling interval. SR 3.0.2 would allow a maximum surveillance interval of 30 months for these surveillances. Although the proposed change will result in an increase in the interval between surveillance tests, the impact on system availability is small based on other, more frequent testing that is performed, the existence of redundant systems and equipment or overall system reliability. There is no evidence of any time-dependent failures that would impact the availability of the systems. The proposed change does not significantly impact the condition or performance of structures, systems and components relied upon for accident mitigation. This change does not alter the existing TS allowable values or analytical limits. The existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The assumptions and results in any safety analyses are not significantly impacted. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine S. Shoop.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 24, 2017. A publicly-available version is in ADAMS under Accession No. ML17114A398.

Description of amendment request: The amendment would revise Technical Specification requirements regarding steam generator tube inspections and reporting as described in Technical Specification Task Force (TSTF) Traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' using the Consolidated Line Item Improvement Process for Arkansas Nuclear One, Unit No. 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of a[n] SGTR is not increased. The consequences of a[n] SGTR are bounded by the conservative assumptions in the design basis accident analysis. The proposed change will not cause the consequences of a[n] SGTR to exceed those assumptions.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a[n] SG is maintained by ensuring the integrity of its tubes.

SG tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW., Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 24, 2017. A publicly-available version is in ADAMS under Accession No. ML17114A399.

Description of amendment request: The amendment would revise Technical Specification requirements regarding steam generator tube inspections and reporting as described in Technical Specifications Task Force (TSTF) Traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' using the Consolidated Line Item Improvement Process for Arkansas Nuclear One, Unit No. 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Steam Generator (SG) Program to modify the frequency of verification of SG tube integrity and SG tube sample selection. A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. The proposed SG tube inspection frequency and sample selection criteria will continue to ensure that the SG tubes are inspected such that the probability of a[n] SGTR is not increased. The consequences of a[n] SGTR are bounded by the conservative assumptions in the design basis accident analysis. The proposed change will not cause the consequences of a[n] SGTR to exceed those assumptions.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs or their method of operation. In addition, the proposed change does not impact any other plant system or component.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a[n] SG is maintained by ensuring the integrity of its tubes.

SG tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change will continue to require monitoring of the physical condition of the SG tubes such that there will not be a reduction in the margin of safety compared to the current requirements.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW., Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: March 28, 2017. A publicly-available version is

in ADAMS under Accession No. ML17087A551.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.1.3, ''Diesel Fuel Oil,'' by relocating the current stored diesel fuel oil numerical volume requirements from the TS to the TS Bases. In addition, the proposed amendment would revise TS 3.8.1.1, ''A.C. [Alternating Current] Sources—Operating,'' and TS 3.8.1.2, ''A.C. Sources—Shutdown,'' to relocate the specific numerical value for feed tank fuel oil volume to the TS Bases and replace it with the feed tank time requirement. The proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–501, Revision 1, ''Relocate Fuel Oil and Lube Oil Volume Values to Licensee Control.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise [TS] 3.8.1.3 (Diesel Fuel Oil) by removing the current stored diesel fuel oil numerical volume requirements from the TS and replacing them with diesel operating time requirements. The specific volume of fuel oil equivalent to a 7 and 6 day supply is calculated using the NRC approved methodology described in Regulatory Guide 1.137, Revision 1, ''Fuel-Oil Systems for Standby Diesel Generators'' and [American Nuclear Standards Institute (ANSI)] N195–1976, ''Fuel Oil Systems for Standby Diesel-Generators'' using the time dependent load method as approved in Waterford 3 License Amendment 157. Because the requirement to maintain a 7 day supply of diesel fuel oil is not changed and is consistent with the assumptions in the accident analyses, and the actions taken when the volume of fuel oil is less than a 6 day supply have not changed, neither the probability nor the consequences of any accident previously evaluated will be affected.

The proposed change also removes the TS 3.8.1.1 and TS 3.8.1.2 diesel feed tank fuel oil numerical volume requirements and replaces them with the diesel one hour diesel generator operation requirement. The specific volume and time is not changed and is consistent with the existing plant design basis to support a diesel generator under accident load conditions.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the diesel generator operates as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise [TS] 3.8.1.3 (Diesel Fuel Oil) by removing the current stored diesel fuel oil numerical volume requirements from the TS and replacing them with diesel operating time requirements. As the bases for the existing limits on diesel fuel oil are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

The proposed change also removes the TS 3.8.1.1 and TS 3.8.1.2 diesel feed tank fuel oil numerical volume requirements and replaces them with the diesel one hour diesel generator operation requirement. As the basis for the existing limits on diesel fuel oil are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW., Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket No. 50–277, Peach Bottom Atomic Power Station (PBAPS), Unit 2, York and Lancaster Counties, Pennsylvania

Date of amendment request: May 19, 2017. A publicly-available version is in ADAMS under Accession No. ML17139D357.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to decrease the number of safety relief valves and safety valves required to be operable when operating at a power level less than or equal to 3358 megawatts thermal (MWt). This change would be in effect for the current PBAPS, Unit 2, Cycle 22 that is scheduled to end in October 2018.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would revise TS Section 3.4.3 to decrease the required number of Safety Relief Valves (SRVs) and Safety Valves (SVs) from a total of 13 to 12, under reduced reactor thermal power operation of 3358 MWt (approximately 85% of Current Licensed Thermal Power (CLTP)). A compensatory reduction in maximum allowed reactor power to 3358 MWt has been determined to conservatively offset the impact/effects of operation with an additional (up to 2) SRVs/SVs Out-of-Service. The Reactor Pressure Vessel (RPV) overpressure protection capability of the 12 operable SRVs and SVs is adequate at the lower power level to ensure the ASME [American Society of Mechanical Engineers] code allowable peak pressure limits are not exceeded. With the maximum thermal power limitation condition, the proposed change has no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents, Anticipated Operational Occurrence (AOO) events and Special Events remains bounded by existing analyses. The proposed change does not require any new or unusual operator actions. The proposed change does not introduce any new failure modes that could result in a new or different accident. The SRVs and SVs are not being modified or operated differently and will continue to operate to meet the design basis requirements for RPV overpressure protection. The proposed change does not alter the manner in which the RPV overpressure protection system is operated and functions and thus, there is no significant impact on reactor operation. There is no change being made to safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

For PBAPS, the limiting overpressure AOO event is the main steam isolation valve closure with scram on high flux (MSIVF). The PBAPS ATWS [anticipated transients without scram] Special Event evaluation considered the limiting cases for RPV overpressure and is analyzed under two cases: (1) Main Steam Isolation Valve Closure (MSIVC) and (2) Pressure Regulator Failure Open (PRFO). These events were analyzed under the proposed conditions and it was confirmed that the existing analyses remain bounding for the condition of adding a

second SRV/SV Out-of-Service with a limited maximum operating power level of 3358 MWt.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change would revise TS Section 3.4.3 to decrease the required number of SRVs and SVs from a total of 13 to 12, under reduced reactor thermal power operation of 3358 MWt (approximately 85% of CLTP). A compensatory reduction in maximum allowed reactor power to 3358 MWt has been determined to conservatively offset the impact/effects of operation with an additional (up to 2) SRVs/SVs Out-of-Service. The RPV overpressure protection capability of the 12 operable SRVs and SVs is adequate at the lower power level to ensure the ASME code allowable peak pressure limits are not exceeded. The SRVs and SVs are not being modified or operated differently and will continue to operate to meet the design basis requirements for RPV overpressure protection. The proposed change does not introduce any new failure modes that could result in a new or different accident. The proposed reactor thermal power restriction of 3358 MWt is within the existing normal operating domain and no new or special operating actions are necessary to operate at the intermediate power level. The proposed change does not alter the manner in which the RPV overpressure protection system is operated and functions and thus, there is no new failure mechanisms for the overpressure protection system. The plant response to the design basis accidents, AOO events and Special Events remains bounded by existing analyses. [These] events were analyzed under the proposed conditions and it was confirmed that the existing analyses remain bounding for the condition of adding a second SRV/SV Out-of-Service with a limited maximum operating power level of 3358 MWt.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established though the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not change the setpoints at which the protective actions are initiated. The proposed change would revise TS Section 3.4.3 to decrease the required number of SRVs and SVs under reduced reactor thermal power operation of 3358 MWt (approximately 85% of CLTP). A compensatory reduction in maximum allowed reactor power to 3358 MWt has been determined to conservatively offset the impact/effects of operation with an additional (up to 2) SRVs/SVs Out-of-Service. The RPV overpressure protection capability of the 12 operable SRVs and SVs is adequate at the lower power level to ensure the ASME code allowable peak pressure limits are not exceeded. The plant response to the design basis accidents, AOO events and Special Events remains bounded by existing analyses. These events were analyzed under the proposed conditions and it was confirmed that the existing analyses remain bounding for the condition of adding a second SRV/SV Out-of-Service with a limited maximum operating power level of 3358 MWt.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No.1, DeWitt County, Illinois

Date of amendment request: May 4, 2017. A publicly-available version is in ADAMS under Accession No. ML17124A121.

Description of amendment request: The proposed change would delete a surveillance requirement (SR) Note associated with technical specification (TS) 3.5.1, ''ECCS [emergency core cooling system]—Operating,'' TS 3.5.2, ''ECCS—Shutdown,'' and TS 3.6.1.7, ''Residual Heat Removal (RHR) Containment Spray System,'' to more appropriately reflect the RHR system design, and ensure the RHR system operation is consistent with the TS limiting condition for operation (LCO) requirements. In addition, the proposed amendment would insert a Note in the LCO for TSs 3.5.1, 3.5.2, 3.6.1.7, 3.6.1.9, ''Feedwater Leakage Control System,'' and 3.6.2.3, ''Residual Heat Removal (RHR) Suppression Pool Cooling,'' to clarify that one of the required subsystems in each of the affected TS sections may be inoperable during alignment and operation of the RHR system for shutdown cooling (SDC) with the reactor steam dome pressure less than the RHR cut in permissive value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No physical changes to the facility will occur as a result of this proposed amendment. The proposed changes will not alter the physical design. The current TS (CTS) Note in SR 3.5.1.4, SR 3.5.2.4, and 3.6.1.7 could make CPS susceptible to potential water hammer in the RHR system while operating in the SDC mode of RHR in MODE 3 when swapping from the SDC to LPCI [low-pressure coolant injection] and RHR containment spray modes of RHR. Deletion of the Note from SR 3.5.1.2, SR 3.5.2.4, and SR 3.6.1.7.1 will eliminate the risk for cavitation of the pump and voiding in the suction piping, thereby avoiding the potential to damage the RHR system, including water hammer. The addition of proposed TS note to LCO 3.5.1, LCO 3.5.2, LCO 3.6.1.7, LCO 3.6.1.9, and LCO 3.6.2.3 will re-establish consistency of the CPS RHR system design with the original TS requirements.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the change does not introduce any new accident initiators, nor does it reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function. Deletion of the Note from SR 3.5.1.2, SR 3.5.2.4 and SR 3.6.1.7.1 is appropriate because current TSs could put the plant at risk for potential cavitation of the pump and voiding in the suction piping, resulting in potential to damage the RHR system, including water hammer. The addition of proposed TS note to LCO 3.5.1, LCO 3.5.2, LCO 3.6.1.7, LCO 3.6.1.9, and LCO 3.6.2.3 will re-establish consistency of the CPS RHR system design with the original TS requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change conforms to NRC regulatory guidance regarding the content of plant Technical Specifications. The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review it appears the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No.1, DeWitt County, Illinois

Date of amendment request: May 1, 2017. A publicly-available version is in ADAMS under Accession No. ML17121A517.

Description of amendment request: The proposed change replaces existing technical specification (TS) requirements related to operations with a potential for draining the reactor vessel (OPDRVs) with new requirements on reactor pressure vessel (RPV) water inventory control (WIC) to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires reactor vessel water level to be greater than the top of active irradiated fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystem to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that secondary containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review it appears the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 24, 2017. A publicly available version is in ADAMS under Accession No. ML17115A087.

Description of amendment request: The amendments would revise the LGS, Units 1 and 2, Technical Specifications (TSs) to a set of Improved Technical Specifications (ITS) based on NUREG–1433, Revision 4, ''Standard Technical Specifications—General Electric Plants, BWR/4,'' published April 2012. Specifically, the amendments would relocate TS Section 3.3.7.12, ''Offgas Gas Monitoring Instrumentation''; TS 3.11.2.5, ''Explosive Gas Mixture''; and Surveillance Requirement (SR) 4.11.2.6.1, which requires continuously monitoring the main condenser gaseous effluent to the LGS Offsite Dose Calculation Manual or to the LGS Technical Requirements Manual. In

addition, associated with the relocation of the main condenser offgas noble gas activity monitor, (1) SR 4.11.2.6.2.b will be changed to account for the relocated instrument's requirements, and (2) associated with the relocation of the explosive gas mixture instrumentation and gaseous effluent TS sections, a new TS Program Section, 6.8.4.l, ''Explosive Gas Monitoring Program,'' will be added to TS Section 6.8, ''Procedures and Programs.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes relocate certain operability and surveillance requirements for the Main Condenser Offgas Monitoring Instrumentation and Gaseous Effluents limits from the Limerick Generating Station (LGS) Technical Specifications (TS) to a licensee-controlled document under the control of 10 CFR 50.59 or under the control of regulatory requirements applicable to the licensee-controlled document. A new TS Administrative Program is proposed to be added to ensure the limit for Main Condenser Offgas hydrogen concentration is maintained.

The proposed changes do not alter the physical design of any plant structure, system, or component; therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. Operation or failure of the Main Condenser Offgas Radioactivity and Hydrogen Monitors capability are not assumed to be an initiator of any analyzed event in the Updated Final Safety Analysis Report (UFSAR) and cannot cause an accident. Whether the requirements for the Main Condenser Offgas Radioactivity and Hydrogen Monitor capability are located in TS or another licensee-controlled document has no effect on the probability or consequences of any accident previously evaluated.

The proposed changes conform to NRC regulatory requirements regarding the content of plant TS as identified in 10 CFR 50.36, and also the guidance as approved by the NRC in NUREG–1433, ''Standard Technical Specifications—General Electric BWR/4 Plants.''

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate certain operability and surveillance requirements for the Main Condenser Offgas Monitoring Instrumentation and Gaseous Effluents limits from the LGS TS to a licensee-controlled document under the control of 10 CFR 50.59 or under the control of regulatory requirements applicable to the licensee-controlled document. A new TS Administrative Program is proposed to be added to ensure the limit for Main Condenser Offgas hydrogen concentration is maintained.

The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function. Also, the response of the plant and the operators following the design basis accidents is unaffected by the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes relocate certain operability and surveillance requirements for the Main Condenser Offgas Monitoring Instrumentation and Gaseous Effluents limits from the LGS TS to a licensee-controlled document under the control of 10 CFR 50.59 or under the control of regulatory requirements applicable to the licensee-controlled document. A new TS Administrative Program is proposed to be added to ensure the limit for the Main Condenser Offgas hydrogen concentration is maintained. The relocated TS requirements do not meet any of the 10 CFR 50.36c(2)(ii) criteria on items for which a TS must be established.

The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant (PNPP), Unit No. 1, Lake County, Ohio

Date of amendment request: April 26, 2017. A publicly-available version is in ADAMS under Accession No. ML17116A575.

Description of amendment request: The proposed amendment would revise the PNPP Environmental Protection Plan (nonradiological) to clarify and enhance wording, to remove duplicative or outdated program information, and to relieve the burden of submitting unnecessary or duplicative information to the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the Environmental Protection Plan (EPP), which provides for protection of nonradiological environmental values during operation of the nuclear facility. The proposed amendment does not change the objectives of the EPP, does not change the way the plant is maintained or operated, and does not affect any accident mitigating feature or increase the likelihood of malfunction for plant structures, systems and components.

The proposed amendment will not change any of the analyses associated with the PNPP Updated Safety Analysis Report Chapter 15 accidents because plant operation, plant structures, systems, components, accident initiators, and accident mitigation functions remain unchanged.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves changes to the EPP, which provides for protection of nonradiological environmental values during operation of the nuclear facility. The proposed amendment does not involve a physical alteration of the plant. No new or different type of equipment will be installed, and there are no physical modifications to existing installed equipment associated with the proposed changes. The

proposed amendment does not change the way the plant is operated or maintained and does not create a credible failure mechanism, malfunction or accident initiator not already considered in the design and licensing basis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Safety margins are applied to design and licensing basis functions and to the controlling values of parameters to account for various uncertainties and to avoid exceeding regulatory or licensing limits. The proposed amendment involves changes to the EPP, which provides for protection of nonradiological environmental values during operation of the nuclear facility. The proposed amendment does not involve a physical change to the plant, does not change methods of plant operation within prescribed limits, or affect design and licensing basis functions or controlling values of parameters for plant systems, structures, and components.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: David J. Wrona.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 2, 2017. A publicly-available version is in ADAMS under Accession No. ML17144A294.

Description of amendment request: The amendments would revise the St. Lucie Plant Unit Nos. 1 and 2 Renewed Facility Operating Licenses, Nos. DPR–67 and NPF–16, respectively, fire protection license conditions. The revisions would incorporate new references into these license conditions that propose and approve a revision to plant modifications previously approved in the March 31, 2016, NRC issuance of amendments regarding transition to a risk-informed, performance-based fire protection program in accordance with 10 CFR 50.48(c), dated March 21, 2016 (ADAMS Accession No. ML15344A346) (known as the National Fire Protection Association Standard 805 (NFPA 805)).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are clarifications to methods applied to ensure compliance with NFPA 30, section 2348. The revised methods comply with NFPA 30, section 2348. This LAR [license amendment request] is essentially an administrative change to revise the letter referenced by the Fire Protection Transition License Conditions. The actual design changes and any related procedural changes are being managed separately from this LAR per 10 CFR 50.59.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not increase the probability or consequence of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are clarifications to methods applied to ensure compliance with NFPA 30, section 2348. The revised methods of compliance align with NFPA 30, section 2348, and will not result in new or different kinds of accidents. This LAR is essentially an administrative change to revise the letter referenced by the Fire Protection Transition License Conditions. The actual design changes and any related procedural changes are being managed separately from this LAR per 10 CFR 50.59.

The requirements in NFPA 30 address only fire protection. The impacts of fire effects on the plant have been evaluated. The proposed amendment does not involve new failure mechanisms or malfunctions that could initiate a new or different kind of accident beyond those already analyzed in the Unit 1 and Unit 2 UFSARs [updated final safety analysis reports].

Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of Plant St. Lucie (PSL) in accordance with the proposed amendment does not involve a reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Undine S. Shoop.

Indiana Michigan Power Company (I&M), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: May 23, 2017. A publicly-available version is in ADAMS under Accession No. ML17146A073.

Description of amendment request: The proposed changes update the emergency action levels (EALs) used at CNP, Unit Nos. 1 and 2, from the current scheme based on Nuclear Management and Resources Council (NUMARC) and National Environmental Studies Project (NESP) NUMARC/NESP–007, ''Methodology for Development of Emergency Action Levels'' dated January 1992, to a scheme based on Nuclear Energy Institute 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the CNP EALs do not impact the physical function of plant structures, systems, or components (SSC) or the manner in which SSCs perform their design function. EALs are used as criteria for determining the need for notification and participation of local and State agencies, and for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions. The proposed changes do not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. No operating procedures or administrative controls that function to prevent or mitigate accidents are affected by the proposed changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the CNP EALs do not involve any physical changes to plant systems or equipment. The proposed changes do not involve the addition of any new equipment. EALs are based on plant conditions, so the proposed changes will not alter the design configuration or the method of plant operation. The proposed changes will not introduce failure modes that could result in a new or different type of accident, and the change does not alter assumptions made in the safety analysis. The proposed changes to the CNP Emergency Plan are not initiators of any accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes to the CNP EALs do not impact operation of the plant or its response to transient or accidents. The changes do not affect the Technical Specifications or the operating license. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes.

Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. The emergency plan will continue to activate an emergency response commensurate with the extent of degradation of plant safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed changes involve references to available plant indications to assess conditions for determination of entry into an emergency action level. There is no change to these established safety margins as a result of this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: May 11, 2017. A publicly-available version is in ADAMS under Accession No. ML17135A225.

Description of amendment request: The requested amendment proposes to depart from combined license (COL) Appendix C information (with corresponding changes to the associated plant-specific Tier 1 information) and involves associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). Specifically, proposed changes clarify that there is more than one turbine building main sump and adds a second sump pump for each of the two turbine building main sumps into UFSAR Tier 2 and COL Appendix C (and associated plant-specific Tier 1) information.

Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The activity adds a second pump to each of the turbine building main sumps, and identifies that there is more than one turbine building sump. The reason for the additional pumps is to account for an increase in volume due to the changes to the [condensate polishing system (CPS)] rinse effluent flowpath from [component cooling water system (CCW)] CCW to [waste water system (WWS)] WWS via the Turbine Building sumps. The extra sump pumps will prevent potential overflowing and flooding of the sumps during CPS rinse operations. The CPS serves no safety-related function. By directing the effluent to the turbine building sumps it is subject to radiation monitoring. Under normal operating conditions, there are no significant amounts of radioactive contamination within the CPS. However, radioactive contamination of the CPS can occur as a result of a primary to secondary leakage in the steam generator should a steam generator tube leak develop while the CPS is in operation and radioactive condensate is processed by the CPS. Radiation monitors associated with the steam generator blowdown, steam generator, and turbine island vents, drains and relief systems provide the means to determine if the secondary side is radioactively contaminated. The main turbine building sumps and sump pumps are not safety-related components and do not interface with any systems, structures, or components (SSC) accident initiator or initiating sequence of events; thus, the probability of accidents evaluated within the plant-specific UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to accident conditions, thus the consequences of accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the non-safety waste water system (WWS) do not affect any safety-related equipment, nor does it add any new interface to safety-related SSCs. No system or design function or equipment qualification is affected by this change. The changes do not introduce a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The WWS is a nonsafety-related system that does not interface with any safety-related equipment. The proposed changes to identify that there is more than one turbine building sump and to add two turbine building sump pumps do not affect any design code,

function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: May 16, 2017. A publicly-available version is in ADAMS under Accession No. ML17137A107.

Description of amendment request: The requested amendment consist of changes to inspections, tests, analyses, and acceptance criteria (ITAAC) in combined license (COL) Appendix C, with corresponding changes to the associated plant-specific Tier 1 information, to consolidate a number of ITAAC to improve efficiency of the ITAAC completion and closure process.

Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed non-technical change to COL Appendix C will consolidate, relocate and subsume redundant ITAAC in order to improve and create a more efficient process for the ITAAC Closure Notification submittals. No structure, system, or component (SSC) design or function is affected. No design or safety analysis is affected. The proposed changes do not affect any accident initiating event or component failure, thus the probabilities of the accidents previously evaluated are not affected. No function used to mitigate a radioactive material release and no radioactive material release source term is involved, thus the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to COL Appendix C does not affect the design or function of any SSC, but will consolidate, relocate and subsume redundant ITAAC in order to improve efficiency of the ITAAC completion and closure process. The proposed changes would not introduce a new failure mode, fault or sequence of events that could result in a radioactive material release.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to COL Appendix C to consolidate, relocate and subsume redundant ITAAC in order to improve efficiency of the ITAAC completion and closure process is considered non-technical and would not affect any design parameter, function or analysis. There would be no change to an existing design basis, design function, regulatory criterion, or analysis. No safety analysis or design basis acceptance limit/criterion is involved.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: May 16, 2017. A publicly-available version is in ADAMS under Accession No. ML17142A315.

Description of amendment request: The proposed amendment would revise the Facility Operating Licenses for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, to reflect deletion of the Cyber Security Plan from License Condition 2.E. This will allow Southern California Edison (SCE) to terminate the SONGS Cyber Security Plan and associated activities at the site. These changes will more fully reflect the permanently shutdown and defueled status of the facility, as well as the reduced scope of potential radiological accidents and security concerns that exist during the decommissioning process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to remove the San Onofre Nuclear Generating Station (SONGS) Cyber Security Plan requirement does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to remove the SONGS Cyber Security Plan requirement does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation,

limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the SONGS Cyber Security Plan does not change these established safety margins. Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Bruce Watson, CHP.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: May 5, 2017. A publicly-available version is in ADAMS under Accession No. ML17125A331.

Description of amendment request: The amendment request proposes to depart from plant-specific Tier 1 emergency planning inspection, test, analysis, and acceptance criteria (ITAAC) information and associated combined license (COL) Appendix C information. The proposed changes do not involve changes to the approved emergency plan or the plant-specific Tier 2 Design Control Document (DCD). Specifically, the requested amendment proposes to revise plant-specific emergency planning inspections (ITAAC) in Appendix C of the VEGP Units 3 and 4 COLs. Also, proposed changes to COL Appendix C information also include changes to the list of acronyms and abbreviations. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 Design DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The VEGP 3 and 4 emergency planning inspections, tests, analyses, and acceptance criteria (ITAAC) provide assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's rules and regulations. The proposed changes do not affect the design of a system, structure, or component (SSC) use to meet the design bases of the nuclear plant. Nor do the changes affect the construction or operation of the nuclear plant itself, so there is no change to the probability or consequences of an accident previously evaluated. Changing the VEGP 3 and 4 emergency planning ITAAC and COL, Appendix C, list of acronyms and abbreviations do not affect prevention and mitigation of abnormal events (*e.g.,* accidents, anticipated operational occurrences, earthquakes, floods, or turbine missiles) or their safety or design analyses. No safety-related structure, system, component (SSC) or function is adversely affected. The changes neither involve nor interface with any SSC accident initiator or initiating sequence of events, so the probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The VEGP 3 and 4 emergency planning ITAAC provide assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commissioner's rules and regulations. The changes do not affect the design of an SSC used to meet the design bases of the nuclear plant. Nor do the changes affect the construction or operation of the nuclear plant. Consequently, there is no new or different kind of accident from any accident previously evaluated. The changes do not affect safety-related equipment, nor do they affect equipment that, if it failed, could initiate an accident or a failure of a fission product barrier. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

No analysis is adversely affected. No system or design function or equipment qualification is adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The VEGP 3 and 4 emergency planning ITAAC provide assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commissioner's rules and regulations. The changes do not affect the assessments or the plant itself. The changes do not adversely affect the safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the proposed change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: May 19, 2017. A publicly-available version is in ADAMS under Accession No. ML17139D394.

Description of amendment request: The requested amendment proposes to depart from combined license (COL) Appendix C information (with corresponding changes to the associated plant-specific Tier 1 information) and involves associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). Specifically, proposed changes clarify that there is more than one turbine building main sump and adds a second sump pump for each of the two turbine building main sumps into the UFSAR Tier 2 and COL Appendix C (and associated plant-specific Tier 1) information.

Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The activity adds a second pump to each of the turbine building main sumps, and identifies that there is more than one turbine building sump. The reason for the additional pumps is to account for an increase in volume due to the changes to the condensate polishing system (CPS) rinse effluent flowpath from CPS to waste water system (WWS) via the turbine building sumps. The extra sump pumps will prevent potential overflowing and flooding of the sumps during CPS rinse operations. The CPS serves no safety-related function. By directing the effluent to the turbine building sumps it is subject to radiation monitoring. Under normal operating conditions, there are is no significant amount of radioactive contamination within the CPS. However, radioactive contamination of the CPS can occur as a result of a primary-to-secondary leakage in the steam generator should a steam generator tube leak develop while the CPS is in operation and radioactive condensate is processed by the CPS. Radiation monitors associated with the steam generator blowdown, steam generator, and turbine island vents, drains and relief systems provide the means to determine if the secondary side is radioactively contaminated. The main turbine building sumps and sump pumps are not safety-related components and do not interface with any systems, structures, or components (SSC) accident initiator or initiating sequence of events; thus, the probability of accidents evaluated within the plant-specific UFSAR are not affected. The proposed changes do not involve a change to the predicted radioactive releases due to accident conditions, thus the consequences of accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the nonsafety-related WWS do not affect any safety-related equipment, nor do they add any new interface to safety-related SSCs. No system or design function or equipment qualification is affected by this change. The changes do not introduce a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The WWS is a nonsafety-related system that does not interface with any safety-related equipment. The proposed changes to identify that there is more than one turbine building sump and to add two turbine building sump pumps do not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 13, 2017. A publicly available version is in ADAMS under Accession No. ML17073A018.

Description of amendment request: The amendments would modify the Surveillance Requirement (SR) 3.8.1.17 of the Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating,'' to delete the note to allow the performance of the SR in Modes 1 through 4 when the associated load is out of service for maintenance or testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposal does not alter the function of any structure, system or component functions, does not modify the manner in which the plant is operated, and does not alter equipment out-of-service time. This request does not degrade the ability of the emergency diesel generator or equipment downstream of the load sequencers to perform their intended function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical changes to plant safety related structure, system or component or alter the modes of plant operation in a manner that is outside the bounds of the current emergency diesel generator system design analyses. The proposed change to revise the note modifying SR 3.8.1.17 to allow the performance of the SR in Modes 1 through 4 when the associated equipment is out of service for maintenance or testing does not create the possibility for an accident or malfunction of a different type than any evaluated previously in SQN's Updated Final Safety Analysis Report. The proposal does not alter the way any structure, system or component function and does not modify the manner in which the plant is operated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS 3.8.1, ''AC Sources—Operating'' to revise the note modifying SR 3.8.1.17 to allow the performance of the SR in Modes 1 through 4 when the associated equipment is out of service for maintenance or testing does not reduce the margin of safety because the test methodologies are not being changed and LCO [limiting condition for operation] allowed outage times are not being changed. The results of accident analyses remain unchanged by this request. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine S. Shoop.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: March 31, 2017. A publicly available version is in ADAMS under Accession No. ML17093A854.

Description of amendment request: The amendment would revise Technical Specification (TS) 5.7.2.14, ''Ventilation Filter Testing Program (VFTP),'' to delete references to the reactor building (RB) purge filters. A previous amendment deleted the reactor building purge air cleanup system from the TSs based on partial implementation of the alternate source term methodology; however, references to the RB purge filters were not removed from TS 5.7.2.14 at that time due to an administrative oversight. The proposed change corrects the administrative

oversight by deleting references to the RB purge filters in TS 5.7.2.14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to WBN TS 5.7.2.1.14 is administrative in nature. Nuclear Regulatory Commission (NRC) Amendment Number 92 (ML13141A564) deleted TS 3.9.8, ''Reactor Building Purge Air Cleanup Units,'' based on implementation of the alternate source term (AST) methodology because no credit is taken for the operation of reactor building air cleanup units for the dose analysis during a fuel handling accident (FHA). However, TVA neglected to remove the references to the RB purge filters in TS 5.7.2.14. The proposed change corrects this oversight by deleting the references to the RB purge filters in TS 5.7.2.14a. through d.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would not require any new or different accidents to be postulated and subsequently evaluated because no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators, nor does it have any significantly adverse impact on any accident mitigating systems. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the permanent plant design, including instrument setpoints, nor does it change the assumptions contained in the safety analyses. Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be significantly degraded by the proposed changes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine S. Shoop.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: March 28, 2017. A publicly-available version is in ADAMS under Accession No. ML17093A608.

Description of amendment request: The amendment would revise the Facility Operating License (OL) to extend the completion date for Condition 2.C.(5) regarding the reporting of actions taken to resolve issues identified in Nuclear Regulatory Commission Bulletin 2012–01, ''Design Vulnerability in Electric Power System,'' dated July 27, 2012 (ADAMS Accession No. ML12074A115).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to revise the completion date for OL Condition 2.C(5) for WBN Unit 2 regarding the reporting of actions taken to resolve issues identified in NRC Bulletin 2012–01 from December 31, 2017 to December 31, 2018 do not affect the structures, systems, or components (SSCs) of the plant, affect plant operations, or any design function or any analysis that verifies the capability of an SSC to perform a design function. No change is being made to any of the previously evaluated accidents in the WBN Updated Final Safety Analysis Report (UFSAR).

The proposed changes do not (1) require physical changes to plant SSCs; (2) prevent the safety function of any safety-related system, structure, or component during a design basis event; (3) alter, degrade, or prevent action described or assumed in any accident described in the WBN UFSAR from being performed because the safety-related SSCs are not modified; (4) alter any assumptions previously made in evaluating radiological consequences; or (5) affect the integrity of any fission product barrier.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new accident causal mechanisms, because no physical changes are being made to the plant, nor do they affect any plant systems that are potential accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed changes will have no effect on the availability, operability, or performance of safety-related systems and components. The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis.

The proposed amendment does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The changes do not adversely affect plant-operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine S. Shoop.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as

applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 18, 2016.

Brief description of amendments: The amendments adopted the approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–535, revising the Technical Specification definition of Shutdown Margin (SDM) to require calculation of the SDM at a reactor moderator temperature of 68 degrees Fahrenheit, or a higher temperature that represents the most reactive state throughout the operating cycle.

Date of issuance: June 7, 2017.

Effective date: As of date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 277 and 305. A publicly-available version is in ADAMS under Accession No. ML17088A396; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 17, 2017 (82 FR 4929).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 2017.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: November 9, 2016.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.10, ''Ventilation Filter Testing Program,'' to correct and modify the description of the control room ventilation and fuel handling area ventilation systems. In addition, the amendment corrects an editorial omission in TS Limiting Condition for Operation 3.0.9.

Date of issuance: June 8, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 263. A publicly-available version is in ADAMS under Accession No. ML17121A510; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 14, 2017 (82 FR 10596).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 2017.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 26, 2016.

Brief description of amendment: The amendment changed the Technical Specifications (TS) to revise requirements for unavailable barriers by adding new Limiting Condition for Operation (LCO) 3.0.9. This LCO establishes conditions under which systems would remain operable when required physical barriers are not capable of providing their related support function. This amendment is consistent with NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–427, Revision 2, ''Allowance for Non Technical Specification Barrier Degradation on Supported System OPERABILITLY.'' The Notice of Availability of this TS improvement and the model application was published in the **Federal Register** on October 3, 2006 (71 FR 58444), as part of the consolidated line item improvement process.

Date of issuance: June 7, 2017.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 212. A publicly-available version is in ADAMS under Accession No. ML17116A032; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–29: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 20, 2016 (81 FR 92866).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 2017.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 1, 2016.

Brief description of amendment: The amendment revised Technical Specification (TS) 2.1.1, ''Reactor Core Safety Limits,'' to reduce the reactor steam dome pressure value specified in TS 2.1.1.1 and TS 2.1.1.2 from 785 pounds per square inch gauge (psig) to 686 psig.

Date of issuance: June 19, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 176. A publicly-available version is in ADAMS under Accession No. ML17139C372; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–58: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 20, 2016 (81 FR 92868).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2017.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: October 18, 2016, as supplemented by letter dated February 27, 2017.

Brief description of amendments: The amendments revised the CNP, Unit Nos. 1 and 2, Technical Specification 5.5.14, ''Containment Leakage Rate Testing Program,'' to clarify the containment leakage rate testing pressure criteria.

Date of issuance: June 7, 2017.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 336 for Unit No. 1 and 318 for Unit No. 2. A publicly-available version is in ADAMS under Accession No. ML17131A277; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 6, 2016 (81 FR 87972). The supplemental letter dated February 27, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 2017.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 28, 2016.

Brief description of amendment: The amendment adopts TSTF–545, Revision 3, ''TS [technical specification] Inservice Testing Program Removal & Clarify SR [surveillance requirements] Usage Rule Application to Section 5.5 Testing.''

Date of issuance: June 16, 2017.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 194. A publicly-available version is in ADAMS under Accession No. ML17123A321; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–22: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 11, 2016 (81 FR 70181).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2017.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: October 9, 2015, as supplemented on December 1, 2015, August 11, 2016, and December 21, 2016.

Description of amendment: This amendment revises License Condition (LC) 2.D(12)(c)1. related to initial Emergency Action Levels (EALs). The LC will require the licensee to submit a fully-developed set of EALs before initial fuel load in accordance with the criteria defined in this license amendment.

Date of issuance: April 10, 2017.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 68 (Unit 2) and 68 (Unit 3). A publicly-available version is in ADAMS under Accession Package No. ML16214A135; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses Nos. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** January 19, 2016 (81 FR 2919). The supplemental letters dated December 1, 2015, August 11, 2016, and December 21, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated April 10, 2017.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield, South Carolina

Date of amendment request: January 20, 2017, and supplemented by letter dated March 8, 2017.

Description of amendment: The amendment consists of changes to the VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant specific Design Control Document Tier 2 information. Specifically, the amendment consists of changes to the UFSAR to provide clarification of the interface criteria for nonsafety-related instrumentation that monitors safety-related fluid systems.

Date of issuance: May 31, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 74. A publicly-available version is in ADAMS under Accession No. ML17130A903; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses Nos. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** February 28, 2017 (82 FR 12130). The supplemental letter dated March 8, 2017, provided additional information that clarified the application, did not expand the scope of the application request as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated May 31, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: February 15, 2016, as supplemented by letters dated August 19, 2016, August 26, 2016, September 13, 2016, December 16, 2016, and March 17, 2017.

Description of amendment: The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information and involves related changes to the associated plant-specific Tier 2* information. Specifically, the departures

consist of changes to UFSAR text and tables, and information incorporated by reference into the UFSAR related to updates to WCAP–16096, ''Software Program Manual for Common Q™ Systems,'' and WCAP–16097, ''Common Qualified Platform Topical Report.''

Date of issuance: June 8, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 79 (Unit 3) and 78 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML17104A109; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined License.

Date of initial notice in ***Federal Register:*** April 12, 2016 (81 FR 21602). The supplemental letters dated August 19, 2016, August 26, 2016, September 13, 2016, December 16, 2016, and March 17, 2017, provided additional information that clarified the application, did not expand the scope of the application request as noticed on February 15, 2016, and did not change the staff's proposed no significant hazards consideration determination as published in the **Federal Register** on April 12, 2016.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated June 8, 2017.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of June 2017.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–13804 Filed 7–3–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting July 12–14, 2017, 11545 Rockville Pike, Rockville, Maryland 20852.

WEDNESDAY, JULY 12, 2017, CONFERENCE ROOM T–2B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: License Renewal Application for the South Texas Project (STP) (Open)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff and the STP Nuclear Operating Co. regarding the associated safety evaluation for license renewal.

10:45 a.m.–12:15 p.m.: NuScale Topical Report TR–0815–16497, ''Safety Classification of Passive Nuclear Power Plant Electrical Systems'' (Open/Closed)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff and NuScale regarding the safety evaluation associated with the subject topical report. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:15 p.m.–3:45 p.m.: Advanced Power Reactor 1400 (APR1400) (Open/Closed)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff and Korea Hydro & Nuclear Power regarding selected chapters of the safety evaluation associated with the APR1400 Design Certification. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

4:00 p.m.–5:30 p.m.: WCAP–17642P Westinghouse Performance Analysis and Design Model (PAD5) (Closed)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff and Westinghouse regarding the safety evaluation associated with the subject topical report. [NOTE: This session will be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

THURSDAY, JULY 13, 2017, CONFERENCE ROOM T–2B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters. [NOTE: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:15 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

FRIDAY, JULY 14, 2017, CONFERENCE ROOM T–2B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND 20852

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [NOTE: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:00 p.m.–5:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [NOTE: A

portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4). A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

5:30 p.m.–6:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016 (81 FR 71543). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 29th day of June, 2017.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. 2017–14062 Filed 7–3–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–145]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 6, 2017.

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

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–145; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 204, with Portions Filed Under Seal; *Filing Acceptance Date:* June 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 6, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–13996 Filed 7–3–17; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Supplemental Information on Accident and Insurance; OMB 3220–0036.

Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board (RRB) is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Forms SI–1c, Supplemental Information on Accident and Insurance; SI–5, Report of Payments to Employee Claiming Sickness Benefits Under the RUIA; ID–3s and ID–3s (Internet), Request for Lien Information—Report of Settlement; ID–3s–1, Lien Information Under Section 12(o) of the RUIA; ID–3u and ID–3u (Internet), Request for Section 2(f) Information; ID–30k, Notice to Request Supplemental Information on Injury or Illness; and ID–30k–1, Notice to Request Supplemental Information on Injury or Illness; to obtain the necessary information from claimants and railroad employers. Completion is required to obtain benefits. One response is requested of each respondent. The RRB proposes no changes to the forms in the collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–1c	475	5	40
SI–5	7	5	1
ID–3s (Paper & Telephone)	4,000	3	200
ID–3s (Internet)	2,000	3	100
ID–3s–1 (Paper & Telephone)	3,000	3	150
ID–3u (Paper & Telephone)	400	3	20
ID–3u (Internet)	200	3	10
ID–30k	55	5	5
ID–30k.1	65	5	5
Total	10,202	.....	531

2. Title and purpose of information collection: Pension Plan Reports; OMB 3220–0089.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least 1 month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment from a private pension from a railroad employer, to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump sum in lieu of monthly pension payments from such a plan, or was required to receive a lump sum from such a plan due to the plan's small benefit provision; and (c) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form G–88p and G–88p (Internet), *Employer's Supplemental Pension Report,* and Form G–88r, *Request for Information About New or Revised Employer Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

The RRB proposes to revise Forms G–88p and G–88p (Internet) to acquire

more accurate employee pension information by asking the employer whether the employee is currently eligible for a pension and instructing the employer to indicate whether the employee filed for the pension or instead elected to defer distribution from the pension account in Items 11a and 11b (paper) and Items 10a and 10b (Internet). The RRB also proposes to make other editorial changes. The RRB proposes no changes to Form G–88r.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	100	8	13
G–88p (Internet)	200	6	20
G–88r	10	8	1
Total	310		34

3. Title and purpose of information collection: Statement Regarding Contributions and Support; OMB 3220–0099.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of the employee's death can affect (1) entitlement to a survivor annuity when the survivor is a parent of the deceased employee; (2) the amount of spouse and survivor annuities; and (3) the Tier II restored amount payable to a widow(er) whose annuity was reduced for receipt of an employee annuity, and who was dependent on the railroad employee in the year prior to the employee's death. One-half support may also negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One response is completed by each respondent. Completion is required to obtain benefits. The RRB proposes no changes to Form G–134.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–134			
With Assistance	75	147	184
Without assistance	25	180	75
Total	100		259

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian D. Foster,

Clearance Officer.

[FR Doc. 2017–14067 Filed 7–3–17; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81040; File No. SR–OCC–2017–804]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning the Adoption of a New Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

June 28, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Payment, Clearing and Settlement Supervision Act'') [1] and Rule 19b–4(n)(1)(i) of the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on June 1, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with proposed changes relating to a new Stock Options and Futures Settlement Agreement (''New Accord'') between OCC and the National Securities Clearing Corporation (''NSCC,'' collectively NSCC and OCC may be referred to herein as the ''clearing agencies'') and amendments to OCC's By-Laws and Rules to accommodate the proposed provisions of the New Accord.

The proposed changes to OCC's By-Laws and Rules and the proposed New Accord were submitted as Exhibits 5A–

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

5C of the filing, respectively.[3] The proposed changes are described in detail in Item 10 below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

OCC issues and clears U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. OCC's Rules, however, provide that delivery of, and payment for, securities underlying certain physically settled stock options and single stock futures cleared by OCC are effected through the facilities of a correspondent clearing corporation (*i.e.,* NSCC) and are not settled through the facilities OCC. OCC and NSCC are parties to a Third Amended and Restated Options Exercise Settlement Agreement, dated February 16, 1995, as amended (''Existing Accord''),[5] which governs the delivery and receipt of stock in the settlement of put and call options issued by OCC (''Stock Options'') that are eligible for settlement through NSCC's Continuous Net Settlement (''CNS'') Accounting Operation and are designated to settle on the third business day following the date the related exercise or assignment was accepted by NSCC (''Options E&A''). All OCC Clearing Members that intend to engage in Stock Options transactions are required to also be Members of NSCC or to have appointed or nominated an NSCC Member to act on its behalf.[6]

OCC proposes to adopt a New Accord with NSCC, which would provide for the settlement of certain Stock Options and delivery obligations arising from certain matured physically-settled stock futures contracts cleared by OCC (''Stock Futures''). Specifically, the New Accord would, among other things: (1) Expand the category of securities that are eligible for settlement and guaranty under the agreement to certain securities (including stocks, exchange-traded funds and exchange-traded notes) that (i) are required to be delivered in the exercise and assignment of Stock Options and are eligible to be settled through NSCC's Balance Order Accounting Operation (in addition to its CNS Accounting Operation) or (ii) are delivery obligations arising from Stock Futures that have reached maturity and are eligible to be settled through NSCC's CNS Accounting Operation or Balance Order Accounting Operation; (2) modify the time of the transfer of responsibilities from OCC to NSCC and, specifically, when OCC's guarantee obligations under OCC's By-Laws and Rules with respect to such transactions (''OCC's Guaranty'') end and NSCC's obligations under Addendum K of the NSCC Rules with respect to such transactions (''NSCC's Guaranty'') begin (such transfer being the ''Guaranty Substitution''); and (3) put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the agreement. Furthermore, OCC proposes to make certain clarifying and conforming changes to the OCC By-Laws and Rules as necessary to implement the New Accord.

The primary purpose of the proposed changes is to (1) provide consistent treatment across all expiries for products with ''regular way'' [7] settlement cycle specifications; (2) reduce the operational complexities of the Existing Accord by eliminating the cross-guaranty between OCC and NSCC and the bifurcated risk management of exercised and assigned transactions between the two clearing agencies by delineating a single point in time at which OCC's Guaranty ceases and NSCC's Guaranty begins; (3) further solidify the roles and responsibilities of OCC and NSCC in the event of a default of a Common Member at either or both clearing agencies; and (4) improve procedures, information sharing, and overall governance under the agreement.

The New Accord would become effective, and wholly replace the Existing Accord, at a date specified in a service level agreement to be entered into between NSCC and OCC.[8]

The Existing Accord

Key Terms of the Existing Accord

Under the Existing Accord, the settlement of Options E&A generally proceeds according to the following

[3] OCC has filed a proposed rule change with the Commission in connection with the New Accord. *See* SR–OCC–2017–013. NSCC also has filed proposed rule change and advance notice filings with the Commission in connection with the New Accord. *See* NSCC filings SR–NSCC–2017–007 and SR–NSCC–2017–803, respectively.

[4] OCC's By-Laws and Rules can be found on OCC's public Web site: *http://optionsclearing.com/about/publications/bylaws.jsp.* Other terms not defined herein or in the OCC By-Laws and Rules can be found in the Rules & Procedures of NSCC (''NSCC Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf,* as the context implies.

[5] The Existing Accord and the proposed changes thereunder were previously approved by the Commission. *See* Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731 (October 3, 1996) (SR–OCC–96–04 and SR–NSCC–96–11) (Order Approving Proposed Rule Change Related to an Amended and Restated Options Exercise Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation); Securities Exchange Act Release No. 43837 (January 12, 2001), 66 FR 6726 (January 22, 2001) (SR–OCC–00–12) (Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of a Program to Relieve Strains on Clearing Members' Liquidity in Connection With Exercise Settlements); and Securities Exchange Act Release No. 58988 (November 20, 2008), 73 FR 72098 (November 26, 2008) (SR–OCC–2008–18 and SR–NSCC–2008–09) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Amendment No. 2 to the Third Amended and Restated Options Exercise Settlement Agreement).

[6] A firm that is both an OCC Clearing Member and an NSCC Member, or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a ''Common Member.''

[7] Under the New Accord, ''regular way settlement'' shall have a meaning agreed to by the clearing agencies. Generally, regular way settlement is understood to be the financial services industry's standard settlement cycle. Currently, regular way settlement of Stock Options or Stock Futures transactions are those transactions designated to settle on the third business day following the date the related exercise, assignment or delivery obligation was accepted by NSCC. NSCC has proposed to change the NSCC Rules with respect to the meaning of regular way settlement in order to be consistent with the anticipated industry-wide move to a shorter standard settlement cycle of two business days after trade date. *See* Securities Exchange Act Release No. 79734 (January 4, 2017), 82 FR 3030 (January 10, 2017) (SR–NSCC–2016–007). *See also* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (S7–22–16) (Amendment to Securities Transaction Settlement Cycle).

[8] Such effective date would be a date following approval of all required regulatory submissions to be filed by OCC and NSCC with the appropriate regulatory authorities, including this advance notice filing. *See supra* note 3.

sequence of events. NSCC maintains and delivers to OCC a list (''CNS Eligibility Master File'') that enumerates all CNS Securities, which are defined in NSCC's Rule 1 and generally include securities that have been designated by NSCC as eligible for processing through NSCC's CNS Accounting Operation and eligible for book entry delivery at NSCC's affiliate, The Depository Trust Company (for purposes of this advance notice filing, such securities are referred to as ''CNS Eligible Securities'').[9] OCC, in turn, uses this file to make a final determination of which securities NSCC would not accept and therefore would need to be settled on a broker-to-broker basis. OCC then sends to NSCC a transactions file,[10] listing the specific securities that are to be delivered and received in settlement of an Options E&A that have not previously been reported to NSCC and for which settlement is to be made through NSCC (''OCC Transactions File'').[11] With respect to each Options E&A, the OCC Transactions File includes the CUSIP number of the security to be delivered, the identities of the delivering and receiving Common Members, the quantity to be delivered, the total value of the quantity to be delivered based on the exercise price of the option for which such security is the underlying security, and the exercise settlement date. After receiving the OCC Transactions File, NSCC then has until 11:00 a.m. Central Time on the following business day to reject any transaction listed in the OCC Transactions File. NSCC can reject a transaction if the security to be delivered has not been listed as a CNS Eligible Security in the CNS Eligible Master File or if information provided in the OCC Transactions File is incomplete. Otherwise, if NSCC does not so notify OCC of its rejection of an Options E&A by the time required under the Existing Accord, NSCC will become unconditionally obligated to effect settlement of the Options E&A.

Under the Existing Accord, even after NSCC's trade guarantee has come into effect,[12] OCC is not released from its guarantee with respect to the Options E&A until certain deadlines[13] have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC or NSCC has ceased to act for such Common Member pursuant to the NSCC Rules.[14] As a result, there is a period of time when NSCC's trade guarantee overlaps with OCC's guarantee and where both clearing agencies are holding margin against the same Options E&A position.

In the event that NSCC or OCC ceases to act on behalf of or suspends a Common Member, that Common Member becomes a ''defaulting member.'' Once a Common Member becomes a defaulting member, the Existing Accord provides that NSCC will make a payment to OCC equal to the lesser of OCC's loss or the positive mark-to-market amount relating to the defaulting member's Options E&A and that OCC will make a payment to NSCC equal to the lesser of NSCC's loss or the negative mark-to-market amount relating to the defaulting member's Options E&A to compensate for potential losses incurred in connection with the default. A clearing agency must request the transfer of any such payments by the close of business on the tenth business day following the day of default and, after a request is made, the other clearing agency is required to make payment within five business days of the request.

The New Accord

Overview

As noted above, NSCC proposes to adopt a New Accord with OCC, which would provide for the settlement of certain Stock Options and Stock Futures transactions. The New Accord is primarily designed to, among other things, expand the category of securities that are eligible for settlement and guaranty under the agreement; simplify the time of the transfer of responsibilities from OCC to NSCC (specifically, the transfer of guarantee obligations); and put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the agreement. The material provisions of the New Accord are described in detail below.

Key Elements of the New Accord

Expanded Scope of Eligible Securities

Pursuant to the proposed New Accord, on each day that both OCC and NSCC are open for accepting trades for clearing (''Activity Date''), NSCC would deliver to OCC an ''Eligibility Master File,'' which would identify the securities, including stocks, exchange-traded funds and exchange-traded notes, that are (1) eligible to settle through NSCC's CNS Accounting Operation (as is currently the case under the Existing Accord) or NSCC's Balance Order Accounting Operation (which is a feature of the New Accord) and (2) to be delivered in settlement of (i) exercises and assignments of Stock Options (as is currently the case under the Existing Accord) or (ii) delivery obligations arising from maturing physically settled Stock Futures (which is a feature of the New Accord) (all such securities collectively being ''Eligible Securities''). OCC, in turn, would deliver to NSCC its file of E&A/Delivery Transactions[15] that list the Eligible Securities to be delivered, or received, and for which settlement is proposed to be made through NSCC on that Activity Date. Guaranty Substitution (discussed further below) would not occur with respect to an E&A/Delivery Transaction that is not submitted in the proper format or that involves a security that is not identified as an Eligible Security on the then-current Eligibility Master File. This process is similar to the current process under the Existing Accord with the exception of the expanded scope of Eligible Securities (and additional fields necessary to accommodate such securities) that would be listed on the

[9] *See supra* note 4.

[10] Delivery of the OCC Transactions File with respect to an Options E&A typically happens on the date of the option's exercise or expiration, though this is not expressly stated in the Existing Accord. In theory, however, an Options E&A could, due to an error or delay, be reported later than the date of the option's exercise or expiration.

[11] This process would be substantially the same under the New Accord with the exception that the CNS Eligibility Master File and OCC Transactions File would be renamed and would be expanded in scope to include additional securities that would be eligible for guaranty and settlement under the New Accord, as discussed in further detail below.

[12] Pursuant to Addendum K of the NSCC Rules, NSCC guarantees the completion of CNS transactions and balance order transactions that have reached the point at which, for bi-lateral submissions by Members, such trades have been validated and compared by NSCC, and for locked-in submission, such trades have been validated by NSCC, as described in the NSCC Rules. Transactions that are covered by the Existing Accord, and that would be covered by the New Accord, are expressly excluded from the timeframes described in Addendum K. *See supra* note 4.

[13] The deadline is 6:00 a.m. Central Time for NSCC notifying OCC of a Common Member failure and, if NSCC does not immediately cease to act for such defaulting Common Member, 4:00 p.m. Central Time for notifying OCC that it has ceased to act.

[14] *See* NSCC Rule 46 (Rule 46 (Restrictions on Access to Services)). *See supra* note 4.

[15] ''E&A/Delivery Transactions'' are transactions involving the settlement of Stock Options and Stock Futures under the New Accord. The delivery of E&A/Delivery Transactions to NSCC would replace the delivery of the ''OCC Transactions File'' from the Existing Accord. The actual information delivered by OCC to NSCC would be the same as is currently provided on the OCC Transactions File, but certain additional terms would be included to accommodate the inclusion of Stock Futures, along with information regarding the date that the instruction to NSCC was originally created and the E&A/Delivery Transaction's designated settlement date.

Eligibility Master File and the E&A/Delivery Transactions file.

Like the Existing Accord, the proposed New Accord would continue to facilitate the processes by which Common Members deliver and receive stock in the settlement of Stock Options that are eligible to settle through NSCC's CNS Accounting Operation and are designated to settle regular way. The New Accord would also expand the category of securities eligible for settlement under the agreement. In particular, the New Accord would facilitate the processes by which Common Members deliver and receive stock in settlement of Stock Futures that are eligible to settle through NSCC's CNS Accounting Operation and are designated to settle regular way. It would also provide for the settlement of both Stock Options and Stock Futures that are eligible to settle through NSCC's Balance Order Accounting Operation on a regular way basis. The primary purpose of expanding the category of securities that are eligible for settlement and guaranty under the agreement is to provide consistent treatment across all expiries for products with regular way settlement cycle specifications and simplify the settlement process for these additional securities transactions.

The New Accord would not apply to Stock Options or Stock Futures that are designated to settle on a shorter timeframe than the regular way settlement timeframe. These Stock Options would continue to be processed and settled as they would be today, outside of the New Accord. The New Accord also would not apply to any Stock Options or Stock Futures that are neither CNS Securities nor Balance Order Securities.[16] Transactions in these securities are, and would continue to be, processed on a trade-for-trade basis away from NSCC's facilities. Such transactions may utilize other NSCC services for which they are eligible, but would not be subject to the New Accord.[17]

Proposed Changes Related to Guaranty Substitution

The New Accord would adopt a fundamentally different approach to the delineation of the rights and responsibilities of OCC and NSCC with respect to E&A/Delivery Transactions. The purpose of the proposed changes related to the Guaranty Substitution, defined below, is to reduce the operational complexities of the Existing Accord by eliminating the cross-guaranty between OCC and NSCC and the bifurcated risk management of exercised and assigned transactions between the two clearing agencies and delineating a single point in time at which OCC's Guaranty ceases and NSCC's Guaranty begins. Moreover, the proposed changes would solidify the roles and responsibilities of OCC and NSCC in the event of a default of a Common Member at either or both clearing agencies.

As described above, the Existing Accord provides that NSCC will make a payment to OCC following the default of a Common Member in an amount equal to the lesser of OCC's loss or the positive mark-to-market amount relating to the Common Member's Options E&A, and provides that OCC will make a payment to NSCC following the default of a Common Member equal to the lesser of NSCC's loss or the negative mark-to-market amount relating to the Common Member's Options E&A to compensate for potential losses incurred in connection with the Common Member's default. The proposed New Accord, in contrast, would focus on the transfer of responsibilities from OCC to NSCC and, specifically, the point at which OCC's Guaranty ends and NSCC's Guaranty begins (*i.e.,* the Guaranty Substitution) with respect to E&A/Delivery Transactions. By focusing on the timing of the Guaranty Substitution, rather than payment from one clearing agency to the other, the New Accord would simplify the agreement and the procedures for situations involving the default of a Common Member. The New Accord additionally would minimize ''double-margining'' situations when a Common Member may simultaneously owe margin to both NSCC and OCC with respect to the same E&A/Delivery Transaction.

After NSCC has received an E&A/Delivery Transaction, the Guaranty Substitution would normally occur when NSCC has received all Required Deposits to its Clearing Fund, calculated taking into account such E&A/Delivery Transaction, of Common Members (''Guaranty Substitution Time'').[18] At the Guaranty Substitution Time, NSCC's Guaranty takes effect, and OCC does not retain any settlement obligations with respect to such E&A/Delivery Transactions. The Guaranty Substitution would not occur, however, with respect to any E&A/Delivery Transaction if NSCC has rejected such E&A/Delivery Transaction due to an improper submission, as described above, or if, during the time after NSCC's receipt of the E&A/Delivery Transaction but prior to the Guaranty Substitution Time, a Common Member involved in the E&A/Delivery Transaction has defaulted on its obligations to NSCC by failing to meet its Clearing Fund obligations, or NSCC has otherwise ceased to act for such Common Member pursuant to the NSCC Rules (in either case, such Common Member becomes a ''Defaulting NSCC Member'').

NSCC would be required to promptly notify OCC if a Common Member becomes a Defaulting NSCC Member, as described above. Upon receiving such a notice, OCC would not submit to NSCC any further E&A/Delivery Transactions involving the Defaulting NSCC Member for settlement, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all E&A/Delivery Transactions that have already been submitted to NSCC and that involve the Defaulting NSCC Member (''Defaulted NSCC Member Transactions''). The Guaranty Substitution ordinarily would not occur with respect to any Defaulted NSCC Member Transactions, unless both clearing agencies agree otherwise. As such, NSCC would have no obligation to guaranty such Defaulted NSCC Member Transactions, and OCC would continue to be responsible for effecting the settlement of such Defaulted NSCC Member Transactions pursuant to OCC's By-Laws and Rules. Once NSCC has confirmed the list of Defaulted NSCC Member Transactions, Guaranty Substitution would occur for all E&A/Delivery Transactions for that Activity Date that are not included on such list. NSCC would be required to promptly notify OCC upon the occurrence of the Guaranty Substitution Time on each Activity Date.

If OCC suspends a Common Member after NSCC has received the E&A/Delivery Transactions but before the Guaranty Substitution has occurred, and that Common Member has not become a Defaulting NSCC Member, the Guaranty Substitution would proceed at the Guaranty Substitution Time. In such a scenario, OCC would continue to be responsible for guaranteeing the settlement of the E&A/Delivery Transactions in question until the Guaranty Substitution Time, at which time the responsibility would transfer to NSCC. If, however, the suspended Common Member also becomes a

[16] Balance Order Securities are defined in NSCC Rule 1, and are generally securities, other than foreign securities, that are eligible to be cleared at NSCC but are not eligible for processing through the CNS Accounting Operation. *See supra* note 4.

[17] OCC will continue to guarantee settlement until settlement actually occurs with respect to these Stock Options and Stock Futures.

[18] Procedure XV of the NSCC Rules provides that all Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise. *See supra* note 4.

Defaulting NSCC Member after NSCC has received the E&A/Delivery Transactions but before the Guaranty Substitution has occurred, Guaranty Substitution would not occur, and OCC would continue to be responsible for effecting the settlement of such Defaulted NSCC Member Transactions pursuant to OCC's By-Laws and Rules (unless both clearing agencies agree otherwise).

Finally, the New Accord also would provide for the consistent treatment of all exercise and assignment activity under the agreement. Under the Existing Accord, ''standard'' [19] option contracts become guaranteed by NSCC when the Common Member meets its morning Clearing Fund Required Deposit at NSCC while ''non-standard'' exercise and assignment activity becomes guaranteed by NSCC at midnight of the day after trade date (T+1). Under the New Accord, all exercise and assignment activity for Eligible Securities would be guaranteed by NSCC as of the Guaranty Substitution Time, under the circumstances described above, further simplifying the framework for the settlement of such contracts.

Other Terms of the New Accord

The New Accord also would include a number of other provisions intended to either generally maintain certain terms of the Existing Accord or improve the procedures, information sharing, and overall governance process under the new agreement. Many of these terms are additions to or improvements upon the terms of the Existing Accord.

Under the proposed New Accord, OCC and NSCC would agree to address the specifics regarding the time, form and manner of various required notifications and actions in a separate service level agreement which the parties would be able to revisit as their operational needs evolve. The service level agreement would also specify an effective date for the New Accord, which, as mentioned above, would occur on a date following approval and effectiveness of all required regulatory submissions to be filed by OCC and NSCC with the appropriate regulatory authorities. Similar to the Existing Accord, the proposed New Accord would remain in effect (a) until it is terminated by the mutual written agreement of OCC and NSCC, (b) until it is unilaterally terminated by either clearing agency upon one year's written notice (as opposed to six months under the Existing Accord), or (c) until it is terminated by either NSCC or OCC upon the bankruptcy or insolvency of the other, provided that the election to terminate is communicated to the other party within three business days by written notice.

Under the proposed New Accord, NSCC would agree to notify OCC if NSCC ceases to act for a Common Member pursuant to the NSCC Rules no later than the earlier of NSCC's provision of notice of such action to the governmental authorities or notice to other NSCC Members. Furthermore, if an NSCC Member for which NSCC has not yet ceased to act fails to satisfy its Clearing Fund obligations to NSCC, NSCC would be required to notify OCC promptly after discovery of the failure. Likewise, OCC would be required to notify NSCC of the suspension of a Common Member no later than the earlier of OCC's provision of notice to the governmental authorities or other OCC Clearing Members.

Under the Existing Accord, NSCC and OCC agree to share certain reports and information regarding settlement activity and obligations under the agreement. The New Accord would enhance this information sharing between the clearing agencies. Specifically, NSCC and OCC would agree to share certain information, including general risk management due diligence regarding Common Members, lists of Common Members, and information regarding the amounts of Common Members' margin and settlement obligations at OCC or Clearing Fund Required Deposits at NSCC. NSCC and OCC would also be required to provide the other clearing agency with any other information that the other reasonably requests in connection with the performance of its obligations under the New Accord. All such information would be required to be kept confidential, using the same care and discretion that each clearing agency uses for the safekeeping of its own members' confidential information. NSCC and OCC would each be required to act in good faith to resolve and notify the other of any errors, discrepancies or delays in the information it provides.

The New Accord also would include new terms to provide that, to the extent one party is unable to perform any obligation as a result of the failure of the other party to perform its responsibilities on a timely basis, the time for the non-failing party's performance would be extended, its performance would be reduced to the extent of any such impairment, and it would not be liable for any failure to perform its obligations. Further, NSCC and OCC would agree that neither party would be liable to the other party in connection with its performance of its obligations under the proposed New Accord to the extent it has acted, or omitted or ceased to act, with the permission or at the direction of a governmental authority. Moreover, the proposed New Accord would provide that in no case would either clearing agency be liable to the other for punitive, incidental or consequential damages. The purpose of these new provisions is to provide clear and specific terms regarding each clearing agency's liability for non-performance under the agreement.

The proposed New Accord would also contain the usual and customary representations and warranties for an agreement of this type, including representations as to the parties' good standing, corporate power and authority and operational capability, that the agreement complies with laws and all government documents and does not violate any agreements, and that all of the required regulatory notifications and filings would be obtained prior to the New Accord's effective date. It would also include representations that the proposed New Accord constitutes a legal, valid and binding obligation on each of OCC and NSCC and is enforceable against each, subject to standard exceptions. Furthermore, the proposed New Accord would contain a force majeure provision, under which NSCC and OCC would agree to notify the other no later than two hours upon learning that a force majeure event has occurred and both parties would be required to cooperate in good faith to mitigate the effects of any resulting inability to perform or delay in performing.

Proposed Amendments to OCC's By-Laws and Rules

Given the key differences between the Existing Accord and the New Accord, as described above, OCC proposes certain changes to its By-Laws and Rules in order to accommodate the terms of the New Accord. The primary purpose of the proposed changes is to: (1) Reflect the expanded scope of the New Accord, (2) reflect changes related to the new Guaranty Substitution mechanics of the New Accord; and (3) make other changes necessary to conform to the terms of the New Accord or to otherwise provide additional clarity around the settlement and margining [20] treatment

[19] Option contracts with ''standard'' expirations expire on the third Friday of the specified expiration month, while ''non-standard'' contracts expire on other days of the expiration month.

[20] OCC notes that, while it is proposing changes to its Rules concerning margin requirements (*e.g.,*

Continued

of: (i) Eligible Securities under the New Accord, (ii) non-regular way securities settling through the facilities of NSCC but outside of the New Accord, and (iii) those securities settling outside of the New Accord and away from NSCC on a broker-to-broker basis. These proposed changes are discussed in greater detail below.

Changes Related to the Expanded Scope of the New Accord

First, OCC proposes to amend and replace the defined term ''CNS-eligible'' [21] in order to reflect the expanded definition of Eligible Securities under the New Accord. The term ''CNS-eligible'' currently describes the securities underlying the physically-settled stock options that are eligible under the Existing Accord to be settled through NSCC's CNS Accounting Operation. Under the New Accord, however, the term Eligible Securities is more broadly defined to include securities (both Stock Options and Stock Futures) eligible for settlement via NSCC's CNS Accounting Operation and NSCC's Balance Order Accounting Operation. Accordingly, OCC proposes to use ''CCC,'' for ''correspondent clearing corporation'' [22] to describe the Eligible Securities. Thus, the term ''CCC-eligible'' would replace ''CNS-eligible'' throughout OCC's By-Laws and Rules.

Next, because the New Accord would include the settlement of Stock Futures, OCC proposes to make several changes to its rules regarding Stock Futures to accommodate this expansion. More specifically, OCC proposes a conforming amendment to Rule 901 Interpretation and Policy (.02) to clarify that, under the New Accord, OCC will, subject to its discretion, cause the settlement of all matured Stock Futures to be made through the facilities of NSCC to the extent that the underlying securities are CCC-eligible as the term is currently proposed.

OCC also proposes clarifying and conforming revisions to newly renumbered Rule 901(e) (currently Rule 901(d)) to specify that settlements made through the facilities of the correspondent clearing corporation are governed by Rule 901 and to clarify that, under the New Accord, specifications made in any Delivery Advice may be revoked up until the point at which NSCC's Guaranty has taken effect (the ''obligation time'' as discussed below) and not the opening of business on the delivery date.

Changes Related to Guaranty Substitution

OCC also proposes a series of amendments to its Rules to accurately reflect the process under which the Guaranty Substitution occurs under the New Accord. First, OCC proposes to amend Rule 901(c) so that the term ''obligation time''—the time that the correspondent clearing corporation becomes unconditionally obligated, in accordance with its rules, to effect settlement in respect thereof or to close out the securities contract arising therefrom—is synonymous with the Guaranty Substitution Time under the New Accord and (*i.e.,* (i) settlement obligations are reported to and are not rejected by NSCC; (ii) NSCC has not notified OCC that it has ceased to act for the relevant Clearing Member; and (iii) the Clearing Fund requirements of the relevant Clearing Member are received by NSCC). Under the New Accord, if a default occurs prior to the Guaranty Substitution Time, the Guaranty Substitution will not occur for any E&A/Delivery Transactions involving the Defaulting NSCC Member, and OCC will continue to guarantee settlement for those Defaulted NSCC Member Transactions.

Next, OCC proposes to amend language in newly renumbered Rule 901(i) (currently Rule 901(h)) regarding the timing of the end of a Clearing Member's obligations to OCC with respect to securities to be settled through NSCC. Under the Existing Accord and OCC's existing Rules, a Clearing Member's obligations to OCC end only once settlement is completed. Under the New Accord, however, a Clearing Member's obligations to OCC will end when OCC's obligations with respect to guaranteeing settlement of the security would end (*i.e.,* the Guaranty Substitution Time or ''obligation time''). OCC therefore proposes to amend newly renumbered Rule 901(i) to specify that a Clearing Member's obligations to OCC will be deemed completed and performed once the ''obligation time'' has occurred.

As discussed above, the New Accord eliminates the provisions of the Existing Accord whereby OCC and NSCC guaranteed each other the performance of Common Members and made certain payments to the other upon the default of a Common Member. As such, OCC proposes to delete discussions of such guarantees and payments from newly renumbered Rule 901(i) and Rule 1107.

OCC also proposes amendments to Rules 910 and 911, which set forth procedures for handling failures to make or take delivery of securities in settlement of exercised or assigned Stock Options and matured physically-settled Stock Futures, to add language to both rules to clarify that the failure procedures set forth therein would not apply with respect to any delivery to be made through NSCC pursuant to Rule 901. Under the New Accord, once the Guaranty Substitution Time with respect to a specific E&A/Delivery Transaction occurs, OCC's Guaranty ends and NSCC's Guaranty begins, leaving OCC with no involvement with or responsibility for the settlement of the securities underlying that transaction. Therefore, if there is a failure to make or take delivery with respect to that transaction after Guaranty Substitution has occurred, the NSCC Rules will govern that failure. With respect to deliveries made on a broker-to-broker basis under OCC Rules 903 through 912 (including those that may utilize NSCC's Obligation Warehouse services), and which are not governed by Rule 901, Guaranty Substitution does not occur and OCC's failure procedures would apply.

Changes to OCC's Margin Rules

Under the New Accord, OCC will no longer collect margin on a transaction once it is no longer guaranteeing settlement for that transaction. As such, OCC proposes to add language to Rule 601(f) to clarify that OCC's margin calculations will not include delivery obligations arising from any Stock Options or Stock Futures that are eligible for settlement through NSCC and for which OCC has no further settlement obligations because either (i) Guaranty Substitution has occurred for E&A/Delivery Transactions under the New Accord (as described in revised Rule 901(c)) or (ii) NSCC has otherwise accepted transactions for non-regular way settlement under the NSCC Rules (as describe in newly proposed Rule 901(d)).[23] By not including these transactions as part of OCC's margin calculation, OCC is hoping to alleviate instances of ''double-margining'' for Common Members that may otherwise simultaneously owe margin to NSCC

which transactions would be included as part of OCC's margin calculation at a given point in time), OCC is not proposing any changes to its margin model (with the exception that OCC would no longer collect and hold margin for positions after NSCC's Guaranty has taken effect under the New Accord).

[21] *See* Article I, Section (C)(23) of OCC's By-Laws.

[22] Under Article I of OCC's By-Laws, the term ''correspondent clearing corporation'' means the National Securities Clearing Corporation or any successor thereto which, by agreement with the Corporation, provides facilities for settlements in respect of exercised option contracts or BOUNDs or in respect of delivery obligations arising from physically-settled stock futures.

[23] Related revisions to Rule 901(c) and newly proposed Rule 901(d) are discussed in more detail below.

and OCC with respect to the same position.

OCC also proposes to delete Rule 608A in its entirety. The New Accord seeks to eliminate the situation under the Existing Accord where Common Members are effectively ''double-margined'' or required to simultaneously post margin with OCC and NSCC with respect to the same position. As the New Accord eliminates this double-margining scenario, Rule 608A, which provides procedures pursuant to which a Clearing Member could use the securities deposited as margin with OCC as collateral to secure a loan to pay its margin obligations to NSCC, is now unnecessary.

Other Clarifying Changes Not Related to the New Accord

OCC also proposes to amend its Rules to make clarifying changes that are not directly required by the New Accord but would provide additional clarity in its Rules in light of other changes being made to accommodate the New Accord. Specifically, OCC proposes to revise Rule 901 Interpretation and Policy (.02) to provide that transactions that involve the delivery of non-CCC eligible securities made on a broker-to-broker basis (and away from NSCC) may nevertheless involve the use of certain services of NSCC (*e.g.,* NSCC's Obligation Warehouse). For such transactions, because they are not covered by the New Accord and NSCC at no point guarantees settlement, OCC Rule 901 would not apply and delivery is governed by the broker-to-broker settlement procedures set forth in OCC Rules 903 through 912, as is the case currently today. Additionally, while OCC's existing Rules do not prohibit broker-to-broker settlements from being facilitated through the services of a correspondent clearing corporation, they do not explicitly contemplate the possibility. OCC also proposes to make clarifying amendments to Rule 904(b) and 910A(a) to more clearly distinguish between settlements effected through NSCC's CNS Accounting Operation or Balance Order Accounting Operations in accordance with OCC Rule 901 and deliveries effected on a broker-to-broker basis utilizing services of NSCC under OCC Rules 903 through 912 and to clearly state which OCC Rules apply in each context.

Further, OCC proposes to add a new paragraph (d) to Rule 901 to clarify that OCC still intends, at its discretion, to effect settlement of Stock Options and Stock Futures that are scheduled to be settled on the first business day after exercise or maturity through NSCC pursuant to Rule 901 and the relevant provisions of the NSCC Rules, even though such contracts are outside the scope of the New Accord. These contracts would continue to be settled as they are currently today.

OCC also proposes clarifying and conforming changes to the introductory language of Chapter IX of the Rules. Specifically, OCC proposes conforming changes to the Rule to reflect the replacement of the defined term ''CNS-eligible'' with ''CCC-eligible'' as described above. The proposed changes would also clarify that OCC's broker-to-broker settlement rules are contained in Rules 903–912, as Rule 902 concerns Delivery Advices, which also may be applicable to settlements made through the correspondent clearing corporation pursuant to Rule 901. In addition, the proposed changes to the introductory language of Chapter IX of the Rules would provide additional clarity around OCC's existing authority to alter a previous designation of a settlement method at any time prior to the designated delivery date by specifying that this authority would apply to both settlements to be made through the facilities of the correspondent clearing corporation pursuant to Rule 901 or settlements to be made on a broker-to-broker basis pursuant to Rules 903 through 912. Finally, OCC proposes a number of conforming changes to Rules 901 and 912 to reflect the renumbering of various Rule provisions due to the proposed amendments described above.

Expected Effect on and Management of Risk

OCC believes that the proposed change, which would adopt the New Accord and make conforming changes to the OCC By-Laws and Rules to accommodate the New Accord, would reduce the overall level of risk to OCC, its Clearing Members, and the markets served by OCC.

In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would provide a clearer, simpler framework for the settlement of Stock Options and Stock Futures. By pinpointing a specific moment in time, the Guaranty Substitution Time, at which guarantee obligations transfer from OCC to NSCC with respect to each cleared securities transaction, the New Accord would eliminate any ambiguity regarding which clearing agency is responsible for guaranteeing settlement at any given moment. Establishing a precise Guaranty Substitution Time also provides greater certainty that, in the event of the default of a Common Member, the default would be handled pursuant to the rules and procedures of the clearing agency whose guarantee is then in effect and the system for the settlement and clearance of Stock Options and Stock Futures would continue with minimal interruption. This greater certainty strengthens OCC's and NSCC's ability to plan for and manage, and therefore mitigate, the risk presented by Common Member defaults to OCC, other Clearing Members and the market as a whole.

The proposal to expand the category of securities eligible for settlement and guaranty under the New Accord would provide consistent treatment across all expiries for products with regular way settlement cycle specifications, and would provide a clearer, simpler framework for the settlement of these securities. Finally, the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord, would assist the clearing agencies to more effectively identify, monitor, and manage risks that may be presented by certain Common Members, and would create new efficiencies in their general surveillance efforts with respect to these firms.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[24] Section 805(a)(2) of the Clearing Supervision Act[25] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[26] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including

[24] 12 U.S.C. 5461(b).

[25] 12 U.S.C. 5464(a)(2).

[26] 12 U.S.C. 5464(b).

those standards adopted pursuant to the Commission rules cited below.[27] For the reasons set forth below, OCC believes that the proposed change is consistent with the risk management standards promulgated under Section 805(a) of the Clearing Supervision Act.[28]

Rule 17Ad–22(e)(1) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[29] The New Accord would constitute a legal, valid and binding obligation on each of OCC and NSCC, which is enforceable against each clearing agency. In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would establish clear, transparent, and enforceable terms for the settlement of OCC's cleared Stock Options and Stock Futures through the facilities of NSCC and would simplify the settlement process for those Stock Options currently settled under the Existing Accord. By clarifying the timing and mechanisms by which OCC's Guaranty ends and NSCC's Guaranty begins by focusing on the timing of the Guaranty Substitution, the new Accord, specifically the proposal to enhance the timing of the Guaranty Substitution, would provide a clear, transparent and enforceable legal basis for OCC's and NSCC's obligations during the event of a Common Member default. As a result, OCC believes that the proposal is consistent with the requirements of Rule 17Ad–22(e)(1).[30]

Rule 17Ad–22(e)(20) requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies or financial market utilities.[31]

OCC is proposing to adopt the New Accord in order to address the risks it has identified related to its existing link with the NSCC within the Existing Accord. Specifically, under the terms of the Existing Accord, even after NSCC's guarantee has come into effect, OCC is not released from its guarantee with respect to the Options E&A until certain deadlines have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC and/or NSCC has ceased to act for such firm. This current process results in a period of time where NSCC's trade guarantee and OCC's guarantee both apply to the same positions, and, therefore, both clearing agencies are holding margin against the same Options E&A position. As a result, the Existing Accord provides for a more complicated framework for the settlement of certain Stock Options. These complications could give rise to inconsistencies with regard to the development and application of interdependent policies and procedures between OCC and NSCC, which could lead to unanticipated disruptions in OCC's or NSCC's clearing operations.

In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would provide for a clearer, simpler framework for the settlement of certain Stock Options and Stock Futures by pinpointing a specific moment in time, the Guaranty Substitution Time, at which guarantee obligations would transfer from OCC to NSCC. The New Accord would eliminate any ambiguity regarding which clearing agency is responsible for guaranteeing settlement at any given moment. Establishing a precise Guaranty Substitution Time would also provide greater certainty that in the event of a Common Member default, the default would be handled pursuant to the rules and procedures of the clearing agency whose guarantee is then in effect and the system for the clearance and settlement of Stock Options and Stock Futures would continue with minimal interruption. This greater certainty would strengthen OCC's and NSCC's ability to plan for and manage, and therefore would mitigate, the risk presented by Common Member defaults to OCC and NSCC, other members, and the markets the clearing agencies serve. Therefore, through the adoption of the proposal to enhance the timing of the Guaranty Substitution, OCC would more effectively manage its risks related to the operation of the New Accord.

Moreover, in connection with the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord, NSCC and OCC would agree to share certain information, including general surveillance information regarding their members, so that each clearing agency would be able to effectively identify, monitor, and manage risks that may be presented by certain Common Members. Accordingly, OCC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between OCC and NSCC for the settlement of certain Stock Options and Stock Futures in a manner consistent with Rule 17Ad–22(e)(20).[32]

Finally, Rule 17Ad–22(e)(21) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, be efficient and effective in meeting the requirements of its participants and the markets it serves.[33] As noted above, under the Existing Accord, even after NSCC's guarantee has come into effect, OCC is not released from its guarantee with respect to the Options E&A until certain deadlines have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC and/or NSCC has ceased to act for such firm. This results in a period of time where NSCC's guarantee overlaps with OCC's guarantee and where both clearing agencies are holding margin against the same Options E&A positions. In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would minimize this ''double margining'' issue by introducing a new Guaranty Substitution Time, which would normally occur as soon as NSCC has received all Required Deposits to the Clearing Fund from Common Members, which have been calculated taking into account the relevant E&A/Delivery Transactions, rather than require reimbursement payments from one clearing agency to the other. As a result, Common Members would no longer be required to post margin at both clearing agencies to cover the same E&A/Delivery Transactions. OCC believes that, by simplifying the terms of the existing agreement in this way, the New Accord is designed to be efficient and effective in meeting the requirements of OCC's and NSCC's participants and the markets they serve.

[27] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore is subject to section (e) of Rule 17Ad-22.

[28] 12 U.S.C. 5464(a).

[29] 17 CFR 240.17Ad–22(e)(1).

[30] *Id.*

[31] 17 CFR 240.17Ad–22(e)(20).

[32] *Id.*

[33] 17 CFR 240.17Ad–22(e)(21).

Additionally, the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord would create new efficiencies in the management of this important link between OCC and NSCC. The proposal to enhance information sharing between OCC and NSCC would allow the clearing agencies to more effectively identify, monitor, and manage risks that may be presented by certain Common Members, and would create new efficiencies in their general surveillance efforts with respect to these firms.

In these ways, OCC believes the proposed New Accord is consistent with the requirements of Rule 17Ad–22(e)(21).[34]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–OCC–2017–804 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2017–804. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_804.pdf.*

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–OCC–2017–804 and should be submitted on or before July 20, 2017.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14016 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

[34] *Id.*

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 38a–1; SEC File No. 270–522, OMB Control No. 3235–0586

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 38a–1 (17 CFR 270.38a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'') is intended to protect investors by fostering better fund compliance with securities laws. The rule requires every registered investment company and business development company (''fund'') to: (i) Adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the fund, including procedures for oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund; (ii) obtain the fund board of directors' approval of those policies and procedures; (iii) annually review the adequacy of those policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation; (iv) designate a chief compliance officer to administer the fund's policies and procedures and prepare an annual report to the board that addresses certain specified items relating to the policies and procedures; and (v) maintain for five years the compliance policies and procedures and the chief compliance officer's annual report to the board.

The rule contains certain information collection requirements that are designed to ensure that funds establish and maintain comprehensive, written internal compliance programs. The information collections also assist the Commission's examination staff in assessing the adequacy of funds' compliance programs.

While Rule 38a–1 requires each fund to maintain written policies and procedures, most funds are located within a fund complex. The experience of the Commission's examination and oversight staff suggests that each fund in a complex is able to draw extensively from the fund complex's ''master'' compliance program to assemble appropriate compliance policies and procedures. Many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop or revise policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

There are approximately 4,333 funds subject to Rule 38a–1. Among these funds, 97 were newly registered in the past year. These 97 funds, therefore, were required to adopt and document the policies and procedures that make up their compliance programs. Commission staff estimates that the average annual hour burden for a fund to adopt and document these policies and procedures is 105 hours. Thus, we estimate that the aggregate annual burden hours associated with the adoption and documentation requirement is 10,185 hours.

All funds are required to conduct an annual review of the adequacy of their existing policies and procedures and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, and the effectiveness of their implementation. In addition, each fund chief compliance officer is required to prepare an annual report that addresses the operation of the policies and procedures of the fund and the policies and procedures of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, any material changes to the policies and procedures recommended as a result of the annual review, and certain compliance matters that occurred since the date of the last report. The staff estimates that each fund spends 49 hours per year, on average, conducting the annual review and preparing the annual report to the board of directors. Thus, we estimate that the annual aggregate burden hours associated with the annual review and annual report requirement is 202,517 hours.

Finally, the staff estimates that each fund spends 6 hours annually, on average, maintaining the records required by proposed Rule 38a–1. Thus, the aggregate annual burden hours associated with the recordkeeping requirement is 24,798 hours.

In total, the staff estimates that the aggregate annual information collection burden of Rule 38a–1 is 237,500 hours. The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 28, 2017.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14064 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81038; File No. SR–NYSEMKT–2016–103]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3, To Allow the Exchange To Trade, Pursuant to Unlisted Trading Privileges, any NMS Stock Listed on Another National Securities Exchange; Establish Rules for the Trading Pursuant to UTP of Exchange-Traded Products; and Adopt New Equity Trading Rules Relating To Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

June 28, 2017.

I. Introduction

On November 17, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Allow the Exchange to trade, pursuant to unlisted trading privileges (''UTP''), any NMS stock [3] listed on another national securities exchange; (2) establish rules for the trading pursuant to UTP of certain exchange-traded products (''ETPs''); and (3) adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on the Exchange's new trading platform, Pillar. The proposed rule change was published for comment in the **Federal Register** on December 1, 2016.[4] On January 4, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On February 24, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''NMS stock'' is defined in Rule 600 of Regulation NMS. *See* 17 CFR 242.600(b)(47).

[4] *See* Securities Exchange Act Release No. 79400 (Nov. 25, 2016), 81 FR 86750 (Dec. 1, 2016).

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 79738, 82 FR 3068 (Jan. 10, 2017).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 80097 (Feb. 24, 2017), 82 FR 12251 (Mar. 1, 2017). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the

On March 28, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, and Amendment No. 1 was published for comment in the **Federal Register** on April 27, 2017.[9] On April 27, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[10] On May 23, 2017, the Commission designated a longer period for Commission action on the proposed rule change.[11] On May 31, 2017, the Exchange filed Amendment No. 3 to the proposed rule change.[12] The Commission has received no comments on the proposed rule change.

The Commission is granting approval of the proposed rule change, as modified by Amendments No. 1, 2, and 3.

II. Description of the Proposal, As Modified by Amendments No. 1, 2, and 3 [13]

NYSE MKT proposes to trade on its Pillar trading platform,[14] pursuant to UTP, any NMS stock listed on another national securities exchange.[15] NYSE MKT also proposes to establish listing and trading requirements for certain types of ETPs on Pillar.[16] The Exchange's proposed rules for the qualification, listing, and trading of these ETPs are substantively identical to the rules of NYSE Arca and NYSE.[17] Finally, the Exchange proposes to adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on Pillar.

Under the proposal, the Exchange represents that it will only trade securities pursuant to UTP on its Pillar trading platform, and will not trade securities pursuant to UTP on its Existing Platform. Furthermore, the Exchange does not intend to list ETPs on Pillar or on its Existing Platform. Therefore, the Exchange represents that the proposed rules apply only to Pillar, and the rules pertaining to the Existing Platform will remain unchanged.

A. New Definitions

The Exchange proposes to define the term ''Exchange Traded Product'' in Rule 1.1E(bbb) to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act, and a ''UTP Exchange Traded Product'' to mean an ETP that trades on the Exchange pursuant to UTP.[18] The Exchange also proposes to add Rule 1.1E(kk) to define ''UTP Regulatory Halt'' as a trade suspension, halt, or pause called by the primary listing market for a UTP security that requires all market centers to halt trading in that security.

B. Proposal To Trade Securities Pursuant to UTP

The Exchange proposes new Rule 5.1E(a) to extend UTP to Pillar for securities listed on other national securities exchanges. Specifically, proposed Rule 5.1E(a)(1) would allow the Exchange to trade securities eligible for UTP under Section 12(f) of the Act.[19] Proposed Rule 5.1E(a) provides that the securities the Exchange would trade pursuant to UTP would be traded on Pillar under the rules applicable to UTP trading.

Proposed Rule 5.1E(a)(1) makes clear that the Exchange would not list any ETPs unless it files a proposed rule change under Section 19(b)(2) under the Act.[20] Therefore, the Exchange represents that the provisions of proposed Rules 5E and 8E described below, which also permit the listing of ETPs, would not be effective until the Exchange files a proposed rule change to amend its rules to comply with Rules 10A–3 and 10C–1 under the Act and to incorporate qualitative listing criteria, and the proposed rule change is approved by the Commission.[21]

C. ETP Trading Pursuant UTP on the Exchange

The Exchange proposes Rule 5.1E(a)(2) to govern the trading of ETPs pursuant to UTP and Rule 19b–4(e) under the Act. Specifically, proposed Rule 5.1E(a)(2)(A) provides that, within

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Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 12252.

[9] *See* Securities Exchange Act Release No. 80500 (Apr. 21, 2017), 82 FR 19416 (Apr. 27, 2017) (''Notice of Amendment No. 1'').

[10] In Amendment No. 2, the Exchange: (1) Corrected the cross-reference in footnote 66 of the filing to read ''*See* supra note 63''; (2) amended proposed Rule 5.2E(j)(6)(B)(V)(2)(a) to read ''may'' instead of ''will''; (3) amended proposed Rule 5.5E(m)(1)(c) to clarify that the regulatory function described therein would be exercised by ''the Exchange'' instead of ''Regulation''; (4) amended Supplementary Material .01 to proposed Rule 8.200E to erase the repetitive words ''are satisfied'' at the end of the introductory paragraph; and (5) amended proposed Rule 8.700E(h) to add at the beginning of the paragraph the sentence ''The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Managed Trust Securities.'' Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysemkt-2016-103/nysemkt2016103-1724667-150689.pdf.* Because Amendment No. 2 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[11] *See* Securities Exchange Act Release No. 80746, 82 FR 24763 (May 30, 2017) (designating July 29, 2017, as the date by which the Commission must either approve or disapprove the proposed rule change).

[12] In Amendment No. 3, the Exchange deleted footnote 10 of the filing, which stated that ''[t]he Exchange currently lists five ETPs on its current trading platform. These ETPs will continue to be listed and traded pursuant to the NYSE MKT Company Guide and the other rules of the Exchange that do not apply to the Pillar platform.'' The Exchange also deleted the sentence that followed footnote 10, which stated that ''[t]herefore, the Exchange is only proposing ETP rules in this rule filing that would apply to the Pillar platform and trading pursuant to UTP. Since the Exchange does not plan to trade ETPs on the Pillar platform that would be listed under these proposed rules, the Exchange is not proposing to change any of the current rules of the Exchange pertaining to the listing and trading of ETPs in the NYSE MKT Company Guide or in its other rules.'' The Exchange also deleted footnote 11, which was attached to the deleted sentence, and which provided a Web site address for the NYSE MKT Company Guide. Amendment No. 3 is available at *https://www.sec.gov/comments/sr-nysemkt-2016-103/nysemkt2016103-1780346-152834.pdf.* Because Amendment No. 3 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

[13] Additional information regarding the proposal can be found in the Notice of Amendment No. 1, *supra* note 9.

[14] On January 29, 2015, the Exchange announced the implementation of Pillar, which, according to the Exchange, is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca'') and New York Stock Exchange LLC (''NYSE''). *See* Trader Update dated January 29, 2015, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Pillar_Trader_Update_Jan_2015.pdf. See also* Securities Exchange Act Release No. 79242 (Nov. 4, 2016), 81 FR 79081 (Nov. 10, 2016) (SR–NYSEMKT–2016–97) (''Pillar Framework Filing'').

[15] The Exchange represents that it will continue to trade the symbols for which it is the listing venue on its separate, existing trading platform (''Existing Platform'') and will not trade securities pursuant to UTP on the Existing Platform.

[16] Specifically, the Exchange proposes to establish listing and trading rules for the following: Equity Linked Notes; Investment Company Units; Index-Linked Exchangeable Notes; Equity Gold Shares; Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, and Multifactor-Index-Linked Securities; Trust Certificates; Currency and Index Warrants; Portfolio Depositary Receipts; Trust Issued Receipts; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Paired Trust Shares; Trust Units; Managed Fund Shares; and Managed Trust Securities.

[17] *See* NYSE Arca Equities Rules 5 (Listings) and 8 (Trading of Certain Equities Derivatives); and NYSE Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products).

[18] These proposed definitions are identical to the definitions of the same terms in NYSE Rule 1.1(bbb), and to the definition of ''Derivative Securities Product'' in NYSE Arca Equities Rule 1.1(bbb).

[19] 15 U.S.C. 78*l*(f).

[20] 15 U.S.C. 78s(b)(2).

[21] In addition, the introductory note to each of proposed Rules 5E and 8E states that the provisions of the rules apply to the trading pursuant to UTP of ETPs on the Exchange and do not apply to the listing of ETPs on the Exchange.

five days after commencement of trading, the Exchange would file a Form 19b–4(e) with the Commission with respect to each ETP the Exchange trades pursuant to UTP.

The Exchange proposes certain other rules to support the trading of ETPs pursuant to UTP. For example, proposed Rule 5.1E(a)(2)(B) provides that the Exchange will distribute an information circular prior to the commencement of trading in an ETP, which would generally include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the ETP, (b) the Exchange's rules that will apply to the ETP, including Rules 2090–Equities and 2111–Equities,[22] and (c) information about the dissemination of the value of the underlying assets or indices, as applicable.

In addition, proposed Rule 5.1E(a)(2)(C) establishes certain requirements for member organizations that have customers that trade ETPs on a UTP basis, including requirements pertaining to prospectus delivery and the provision of written description of terms and characteristics of the ETPs. Also, proposed Rule 5.1E(a)(2)(E) imposes restrictions on member organizations that are registered as market makers on the Exchange for certain ETPs. Finally, proposed Rule 5.1E(a)(2)(F) specifies certain surveillance mechanisms for ETPs traded on the Exchange pursuant to UTP. Namely, Rule 5.1E(a)(2)(F) provides that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the ETP is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with those markets.[23]

The Exchange also proposes to add certain definitions contained in NYSE Arca Equities Rule 5.1E(b) that are relevant to the proposed rules, including non-substantive changes to certain references to account for the minor differences of the Exchange and NYSE Arca and their respective rules.

D. Listing and Trading Requirements for ETPs

The Exchange proposes to adopt rules that are substantively identical to those of NYSE Arca and NYSE for the qualification, listing, and delisting of ETPs. The Exchange proposes to add Rule 5.2E(j), which would be substantively identical to NYSE Arca Equities and NYSE Rule 5.2(j). This proposed rule pertains to the following ETPs: Equity Linked Notes (Rule 5.2E(j)(2)); Investment Company Units (Rule 5.2E(j)(3)); Index-Linked Exchangeable Notes (Rule 5.2E(j)(4)); Equity Gold Shares (Rule 5.2E(j)(5)); Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities (Rule 5.2E(j)(6)); and Trust Certificates (Rule 5.2E(j)(7)). The Exchange also proposes to add Rules 5.5E(g)(2), which would provide additional continued listing standards for Investment Company Units; 5.5E(j)–1, which would provide additional continued listing standards for Equity Linked Notes; and 5.5E(m), which would provide delisting procedures for ETPs. Other than certain non-substantive and technical differences, the text of these proposed rules is identical to NYSE Arca and NYSE Rules 5.2(j)(2)–5.2(j)(7), 5.5(g)(2), 5.5(j)–1, and 5.5(m).

Further, the Exchange proposes to add Rule 8E, which is substantively identical to Sections 1 and 2 of NYSE Arca Equities Rule 8 and of NYSE Rule 8P. This proposed rule pertains to the following ETPs: Currency and Index Warrants (Rules 8.1E–8.13E); Portfolio Depositary Receipts (Rule 8.100E); Trust Issued Receipts (Rule 8.200E); Commodity-Based Trust Shares (Rule 8.201E);Currency Trust Shares (Rule 8.202E); Commodity Index Trust Shares (Rule 8.203E); Commodity Futures Trust Shares (Rule 8.204E); Partnership Units (Rule 8.300E); Paired Trust Shares (Rule 8.400E); Trust Units (Rule 8.500E); Managed Fund Shares (Rule 8.600E); and Managed Trust Securities (Rule 8.700E).

As mentioned above, the Exchange would not list any ETPs unless it files a proposed rule change under Section 19(b)(2) under the Act.[24] Therefore, the provisions of Rules 5E and 8E, which permit the listing of ETPs, would not be effective until the Exchange files a proposed rule change to amend its rules to comply with Rules 10A–3 and 10C–1 under the Act and to incorporate qualitative listing criteria, and the proposed rule change is approved by the Commission.

E. Proposed Rule 7.18E—Requirements for Halts on Pillar Platform

In conjunction with the implementation of Pillar for trading of securities pursuant to UTP, the Exchange proposes new Rule 7.18E which governs trading halts in symbols trading on Pillar. This rule is substantively identical to the rules of NYSE Arca and NYSE.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to trade, pursuant to UTP, NMS stocks (including ETPs) on its Pillar platform. Section 12(f) of the Act[27] provides that any national securities exchange may extend UTP to securities listed and registered on other national securities exchanges, subject to Commission rules. In particular, in order to extend UTP to securities, Rule 12f–5 under the Act requires a national securities exchange to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[28] The Commission notes that the Exchange's proposed Rule 5.1E allows NYSE MKT to extend UTP in Pillar to any security that is an NMS stock that

[22] *See* NYSE MKT Rule 2090–Equities (the Exchange's Know Your Customer Rule) and NYSE MKT Rule 2111–Equities (the Exchange's Suitability Rule).

[23] In addition, the Exchange represents that its surveillance procedures for ETPs traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems. *See* Notice of Amendment No. 1, *supra* note 9, at 19418.

[24] 15 U.S.C. 78s(b)(2).

[25] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78*l*.

[28] *See* 17 CFR 240.12f–5. *See also* Securities Exchange Act Release No. 35737 (Apr. 21, 1995), 60 FR 20891 (Apr. 28, 1995) (File No. S7–4–95) (adopting Rule 12f–5 under the Act).

is listed on another national securities exchange.

The Commission has previously approved substantively identical rules for the listing and trading of ETPs on NYSE Arca and NYSE. The Exchange represents that it will not list, but only trade, ETPs on a UTP basis. The Exchange represents that to trade pursuant to UTP any ETP that is listed and traded on another national securities exchange, NYSE MKT would be required to file Form 19b–4(e) with the Commission.

The Commission believes that the Exchange's proposal does not raise any novel issues, and the proposed rules of the Exchange are consistent with the rules of other national securities exchanges that trade securities, including ETPs.[29] Additionally, the Exchange represents, and its proposed rules specify, that NYSE MKT will not list any ETPs unless it first obtains Commission approval of a proposed rule change under Section 19(b)(2) of the Act. Therefore, the provisions of proposed Rules 5E and 8E that permit the listing of ETPs would only be effective if the Commission approves a proposed rule change for the Exchange to amend its rules to comply with Rules 10A–3 and 10C–1 under the Act and to incorporate other applicable listing criteria. Finally, the Commission notes that NYSE MKT has represented that it will be responsible for accepting the obligations applicable to a UTP market, including specific requirements for registered market makers, books and records production, surveillance procedures, suitability and prospectus requirements, and requisite Exchange approvals.[30]

The Commission believes that the UTP trading on NYSE MKT of NMS stocks, including ETPs, listed on other national securities exchanges is consistent with existing UTP trading of NMS stocks on other national securities exchanges and that is designed to increase competition among the different securities markets to the benefit of market participants. The Commission therefore finds that NYSE MKT's proposed rules governing trading on a UTP basis on its Pillar platform are consistent with the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEMKT–2016–103), as modified by Amendments No. 1, 2, and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14014 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

[29] *See, e.g.,* Rule 14.1 of Bats BYX Exchange, Inc. and Rule 14.1 of Bats EDGA Exchange, Inc.

[30] *See* proposed Rule 5.1E.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–427, OMB Control No. 3235–0476]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension: Rule 10b–17

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 10b–17 (17 CFR 240.10b–17), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering.

There are approximately 12,127 respondents per year. These respondents make approximately 27,144 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is 4,524 burden hours. The total internal labor cost of compliance for the respondents, associated with producing and filing the reports, is approximately $317,991.96.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 28, 2017.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14065 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81037; File No. SR–ICC–2017–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules and the ICC Treasury Operations Policies and Procedures

June 28, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2017, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice, as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed changes is to make changes to the ICC Clearing Rules (the ''ICC Rules'') and ICC Treasury Operations Policies and Procedures (''Treasury Policy'') to remove eligibility of Japanese yen (''JPY''), Great British pounds (''GBP''), and Canadian dollars (''CAD'') to meet Initial Margin and Guaranty Fund requirements.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC Clearing Participants are required to post Initial Margin and contribute to the Guaranty Fund to collateralize their individual credit exposure to ICC. Currently, a Clearing Participant may meet the final 35% of their Initial Margin and Guaranty Fund requirements with JPY, GBP, or CAD, in aggregate. To date, ICC has never received GBP and CAD, and has received small deposits of JPY from a limited number of Clearing Participants (*i.e.* less than 1% of total margin deposits). JPY, GBP, and CAD are not considered to be 'liquid' resources from an ICC perspective, as they must be converted to another currency (USD or Euro). JPY additionally has a significant timing issue related to conversion. Further, ICC has found securitization for these currencies impractical, especially for the small balances of JPY received.

For the aforementioned reasons, ICC proposes revising the ICC Rules and ICC Treasury Operations Policies and Procedures to remove eligibility of JPY, GBP, and CAD to meet Initial Margin and Guaranty Fund requirements. Clearing Participants will continue to be able to meet their Initial Margin and Guaranty Fund requirements using Euro cash, U.S. cash and/or U.S. Treasuries, in accordance with the collateral thresholds set forth in Schedule 401 of the ICC Rules. The proposed revisions to the ICC Rules and ICC Treasury Policy are described in detail as follows.

ICC Rules

ICC proposes updates to Schedule 401 of the ICC Rules. Specifically, ICC proposes removing references to G7 cash,[3] and defining 'All Eligible Collateral' for both Non-Client Initial Margin and Guaranty Fund Liquidity Requirements and Client-Related Initial Margin Liquidity Requirements to be U.S. cash, Euro cash, and/or U.S. Treasuries. Under the proposed changes, U.S. cash, Euro cash, and/or U.S. Treasuries will be eligible for meeting the final 35% of Initial Margin and Guaranty Fund requirements for all Non-Client Initial Margin and Guaranty Fund Liquidity Requirements and Client-Related USD denominated Initial Margin Requirements; and U.S. cash, Euro cash, and/or U.S. Treasuries will be eligible for meeting a maximum of 100% of Initial Margin requirements for Client-Related Euro Denominated Product Requirements.

ICC Treasury Policy

ICC also proposes updates to the ICC Treasury Policy to remove references to CAD, GBP, and JPY as eligible collateral. ICC proposes removing references to CAD, GBP, and JPY in the 'Collateral Liquidation Assumptions' tables (for both Euro and U.S. Dollar denominated requirements). Under the proposed changes, the tables will set forth collateral liquidity assumptions for U.S. cash, Euro cash, and U.S. Treasuries only.

ICC proposes updating the House Initial Margin and Guaranty Fund Liquidity Requirements (for Non-Client U.S. Dollar and Euro denominated requirements) chart to remove reference to G7 cash and to define 'All Eligible Collateral' to be U.S. cash, Euro cash, and/or U.S. Treasuries. ICC proposes updating the list of acceptable forms of collateral for Initial Margin to specifically include U.S. Treasury Securities, U.S. cash, and Euro cash, and to remove the general reference to G7 currencies. ICC also proposes updating the list of acceptable forms of collateral for the Guaranty Fund to include U.S. Treasury Securities, U.S. cash, and Euro cash, and to remove the general reference to G7 currencies. ICC proposes updates to the 'Eligible Client Collateral' section of the Treasury Policy to note that ICC's eligible collateral for client Initial Margin includes U.S. cash, Euro cash, and U.S. government securities in line with current eligible collateral for House exposures (*i.e.* U.S. Treasuries). ICC also proposes updates to the 'Client-Related Initial Margin Liquidity Requirements' section of the Treasury Policy to reflect the proposed liquidity requirement changes, namely U.S. denominated product requirements of 65% U.S. cash and/or U.S. Treasuries, and 35% remainder eligible U.S. cash, U.S. Treasuries, and/or Euro cash; and Euro denominated product requirements of 100% U.S. cash, Euro cash, and/or U.S. Treasuries.

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[5] because ICC believes that removing eligibility of JPY, GBP, and CAD to meet Initial Margin and Guaranty Fund requirements will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The proposed update will promote the liquidity of ICC collateral. Such changes are consistent with the eligible collateral accepted by other market participants. Further, from a practical standpoint, the proposed updates will have minimal impact on ICC's financial resource composition, as such currencies have been rarely utilized by Clearing Participants to meet Initial Margin and Guaranty Fund requirements. ICC will continue to accept U.S. cash, Euro cash, and U.S. Treasuries as eligible collateral, in accordance with Schedule 401 of the ICC Rules. Such collateral will continue to be held in a manner whereby risk of loss or of delay in access to them is minimized, consistent with Section 17A(b)(3)(F)[6] and Rule 17Ad–22(d)(3).[7]

[3] G7 cash includes U.S. cash, Euro cash, JPY, GBP, and CAD.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] *Id.*

[7] 17 CFR 240.17Ad–22(d)(3).

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The changes to ICC's eligible collateral apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2017–010 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–ICC–2017–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2017–010 and should be submitted on or before July 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14013 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81039; File No. SR–NSCC–2017–803]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Adopt a New Stock Options and Futures Settlement Agreement With The Options Clearing Corporation

June 28, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Payment, Clearing and Settlement Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on June 1, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice SR–NSCC–2017–803 (''Advance Notice'') as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice has been filed by NSCC in connection with proposed changes relating to a new Stock Options and Futures Settlement Agreement (''New Accord'') between NSCC and The Options Clearing Corporation (''OCC,'' collectively NSCC and OCC may be referred to herein as the ''clearing agencies''), and proposed amendments to Procedures III and XV of the Rules & Procedures of NSCC (''NSCC Rules'') to accommodate the proposed provisions of the New Accord, as described in greater detail below.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

[8] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On June 1, 2017, NSCC filed this Advance Notice as a proposed rule change (SR–NSCC–2017–007) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.* The Options Clearing Corporation also has filed proposed rule change and advance notice filings with the Commission in connection with this proposal. *See* OCC filings SR–OCC–2017–013 and SR–OCC–2017–804.

[4] Terms not defined herein are defined in the NSCC Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf,* or in OCC's By-Laws and Rules, *available at http://optionsclearing.com/about/publications/bylaws.jsp,* as the context implies.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received. NSCC will notify the Commission of any written comments received by NSCC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Background

OCC issues and clears U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. OCC's Rules, however, provide that delivery of, and payment for, securities underlying certain physically settled stock options and single stock futures cleared by OCC are effected through the facilities of a correspondent clearing corporation (such as NSCC) and are not settled through the facilities of OCC. NSCC and OCC are parties to a Third Amended and Restated Options Exercise Settlement Agreement, dated February 16, 1995, as amended (''Existing Accord''),[5] which governs the delivery and receipt of stock in the settlement of put and call options issued by OCC (''Stock Options'') that are eligible for settlement through NSCC's Continuous Net Settlement (''CNS'') Accounting Operation and are designated to settle on the third business day following the date the related exercise or assignment was accepted by NSCC (''Options E&A''). All OCC Clearing Members that intend to engage in Stock Options transactions are required to also be Members of NSCC or to have appointed or nominated an NSCC Member to act on its behalf.[6]

NSCC proposes to adopt a New Accord with OCC, which would provide for the settlement of certain Stock Options and delivery obligations arising from certain matured physically-settled stock futures contracts cleared by OCC (''Stock Futures''). Specifically, the New Accord would, among other things: (1) Expand the category of securities that are eligible for settlement and guaranty under the agreement to certain securities (including stocks, exchange-traded funds and exchange-traded notes) that (i) are required to be delivered in the exercise and assignment of Stock Options and are eligible to be settled through NSCC's Balance Order Accounting Operation (in addition to its CNS Accounting Operation) or (ii) are delivery obligations arising from Stock Futures that have reached maturity and are eligible to be settled through NSCC's CNS Accounting Operation or Balance Order Accounting Operation; (2) modify the time of the transfer of responsibilities from OCC to NSCC and, specifically, when OCC's guarantee obligations under OCC's By-Laws and Rules with respect to such transactions (''OCC's Guaranty'') end and NSCC's obligations under Addendum K of the NSCC Rules with respect to such transactions (''NSCC's Guaranty'') begin (such transfer being the ''Guaranty Substitution''); and (3) put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the agreement. Furthermore, NSCC proposes to make certain clarifying and conforming changes to the NSCC Rules as necessary to implement the New Accord.

The primary purpose of the proposed changes is to (1) provide consistent treatment across all expiries for products with ''regular way'' [7] settlement cycle specifications; (2) reduce the operational complexities of the Existing Accord by eliminating the cross-guaranty between OCC and NSCC and the bifurcated risk management of exercised and assigned transactions between the two clearing agencies by delineating a single point in time at which OCC's Guaranty ceases and NSCC's Guaranty begins; (3) further solidify the roles and responsibilities of OCC and NSCC in the event of a default of a Common Member at either or both clearing agencies; and (4) improve procedures, information sharing, and overall governance under the agreement.

The New Accord would become effective, and wholly replace the Existing Accord, at a date specified in a service level agreement to be entered into between NSCC and OCC.[8]

The Existing Accord

Key Terms of the Existing Accord

Under the Existing Accord, the settlement of Options E&A generally proceeds according to the following sequence of events. NSCC maintains and delivers to OCC a list (''CNS Eligibility Master File'') that enumerates all CNS Securities, which are defined in NSCC Rule 1 and generally include securities that have been designated by NSCC as eligible for processing through NSCC's CNS Accounting Operation and eligible for book entry delivery at NSCC's affiliate, The Depository Trust Company (for purposes of this advance notice, such securities are referred to as ''CNS Eligible Securities'').[9] OCC, in turn, uses this file to make a final determination of which securities NSCC would not accept and therefore would need to be settled on a broker-to-broker basis. OCC then sends to NSCC a transactions file,[10] listing the specific securities that are to be delivered and received in settlement of an Options E&A that have not previously been reported to NSCC and for which settlement is to be made through NSCC (''OCC Transactions File'').[11] With

[5] The Existing Accord and the proposed changes thereunder were previously approved by the Commission. *See* Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731 (October 3, 1996) (SR–OCC–96–04 and SR–NSCC–96–11) (Order Approving Proposed Rule Change Related to an Amended and Restated Options Exercise Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation); Securities Exchange Act Release No. 43837 (January 12, 2001), 66 FR 6726 (January 22, 2001) (SR–OCC–00–12) (Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of a Program to Relieve Strains on Clearing Members' Liquidity in Connection With Exercise Settlements); and Securities Exchange Act Release No. 58988 (November 20, 2008), 73 FR 72098 (November 26, 2008) (SR–OCC–2008–18 and SR–NSCC–2008–09) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Amendment No. 2 to the Third Amended and Restated Options Exercise Settlement Agreement).

[6] A firm that is both an OCC Clearing Member and an NSCC Member, or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a ''Common Member.''

[7] Under the New Accord, ''regular way settlement'' shall have a meaning agreed to by the clearing agencies. Generally, regular way settlement is understood to be the financial services industry's standard settlement cycle. Currently, regular way settlement of Stock Options or Stock Futures transactions are those transactions designated to settle on the third business day following the date the related exercise, assignment or delivery obligation was accepted by NSCC. NSCC has proposed to change the NSCC Rules with respect to the meaning of regular way settlement in order to be consistent with the anticipated industry-wide move to a shorter standard settlement cycle of two business days after trade date. *See* Securities Exchange Act Release No. 79734 (January 4, 2017), 82 FR 3030 (January 10, 2017) (SR–NSCC–2016–007). *See also* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (S7–22–16) (Amendment to Securities Transaction Settlement Cycle).

[8] Such effective date would be a date following approval of all required regulatory submissions to be filed by OCC and NSCC with the appropriate regulatory authorities, including this advance notice. *See supra* note 3.

[9] *Supra* note 4.

[10] Delivery of the OCC Transactions File with respect to an Options E&A typically happens on the date of the option's exercise or expiration, though this is not expressly stated in the Existing Accord. However, in theory, an Options E&A could, due to an error or delay, be reported later than the date of the option's exercise or expiration.

[11] This process would be substantially the same under the New Accord with the exception that the CNS Eligibility Master File and OCC Transactions File would be renamed and would be expanded in scope to include additional securities that would be

respect to each Options E&A, the OCC Transactions File includes the CUSIP number of the security to be delivered, the identities of the delivering and receiving Common Members, the quantity to be delivered, the total value of the quantity to be delivered based on the exercise price of the option for which such security is the underlying security, and the exercise settlement date. After receiving the OCC Transactions File, NSCC then has until 11:00 a.m. Central Time on the following business day to reject any transaction listed in the OCC Transactions File. NSCC can reject a transaction if the security to be delivered has not been listed as a CNS Eligible Security in the CNS Eligible Master File or if information provided in the OCC Transactions File is incomplete. Otherwise, if NSCC does not so notify OCC of its rejection of an Options E&A by the time required under the Existing Accord, NSCC will become unconditionally obligated to effect settlement of the Options E&A.

Under the Existing Accord, even after NSCC's trade guarantee has come into effect,[12] OCC is not released from its guarantee with respect to the Options E&A until certain deadlines [13] have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC or NSCC has ceased to act for such Common Member pursuant to the NSCC Rules.[14] As a result, there is a period of time when NSCC's trade guarantee overlaps with OCC's guarantee and where both clearing agencies are holding margin against the same Options E&A position.

In the event that NSCC or OCC ceases to act on behalf of or suspends a Common Member, that Common Member becomes a ''defaulting member.'' Once a Common Member becomes a defaulting member, the Existing Accord provides that NSCC will make a payment to OCC equal to the lesser of OCC's loss or the positive mark-to-market amount relating to the defaulting member's Options E&A and that OCC will make a payment to NSCC equal to the lesser of NSCC's loss or the negative mark-to-market amount relating to the defaulting member's Options E&A to compensate for potential losses incurred in connection with the default. A clearing agency must request the transfer of any such payments by the close of business on the tenth business day following the day of default and, after a request is made, the other clearing agency is required to make payment within five business days of the request.

The New Accord

Overview

As noted above, NSCC proposes to adopt a New Accord with OCC, which would provide for the settlement of certain Stock Options and Stock Futures transactions. The New Accord is primarily designed to, among other things, expand the category of securities that are eligible for settlement and guaranty under the agreement; simplify the time of the transfer of responsibilities from OCC to NSCC (specifically, the transfer of guarantee obligations); and put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the agreement. The material provisions of the New Accord are described in detail below.

Key Elements of the New Accord

Expanded Scope of Eligible Securities

Pursuant to the proposed New Accord, on each day that both OCC and NSCC are open for accepting trades for clearing (''Activity Date''), NSCC would deliver to OCC an ''Eligibility Master File,'' which would identify the securities, including stocks, exchange-traded funds and exchange-traded notes, that are (1) eligible to settle through NSCC's CNS Accounting Operation (as is currently the case under the Existing Accord) or NSCC's Balance Order Accounting Operation (which is a feature of the New Accord) and (2) to be delivered in settlement of (i) exercises and assignments of Stock Options (as is currently the case under the Existing Accord) or (ii) delivery obligations arising from maturing physically settled Stock Futures (which is a feature of the New Accord) (all such securities collectively being ''Eligible Securities''). OCC, in turn, would deliver to NSCC its file of E&A/Delivery Transactions [15] that list the Eligible Securities to be delivered, or received, and for which settlement is proposed to be made through NSCC on that Activity Date. Guaranty Substitution (discussed further below) would not occur with respect to an E&A/Delivery Transaction that is not submitted in the proper format or that involves a security that is not identified as an Eligible Security on the then-current Eligibility Master File. This process is similar to the current process under the Existing Accord with the exception of the expanded scope of Eligible Securities (and additional fields necessary to accommodate such securities) that would be listed on the Eligibility Master File and the E&A/Delivery Transactions file.

Like the Existing Accord, the proposed New Accord would continue to facilitate the processes by which Common Members deliver and receive stock in the settlement of Stock Options that are eligible to settle through NSCC's CNS Accounting Operation and are designated to settle regular way. The New Accord would also expand the category of securities eligible for settlement under the agreement. In particular, the New Accord would facilitate the processes by which Common Members deliver and receive stock in settlement of Stock Futures that are eligible to settle through NSCC's CNS Accounting Operation and are designated to settle regular way. It would also provide for the settlement of both Stock Options and Stock Futures that are eligible to settle through NSCC's Balance Order Accounting Operation on a regular way basis. The primary purpose of expanding the category of securities that are eligible for settlement and guaranty under the agreement is to provide consistent treatment across all expiries for products with regular way settlement cycle specifications and simplify the settlement process for these additional securities transactions.

The New Accord would not apply to Stock Options or Stock Futures that are designated to settle on a shorter timeframe than the regular way settlement timeframe. These Stock

eligible for guaranty and settlement under the New Accord, as discussed in further detail below.

[12] Pursuant to Addendum K of the NSCC Rules, NSCC guarantees the completion of CNS transactions and balance order transactions that have reached the point at which, for bi-lateral submissions by Members, such trades have been validated and compared by NSCC, and for locked-in submission, such trades have been validated by NSCC, as described in the NSCC Rules. Transactions that are covered by the Existing Accord, and that would be covered by the New Accord, are expressly excluded from the timeframes described in Addendum K. *See supra* note 4.

[13] The deadline is 6:00 a.m. Central Time for NSCC notifying OCC of a Common Member failure and, if NSCC does not immediately cease to act for such defaulting Common Member, 4:00 p.m. Central Time for notifying OCC that it has ceased to act.

[14] *See* NSCC Rule 46 (Rule 46 (Restrictions on Access to Services)). *See supra* note 4.

[15] ''E&A/Delivery Transactions'' are transactions involving the settlement of Stock Options and Stock Futures under the New Accord. The delivery of E&A/Delivery Transactions to NSCC would replace the delivery of the ''OCC Transactions File'' from the Existing Accord. The actual information delivered by OCC to NSCC would be the same as is currently provided on the OCC Transactions File, but certain additional terms would be included to accommodate the inclusion of Stock Futures, along with information regarding the date that the instruction to NSCC was originally created and the E&A/Delivery Transaction's designated settlement date.

Options would continue to be processed and settled as they would be today, outside of the New Accord. The New Accord also would not apply to any Stock Options or Stock Futures that are neither CNS Securities nor Balance Order Securities.[16] Transactions in these securities are, and would continue to be processed on a trade-for-trade basis away from NSCC's facilities. Such transactions may utilize other NSCC services for which they are eligible, but would not be subject to the New Accord.[17]

Proposed Changes Related to Guaranty Substitution

The New Accord would adopt a fundamentally different approach to the delineation of the rights and responsibilities of OCC and NSCC with respect to E&A/Delivery Transactions. The purpose of the proposed changes related to the Guaranty Substitution, defined below, is to reduce the operational complexities of the Existing Accord by eliminating the cross-guaranty between OCC and NSCC and the bifurcated risk management of exercised and assigned transactions between the two clearing agencies and delineating a single point in time at which OCC's Guaranty ceases and NSCC's Guaranty begins. Moreover, the proposed changes would solidify the roles and responsibilities of OCC and NSCC in the event of a default of a Common Member at either or both clearing agencies.

As described above, the Existing Accord provides that NSCC will make a payment to OCC following the default of a Common Member in an amount equal to the lesser of OCC's loss or the positive mark-to-market amount relating to the Common Member's Options E&A, and provides that OCC will make a payment to NSCC following the default of a Common Member equal to the lesser of NSCC's loss or the negative mark-to-market amount relating to the Common Member's Options E&A to compensate for potential losses incurred in connection with the Common Member's default. The proposed New Accord, in contrast, would focus on the transfer of responsibilities from OCC to NSCC and, specifically, the point at which OCC's Guaranty ends and NSCC's Guaranty begins (*i.e.,* the Guaranty Substitution) with respect to E&A/Delivery Transactions. By focusing on the timing of the Guaranty Substitution, rather than payment from one clearing agency to the other, the New Accord would simplify the agreement and the procedures for situations involving the default of a Common Member. The New Accord additionally would minimize ''double-margining'' situations when a Common Member may simultaneously owe margin to both NSCC and OCC with respect to the same E&A/Delivery Transaction.

After NSCC has received an E&A/Delivery Transaction, the Guaranty Substitution would normally occur when NSCC has received all Required Deposits to its Clearing Fund, calculated taking into account such E&A/Delivery Transaction, of Common Members (''Guaranty Substitution Time'').[18] At the Guaranty Substitution Time, NSCC's Guaranty takes effect, and OCC does not retain any settlement obligations with respect to such E&A/Delivery Transactions. The Guaranty Substitution would not occur, however, with respect to any E&A/Delivery Transaction if NSCC has rejected such E&A/Delivery Transaction due to an improper submission, as described above, or if, during the time after NSCC's receipt of the E&A/Delivery Transaction but prior to the Guaranty Substitution Time, a Common Member involved in the E&A/Delivery Transaction has defaulted on its obligations to NSCC by failing to meet its Clearing Fund obligations, or NSCC has otherwise ceased to act for such Common Member pursuant to the NSCC Rules (in either case, such Common Member becomes a ''Defaulting NSCC Member'').

NSCC would be required to promptly notify OCC if a Common Member becomes a Defaulting NSCC Member, as described above. Upon receiving such a notice, OCC would not submit to NSCC any further E&A/Delivery Transactions involving the Defaulting NSCC Member for settlement, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all E&A/Delivery Transactions that have already been submitted to NSCC and that involve the Defaulting NSCC Member (''Defaulted NSCC Member Transactions''). The Guaranty Substitution ordinarily would not occur with respect to any Defaulted NSCC Member Transactions, unless both clearing agencies agree otherwise. As such, NSCC would have no obligation to guaranty such Defaulted NSCC Member Transactions, and OCC would continue to be responsible for effecting the settlement of such Defaulted NSCC Member Transactions pursuant to OCC's By-Laws and Rules. Once NSCC has confirmed the list of Defaulted NSCC Member Transactions, Guaranty Substitution would occur for all E&A/Delivery Transactions for that Activity Date that are not included on such list. NSCC would be required to promptly notify OCC upon the occurrence of the Guaranty Substitution Time on each Activity Date.

If OCC suspends a Common Member after NSCC has received the E&A/Delivery Transactions but before the Guaranty Substitution has occurred, and that Common Member has not become a Defaulting NSCC Member, the Guaranty Substitution would proceed at the Guaranty Substitution Time. In such a scenario, OCC would continue to be responsible for guaranteeing the settlement of the E&A/Delivery Transactions in question until the Guaranty Substitution Time, at which time the responsibility would transfer to NSCC. If, however, the suspended Common Member also becomes a Defaulting NSCC Member after NSCC has received the E&A/Delivery Transactions but before the Guaranty Substitution has occurred, Guaranty Substitution would not occur, and OCC would continue to be responsible for effecting the settlement of such Defaulted NSCC Member Transactions pursuant to OCC's By-Laws and Rules (unless both clearing agencies agree otherwise).

Finally, the New Accord also would provide for the consistent treatment of all exercise and assignment activity under the agreement. Under the Existing Accord, ''standard'' [19] option contracts become guaranteed by NSCC when the Common Member meets its morning Clearing Fund Required Deposit at NSCC while ''non-standard'' exercise and assignment activity becomes guaranteed by NSCC at midnight of the day after trade date (T+1). Under the New Accord, all exercise and assignment activity for Eligible Securities would be guaranteed by NSCC as of the Guaranty Substitution Time, under the circumstances described above, further simplifying the framework for the settlement of such contracts.

[16] Balance Order Securities are defined in NSCC Rule 1, and are generally securities, other than foreign securities, that are eligible to be cleared at NSCC but are not eligible for processing through the CNS Accounting Operation. *See supra* note 4.

[17] OCC will continue to guarantee settlement until settlement actually occurs with respect to these Stock Options and Stock Futures.

[18] Procedure XV of the NSCC Rules provides that all Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise. *See supra* note 4.

[19] Option contracts with ''standard'' expirations expire on the third Friday of the specified expiration month, while ''non-standard'' contracts expire on other days of the expiration month.

Other Terms of the New Accord

The New Accord also would include a number of other provisions intended to either generally maintain certain terms of the Existing Accord or improve the procedures, information sharing, and overall governance process under the new agreement. Many of these terms are additions to or improvements upon the terms of the Existing Accord.

Under the proposed New Accord, OCC and NSCC would agree to address the specifics regarding the time, form and manner of various required notifications and actions in a separate service level agreement, which the parties would be able to revisit as their operational needs evolve. The service level agreement would also specify an effective date for the New Accord, which, as mentioned above, would occur on a date following approval and effectiveness of all required regulatory submissions to be filed by OCC and NSCC with the appropriate regulatory authorities. Similar to the Existing Accord, the proposed New Accord would remain in effect (a) until it is terminated by the mutual written agreement of OCC and NSCC, (b) until it is unilaterally terminated by either clearing agency upon one year's written notice (as opposed to six months under the Existing Accord), or (c) until it is terminated by either NSCC or OCC upon the bankruptcy or insolvency of the other, provided that the election to terminate is communicated to the other party within three business days by written notice.

Under the proposed New Accord, NSCC would agree to notify OCC if NSCC ceases to act for a Common Member pursuant to the NSCC Rules no later than the earlier of NSCC's provision of notice of such action to the governmental authorities or notice to other NSCC Members. Furthermore, if an NSCC Member for which NSCC has not yet ceased to act fails to satisfy its Clearing Fund obligations to NSCC, NSCC would be required to notify OCC promptly after discovery of the failure. Likewise, OCC would be required to notify NSCC of the suspension of a Common Member no later than the earlier of OCC's provision of notice to the governmental authorities or other OCC Clearing Members.

Under the Existing Accord, NSCC and OCC agree to share certain reports and information regarding settlement activity and obligations under the agreement. The New Accord would enhance this information sharing between the clearing agencies. Specifically, NSCC and OCC would agree to share certain information, including general risk management due diligence regarding Common Members, lists of Common Members, and information regarding the amounts of Common Members' margin and settlement obligations at OCC or Clearing Fund Required Deposits at NSCC. NSCC and OCC would also be required to provide the other clearing agency with any other information that the other reasonably requests in connection with the performance of its obligations under the New Accord. All such information would be required to be kept confidential, using the same care and discretion that each clearing agency uses for the safekeeping of its own members' confidential information. NSCC and OCC would each be required to act in good faith to resolve and notify the other of any errors, discrepancies or delays in the information it provides.

The New Accord also would include new terms to provide that, to the extent one party is unable to perform any obligation as a result of the failure of the other party to perform its responsibilities on a timely basis, the time for the non-failing party's performance would be extended, its performance would be reduced to the extent of any such impairment, and it would not be liable for any failure to perform its obligations. Further, NSCC and OCC would agree that neither party would be liable to the other party in connection with its performance of its obligations under the proposed New Accord to the extent it has acted, or omitted or ceased to act, with the permission or at the direction of a governmental authority. Moreover, the proposed New Accord would provide that in no case would either clearing agency be liable to the other for punitive, incidental or consequential damages. The purpose of these new provisions is to provide clear and specific terms regarding each clearing agency's liability for non-performance under the agreement.

The proposed New Accord would also contain the usual and customary representations and warranties for an agreement of this type, including representations as to the parties' good standing, corporate power and authority and operational capability, that the agreement complies with laws and all government documents and does not violate any agreements, and that all of the required regulatory notifications and filings would be obtained prior to the New Accord's effective date. It would also include representations that the proposed New Accord constitutes a legal, valid and binding obligation on each of OCC and NSCC and is enforceable against each, subject to standard exceptions. Furthermore, the proposed New Accord would contain a force majeure provision, under which NSCC and OCC would agree to notify the other no later than two hours upon learning that a force majeure event has occurred and both parties would be required to cooperate in good faith to mitigate the effects of any resulting inability to perform or delay in performing.

Proposed Amendments to NSCC Procedures III and XV of the NSCC Rules

Given the key differences between the Existing Accord and the New Accord, as described above, NSCC proposes certain changes to Procedures III and XV of the NSCC Rules in order to accommodate the terms of the New Accord. In particular, NSCC would update Section B of Procedure III to define the scope of the New Accord. First, the proposed Section B of Procedure III would identify the E&A/Delivery Transactions, and would make clear that the New Accord would apply only to E&A/Delivery Transactions that are in either CNS Securities or Balance Order Securities, as such terms are defined in the NSCC Rules. The proposed Section B of Procedure III would also define the Common Members, or firms that must be named as counterparties to E&A/Delivery Transactions, as ''Participating Members.'' The proposal would describe the Guaranty Substitution Time and would describe the circumstances under which the Guaranty Substitution would not occur. Finally, the proposed Section B of Procedure III would describe how E&A/Delivery Transactions for which the Guaranty Substitution has occurred would be processed at NSCC both if they are covered by the proposed New Accord and if they are not covered by the proposed New Accord because, for example, they are not transactions in CNS Securities or Balance Order Securities or were not submitted for regular way settlement.

Finally, NSCC is also proposing to amend Procedure XV to remove reference to the exclusion of E&A/Delivery Transactions from the calculation of the mark-to-market margin component of its Clearing Fund calculations, which is no longer applicable under the proposed New Accord where the Guaranty Substitution would replace the transfer of a defaulting Common Member's margin payments under the Existing Accord. As such, NSCC is not proposing any change to its margining methodology, but will include E&A/Delivery Transactions in the calculation the mark-to-market

margin component of Common Members' Clearing Fund Required Deposits following implementation of the New Accord.

Expected Effect on and Management of Risk

NSCC believes that the proposed change, which would adopt the New Accord and make conforming changes to the NSCC Rules to accommodate the New Accord, would reduce the overall level of risk to NSCC, its Members, and the markets served by NSCC.

In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would provide a clearer, simpler framework for the settlement of Stock Options and Stock Futures. By pinpointing a specific moment in time, the Guaranty Substitution Time, at which guarantee obligations transfer from OCC to NSCC with respect to each cleared securities transaction, the New Accord would eliminate any ambiguity regarding which clearing agency is responsible for guaranteeing settlement at any given moment. Establishing a precise Guaranty Substitution Time also would provide greater certainty that, in the event of the default of a Common Member, the default would be handled pursuant to the rules and procedures of the clearing agency whose guarantee is then in effect and the system for the settlement and clearance of Stock Options and Stock Futures would continue with minimal interruption. This greater certainty strengthens OCC's and NSCC's ability to plan for and manage, and therefore mitigate, the risk presented by Common Member defaults to NSCC, other Members and the market as a whole.

The proposal to expand the category of securities eligible for settlement and guaranty under the New Accord would provide consistent treatment across all expiries for products with regular way settlement cycle specifications, and would provide a clearer, simpler framework for the settlement of these securities. Finally, the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord, would assist the clearing agencies to more effectively identify, monitor, and manage risks that may be presented by certain Common Members, and would create new efficiencies in their general surveillance efforts with respect to these firms.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[20] Section 805(a)(2) of the Clearing Supervision Act[21] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like NSCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[22] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including those standards adopted pursuant to the Commission rules cited below.[23] For the reasons set forth below, NSCC believes that the proposed change is consistent with the risk management standards promulgated under Section 805(b) of the Clearing Supervision Act.[24]

Rule 17Ad–22(e)(1) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[25] The New Accord would constitute a legal, valid and binding obligation on each of OCC and NSCC, which is enforceable against each clearing agency. In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would establish clear, transparent, and enforceable terms for the settlement of OCC's cleared Stock Options and Stock Futures through the facilities of NSCC and would simplify the settlement process for those Stock Options currently settled under the Existing Accord. By clarifying the timing and mechanisms by which OCC's Guaranty ends and NSCC's Guaranty begins by focusing on the timing of the Guaranty Substitution, the new Accord, specifically the proposal to enhance the timing of the Guaranty Substitution, would provide a clear, transparent and enforceable legal basis for OCC's and NSCC's obligations during the event of a Common Member default. As a result, NSCC believes that the proposal is consistent with the requirements of Rule 17Ad–22(e)(1).[26]

Rule 17Ad–22(e)(20) under the Act requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies or financial market utilities.[27]

NSCC is proposing to adopt the New Accord in order to address the risks it has identified related to its existing link with OCC within the Existing Accord. Specifically, under the terms of the Existing Accord, even after NSCC's guarantee has come into effect, OCC is not released from its guarantee with respect to the Options E&A until certain deadlines have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC and/or NSCC has ceased to act for such firm. This current process results in a period of time where NSCC's trade guarantee and OCC's guarantee both apply to the same positions, and, therefore, both clearing agencies are holding margin against the same Options E&A position. As a result, the Existing Accord provides for a more complicated framework for the settlement of certain Stock Options. These complications could give rise to inconsistencies with regard to the development and application of interdependent policies and procedures between OCC and NSCC, which could lead to unanticipated disruptions in OCC's or NSCC's clearing operations.

In connection with the proposal to enhance the timing of the Guaranty

[20] 12 U.S.C. 5461(b).

[21] 12 U.S.C. 5464(a)(2).

[22] 12 U.S.C. 5464(b).

[23] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. NSCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore is subject to section (e) of Rule 17Ad–22.

[24] 12 U.S.C. 5464(b)(1) and (4).

[25] 17 CFR 240.17Ad–22(e)(1).

[26] *Id.*

[27] 17 CFR 240.17Ad–22(e)(20).

Substitution, the New Accord would provide for a clearer, simpler framework for the settlement of certain Stock Options and Stock Futures by pinpointing a specific moment in time, the Guaranty Substitution Time, at which guarantee obligations would transfer from OCC to NSCC. The New Accord would eliminate any ambiguity regarding which clearing agency is responsible for guaranteeing settlement at any given moment. Establishing a precise Guaranty Substitution Time would also provide greater certainty that in the event of a Common Member default, the default would be handled pursuant to the rules and procedures of the clearing agency whose guarantee is then in effect and the system for the clearance and settlement of Stock Options and Stock Futures would continue with minimal interruption. This greater certainty would strengthen OCC's and NSCC's ability to plan for and manage, and therefore would mitigate, the risk presented by Common Member defaults to OCC and NSCC, other members, and the markets the clearing agencies serve. Therefore, through the adoption of the proposal to enhance the timing of the Guaranty Substitution, NSCC would more effectively manage its risks related to the operation of the New Accord.

Moreover, in connection with the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord, NSCC and OCC would agree to share certain information, including general surveillance information regarding their members, so that each clearing agency would be able to effectively identify, monitor, and manage risks that may be presented by certain Common Members. Accordingly, NSCC believes the proposed changes are reasonably designed to identify, monitor, and manage risks related to the link established between OCC and NSCC for the settlement of certain Stock Options and Stock Futures in a manner consistent with Rule 17Ad–22(e)(20).[28]

Finally, Rule 17Ad–22(e)(21) under the Act requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, be efficient and effective in meeting the requirements of its participants and the markets it serves.[29] As noted above, under the Existing Accord, even after NSCC's guarantee has come into effect, OCC is not released from its guarantee with respect to the Options E&A until certain deadlines have passed on the first business day following the scheduled settlement date without NSCC notifying OCC that the relevant Common Member has failed to meet an obligation to NSCC and/or NSCC has ceased to act for such firm. This results in a period of time where NSCC's guarantee overlaps with OCC's guarantee and where both clearing agencies are holding margin against the same Options E&A positions. In connection with the proposal to enhance the timing of the Guaranty Substitution, the New Accord would minimize this ''double margining'' issue by introducing a new Guaranty Substitution Time, which would normally occur as soon as NSCC has received all Required Deposits to the Clearing Fund from Common Members, which have been calculated taking into account the relevant E&A/Delivery Transactions, rather than require reimbursement payments from one clearing agency to the other. As a result, Common Members would no longer be required to post margin at both clearing agencies to cover the same E&A/Delivery Transactions. NSCC believes that, by simplifying the terms of the existing agreement in this way, the New Accord is designed to be efficient and effective in meeting the requirements of OCC's and NSCC's participants and the markets they serve.

Additionally, the proposal to put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the New Accord would create new efficiencies in the management of this important link between OCC and NSCC. The proposal to enhance information sharing between OCC and NSCC would allow the clearing agencies to more effectively identify, monitor, and manage risks that may be presented by certain Common Members, and would create new efficiencies in their general surveillance efforts with respect to these firms.

In these ways, NSCC believes the proposed New Accord is consistent with the requirements of Rule 17Ad–22(e)(21).[30]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–NSCC–2017–803 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–NSCC–2017–803. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the

[28] *Id.*

[29] 17 CFR 240.17Ad–22(e)(21).

[30] *Id.*

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 NSCC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2017–803 and should be submitted on or before July 20, 2017.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–14015 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32718; 812–14649]

Transamerica ETF Trust, et al.

June 30, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

APPLICANTS: Transamerica Asset Management, Inc. (the ''Initial Adviser''), a Florida corporation that is registered as an investment adviser under the Investment Advisers Act of 1940, Transamerica ETF Trust (the ''Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, and Foreside Fund Services, LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATE: The application was filed on May 6, 2016 and amended on March 2, 2017 and June 23, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 25, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Transamerica Asset Management, Inc. and Transamerica ETF Trust, 1801 California Street, Suite 5200, Denver, Colorado 80202; and Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, at (202) 551–6883, or Aaron Gilbride, Acting Branch Chief, at (202) 551–6906 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the

[1] Applicants request that the order apply to the new series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2017–14196 Filed 7–3–17; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SMALL BUSINESS ADMINISTRATION

Office of the National Ombudsman; Solicitation of Nominations for Appointment to Small Business Regional Regulatory Fairness Boards

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Solicit nominations of owners, operators, and officers of small business concerns to serve on 10 Regional Regulatory Fairness Boards nationwide.

SUMMARY: The SBA Office of the National Ombudsman (ONO) is issuing this notice to solicit nominations of qualified owners, operators, and officers of small business concerns to be considered for appointment by the SBA Administrator as a member of a Small Business Regional Regulatory Fairness Board (''RegFair Board'').

The RegFair Board members on the ten regional boards serve as advisors to the National Ombudsman on regulatory enforcement and compliance issues of concern to small business owners within their respective regions and surface those issues to the attention of the National Ombudsman. Nominations of qualified candidates are being sought to fill vacancies on the RegFair Boards. RegFair Board members are appointed by, and serve at the pleasure of, the SBA Administrator for terms of no longer than three years. The Administrator may reappoint an individual for additional terms of service.

Board members serve without compensation. They will, however, be reimbursed for authorized travel-related expenses at per diem rates established by GSA when asked to perform official duties as a Board member.

Authority: This notice was prepared in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (Pub. L. 104–121), Sec. 222.

DATES: Nominations for membership on the RegFair Board will be accepted on a rolling basis.

ADDRESSES: All nominations should be mailed to the Office of the National

Ombudsman, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, or emailed to *ombudsman@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Pope, Office of the National Ombudsman, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Telephone: (202) 401–299; Email: *cynthia.pope@sba.gov.* A copy of the RegFair Board Charter and a list of current Board members may be obtained by contacting Ms. Pope. For more information on ONO, please visit our Web site, *www.sba.gov/ombudsman.*

SUPPLEMENTARY INFORMATION: As established by the United States Congress, the Small Business Regulatory Enforcement Fairness Act of 1996 created ONO within the SBA and 10 Regional Regulatory Fairness Boards nationwide. Pursuant to the statute, ONO works with Federal agencies that have regulatory authority over small businesses subjected to an audit, on-site inspection, fine or penalty, compliance assistance effort, or other enforcement related communication or contact by agency personnel with a vehicle to comment on the enforcement actions.

Pursuant to SBREFA, the ONO is authorized to establish, maintain, and coordinate activities of 10 Regional Regulatory Fairness Boards. The ONO has RegFair Boards in each of SBA's 10 regions. Each Board is comprised of 5 small business owners, operators, or officers. No more than three RegFair Board Members per board may be of the same political affiliation. All Board members are appointed by the SBA Administrator for three-year terms.

The purpose of the RegFair Boards is to have leaders of small businesses advise and represent the National Ombudsman on regulatory issues for small businesses in their respective regions. Each year, the RegFair Boards convene for an annual meeting to discuss the state of affairs in Federal regulatory enforcement. The meeting also provides the ONO with the opportunity to assess trends and new regulatory issues that impact small businesses in each region.

Additionally, the RegFair Boards work with the SBA District Offices and SBA Regional staff to communicate opportunities small businesses have to share their concerns regarding regulatory enforcement. This includes promoting and providing small businesses with information regarding RegFair Hearings and Roundtables within their respective regions.

Requirements for Nomination Submission

Completed SBA Form 898: Interested applicants must submit a completed SBA Form 898. To download a copy of the form, please visit *https://www.sba.gov/ombudsman/fairness-boards.* Please note that a YES answer to any of the questions listed in Section 6 of the SBA Form 898 Advisory Committee Membership Nominee Information Form may deem a candidate ineligible to serve on a RegFair Board.

Resume: Please include the nominee's contact information (including name, mailing address, telephone numbers, and email address) and a chronological summary of the nominee's experience and qualifications. Please do not submit a bio.

Dated: June 27, 2017.

Richard W. Kingan,

SBA Committee Management Officer (Acting).

[FR Doc. 2017–14001 Filed 7–3–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15175 and # 15176; ARKANSAS Disaster Number AR–00094]

Presidential Declaration Amendment of a Major Disaster for the State of ARKANSAS

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of ARKANSAS (FEMA–4318–DR), dated 06/15/2017.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/26/2017 through 05/19/2017.

DATES: Effective 06/28/2017.

Physical Loan Application Deadline Date: 08/14/2017.

Eidl Loan Application Deadline Date: 03/15/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of ARKANSAS, dated 06/15/2017 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Prairie, White, Woodruff.

Contiguous Counties: (Economic Injury Loans Only): Arkansas, Monroe, Saint Francis.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–14030 Filed 7–3–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.625 percent for the July–September quarter of FY 2017.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2017–14040 Filed 7–3–17; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0035]

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

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–2017–0035].

I. The information collection below are pending at SSA. SSA will submit it 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 September 5, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

Help America Vote Act—0960–0706. House Rule 3295, the Help America Vote Act of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have driver's licenses or State-issued ID cards, they must supply the last four digits of their Social Security number to their local State election agencies for verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA), and the State MVA inputs the data into the American Association of MVAs, a central consolidation system that routes the voter data to SSA's Help America Vote Verification (HAVV) system. Once SSA's HAVV system confirms the identity of the voter, the information returns along the same route in reverse until it reaches the State election agency. The respondents are the State MVAs seeking to confirm voter identities.

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)
HAVV	4,938,093	1	2	164,603

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these 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 August 4, 2017. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Application for Benefits under a U.S. International Social Security Agreement—20 CFR 404.1925—0960–0448.* Section 233(a) of the Social Security Act (Act) authorizes the President to broker international Social Security agreements (Totalization Agreements) between the United States and foreign countries. SSA collects information using Form SSA–2490–BK to determine entitlement to Social Security benefits from the United States, or from a country that enters into a Totalization Agreement with the United States. The respondents are individuals applying for Old Age Survivors and Disability Insurance (OASDI) benefits from the United States or from a Totalization Agreement country.

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–2490–BK (MCS)	15,030	1	30	7,515
SSA–2490–BK (paper)	2,120	1	30	1,060
Totals	17,150			8,575

2. *Medicare Part D Subsidies Regulations—20 CFR 418.3625(c), 418.3645, 418.3665(a), and 418.3670—0960–0702.* The Medicare Prescription Drug Improvement and Modernization Act (MMA) of 2003 established the Medicare Part D program for voluntary prescription drug coverage of premium, deductible, and co-payment costs for certain low-income individuals. The MMA also mandated the provision of subsidies for those individuals who qualify for the program and who meet eligibility criteria for help with premium, deductible, or co-payment costs. This law requires SSA to make eligibility determinations, and to provide a process for appealing SSA's determinations. Regulation sections 418.3625(c), 418.3645, 418.3665(a), and 418.3670 contain public reporting requirements pertaining to administrative review hearings. Respondents are applicants for the Medicare Part D subsidies who request an administrative review hearing.

Type of Request: Revision of an existing OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
418.3625(c)	140	1	5	12
418.3645	10	1	10	2
418.3665(a)	275	1	5	23
418.3670*	0	1	10	0
Total	425	.....	.....	37

* Regulation section 418.3670 could be used at any time; however, we currently have no data showing usage over the past three years.

3. *Request for Evidence from Doctor and Request for Evidence from Hospital—20 CFR 404 Subpart P and 20 CFR 416 Subpart I—0960–0722.* Sections 223(d)(5) and 1614(a)(3)(H)(i) of the Act require claimants to furnish medical evidence of their disability when filing a disability claim. SSA uses Forms HA–66 and HA–67 to request evidence from medical sources, which claimants identify as having information relative to their impairments, or ability to do work-related activities. In addition to accepting manual paper responses, SSA sends a barcode with the HA–66 and HA–67, allowing respondents to fax the information directly into the electronic claims folder rather than submitting it manually. SSA uses the information to determine eligibility for benefits, and to pay medical sources for furnishing the information. The respondents are medical sources, doctors, and hospitals that evaluate the claimants.

This is a correction notice: when we published the first **Federal Register** Notice on February 28, 2017 at 82 FR 12159, it did not include the accurate number of responses. We are correcting this by publishing the number of responses in a separate column in the chart below.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–66—Paper Version	3,060	22	67,320	15	16,830
HA–66—Electronic Version	8,940	22	196,680	15	49,170
HA–67—Paper Version	3,060	22	67,320	15	16,830
HA–67—Electronic Version	8,940	22	196,680	15	49,170
Totals	24,000	.....	528,000	.....	132,000

Dated: June 28, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–14018 Filed 7–3–17; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on August 3, 2017, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a request for waiver by Middletown Borough, as well as a proposed guidance for alternatives analysis. Such projects, request and proposal are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for September 7, 2017, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects, request and proposal. The deadline for the submission of written comments is August 14, 2017.

DATES: The public hearing will convene on August 3, 2017, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is August 14, 2017.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436.

Information concerning the applications for these projects is available at the SRBC Water Application and Approval Viewer at *http://mdw.srbc.net/waav.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover a request for waiver of 18 CFR 806.6(a)(5) and (b) by Middletown Borough, tabled at the Commission's business meeting held June 16, 2017, as well as a proposed guidance for alternatives analysis, as posted on the SRBC Public Participation Center Web page at *www.srbc.net/pubinfo/publicparticipation.htm.* The public hearing will also cover the following projects:

Projects Scheduled for Action

1. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Meshoppen Creek), Springville Township, Susquehanna County, Pa. Application for renewal with modification of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20130904).

2. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Chemung River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of

up to 0.999 mgd (peak day) (Docket No. 20130905).

3. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Sugar Creek), Burlington Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20130906).

4. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20130907).

5. *Project Sponsor and Facility:* Chief Oil & Gas LLC (Towanda Creek), Leroy Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

6. *Project Sponsor and Facility:* Downs Racing, L.P. d/b/a Mohegan Sun Pocono, Plains Township, Luzerne County, Pa. Application for consumptive use of up to 0.350 mgd (peak day).

7. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.432 mgd (30-day average) from Well 6 (Docket No. 19861103).

8. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.432 mgd (30-day average) from Well 7.

9. *Project Sponsor and Facility:* Elizabethtown Area Water Authority, Elizabethtown Borough and Mount Joy Township, Lancaster County, Pa. Modification to correct total system limit to remove inclusion of water discharged to the Conewago watershed to offset passby and transfer of water from Conewago Creek to Back Run (Docket No. 20160903).

10. *Project Sponsor and Facility:* Houtzdale Municipal Authority, Gulich Township, Clearfield County, Pa. Application for groundwater withdrawal of up to 1.008 mgd (30-day average) from Well 14R.

11. *Project Sponsor and Facility:* Moxie Freedom LLC, Salem Township, Luzerne County, Pa. Modification to increase consumptive use by an additional 0.408 mgd (peak day), for a total consumptive use of up to 0.500 mgd (peak day) (Docket No. 20150907).

12. *Project Sponsor and Facility:* Susquehanna Gas Field Services, LLC (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.145 mgd (peak day) (Docket No. 20130913).

13. *Project Sponsor and Facility:* Susquehanna Nuclear, LLC, Salem Township, Luzerne County, Pa. Modification to increase consumptive use by an additional 5.000 mgd (peak day), for a total consumptive use of up to 53.000 mgd (peak day) (Docket No. 19950301).

14. *Project Sponsor and Facility:* Susquehanna Nuclear, LLC (Susquehanna River), Salem Township, Luzerne County, Pa. Modification to increase surface water withdrawal by an additional 10.000 mgd (peak day), for a total surface water withdrawal increase of up to 76.000 mgd (peak day) (Docket No. 19950301).

15. *Project Sponsor and Facility:* SWEPI LP (Elk Run), Sullivan Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.646 mgd (peak day).

16. *Project Sponsor and Facility:* SWN Production Company, LLC (Wyalusing Creek), Wyalusing Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20130911).

17. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, Pa. Application for modification to add consumptive use of up to 0.200 mgd (peak day) to existing docket approval (Docket No. 20160913).

18. *Project Sponsor and Facility:* Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, Pa. Application for modification to change authorized use of source to existing docket approval (Docket No. 20160913).

19. *Project Sponsor and Facility:* Village of Waverly, Tioga County, N.Y. Application for groundwater withdrawal of up to 0.320 mgd (30-day average) from Well 1.

20. *Project Sponsor and Facility:* Village of Waverly, Tioga County, N.Y. Application for groundwater withdrawal of up to 0.480 mgd (30-day average) from Well 2.

21. *Project Sponsor and Facility:* Village of Waverly, Tioga County, N.Y. Application for groundwater withdrawal of up to 0.470 mgd (30-day average) from Well 3.

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project, request or proposal listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Guidelines for the public hearing will be posted on the Commission's Web site, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any project, request or proposal listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *www.srbc.net/pubinfo/publicparticipation.htm.* Comments mailed or electronically submitted must be received by the Commission on or before August 14, 2017, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: June 29, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–14076 Filed 7–3–17; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2017–0090]

Notice of Funding Opportunity for the Department of Transportation's Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Years 2017 and 2018

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice of funding opportunity.

SUMMARY: The Nationally Significant Freight and Highway Projects (INFRA) program provides Federal financial assistance to highway and freight projects of national or regional significance. This notice solicits applications for awards under the program's FY 2017 and FY 2018 funding, subject to future appropriations.

DATES: Applications must be submitted by 8:00 p.m. EST November 2, 2017. The *Grants.gov* ''Apply'' function will open by August 1, 2017.

ADDRESSES: Applications must be submitted through *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at *INFRAgrants@dot.gov.* For more information about highway projects, please contact Crystal Jones at (202) 366–2976. For more information about maritime projects, please contact Robert Bouchard at (202) 366–5076. For more information about rail projects, please contact Stephanie Lawrence at (202) 493–1376. For more information about railway-highway grade crossing projects, please contact Karen McClure at (202) 493–6417. For all other questions, please contact Paul Baumer at (202) 366–1092. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT's Web site at *https://www.transportation.gov/buildamerica/INFRAgrants.*

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description

1. Overview

The INFRA program provides Federal financial assistance to highway and freight projects of national or regional significance. To maximize the value of FY 2017–2018 INFRA funds for all Americans, the Department is focusing the competition on transportation infrastructure projects that support four key objectives, each of which is discussed in greater detail in section A.2:

(1) Supporting economic vitality at the national and regional level;

(2) Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment, as well as accounting for the life-cycle costs of the project;

(3) Using innovative approaches to improve safety and expedite project delivery; and

(4) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

This notice's focus on the four key objectives does not compromise the Department's position that safety is our top priority. The Department is committed to reducing traffic fatalities and serious injuries on the surface transportation system. To reinforce the Department's safety priority, the USDOT will require projects that receive INFRA awards to consider and effectively respond to data-driven transportation safety concerns. Section F.2.a describes related requirements that the Department will impose on each INFRA project. These requirements focus on performing detailed, data-driven safety analyses and the incorporating project elements that respond to State-specific safety priority areas.

2. Key Program Objectives

This section of the notice describes the four key program objectives that the Department intends to advance with FY 2017–2018 INFRA funds. These four objectives are reflected in later portions of the notice, including section E.1, which describes how the Department will evaluate applications to advance these objectives, and section D.2.b, which describes how applicants should address the four objectives in their applications.

a. Key Program Objective #1: Supporting Economic Vitality

A strong transportation network is absolutely critical to the functioning and growth of the American economy. The nation's industry depends on the transportation network not only to move the goods that it produces, but also to facilitate the movements of the workers who are responsible for that production. When the nation's highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being. When the transportation network fails—whether due to increasing bottlenecks, growing connectivity gaps, or unsafe, crumbling conditions—our economy suffers. Projects that address congestion in our major urban areas, particularly those that do so through the use of congestion pricing or the deployment of advanced technology, projects that bridge gaps in service in our rural areas, and projects that attract private economic development, all support national or regional economic vitality. Therefore, the INFRA program seeks these types of infrastructure projects.

b. Key Program Objective #2: Leveraging of Federal Funding

The Department is committed to supporting the President's call for more infrastructure investment. That goal will not be achieved through Federal investment alone, but rather requires States, local governments, and the private sector to share responsibility and accountability, and to maximize their own contributions. The Federal government provided about 25%, or about $100 billion of the estimated $416 billion of public investment in transportation and water infrastructure in 2014,[1] but more infrastructure investment is possible if the significant Federal contribution is a smaller portion of a larger total.

To increase the leveraging of Federal funding, the INFRA program will give priority consideration to projects that use all available non-Federal resources for development, construction, operations, and maintenance. (As described further in E.1.a (Criterion #2), the Department will also consider the level at which these resources are in fact available, particularly for rural areas). These projects include projects that maximize State, local, and private sector funding, projects that raise revenue directly, projects that benefit from local self-help, and projects that pair INFRA grants with broader-scale innovative financing, including Federal credit assistance such as Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation Improvement Financing (RRIF) loans.

By emphasizing leveraging of Federal funding, the Department expects to expand the total resources being used to build and restore infrastructure, rather than have Federal dollars merely

[1] *https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49910-Infrastructure.pdf.*

displace or substitute for State, local, and private funds.

c. Key Program Objective #3: Innovation

The Department seeks to use the INFRA program to encourage innovation in three areas: (1) Environmental review and permitting; (2) use of experimental project delivery authorities; and (3) safety and technology. The Department anticipates making awards that advance each innovation area, but it does not necessarily expect each INFRA project to address all three innovation areas. Instead, the Department expects applicants to identify the innovation areas that provide benefit to their project and propose activities in those areas.

Innovation Area #1: Environmental Review and Permitting

Some project sponsors indicate that Federal law and regulations impose requirements on transportation projects that delay the timely delivery of infrastructure. Some claim that the current approach to environmental review and permitting can lead to costly delays that are not justified by environmental benefits. Others note that excessive spending for permitting and studies diverts resources from environmental mitigation. Fortunately, recent transportation authorizations, including the FAST Act, have introduced a number of reforms intended to reduce project timelines and costs without compromising the integrity of crucial environmental protections. The Department is eager to use the INFRA program to expand and improve upon these reforms.

Under the INFRA program the Department seeks to test new approaches to the environmental review and permitting process for infrastructure projects. This approach has four objectives: (1) Accelerating the environmental permitting and review process; (2) improving outcomes for communities and the environment; (3) facilitating concurrent and consistent environmental permitting and review, analysis and decision making across Federal agencies and geographic regions; and (4) establishing a shared vision of permitting success among all Federal agencies.

In the current practice, the resource agencies that are responsible for environmental review and permitting, including U.S. Army Corps of Engineers, the Fish and Wildlife Service, and the Environmental Protection Agency, operate independently and collaborate as necessary. This independent and distributed operation can frustrate efficient project delivery. Under the approach, the Department will aim to identify ''liaisons'' within each relevant resource agency. These liaisons will work closely and collaboratively with each other, project sponsors, and local field offices to steward projects participating in the effort through the environmental review process in a timely manner. The liaisons will be responsible for making consistent and timely permit determinations, while ensuring compliance with the purposes and procedures of the environmental permitting and review statutes. They will also have easy access to their counterparts throughout the Department, including in the Department's operating administrations, the Infrastructure Permitting Improvement Center, and the Build America Bureau.

The Department's aim is for liaisons to have active and defined roles early in the project development process to define potential permitting risks as early as the project scoping and the development of alternatives stages. They will coordinate activity to reduce risks, and will have specific responsibilities (*e.g.,* dispute resolution) that are triggered when a project is at risk for missing a permit deadline. Additionally, to ensure consistency across Federal agency jurisdictions, liaisons will coordinate permitting activities between Agency-specific districts for projects that cross jurisdictional boundaries.

The Department's aim is to achieve timely and consistent environmental review and permit decisions. Liaisons' work will be tracked on the Federal Infrastructure Project Permitting Dashboard, an online tool for tracking the environmental review and authorization process for large or complex infrastructure projects.

Participation in this new approach will not remove any statutory requirements affecting project delivery, and INFRA award recipients are not required to participate. However, the Department seeks INFRA applications for projects that could benefit from this approach, which are likely larger, more complex projects, and encourages those applicants to indicate whether they are interested in participating. Because the Department views this as a potential model for future environmental review and permitting, it seeks projects that will allow it to evaluate that model.

Innovation Area #2: Special Experimental Authorities

By statute, all INFRA awards are subject to Federal requirements associated with the Federal-aid Highways program under title 23 of the United States Code. However, the Department is interested in ensuring that those requirements do not unnecessarily impede project delivery. The Federal Highway Administration (FHWA) has long encouraged increasing private sector participation in the project development, finance, design, construction, maintenance, and operations. Since 1990, FHWA has experimented with innovative contracting practices under its Special Experimental Project No. 14 (SEP–14). In 2004, FHWA established Special Experimental Project No. 15 (SEP–15), which encouraged tests and experimentation throughout the entire project development process. SEP–15 was specifically aimed at attracting private investment, leading to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. Under SEP–14 and SEP–15, FHWA may waive statutory and regulatory requirements under title 23 on a project-by-project basis to explore innovative processes that could be adopted through legislation. This experimental authority is available to test changes that would improve the efficiency of project delivery in a manner that is consistent with the purposes underlying existing requirements; it is not available to frustrate the purposes of existing requirements.

The Department encourages applicants for INFRA funding to consider whether their project is eligible for and would benefit from an experimental authority or waiver under SEP–14, SEP–15, or some other experimental authority program. For appropriate projects, applicants should propose to use experimental authority and describe their expected benefits. In particular, the Department is interested in proposals that will substantially accelerate the pace of project deployment.

The Department is not replacing the application processes for SEP–14, SEP–15, or other experimental programs, with this notice or the INFRA program application. Instead, it seeks detailed expressions of interest in those programs. If selected for an INFRA award, the applicant would need to satisfy the relevant programs' requirements and complete the appropriate application processes. Selection for an INFRA award does not mean a project's SEP–14 or SEP–15 proposal has been approved. The Department will make a separate determination in accordance with those programs' processes on the appropriateness of a waiver.

Innovation Area #3: Safety and Technology

In addition to these cross-cutting safety-related requirements previously mentioned (and detailed in section F.2.a of this Notice), USDOT seeks opportunities under the INFRA program to experiment with innovative approaches to transportation safety, particularly projects which incorporate innovative design solutions, enhance the environment for automated vehicles, or use technology to improve the detection, mitigation, and documentation of safety risks. Illustrative examples include:

- Innovative designs that inherently reduce safety risk;
- Conflict detection and mitigation technologies for freight and non-freight interaction (*e.g.,* intersection alerts and signal prioritization);
- Dynamic signaling or pricing systems to reduce congestion;
- Connected vehicle technology, including systems for vehicle-to-vehicle and vehicle-to-infrastructure communications;
- Signage and design features that facilitate autonomous technologies;
- Applications to automatically capture and report safety-related issues (*e.g.,* identifying and documenting near-miss incidents); and
- Cybersecurity elements to protect safety-critical systems.

d. Key Program Objective #4: Performance and Accountability

To maximize public benefits from INFRA funds and promote local activity that will provide benefits beyond the INFRA-funded projects, the Department seeks projects that allow it to condition funding on specific, measurable outcomes. For appropriate projects, the Department may use one or more of the following types of events to trigger availability of some or all INFRA funds: (1) Reaching project delivery milestones in a timely manner; (2) making specific State or local policy changes that advance desirable transportation outcomes; and (3) achieving transportation performance objectives that support economic vitality or improve safety.

Each of these three types of events encourages accountability from project sponsors. First, project milestones can make a project sponsor accountable for timely project delivery. For example, to ensure that planning activities will not delay construction, the Department may condition construction funds on the sponsor completing those planning activities by a specific date. Second, INFRA funds can provide an additional incentive to make specific policy changes. For example, in some jurisdictions, administrative barriers to public-private partnerships prevent project sponsors from using an effective and proven method of project delivery. In such jurisdictions, the Department can help dismantle those barriers by conditioning INFRA funds on local policy changes. Finally, the Department can improve overall performance of the transportation system by tying funding to specific performance targets. For example, if an INFRA project is awarded to improve freight movement through a corridor, the Department may condition some of the INFRA funds to be used to improve one interchange in the corridor on the project sponsor's ability to demonstrate satisfactory levels of service at other points in the corridor. Improvements at those other points on the corridor to reach the target level of service could be made with other, non-conditioned INFRA funds or with non-Federal funds.

These examples are illustrative, but the Department encourages applicants to identify other, creative ways to condition funding to advance INFRA program goals. The Department does not intend to impose these conditions on unwilling or uninterested INFRA recipients, nor does it intend to limit the types of projects that should consider accountability mechanisms. Instead, the Department encourages applicants to voluntarily identify measures through which the Department may hold them accountable, describe, in their application, how the Department could structure any conditions on funding, and detail how the structure advances INFRA program goals. As described in section E.1, an applicant-directed approach to accountability will allow the Department to differentiate among INFRA applications.

3. Program Name

The INFRA grant program is authorized as the Nationally Significant Freight and Highway Projects program at 23 U.S.C. 117. The Department formerly referred to INFRA grants as Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants. The Department has renamed the program Infrastructure For Rebuilding America (INFRA), to call attention to new priorities: Rebuilding and revitalizing our economy through infrastructure investment.

B. Federal Award Information

1. Amount Available

The FAST Act authorizes the INFRA program at $4.5 billion for fiscal years (FY) 2016 through 2020, including $850 million [2] for FY 2017 and $900 million for FY 2018, to be awarded by USDOT on a competitive basis to projects of national or regional significance that meet statutory requirements. This notice solicits applications for up to $1.56 billion in FY 2017–2018 INFRA funds. Approximately $710 million of FY 2017 funds are available for INFRA awards.[3] The Department anticipates that approximately $810–855 million of FY 2018 funds will be available for awards, but that total is uncertain because the Department is issuing this notice before appropriations legislation has been enacted for FY 2018. The estimate may be higher or lower than the final amount, which is dependent on future appropriations legislation. Any award under this notice will be subject to the availability of funds.

2. Restrictions on Award Portfolio

The Department will make awards under the INFRA program to both large and small projects. (Refer to section C.3.ii.for a definition of large and small projects.) For a large project, the FAST Act specifies that an INFRA grant must be at least $25 million. For a small project, including both construction awards and project development awards, the grant must be at least $5 million. For each fiscal year of INFRA funds, 10 percent of available funds are reserved for small projects, and 90 percent of funds are reserved for large projects. The Department intends to use 10 percent of the available FY 2017 funding to make small project selections under the Notice of Funding Opportunity published in November of 2016. The FY 2017 funds made available under this notice are for large projects. The anticipated FY 2018 funds will be for both large and small projects.[4] In summary, the estimated funding available for FY 2017 and FY 2018 under this notice is approximately

[2] Funds are subject to the overall Federal-aid highway obligation limitation, and funds in excess of the obligation limitation provided to the program are distributed to the States. While $850 million is authorized for FY 2017, $788.8 million is available for award. For additional information see FAST Act § 1102(f) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016, Pub. L. 114–113, div. L § 120.

[3] The Department intends to award the 10 percent of the FY 2017 funding reserved for small projects to applications received under the Notice published in November, 2016. $709.92 million of FY 2017 funds is available under the terms of this Notice.

[4] Subject to availability of FY 2018 funding.

$81 million–$85.5 million for small projects and $1.44 billion–$1.48 billion for large projects.

The FAST Act specifies that not more than $500 million in aggregate of the $4.5 billion authorized for INFRA grants over fiscal years 2016 to 2020 may be used for grants to freight rail, water (including ports), or other freight intermodal projects that make significant improvements to freight movement on the National Highway Freight Network. After accounting for FY 2016 and previous FY 2017 INFRA selections, approximately $326 million within this constraint remains available. Only the non-highway portion(s) of multimodal projects count toward the $500 million maximum. Grade crossing and grade separation projects do not count toward the $500 million maximum for freight rail, port, and intermodal projects.

The FAST Act directs that at least 25 percent of the funds provided for INFRA grants must be used for projects located in rural areas, as defined in Section C.3.iv. The Department may elect to go above that threshold if the appropriate projects are submitted. The USDOT must consider geographic diversity among grant recipients, including the need for a balance in addressing the needs of urban and rural areas.

3. Repeat Applications

The selection criteria described in Section E. of this Notice changed substantially from previous INFRA solicitations. Applicants who elect to resubmit an application from a previous solicitation should include a supplementary appendix which describes how their project aligns with the new selection criteria.

C. Eligibility Information

To be selected for an INFRA grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project that meets the Minimum Project Size Requirement.

1. Eligible Applicants

Eligible applicants for INFRA grants are: (1) A State or group of States; (2) a metropolitan planning organization that serves an Urbanized Area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals; (3) a unit of local government or group of local governments; (4) a political subdivision of a State or local government; (5) a special purpose district or public authority with a transportation function, including a port authority; (6) a Federal land management agency that applies jointly with a State or group of States; (7) a tribal government or a consortium of tribal governments; or (8) a multi-State or multijurisdictional group of public entities.

Multiple States or jurisdictions that submit a joint application should identify a lead applicant as the primary point of contact. Joint applications should include a description of the roles and responsibilities of each applicant and should be signed by each applicant. The applicant that will be responsible for financial administration of the project must be an eligible applicant.

2. Cost Sharing or Matching

This section describes the statutory cost share requirements for an INFRA award. Cost share will also be evaluated according to the ''Leveraging of Federal Funding'' evaluation criterion described in Section E.1.a.ii. That section clarifies that the Department seeks applications for projects that exceed the minimum non-Federal cost share requirement described here.

INFRA grants may be used for up to 60 percent of future eligible project costs. Other Federal assistance may satisfy the non-Federal share requirement for an INFRA grant, but total Federal assistance for a project receiving an INFRA grant may not exceed 80 percent of the future eligible project costs. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, private funds or other funding sources of non-Federal origins. If a Federal land management agency applies jointly with a State or group of States, and that agency carries out the project, then Federal funds that were not made available under titles 23 or 49 of the United States Code may be used for the non-Federal share. Unless otherwise authorized by statute, local cost-share may not be counted as non-Federal share for both the INFRA and another Federal program. For any project, the Department cannot consider previously-incurred costs or previously-expended or encumbered funds towards the matching requirement. Matching funds are subject to the same Federal requirements described in Section F.2.b as awarded funds.

For the purpose of evaluating eligibility under the statutory cost share requirements, funds from the TIFIA and RRIF credit assistance programs are considered Federal assistance and, combined with other Federal assistance, may not exceed 80 percent of the future eligible project costs.

3. Other

a. Eligible Project

Eligible projects for INFRA grants are: Highway freight projects carried out on the National Highway Freight Network (23 U.S.C. 167); highway or bridge projects carried out on the National Highway System (NHS), including projects that add capacity on the Interstate System to improve mobility or projects in a national scenic area; railway-highway grade crossing or grade separation projects; or a freight project that is (1) an intermodal or rail project, or (2) within the boundaries of a public or private freight rail, water (including ports), or intermodal facility. A project within the boundaries of a freight rail, water (including ports), or intermodal facility must be a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility and must significantly improve freight movement on the National Highway Freight Network. Improving freight movement on the National Highway Freight Network may include shifting freight transportation to other modes, thereby reducing congestion and bottlenecks on the National Highway Freight Network. For a freight project within the boundaries of a freight rail, water (including ports), or intermodal facility, Federal funds can only support project elements that provide public benefits.

b. Eligible Project Costs

INFRA grants may be used for the construction, reconstruction, rehabilitation, acquisition of property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, equipment acquisition, and operational improvements directly related to system performance. Statutorily, INFRA grants may also fund development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities, provided the project meets statutory requirements. However, the Department is seeking to use INFRA funding on projects that result in construction. Public-private partnership assessments for projects in the development phase are also eligible costs.

INFRA grant recipients may use INFRA funds to pay the subsidy and administrative costs necessary to receive TIFIA.

c. Minimum Project Size Requirement

For the purposes of determining whether a project meets the minimum project size requirement, the Department will count all future eligible project costs under the award and some related costs incurred before selection for an INFRA grant. Previously-incurred costs will be counted toward the minimum project size requirement only if they were eligible project costs under Section C.3.b. and were expended as part of the project for which the applicant seeks funds. Although those previously-incurred costs may be used for meeting the minimum project size thresholds described in this Section, they cannot be reimbursed with INFRA grant funds, nor will they count toward the project's required non-Federal share.

i. Large Projects

The minimum project size for large projects is the lesser of $100 million; 30 percent of a State's FY 2016 Federal-aid apportionment if the project is located in one State; or 50 percent of the larger participating State's FY 2016 apportionment for projects located in more than one State. The following chart identifies the minimum total project cost for projects for FY 2017 for both single and multi-State projects.

State	FY17 NSFHP (30% of FY16 apportionment) One-State minimum (millions)	FY17 NSFHP (50% of FY16 apportionment) Multi-State minimum * (millions)	FY18 NSFHP (30% of FY17 apportionment) One-State minimum (millions)	FY18 NSFHP (50% of FY17 apportionment) Multi-State minimum * (millions)
Alabama	$100	$100	$100	$100
Alaska	100	100	100	100
Arizona	100	100	100	100
Arkansas	100	100	100	100
California	100	100	100	100
Colorado	100	100	100	100
Connecticut	100	100	100	100
Delaware	51	86	52	87
Dist. of Col.	49	81	49	82
Florida	100	100	100	100
Georgia	100	100	100	100
Hawaii	51	86	52	87
Idaho	87	100	88	100
Illinois	100	100	100	100
Indiana	100	100	100	100
Iowa	100	100	100	100
Kansas	100	100	100	100
Kentucky	100	100	100	100
Louisiana	100	100	100	100
Maine	56	94	57	95
Maryland	100	100	100	100
Massachusetts	100	100	100	100
Michigan	100	100	100	100
Minnesota	100	100	100	100
Mississippi	100	100	100	100
Missouri	100	100	100	100
Montana	100	100	100	100
Nebraska	88	100	89	100
Nevada	100	100	100	100
New Hampshire	50	84	51	85
New Jersey	100	100	100	100
New Mexico	100	100	100	100
New York	100	100	100	100
North Carolina	100	100	100	100
North Dakota	76	100	77	100
Ohio	100	100	100	100
Oklahoma	100	100	100	100
Oregon	100	100	100	100
Pennsylvania	100	100	100	100
Puerto Rico	44	74	44	74
Rhode Island	67	100	67	100
South Carolina	100	100	100	100
South Dakota	86	100	87	100
Tennessee	100	100	100	100
Texas	100	100	100	100
Utah	100	100	100	100
Vermont	62	100	63	100
Virginia	100	100	100	100
Washington	100	100	100	100
West Virginia	100	100	100	100
Wisconsin	100	100	100	100
Wyoming	78	100	79	100

* For multi-State projects, the minimum project size is the largest of the multi-State minimums from the participating States.

ii. Small Projects

A small project is an eligible project that does not meet the minimum project size described in Section C.3.c.i.

d. Large/Small Project Requirements

For a large project to be selected, the Department must determine that the project generates national or regional economic, mobility, or safety benefits; is cost-effective; contributes to one or more of the goals described in 23 U.S.C 150; is based on the results of preliminary engineering; has one or more stable and dependable funding or financing sources available to construct, maintain, and operate the project, and contingency amounts are available to cover unanticipated cost increases; cannot be easily and efficiently completed without other Federal funding or financial assistance; and is reasonably expected to begin construction no later than 18 months after the date of obligation. These requirements are discussed in greater detail in section D.2.b.vii.

For a small project to be selected, the Department must consider the cost-effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out.

e. Rural/Urban Area

This section describes the statutory definition of urban and rural areas and the minimum statutory requirements for projects that meet those definitions. For more information on how the Department consider projects in urban, rural, and low population areas as part of the selection process, see Section E.1.a. Criterion #2, and E.1.c.

The INFRA statute defines a rural area as an area outside an Urbanized Area [5] with a population of over 200,000. In this notice, urban area is defined as inside an Urbanized Area, as designated by the U.S. Census Bureau, with a population of 200,000 or more.[6] Rural and urban definitions differ in some other USDOT programs, including TIFIA and the FY 2016 TIGER Discretionary Grants program. Cost share requirements and minimum grant awards are the same for projects located in rural and urban areas. The Department will consider a project to be in a rural area if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located in a rural area. However, if a project consists of multiple components, as described under section C.3.f or C.3.g., then for each separate component the Department will determine whether that component is rural or urban. In some circumstances, including networks of projects under section C.3.g that cover wide geographic regions, this component-by-component determination may result in INFRA awards that include urban and rural funds.

f. Project Components

An application may describe a project that contains more than one component. The USDOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C, including the requirements for large projects described in sections C.3.d and D.2.b.vii; (2) independently aligns well with the selection criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of USDOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. If an application describes multiple components, the application should demonstrate how the components collectively advance the purposes of the INFRA program. An applicant should not add multiple components to a single application merely to aggregate costs or avoid submitting multiple applications.

Applicants should be aware that, depending upon applicable Federal law and the relationship among project components, an award funding only some project components may make other project components subject to Federal requirements as described in Section F.2.b. For example, under 40 CFR 1508.25, the NEPA review for the funded project component may need to include evaluation of all project components as connected, similar, or cumulative actions.

The Department strongly encourages applicants to identify in their applications the project components that meet independent utility standards and separately detail the costs and INFRA funding requested for each component. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses selection criteria.

g. Network of Projects

An application may describe and request funding for a network of projects. A network of projects is one INFRA award that consists of multiple projects addressing the same transportation problem. For example, if an applicant seeks to improve efficiency along a rail corridor, then their application might propose one award for four grade separation projects at four different railway-highway crossings. Each of the four projects would independently reduce congestion but the overall benefits would be greater if the projects were completed together under a single award.

The USDOT will evaluate applications that describe networks of projects similar to how it evaluates projects with multiple components. Because of their similarities, the guidance in section C.3.f is applicable to networks of projects, and applicants should follow that guidance on how to present information in their application. As with project components, depending upon applicable Federal law and the relationship among projects within a network of projects, an award that funds only some projects in a network may make other projects subject to Federal requirements as described in Section F.2.

h. Application Limit

To encourage applicants to prioritize their INFRA submissions, each eligible applicant may submit no more than three applications. The three-application limit applies only to applications where the applicant is the lead applicant. There is no limit on applications for which an applicant can be listed as a partnering agency. If a lead applicant submits more than three applications as the lead applicant, only the first three received will be considered.

D. Application and Submission Information

1. Address

Applications must be submitted through *www.Grants.gov*. Instructions

[5] For Census 2010, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau Web site at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/*. For the purposes of the INFRA program, Urbanized Areas with populations fewer than 200,000 will be considered rural.

[6] See *www.transportation.gov/buildamerica/InFRAgrants* for a list of Urbanized Areas with a population of 200,000 or more.

for submitting applications can be found at *https://www.transportation.gov/buildamerica/InFRAgrants.*

2. Content and Form of Application

The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424C (Budget Information for Construction Programs), cover page, and the Project Narrative. More detailed information about the cover pages and Project Narrative follows.

a. Cover Page

Each application should contain a cover page with the following chart:

Project name	
Was an INFRA application for this project submitted previously?	Yes/no.
If yes, what was the name of the project in the previous application?	
Previously Incurred Project Cost	$.
Future Eligible Project Cost	$.
Total Project Cost (This should be the sum of the previous two rows)	$.
INFRA Request	$.
Total Federal Funding (including INFRA)	$.
Are matching funds restricted to a specific project component? If so, which one?	Yes/no.
Is the project or a portion of the project currently located on National Highway Freight Network?	Yes/no.
Is the project or a portion of the project located on the NHS?	Yes/no (for each question).
• Does the project add capacity to the Interstate system?	
• Is the project in a national scenic area?	
Do the project components include a railway-highway grade crossing or grade separation project?	Yes/no.
• If so, please include the grade crossing ID.	
Do the project components include an intermodal or freight rail project, or freight project within the boundaries of a public or private freight rail, water (including ports), or intermodal facility?.	Yes/no.
If answered yes to either of the two component questions above, how much of requested INFRA funds will be spent on each of these projects components?	
State(s) in which project is located.	
Small or large project	Small/Large.
Urbanized Area in which project is located, if applicable.	
Population of Urbanized Area.	
Is the project currently programmed in the:	Yes/no (*please specify in which plans the project is currently programmed*).
• TIP	
• STIP	
• MPO Long Range Transportation Plan	
• State Long Range Transportation Plan	
• State Freight Plan?	
If selected, would you be interested in participating in a new environmental review and permitting approach?.	Yes/No.

b. Project Narrative for Construction Projects

The Department recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Project Description	See D.2.b.i.
II. Project Location	See D.2.b.ii.
III. Project Parties	See D.2.b.iii.
IV. Grant Funds, Sources and Uses of all Project Funding.	See D.2.b.iv.
V. Merit Criteria	See D.2.b.v.
VI. Project Readiness	See D.2.b.vi and E.1.c.ii.
VII. Large/Small Project Requirements.	See D.2.b.vii.

The project narrative should include the information necessary for the Department to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Department. The Department may ask any applicant to supplement data in its application, but expects applications to be complete upon submission.

In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps, and graphics, as appropriate to make the information easier to review. The Department recommends that the project narrative be prepared with standard formatting preferences. (*i.e.,* a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins.) The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 25-page limit are documents supporting assertions or conclusions made in the 25-page project narrative. If possible, Web site links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different USDOT financial assistance program may be referenced and described as unchanged. The Department recommends using appropriately descriptive final names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments. The USDOT recommends applications include the following sections:

i. Project Summary

The first section of the application should provide a concise description of the project, the transportation challenges that it is intended to address, and how it will address those challenges. This section should discuss the project's history, including a

description of any previously incurred costs. The applicant may use this section to place the project into a broader context of other infrastructure investments being pursued by the project sponsor.

ii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. If the project is located within the boundary of a Census-designated Urbanized Area, the application should identify the Urbanized Area.

iii. Project Parties

This section of the application should list all project parties, including details about the proposed grant recipient and other public and private parties who are involved in delivering the project, such as port authorities, terminal operators, freight railroads, shippers, carriers, freight-related associations, third-party logistics providers, and freight industry workforce organizations.

iv. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the project's budget. At a minimum, it should include:

(A) Previously-incurred expenses, as defined in Section C.3.c.

(B) Future eligible costs, as defined in Section C.3.c.

(C) For all funds to be used for future eligible project costs, the source and amount of those funds.

(D) For non-Federal funds to be used for future eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application.

(E) For Federal funds to be used for future eligible project costs, the amount, nature, and source of any required non-Federal match for those funds.

(F) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; INFRA; and other Federal. If the project contains components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget should be detailed enough to demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

(G) Information showing that the applicant has budgeted sufficient contingency amounts to cover unanticipated cost increases.

(H) The amount of the requested INFRA funds that would be subject to the $500 million maximum described in Section B.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a particular source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a particular source of funds is available for expenditure only during a fixed time period, the application should describe that restriction. Complete information about project funds will ensure that the Department's expectations for award execution align with any funding restrictions unrelated to the Department, even if an award differs from the applicant's request.

v. Merit Criteria

This section of the application should demonstrate how the project aligns with the Merit Criteria described in section E.1 of this notice. The Department encourages applicants to address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the following organization, which addresses each criterion separately, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about how the applicant should organize their application. Guidance describing how the Department will evaluate projects against the Merit Criteria is in section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

Criterion #1: Support for National or Regional Economic Vitality

This section of the application should describe the anticipated outcomes of the project that support the Economic Vitality criterion (described in Section E.1.a of this notice). The applicant should summarize the conclusions of the project's benefit-cost analysis, including estimates of the project's benefit-cost ratio and net benefits. The applicant should also describe economic impacts and other data-supported benefits that are not included in the benefit-cost analysis.

The benefit-cost analysis itself should be provided as an appendix to the project narrative, as described in D.2.d. of this Notice.

Criterion #2: Leveraging of Federal Funding

This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for the Department to evaluate how the project addresses the Leverage criterion, including:

(A) A description of the applicant's activities to maximize the non-Federal share of the project funding;

(B) a description of all evaluations of the project for private funding, the outcome of those evaluations, and all activities undertaken to pursue private funding for the project;

(C) a description of any fiscal constraints that affect the applicant's ability to use non-Federal contributions; and

(D) a description of the non-Federal share across the applicant's transportation program, if the applicant is a regular recipient of federal transportation funding; and

(E) a description of the applicant's plan to address the full life-cycle costs associated with the project, including a description of operations and maintenance funding commitments made by the applicant.

Criterion #3: Potential for Innovation

This section of the application should contain sufficient information to evaluate how the project includes or enables innovation in: (1) Environmental review and permitting; (2) use of experimental project delivery authorities; and (3) safety and technology. If the project does not address a particular innovation area, the application should state this fact.

If an applicant is proposing to participate in the environmental review and permitting approach described in section A.2.c, the application should describe how the project would benefit from participation, identify significant anticipated permitting challenges, and identify coordination that might be necessary to complete the environmental and permitting review process.

If an applicant is proposing to use SEP–14, SEP–15, or some other experimental authority program, the applicant should describe that proposal and their expected benefits. The applicant should also provide sufficient information for evaluators to confirm that the applicant's proposal would meet the requirements of the specific experimental authority program.[7]

If an applicant is proposing to adopt innovative safety approaches or technology, the application should demonstrate the applicant's capacity to implement those innovations, the applicant's understanding of whether the innovations will require extraordinary permitting, approvals, or other procedural actions, and the effects of those innovations on the project delivery timeline.

Criterion #4: Performance and Accountability

This section of the application should include sufficient information to evaluate how the applicant will advance the Performance and Accountability program objective. In general, the applicant should describe mechanisms that will allow the Department to hold it accountable for advancing INFRA program goals. Additional details for three approaches are provided in the following paragraphs, but these examples are not exhaustive. As described in greater detail in section A.2.d, the Department encourages applicants to identify other creative ways to condition funding to advance INFRA program goals and describe those mechanisms in this section of the application.

If the applicant is proposing to condition funding availability on timely completion of project milestones, the applicant should identify specific milestone events, provide target dates for those milestones, and propose a relationship between some or all of the requested INFRA funding and the milestones.

If the applicant is proposing to adopt a specific policy change, the applicant should provide sufficient information for evaluators to understand the existing policy, how changing the policy would advance the Department's goals, and how feasible the change will be for the applicant to complete within the project's delivery timeframe. The applicant should propose a relationship between some or all of the requested INFRA funding and its completion of the change.

If the applicant is proposing to condition funding availability on reaching specific performance targets, the applicant should detail those performance targets in detail, describe the feasibility of tracking and achieving the target within the project's delivery timeframe, and propose a relationship between some or all of the requested INFRA funding and the performance objective.

vi. Project Readiness

This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for the Department to evaluate whether the project is reasonably expected to begin construction in a timely manner. To assist the Department's project readiness assessment, the applicant should provide the information requested on technical feasibility, project schedule, project approvals, and project risks, each of which is described in greater detail in the following sections. Applicants are not required to follow the specific format described here, but this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about what information applicants should provide and how the applicant should organize their application. Guidance describing how the Department will evaluate a project's readiness is described in section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

(A) Technical Feasibility. The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the INFRA application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

(B) Project Schedule. The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the Statewide Transportation Improvement Program), start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates (PS&E); procurement; State and local approvals; project partnership and implementation agreements including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(1) All necessary activities will be complete to allow INFRA funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2020 for FY 2017 funds, September 30, 2021 for FY 2018 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(2) the project can begin construction quickly upon obligation of INFRA funds, and that the grant funds will be spent expeditiously once construction starts; and

(3) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary.

(C) Required Approvals.

(1) Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State and local requirements and completion of the NEPA process. Specifically, the application should include:

(a) Information about the NEPA status of the project. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a Web site link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all

[7] SEP–14 information is available at *https://www.fhwa.dot.gov/programadmin/contracts/sep_a.cfm.* SEP–15 information is available at *https://www.fhwa.dot.gov/ipd/p3/tools_programs/sep15_procedures.aspx.*

milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements.

(b) Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,[8] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a Web site link or other reference to copies of any reviews, approvals, and permits prepared.

(c) Environmental studies or other documents—preferably through a Web site link—that describe in detail known project impacts, and possible mitigation for those impacts.

(d) A description of discussions with the appropriate USDOT modal administration field or headquarters office regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

(e) A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

(2) State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and STIP or TIP funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

(3) Federal Transportation Requirements Affecting State and Local Planning. The planning requirements applicable to the Federal-aid highway program apply to all INFRA projects, but for port, freight, and rail projects planning requirements of the operating administration that will administer the INFRA project will also apply,[9] including intermodal projects located at airport facilities.[10] Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document.

To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202). Applicants should provide links or other documentation supporting this consideration.

Because projects have different schedules, the construction start date for each INFRA grant will be specified in the project-specific agreements signed by relevant modal administration and the grant recipients, based on critical path items that applicants identify in the application and will be consistent with relevant State and local plans.

(D) Assessment of Project Risks and Mitigation Strategies. Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake in order to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

To the extent it is unfamiliar with the Federal program, the applicant should contact USDOT modal field or headquarters offices as found at *www.transportation.gov/infragrants* for information on what steps are pre-requisite to the obligation of Federal funds in order to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

vii. Large/Small Project Requirements

To select a large project for award, the Department must determine that the project satisfies several statutory requirements enumerated at 23 U.S.C. 117(g) and restated in the table below. The application must include sufficient information for the Department to make these determinations. Applicants should use this section of the application to summarize how their project meets each of the following requirements. Applicants are not required to reproduce the table below in their application, but following this format will help evaluators identify the relevant information that supports each large project determination. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

[8] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

[9] In accordance with 23 U.S.C. 134 and 135, all projects requiring an action by the Federal Highway Administration (FHWA) must be in the applicable plan and programming documents (*e.g.,* metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP)). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive an INFRA grant until it is included in such plans. Projects not currently included in these plans can be amended by the State and metropolitan planning organization (MPO). Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans in order to receive an INFRA grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would include whether the project is in a TIP or a State Freight Plan that conforms to the requirements Section 70202 of Title 49 prior to the start of construction. Port planning guidelines are available at *StrongPorts.gov*.

[10] Projects at grant obligated airports must be compatible with the FAA-approved Airport Layout Plan (ALP), as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: Must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

Large project determination	Guidance
1. Does the project generate national or regional economic, mobility, safety benefits?	Summarize the economic, mobility, and safety benefits described in Section V of the application, and describe the scale of their impact in national or regional terms.
2. Is the project cost effective?	Highlight the results of the benefit cost analysis described in Section V of the application.
3. Does the project contribute to one or more of the Goals listed under 23 U.S.C. 150 (and shown below)? (b) National Goals.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals: (1) Safety.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads. (2) Infrastructure condition.—To maintain the highway infrastructure asset system in a state of good repair. (3) Congestion reduction.—To achieve a significant reduction in congestion on the National Highway System. (4) System reliability.—To improve the efficiency of the surface transportation system. (5) Freight movement and economic vitality.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development. (6) Environmental sustainability.—To enhance the performance of the transportation system while protecting and enhancing the natural environment. (7) Reduced project delivery delays.—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.	Specify the Goal(s) and summarize how the project contributes to that goal(s). This information may also be found in Section I or Section V.
4. Is the project based on the results of preliminary engineering?	Yes/No. Please provide evidence of preliminary engineering. For more information on preliminary engineering activities, please see: *https://www.fhwa.dot.gov/federalaid/150311.cfm*.
5a. With respect to non-Federal financial commitments, does the project have one or more stable and dependable funding or financing sources to construct, maintain, and operate the project?	Please indicate funding source(s) and amounts. Historical trends, current policy, or future feasibility analyses can be used as evidence to substantiate the stable and dependable nature of the non-Federal funding or financing.
5b. Are contingency amounts available to cover unanticipated cost increases?	Contingency amounts are often, but not always, expressly shown in project budgets or the SF–424C. If your project cost estimates include an implicit contingency calculation, please say so directly.
6. Is it the case that the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor?	Discussion of the impact that not having any Federal funding, including an INFRA grant, would have on project's schedule, cost, or likelihood of completion, can help convey whether a project can be completed as easily or efficiently without Federal funding available to the project sponsor.
7. Is the project reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project?	Please reference project budget and schedule when providing evidence.

For a small project to be selected, the Department must consider the cost effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out. If an applicant seeks an award for a small project, it should use this section to provide information on the project's cost effectiveness and the project's effect on the mobility in its State and region, or refer to where else the information can be found in the application.

c. Guidance for Benefit-Cost Analysis

This section describes the recommended approach for the completion and submission of a benefit-cost analysis (BCA) as an appendix to the Project Narrative. The results of the analysis should be summarized in the Project Narrative directly, as described in Section D.2.b.v.

Applicants should delineate each of their project's expected outcomes in the form of a complete BCA to enable the Department to consider cost-effectiveness (small projects), determine whether the project will be cost effective (large projects), estimate a benefit-cost ratio and calculate the magnitude of net benefits and costs for the project. In support of each project for which an applicant seeks funding, that applicant should submit a BCA that quantifies the expected benefits of the project against a no-build baseline, provides monetary estimates of the benefits' economic value, and compares the properly-discounted present values of these benefits to the project's estimated costs.

The primary economic benefits from projects eligible for INFRA grants are likely to include savings in travel time costs, vehicle operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it as a result of the project. Reduced damages from vehicle emissions and savings in maintenance costs to public agencies may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times or improvements to the existing human and natural environments (such as increased connectivity, improved public

health, storm water runoff mitigation, and noise reduction), while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project, as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period (net of future maintenance and rehabilitation costs) as a deduction from the estimated costs. The costs and benefits that are compared in the BCA should also cover the same project scope.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by USDOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values, are available in the Department's guidance for conducting BCAs for projects seeking funding under the INFRA program (see *https://www.transportation.gov/buildamerica/infragrants*).

Applicants for freight projects within the boundaries of a freight rail, water (including ports), or intermodal facility should also quantify the benefits of their proposed projects for freight movements on the National Highway Freight Network, and should demonstrate that the Federal share of the project funds only elements of the project that provide public benefits.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make an INFRA grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make an INFRA grant, the Department may determine that the applicant is not qualified to receive an INFRA grant and use that determination as a basis for making an INFRA grant to another applicant.

4. Submission Dates and Timelines

a. Deadline

Applications must be submitted by 8:00 p.m. EST November 2, 2017. The *Grants.gov* ''Apply'' function will open by August 1, 2017.

To submit an application through *Grants.gov,* applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number:

(2) Register with the System Award for Management (SAM) at *www.sam.gov;* and

(3) Create a *Grants.gov* username and password;

(4) The E-business Point of Contact (POC) at the applicant's organization must also respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the POC as an Authorized Organization Representative (AOR). Please note that there can only be one AOR per organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If interested parties experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

b. Consideration of Application

Only applicants who comply with all submission deadlines described in this notice and submit applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

c. Late Applications

Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties outlined in Section D.4.d.

d. Late Application Policy

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *INFRAgrants@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* ''Grant tracking number'';

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contact the *Grants.gov* Help Desk to validate reported technical issues, USDOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov.* If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

a. Merit Criteria for Construction Projects

To differentiate among applications for construction projects under this notice, the Department will consider the extent to which the project addresses the follow criteria, which are explained in greater detail below and reflect the key program objectives described in section A.2: (1) Support for national or regional economic vitality; (2)

leveraging of Federal funding; (3) potential for innovation; and (4) performance and accountability. The Department is neither weighting these criteria nor requiring that each application address every criterion, but the Department expects that competitive applications will substantively address all four criteria.

Criterion #1: Support for National or Regional Economic Vitality

The Department will consider the extent to which a project would support the economic vitality of either the nation or a region. To the extent possible, the Department will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the applicant-supplied benefit-cost analysis described in section D.2.d. In addition to considering the anticipated outcomes of the project that align with this criterion, the Department will consider estimates of the project's benefit-cost ratio and net quantifiable benefits.

There are several different types of projects that the Department anticipates will successfully support national or regional economic vitality, including projects that:

- Achieve a significant reduction in traffic fatalities and serious injuries on the surface transportation system;
- Improve interactions between roadway users, reducing the likelihood of derailments or high consequence events;
- Eliminate bottlenecks in the freight supply chain;
- Ensure or restore the good condition of infrastructure that supports commerce and economic growth;
- Sustain or advance national or regional economic development in areas of need, including projects that provide or improve connections to the Nation's transportation network to support the movement of freight and people; and
- Reduce barriers separating workers from employment centers, including projects that are primarily oriented toward reducing traffic congestion and corridor projects that reduce transportation network gaps to connect peripheral regions to urban centers or job opportunities.

The Department anticipates that applications for networks of projects are likely to align well with this evaluation criterion because networks of projects often are able to address problems on a broader scale.

Criterion #2: Leveraging of Federal Funding

To maximize the impact of INFRA awards, the Department seeks to leverage INFRA funding with non-Federal contributions. Therefore, the Department will consider the extent to which an applicant proposes to use non-Federal funding. For example, an application that proposes a 20 percent Federal share will be more competitive than an otherwise identical application proposing 50 percent Federal share. For the purposes of this criterion, funds from Federal credit programs, including TIFIA and RRIF, will be considered non-Federal funding.

There are three additional types of information that the Department will consider when evaluating an applicant's non-Federal contributions. First, DOT recognizes that applicants have varying abilities and resources to contribute non-Federal contributions. If an applicant describes broader fiscal constraints that affect its ability to generate or draw on non-Federal contributions, the Department will consider those constraints. Relevant constraints may include the size of the population taxed to supply the matching funds, the wealth of that population, or other constraints on the raising of funds. In practice, the Department expects that projects that come from rural or less-wealthy applicants will have to meet a lower standard for leverage than projects coming from urban or more wealthy applicants; however, the Department still expects all applicants' projects to maximize leverage to the extent they are able. Second, the Department recognizes that some applicants consolidate Federal funding into a minimum number of projects to simplify their burden complying with Federal administrative requirements. For those applicants, the Federal share on specific projects may be much higher than the overall Federal share of their overall transportation program. If an applicant follows that practice, explains their practice in their application, and provides evidence establishing the Federal share of their overall transportation program, the Department will consider that information. Third, the Department will consider how well the applicant has prepared for future operations and maintenance costs associated with their project's life-cycle. Applicants should demonstrate a credible plan to maintain their asset without having to rely on future federal funding. This plan should include a description of the applicant's approach to ensuring operations and maintenance will not be underfunded in future years.

In addition, the Department seeks to increase the sources of infrastructure funding by encouraging private infrastructure investment. Therefore, projects that incorporate private sector contributions, including through a public-private partnership structure, are likely to be more competitive than those that rely solely on public non-Federal funding. Likewise, applicants who have pursued private funds for appropriate projects are likely to be more competitive under this program than applicants who have not. If an applicant omits information on the applicability and pursuit of private funds, the Department may conclude that the applicant has not considered viable non-Federal funding alternatives and an INFRA award would be premature.

This evaluation criterion is separate from the statutory cost share requirements for INFRA grants, which are described Section C.2. Those statutory requirements establish the minimum permissible non-Federal share; they do not define a competitive INFRA project.

Criterion #3: Potential for Innovation

The Department seeks to use INFRA program to encourage innovation in three areas: (1) Environmental review and permitting; (2) use of experimental project delivery authorities; and (3) safety and technology. Under this criterion, the Department will consider the extent to which a project includes or enables innovation in each of those areas.

In Innovation Area #1, as described in section A.2.c, the Department seeks to establish a new approach to the process of Federal environmental review and permitting. When making INFRA award decisions, the Department will consider an applicant's interest in the participating in this new approach and the extent to which the project could benefit from that participation. The Department will also consider the degree to which the results of a project's participation might be representative and reproducible to other departmental or government-wide projects or programs.

In Innovation Area #2, as described in section A.2.c, the Department seeks innovative approaches to project delivery under the auspices of the FHWA SEP–14 and SEP–15 programs and any other applicable experimental programs. When making INFRA award decisions, the Department will consider the applicant's proposals to use those programs, whether the proposals are consistent with the objectives and requirements of those programs, the potential benefits that experimental authorities or waivers might provide to the project, and the broader applicability of potential results.

Finally, in Innovation Area #3, as described in section A.2.c, the Department seeks to experiment with innovative approaches to transportation safety, particularly in relation to automated vehicles and the detection, mitigation, and documentation of safety risks. When making INFRA award decisions, the Department will consider any innovative safety approaches proposed by the applicant, the safety benefits that those approaches could produce, and the broader applicability of the potential results. As described in section F.2.a, the Department expects all projects to implement baseline safety improvements consistent with FHWA's list of ''Proven Countermeasures'' and will not consider those improvements under this criterion.

Criterion #4: Performance and Accountability

The Department intends to award INFRA funding to projects that will be delivered on agreed-upon schedules, that will generate clear, quantifiable, results, and that will advance the Department's transportation policy goals. The Department expects all applicants to provide accurate estimates of benefits of their project, its delivery schedule, and total costs. However, the Department will consider the extent to which the applicant proposes specific measures and conditions allowing the Department to ensure accountability, as described in section A.2.d. Instead of rewarding unrealistic promises, the Department intends to reward thoughtful planning, efficient delivery, and effective policy.

b. Additional Considerations

i. Geographic Diversity

By statute, when selecting INFRA projects, the Department must consider contributions to geographic diversity among recipients, including the need for a balance between the needs of rural and urban communities. However, the Department also recognizes that it can better balance the needs of rural and urban communities if it does not take a binary view of urban and rural. Accordingly, in addition to considering whether a project is ''rural'' as defined by the INFRA statute and described in section C.3.e, when balancing the needs of rural and urban communities, the Department will consider the actual population of the community that each project serves.

ii. Project Readiness

During application evaluation, the Department considers project readiness in two ways: To assess the likelihood of successful project delivery and to confirm that a project will satisfy statutory readiness requirements.

First, the Department will consider significant risks to successful completion of a project, including risks associated with environmental review, permitting, technical feasibility, funding, and the applicant's capacity to manage project delivery. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks is more competitive than a comparable project with unaddressed risks.

Second, by statute, the Department cannot award a large project unless that project is reasonably expected to begin construction within 18 months of obligation of funds for the project. Obligation occurs when a selected applicant enters a written, project-specific agreement with the Department and is generally after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Depending on the nature of pre-construction activities included in the awarded project, the Department may obligate funds in phases. Preliminary engineering and right-of-way acquisition activities, such as environmental review, design work, and other preconstruction activities, do not fulfill the requirement to begin construction within 18 months of obligation for large projects. By statute, INFRA funds must be obligated within three years of the end of the fiscal year for which they are authorized. Therefore, for awards with FY 2017 funds, the Department will determine that large projects with an anticipated obligation date beyond September 30, 2020 are not reasonably expected to begin construction within 18 months of obligation. For awards with FY 2018 funds, that deadline is one year later: September 30, 2021.

2. Review and Selection Process

The USDOT will review all eligible applications received before the application deadline. The INFRA process consists of a Technical Evaluation phase and Senior Review. In the Technical Evaluation phase, teams will, for each project, determine whether the project satisfies statutory requirements and rate how well it addresses the selection criteria. The Senior Review Team will consider the applications and the technical evaluations to determine which projects to advance to the Secretary for consideration. The Secretary will ultimately select the projects for award. A Quality Control and Oversight Team will ensure consistency across project evaluations and appropriate documentation throughout the review and selection process.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in section E, the Secretary will announce awarded projects by posting a list of selected projects at *https://www.transportation.gov/buildamerica/INFRAgrants.* Following the announcement, the Department will contact the point of contact listed in the SF 424 to initiate negotiation of a project-specific agreement.

2. Administrative and National Policy Requirements

a. Safety Requirements

The Department will require INFRA projects to meet two general requirements related to safety. First, INFRA projects must be part of a thoughtful, data-driven approach to safety. Each State maintains a strategic highway safety plan.[11] INFRA projects will be required to incorporate appropriate elements that respond to priority areas identified in that plan and are likely to yield safety benefits. Second, INFRA projects will incorporate two categories of safety-related activities. The first category encompasses activities that the Federal Highway Administration (FHWA) has identified as ''proven safety countermeasures'' due to their history of

[11] Information on State-specific strategic highway safety plans is available at *https://safety.fhwa.dot.gov/shsp/other_resources.cfm.*

demonstrated effectiveness.[12] The second category encompasses safety-related tools, technologies, and practices from FHWA's Every Day Counts initiative.[13]

After selecting INFRA recipients, the Department will work with those recipients on a project-by-project basis to determine the specific safety requirements that are appropriate for each award.

b. Other Administrative and Policy Requirements

All INFRA awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by USDOT at 2 CFR part 1201. A project carried out under the INFRA program will be treated as if the project is located on a Federal-aid highway. All INFRA projects are subject to the Buy America requirement at 23 U.S.C. 313. Additionally, applicable Federal laws, rules and regulations of the relevant operating administration administering the project will apply to the projects that receive INFRA grants, including planning requirements, Stakeholder Agreements, and other requirements under the Department's other highway, transit, rail, and port grant programs. For an illustrative list of the applicable laws, rules, regulations, executive orders, policies, guidelines, and requirements as they relate to an INFRA grant, please see *http://www.ops.fhwa.dot.gov/Freight/infrastructure/nsfhp/fy2016_gr_exhbt_c/index.htm*.

The applicability of Federal requirements to a project may be affected by the scope of the NEPA reviews for that project. For example, under 23 U.S.C. 313(g), Buy America requirements apply to all contracts that are eligible for assistance under title 23, United States Code, and are carried out within the scope of the NEPA finding, determination, or decision regardless of the funding source of such contracts if at least one contract is funded with Title 23 funds.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for an INFRA grant must submit the Federal Financial Report (SF–425) on the financial condition of the project and the project's progress, as well as an Annual Budget Review and Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the INFRA program.

b. Reporting of Matters Related to Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Office of the Secretary via email at *InFRAgrants@dot.gov.* For more information about highway projects, please contact Crystal Jones at (202) 366–2976. For more information about maritime projects, please contact Robert Bouchard at (202) 366–5076. For more information about rail projects, please contact Stephanie Lawrence at (202) 493–1376. For more information about railway-highway grade crossing projects, please contact Karen McClure at (202) 493–6417. For all other questions, please contact Paul Baumer at (202) 366–1092. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT's Web site at *https://www.transportation.gov/buildamerica/InFRAgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact USDOT directly, rather than through intermediaries or third parties, with questions.

H. Other Information

1. Invitation for Public Comment on the FY 2017–2018 Notice

The FAST Act authorized the INFRA program through FY 2020. This notice solicits applications for FY 2017 and FY 2018 only. The Department invites interested parties to submit comments about this notice's contents, and the Department's implementation choices, as well as suggestions for clarification in future INFRA rounds. The Department may consider the submitted comments and suggestions when developing subsequent INFRA solicitations and guidance, but submitted comments will not affect the selection criteria for the FY 2017–FY 2018 round. Applications or comments about specific projects should not be submitted to the docket. Any application submitted to the docket will not be reviewed. Comments should be sent to DOT–OST–0090 by November 2, 2017, but, to the extent practicable, the Department will consider late filed comments.

2. Protection of Confidential Business Information

All information submitted as part of, or in support of, any application shall use publicly-available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, USDOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

3. Publication of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested.

[12] Information on FHWA proven safety countermeasures is available at: *https://safety.fhwa.dot.gov/provencountermeasures/.*

[13] Information of the FHWA Everyday Counts Initiative is available at *https://www.fhwa.dot.gov/innovation/everydaycounts/.*

Issued in Washington, DC, on June 28, 2017.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2017–14042 Filed 7–3–17; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.''

DATES: Comments must be submitted on or before September 5, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0321, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

OMB Control No.: 1557–0321.

Description: The OCC's guidelines codified in 12 CFR part 30, appendix D establish minimum standards for the design and implementation of a risk governance framework for insured national banks, insured federal savings associations, and insured federal branches of a foreign bank (bank). The guidelines apply to a bank with average total consolidated assets:

(i) Equal to or greater than $50 billion; (ii) less than $50 billion if that bank's parent company controls at least one insured national bank or insured federal savings association that has average total consolidated assets of $50 billion or greater; or (iii) less than $50 billion, if the OCC determines such bank's operations are highly complex or otherwise present a heightened risk as to warrant the application of the guidelines (covered banks). The guidelines also establish minimum standards for a board of directors in overseeing the framework's design and implementation. These guidelines were finalized on September 11, 2014.[1] The OCC is now seeking to renew the information collection associated with these guidelines.

The standards contained in the guidelines are enforceable under section 39 of the Federal Deposit Insurance Act (FDIA),[2] which authorizes the OCC to prescribe operational and managerial standards for insured national banks, insured federal savings associations, and insured federal branches of a foreign bank.

The guidelines formalize the OCC's heightened expectations program. The guidelines also further the goal of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to strengthen the financial system by focusing management and boards of directors on improving and strengthening risk management practices and governance, thereby minimizing the probability and impact of future financial crises.

The standards for the design and implementation of the risk governance framework, which contain collections of information, are as follows:

Standards for Risk Governance Framework

Covered banks should establish and adhere to a formal, written risk governance framework designed by independent risk management. The framework should include delegations of authority from the board of directors to management committees and executive officers as well as risk limits established for material activities. The framework should be approved by the board of directors or the board's risk committee, and it should be reviewed and updated, at least annually, by independent risk management.

Front Line Units

Front line units should take responsibility and be held accountable by the chief executive officer (CEO) and the board of directors for appropriately assessing and effectively managing all of

[1] 79 FR 51518.

[2] 12 U.S.C. 1831p–1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, section 132(a), 105 Stat. 2236, 2267–70 (Dec. 19, 1991).

the risks associated with their activities. In fulfilling this responsibility, each front line unit should, either alone or in conjunction with another organizational unit that has the purpose of assisting a front line unit: (i) Assess, on an ongoing basis, the material risks associated with its activities and use such risk assessments as the basis for fulfilling its responsibilities and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the unit's risk profile or other conditions; (ii) establish and adhere to a set of written policies that include front line unit risk limits. Such policies should ensure risks associated with the front line unit's activities are effectively identified, measured, monitored, and controlled, consistent with the covered bank's risk appetite statement, concentration risk limits, and all policies established within the risk governance framework; (iii) establish and adhere to procedures and processes, as necessary to maintain compliance with the policies described in (ii); (iv) adhere to all applicable policies, procedures, and processes established by independent risk management; (v) develop, attract, and retain talent and maintain staffing levels required to carry out the unit's role and responsibilities effectively; (vi) establish and adhere to talent management processes; and (vii) establish and adhere to compensation and performance management programs.

Independent Risk Management

Independent risk management should oversee the covered bank's risk-taking activities and assess risks and issues independent of the front line units by: (i) Designing a comprehensive written risk governance framework commensurate with the size, complexity, and risk profile of the covered bank; (ii) identifying and assessing, on an ongoing basis, the covered bank's material aggregate risks and using such risk assessments as the basis for fulfilling its responsibilities and for determining if actions need to be taken to strengthen risk management or reduce risk given changes in the covered bank's risk profile or other conditions; (iii) establishing and adhering to enterprise policies that include concentration risk limits; (iv) establishing and adhering to procedures and processes to ensure compliance with policies in (iii); (v) identifying and communicating to the CEO and board of directors or board's risk committee material risks and significant instances where independent risk management's assessment of risk differs from that of a front line unit, and significant instances where a front line unit is not adhering to the risk governance framework; (vi) identifying and communicating to the board of directors or the board's risk committee material risks and significant instances where independent risk management's assessment of risk differs from the CEO, and significant instances where the CEO is not adhering to, or holding front line units accountable for adhering to, the risk governance framework; and (vii) developing, attracting, and retaining talent and maintaining staffing levels required to carry out the unit's role and responsibilities effectively while establishing and adhering to talent management processes and compensation and performance management programs.

Internal Audit

Internal audit should ensure that the covered bank's risk governance framework complies with the guidelines and is appropriate for the size, complexity, and risk profile of the covered bank. It should maintain a complete and current inventory of all of the covered bank's material processes, product lines, services, and functions, and assess the risks, including emerging risks, associated with each, which collectively provide a basis for the audit plan. It should establish and adhere to an audit plan, which is periodically reviewed and updated, that takes into account the covered bank's risk profile, emerging risks, issues, and establishes the frequency with which activities should be audited. The audit plan should require internal audit to evaluate the adequacy of and compliance with policies, procedures, and processes established by front line units and independent risk management under the risk governance framework. Significant changes to the audit plan should be communicated to the board's audit committee. Internal audit should report in writing, conclusions and material issues and recommendations from audit work carried out under the audit plan to the board's audit committee. Reports should identify the root cause of any material issues and include: (i) A determination of whether the root cause creates an issue that has an impact on one organizational unit or multiple organizational units within the covered bank; and (ii) a determination of the effectiveness of front line units and independent risk management in identifying and resolving issues in a timely manner. Internal audit should establish and adhere to processes for independently assessing the design and ongoing effectiveness of the risk governance framework on at least an annual basis. The independent assessment should include a conclusion on the covered bank's compliance with the standards set forth in the guidelines. Internal audit should identify and communicate to the board's audit committee significant instances where front line units or independent risk management are not adhering to the risk governance framework. Internal audit should establish a quality assurance program that ensures internal audit's policies, procedures, and processes comply with applicable regulatory and industry guidance, are appropriate for the size, complexity, and risk profile of the covered bank, are updated to reflect changes to internal and external risk factors, emerging risks, and improvements in industry internal audit practices, and are consistently followed. Internal audit should develop, attract, and retain talent and maintain staffing levels required to effectively carry out its role and responsibilities. Internal audit should establish and adhere to talent management processes and compensation and performance management programs that comply with the guidelines.

Strategic Plan

The CEO, with input from front line units, independent risk management, and internal audit, should be responsible for the development of a written strategic plan that should cover, at a minimum, a three-year period. The board of directors should evaluate and approve the plan and monitor management's efforts to implement the strategic plan at least annually. The plan should include a comprehensive assessment of risks that impact the covered bank, an overall mission statement and strategic objectives, an explanation of how the covered bank will update the risk governance framework to account for changes to its risk profile projected under the strategic plan, and be reviewed, updated, and approved due to changes in the covered bank's risk profile or operating environment that were not contemplated when the plan was developed.

Risk Appetite Statement

A covered bank should have a comprehensive written statement that articulates its risk appetite that serves as the basis for the risk governance framework. It should contain qualitative components that describe a safe and sound risk culture and how the covered bank will assess and accept risks and quantitative limits that include sound stress testing processes and address earnings, capital, and liquidity.

Risk Limit Breaches

A covered bank should establish and adhere to processes that require front line units and independent risk management to: (i) Identify breaches of the risk appetite statement, concentration risk limits, and front line unit risk limits; (ii) distinguish breaches based on the severity of their impact; (iii) establish protocols for disseminating information regarding a breach; (iv) provide a written description of the breach resolution; and (v) establish accountability for reporting and resolving breaches.

Concentration Risk Management

The risk governance framework should include policies and supporting processes appropriate for the covered bank's size, complexity, and risk profile for effectively identifying, measuring, monitoring, and controlling the covered bank's concentrations of risk.

Risk Data Aggregation and Reporting

The risk governance framework should include a set of policies, supported by appropriate procedures and processes, designed to provide risk data aggregation and reporting capabilities appropriate for the covered bank's size, complexity, and risk profile and to support supervisory reporting requirements. Collectively, these policies, procedures, and processes should provide for: (i) The design, implementation, and maintenance of a data architecture and information technology infrastructure that support the covered bank's risk aggregation and reporting needs during normal times and during times of stress; (ii) the capturing and aggregating of risk data and reporting of material risks, concentrations, and emerging risks in a timely manner to the board of directors and the OCC; and (iii) the distribution of risk reports to all relevant parties at a frequency that meets their needs for decision-making purposes.

Talent and Compensation Management

A covered bank should establish and adhere to processes for talent development, recruitment, and succession planning. The board of directors or appropriate committee should review and approve a written talent management program. A covered bank should also establish and adhere to compensation and performance management programs that comply with any applicable statute or regulation.

Board of Directors Training and Evaluation

The board of directors of a covered bank should establish and adhere to a formal, ongoing training program for all directors. The board of directors should also conduct an annual self-assessment.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 41.

Estimated Burden per Respondent: 3,776 hours.

Estimated Total Annual Burden: 154,816 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: June 23, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017–14000 Filed 7–3–17; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Assessment of Fees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Assessment of Fees.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by August 4, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0223, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0223, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC is requesting that OMB extend its approval of the following information collection:

Title: Assessment of Fees.

OMB Control No.: 1557–0223.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: The OCC is authorized by the National Bank Act (for national banks) and the Home Owners Loan Act (for Federal savings associations) to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC. 12 U.S.C. 482 and 1467(a), respectively; 12 U.S.C. 16 (for national banks and Federal savings associations). OCC regulations require an independent credit card bank or independent credit card Federal savings association (collectively, independent credit card institutions) to pay an additional assessment based on receivables attributable to accounts owned by the national bank or Federal savings association. Independent credit card institutions are national banks or Federal savings associations that primarily engage in credit card operations and are not affiliated with a full service national bank or Federal savings association. Under 12 CFR 8.2(c)(2), the OCC also has the authority to assess an independent credit card institution that is affiliated with a full-service national bank or full-service Federal savings association if the OCC concludes that the affiliation is intended to evade 12 CFR part 8.

The OCC requires independent credit card institutions to provide the OCC with ''receivables attributable'' data. ''Receivables attributable'' refers to the total amount of outstanding balances due on credit card accounts owned by an independent credit card institution (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the independent credit card institution's balance sheet as of that day. The OCC will use the information to verify the accuracy of each independent credit card institution's assessment computation and to adjust the assessment rate for independent credit card institutions over time.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden: 24 hours.

The OCC issued a notice for 60 days of comment on April 4, 2017, 82 FR 16473. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: June 23, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2017–14002 Filed 7–3–17; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Multiple Departmental Office Information Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the information collections listed below, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 5, 2017.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Leonard by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Troubled Asset Relief Program—Conflicts of Interest.

OMB Control Number: 1505–0209.

Type of Review: Extension without change of a currently approved collection.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), as amended by the American Recovery and Reinvestment Act (ARRA) of 2009, the Department of the Treasury has implemented aspects of the Troubled Asset Relief Program (TARP) by codifying section 108 of EESA. Title 31 CFR part 31, TARP Conflict of Interest, sets forth the process for reviewing and addressing actual or potential conflicts of interest among any individuals or entities seeking or having a contract or financial agency agreement with the Treasury for services under EESA. The information collection required by this part will be used to evaluate and minimize real and apparent conflicts of interest related to contractual or financial agent agreement services performed under TARP.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 19.

Estimated Annual Response: 41.

Estimated Total Annual Burden Hours: 876.

Title: TARP Capital Purchase Program—Executive Compensation.

OMB Control Number: 1505–0219.

Type of Review: Authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Public Law 110–343, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, the Department of the Treasury established the Troubled Asset Relief Program (TARP) to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution on such terms and conditions determined by the Secretary. Section 111 of EESA, as amended by ARRA, provides that certain entities receiving financial assistance from Treasury under TARP will be subject to specified executive compensation and corporate governance standards established by the Secretary. These standards were set forth in the interim final rule published on June 15, 2009 (74 FR 28394), as corrected on December 7, 2009 (74 FR 63990) (the Interim Final Rule). The standards implemented in the Interim Final Rule require that TARP recipients submit certain information pertaining to their executive compensation and corporate governance practices.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 41.

Estimated Annual Response: 180.

Estimated Total Annual Burden Hours: 1,530.

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. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 28, 2017.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2017–14005 Filed 7–3–17; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 82 Wednesday,
No. 127 July 5, 2017

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program; Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6068–F]

RIN 0938–AS74

Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs based on the changes to Medicaid and the Children's Health Insurance Program (CHIP) eligibility under the Patient Protection and Affordable Care Act. This rule also implements various other improvements to the PERM program.

DATES: These regulations are effective on August 4, 2017.

FOR FURTHER INFORMATION CONTACT: Bridgett Rider, (410) 786–2602.

SUPPLEMENTARY INFORMATION:

Acronyms

AFR Agency Financial Report
AT Account Transfer file
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CHIPRA Children's Health Insurance Program Reauthorization Act of 2009
CMS Centers for Medicare and Medicaid Services
DAB Departmental Appeals Board
DHHS Department of Health and Human Services
DP Data Processing
ELA Express Lane Agency
ELE Express Lane Eligibility
EOB Explanation of Benefits
ERC Eligibility Review Contractor
FFE Federally Facilitated Exchange
FFE–A Federally Facilitated Exchange-Assessment
FFE–D Federally Facilitated Exchange-Determination
FFP Federal Financial Participation
FFS Fee-For-Service
FFY Federal Fiscal Year
FMAP Federal Medical Assistance Percentages
FY Fiscal Year
HHS Health and Human Services
HIPP Health Insurance Premium Payments
IFR Interim Final Rule with comment period
IPERA Improper Payments Elimination and Recovery Act
IPERIA Improper Payments Elimination and Recovery Improvement Act
IPIA Improper Payments Information Act
IRFA Initial Regulatory Flexibility Analysis
MAGI Modified Adjusted Gross Income
MEQC Medicaid Eligibility Quality Control
MSO Medicaid State Operations
OMB Office of Management and Budget
PCCM Primary Care Case Management
PERM Payment Error Rate Measurement
RC Review Contractor
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SC Statistical Contractor
SHO State Health Official
the Act Social Security Act
UMRA Unfunded Mandates Reform Act

I. Background

A. Introduction

The Medicaid Eligibility Quality Control (MEQC) program at § 431.810 through 431.822 implements section 1903(u) of the Social Security Act (the Act) and requires each state to report to the Secretary the ratio of its erroneous excess payments for medical assistance under its state plan to its total expenditures for medical assistance. Section 1903(u) of the Act sets a 3 percent threshold for eligibility-related improper payments in any fiscal year (FY) and generally requires the Secretary to withhold payments to states with respect to the amount of improper payments that exceed that threshold.

The Payment Error Rate Measurement (PERM) program was developed to implement the requirements of the Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300, enacted January 23, 2002), which requires the heads of federal agencies to review all programs and activities that they administer to determine if any programs are susceptible to significant erroneous payments, and, if so, to identify them. IPIA was amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) (Pub. L. 111–204, enacted on July 22, 2010) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) (Pub. L. 112–248, enacted on January 10, 2013).

The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation; OMB provides such guidance for IPIA, IPERA, and IPERIA in OMB circular A–123 App. C. OMB defines ''significant improper payments'' as annual erroneous payments in the program exceeding (1) both $10 million and 1.5 percent of program payments, or (2) $100 million regardless of percentage (OMB M–15–02, OMB Circular A–123, App. C October 20, 2014). Erroneous payments and improper payments have the same meaning under OMB guidance.

For those programs found to be susceptible to significant erroneous payments, federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce those improper payments, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached. Section 2(b)(1) of IPERA clarified that, when meeting IPIA and IPERA requirements, agencies must produce a statistically valid estimate, or an estimate that is otherwise appropriate using a methodology approved by the Director of OMB. IPERIA further clarified requirements for agency reporting on actions to reduce and recover improper payments.

The Medicaid program and the Children's Health Insurance Program (CHIP) were identified as at risk for significant erroneous payments by OMB. As set forth in OMB Circular A–136, Financial Reporting Requirements, for IPIA reporting, the Department of Health and Human Services (DHHS) reports the estimated improper payment rates (and other required information*)* for both programs in its annual Agency Financial Report (AFR).

Sections 203 and 601 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3, enacted on February 4, 2009) relate to the PERM program. Section 203 of the CHIPRA amended sections 1902(e)(13) and 2107(e)(1) of the Act to establish a state option for an express lane eligibility (ELE) process for determining eligibility for children and an error rate measurement for the enrollment of children under the ELE option. ELE provides states with important new avenues to expeditiously facilitate children's Medicaid or CHIP enrollment through a fast and simplified eligibility determination or renewal process by which states may rely on findings made by another program designated as an express lane agency (ELA) for eligibility factors including, but not limited to, income or household size. Section 1902(e)(13)(E) of the Act, as amended by the CHIPRA, specifically addresses error rates for ELE. States are required to conduct a separate analysis of ELE error rates, applying a 3 percent error rate threshold, and are directed not to include those children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on

a finding made by an ELA in any data or samples used for purposes of complying with a MEQC review or as part of the PERM measurement. Section 203(b) of the CHIPRA directed the Secretary to conduct an independent evaluation of children who enrolled in Medicaid or CHIP plans through the ELE option to determine the percentage of children who were erroneously enrolled in such plans, the effectiveness of the option, and possible legislative or administrative recommendations to more effectively enroll children through reliance on such findings.

Section 601(a)(1) of the CHIPRA amended section 2015(c) of the Act, and provided a 90 percent federal match for CHIP spending related to PERM administration and excluded such spending from the CHIP 10 percent administrative cap. (Section 2105(c)(2) of the Act generally limits states to using no more than 10 percent of the CHIP benefit expenditures for administrative costs, outreach efforts, additional services other than the standard benefit package for low-income children, and administrative costs.)

Section 601(b) of the CHIPRA required that the Secretary issue a new PERM rule and delay any calculations of a PERM improper payment rate for CHIP until 6 months after the new PERM final rule was effective. Section 601(c) of the CHIPRA established certain standards for such a rule, and section 601(d) of the CHIPRA provided that states that were scheduled for PERM measurement in FY 2007 or 2008, respectively, could elect to accept a CHIP PERM improper payment rate determined in whole or in part on the basis of data for FY 2007 or 2008, respectively, or could elect instead to consider its PERM measurement conducted for FY 2010 or 2011, respectively, as the first fiscal year for which PERM applied to the state for CHIP. The new PERM rule required by the CHIPRA was to include the following:

- Clearly defined criteria for errors for both states and providers.
- Clearly defined processes for appealing error determinations.
- Clearly defined responsibilities and deadlines for states in implementing any corrective action plans (CAPs).
- Requirements for state verification of an applicant's self-declaration or self-certification of eligibility for, and correct amount of, medical assistance under Medicaid or child health assistance under CHIP.
- State-specific sample sizes for application of the PERM requirements.

The Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) was enacted in March 2010. The Affordable Care Act mandated changes to the Medicaid and CHIP eligibility processes and policies to simplify enrollment and increase the share of eligible persons that are enrolled and covered. Some of the key changes applicable to all states, regardless of a state decision to expand Medicaid coverage, include:

- Use of Modified Adjusted Gross Income (MAGI) methodologies for income determinations and household compositions for most applicants.
- Use of the single streamlined application (or approved alternative) for intake of applicant information.
- Availability of multiple application channels, such as mail, fax, phone, or on-line, for consumers to submit application information.
- Use of a HHS-managed data services hub for access to federal verification sources.
- Need for account transfers and data sharing between the state- or federal-Exchange, Medicaid, and CHIP to avoid additional work or confusion by consumers.
- Reliance on data-driven processes for 12 month renewals.
- Use of applicant self-attestation of most eligibility elements as of January 1, 2014, with reliance on electronic third-party data sources, if available, for verification.
- Enhanced 90 percent federal financial participation (FFP) match for the design, development, installation, or enhancement of the state's eligibility system.

In light of the implementation of the Affordable Care Act's major changes to the Medicaid and CHIP eligibility and enrollment provisions, and our continued efforts to comply with IPERIA and the CHIPRA, an interim change in methodology was implemented for conducting Medicaid and CHIP eligibility reviews under PERM. As described in an August 15, 2013 State Health Official (SHO) letter (SHO #13–005), instead of the PERM and MEQC eligibility review requirements, we required states to participate in Medicaid and CHIP Eligibility Review Pilots from FY 2014 to FY 2016 to support the development of a revised PERM methodology that provides informative, actionable information to states and allows CMS to monitor program administration. A subsequent SHO letter dated October 7, 2015 (SHO #15–004) extended the Medicaid and CHIP Eligibility Review Pilots for one additional year.

B. Regulatory History

1. Medicaid Eligibility Quality Control (MEQC) Program

The MEQC program implements section 1903(u) of the Act, which defines erroneous excess payments as both payments for ineligible persons and overpayments for eligible persons. Section 1903(u) of the Act instructs the Secretary not to make payment to a state with respect to the portion of its erroneous payments that exceed a 3 percent error rate, though the statute also permits the Secretary to waive all or part of that payment restriction if a state demonstrates that it cannot reach the 3 percent allowable error rate despite a good faith effort.

Regulations implementing the MEQC program are at 42 CFR part 431, subpart P—Quality Control. The regulations specify the sample and review procedures for the MEQC program and standards for good faith efforts to keep improper payments below the error rate threshold. From its implementation in 1978 until 1994, states were required to follow the as-promulgated MEQC regulations in what was known as the traditional MEQC program. Every month, states reviewed a random sample of Medicaid cases and verified the categorical and financial eligibility of the case members. Sample sizes had to meet minimum standards, but otherwise were at state option.

For cases in the sample found ineligible, the claims for services received in the review month were collected, and error rates were calculated by comparing the amount of such claims to the total claims for the universe of sampled claims. The state's calculated error rate was adjusted based on a federal validation subsample to arrive at a final state error rate. This final state error rate was calculated as a point estimate, without adjustment for the confidence interval resulting from the sampling methodology. States with error rates over 3 percent were subject under those regulations to a disallowance of FFP in all or part of the amount of FFP over the 3 percent error rate.

At HHS's Departmental Appeals Board (DAB), HHS's final level of administrative review, states prevailed in challenges to disallowances based on the MEQC system in 1992. The DAB concluded that the MEQC sampling protocol and the resulting error rate calculation were not sufficiently accurate to provide reliable evidence to support a disallowance based on an actual error rate exceeding the 3 percent threshold.

Although the MEQC system remained in place, we provided states with an alternative to the MEQC program that was focused on prospective improvements in eligibility determinations rather than disallowances. These changes, outlined in Medicaid State Operations (MSO) Letter #93–58, dated July 23, 1993, provided states with the option to continue operating a traditional MEQC program, or to conduct what we termed ''MEQC pilots,'' that did not lead to the calculation of error rates (or, therefore, to disallowances). These pilots continue today. States choosing the latter pilot option have generally operated, on a year-over-year basis, year-long pilots focused on state-specific areas of interest, such as high-cost or high-risk eligibility categories and problematic eligibility determination processes. These pilots review specific program areas to determine whether problems exist and produce findings the state agency can address through corrective actions, such as policy changes or additional training. Over time, most states have elected to participate in the pilots; 39 states now operate MEQC pilots, while 12 maintain traditional MEQC programs.

2. Payment Error Rate Measurement (PERM) Program

We issued the August 27, 2004 proposed rule (69 FR 52620) as a result of the IPIA and OMB guidance that set forth proposed provisions establishing the PERM program by which states would annually be required to estimate and report improper payments in the Medicaid program and CHIP. The state-reported, state-specific, improper payment rates were to be used to compute the national improper payment estimates for these programs.

In the October 5, 2005 **Federal Register** (70 FR 58260), we published a PERM interim final rule (IFR) with comment period that responded to public comments on the proposed rule and informed the public of both our national contracting strategy and plan to measure improper payments in a subset of states. That IFR with comment period described that a state's Medicaid program and CHIP would be subject to PERM measurement just once every 3 years; the 3 year period is referred to as a cycle, and the year in which a state is measured is known as its ''PERM year.'' In response to the public comments from that IFR, we published a second IFR with comment period in the August 28, 2006 **Federal Register** (71 FR 51050) that reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care. We set forth, and invited comments on, state requirements for estimating improper payments due to Medicaid and CHIP eligibility determination errors. We also announced that a state's Medicaid program and CHIP would be reviewed during the same cycle.

In the August 31, 2007 **Federal Register** (72 FR 50490), we published a PERM final rule that finalized state requirements for: (1) Submitting claims to the federal contractors that conduct FFS and managed care reviews; (2) conducting eligibility reviews; and (3) estimating payment error rates due to errors in eligibility determinations.

3. 2010 Final Rule: Revisions to MEQC and PERM To Meet the CHIPRA Requirements

In the July 15, 2009 **Federal Register** (74 FR 34468), we published a proposed rule which proposed revisions, as required by the CHIPRA, to the MEQC and PERM programs, including changes to the PERM review process.

In the August 11, 2010 **Federal Register** (75 FR 48816), we published a final rule for the MEQC and PERM programs, which became effective on September 10, 2010, that codified several procedural aspects of the process for estimating improper payments in Medicaid and CHIP, including: Changes to state-specific sample sizes to reduce state burden; the stratification of universes to obtain required precision levels; eligibility sampling requirements; the modification of review requirements for self-declaration or self-certification of eligibility; the exclusion of children enrolled through the ELE from the PERM measurement; clearly defined ''types of payment errors'' to clarify that errors must affect payments for the purpose of the PERM program; a clearly defined difference resolution and appeals process; and state requirements for implementation of CAPs.

Section 601(e) of the CHIPRA required harmonizing the MEQC and PERM programs' eligibility review requirements to improve coordination of the two programs, decrease duplicate efforts, and minimize state burden. To comply with the CHIPRA, the final rule granted states the flexibility, in their PERM year, to apply PERM data to satisfy the annual MEQC requirements, or to apply ''traditional'' MEQC data to satisfy the PERM eligibility component requirements.

The August 11, 2010 final rule permitted a state to use the same data, such as the same sample, eligibility review findings, and payment review findings, for each program. However, the CHIPRA permits substituting PERM and MEQC data only where the MEQC review is conducted under section 1903(u) of the Act, so only states using the ''traditional'' MEQC methodology may employ this substitution option. Also, each state, with respect to each program (MEQC and PERM) is still required to develop separate error/improper payment rate calculations.

II. Provisions of the Proposed Rule and Analysis of and Responses to Comments

We received 20 timely comments from the public, in response to the proposed rule published on June 22, 2016 (81 FR 40596). The following sections, arranged by subject area, include a summary of the public comments received and our responses.

We received comments from the public, State Medicaid agencies, advocacy groups, a non-partisan legislative branch agency, and associations. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding the proposed changes.

Many commenters raised issues centered around the PERM managed care component and the transparency and public reporting aspects of both the PERM and MEQC programs. We believe that these issues are beyond the scope of this final rule. However, we may consider whether to take other actions, such as revising or clarifying CMS program operating instructions or procedures, based on the information or recommendations in the comments. Brief summaries of each proposed provision, a summary of the public comments we received (with the exception of specific comments on the paperwork burden or the economic impact analysis), and our responses to the comments are provided in this final rule. Comments related to the paperwork burden and the impact analyses included in the proposed rule are addressed in the ''Collection of Information Requirements'' and ''Regulatory Impact Statement'' sections in this final rule. The final regulation text follows these analyses.

We proposed the following changes to part 431 to address the eligibility provisions of the Affordable Care Act, as well as to make improvements to the PERM and MEQC programs.

A. MEQC Program Revision

Section 1903(u) of the Act requires the review of Medicaid eligibility to identify erroneous payments, but it does not specify the manner by which such reviews must occur. The MEQC program

was originally created to implement the requirements of section 1903(u) of the Act, but the PERM program, implemented subsequent to MEQC and under other legal authority, likewise reviews Medicaid eligibility to identify erroneous payments. As noted previously, the CHIPRA required harmonizing the MEQC and PERM programs and allowed for certain data substitution options between the two programs, to coordinate consistent state implementation to meet both sets of requirements and reduce redundancies. Because states are subject to PERM reviews only once every 3 years, we proposed to meet the requirements in section 1903(u) of the Act through a combination of the PERM program and a revised MEQC program that resembles the current MEQC pilots, by which the revised MEQC program would provide measures of a state's erroneous eligibility determinations in the 2 off-years between its PERM years.

As previously noted, states currently may satisfy our requirements by conducting either a traditional MEQC program or MEQC pilots, with the majority of states (39) electing the latter due to the pilots' flexibility to target specific problematic or high-interest areas. The revised MEQC program will eliminate the traditional MEQC program and, instead, formalize, and make mandatory, the pilot approach. During the 2 off-years between each state's PERM years, when a state is not reviewed under the PERM program, we proposed that it conduct one MEQC pilot spanning that 2-year period. The revised regulations will conform the MEQC program to how the majority of states have applied the MEQC pilots through the administrative flexibility we granted states decades ago to meet the requirements of section 1903(u) of the Act. We believe such MEQC pilots will provide states with the necessary flexibility to target specific problems or high-interest areas as necessary. As a matter of semantics, note that in the proposed rule we continued to use the term ''pilots,'' not because they are fixed or defined projects (as the term sometimes connotes), but, rather because, as described, states will have flexibility to adapt pilots to target particular areas.

We further proposed to take a similar approach to ''freezing'' error rates as we took when we initially introduced MEQC pilots 2 decades ago. In 1994, when we introduced MEQC pilots we offered states the ability to ''freeze'' their error rates until they resumed traditional MEQC activities. Similarly, we proposed to freeze a state's most recent PERM eligibility improper payment rate during the 2 off-years between a state's PERM cycles, when the state will be conducting an MEQC pilot. As noted previously, section 1903(u) of the Act sets a 3 percent threshold for improper payments in any period or fiscal year and generally requires the Secretary to withhold payments to states with respect to the amount of improper payments that exceed the threshold. Therefore, we proposed freezing the PERM eligibility improper payment rate as it allows each state a chance to test the efficacy of its corrective actions as related to the eligibility errors identified during its PERM year. Our provisions also allow states a chance to implement prospective improvements in eligibility determinations before having their next PERM eligibility improper payment measurement performed, where identified improper payments will be subject to potential payment reductions and disallowances under 1903(u) of the Act.

We proposed to revise § 431.800 to revise and clarify the MEQC program basis and scope.

Comment: Several commenters supported our proposal to revise the MEQC program into a pilot program that works in conjunction with the PERM program.

Response: We appreciate the commenters' support, and we are finalizing as proposed.

We proposed to remove § 431.802 as FFP, state plan requirements, and the requirement for the MEQC program to meet section 1903(u) of the Act will no longer be applicable to the revised MEQC program.

We did not receive any comments on this proposal, and therefore, we are finalizing as proposed.

We proposed to revise § 431.804 by adding definitions for ''corrective action,'' ''deficiency,'' ''eligibility,'' ''Medicaid Eligibility Quality Control (MEQC),'' ''MEQC Pilot,'' ''MEQC review period,'' ''negative case,'' ''off years,'' ''Payment Error Rate Measurement (PERM),'' and ''PERM year.''

We proposed to revise the definitions for ''active case,'' and ''eligibility error,'' and remove ''administrative period,'' ''claims processing error,'' ''negative case action,'' and ''state agency.'' We proposed to add, revise, or remove definitions to provide additional clarification for the proposed MEQC program revisions.

The following is summary of the comments we received regarding our proposal to add, revise, or remove definitions.

Comment: One commenter stated that the MEQC definition of ''deficiency'' should not include the word ''error'' in it since ''eligibility error'' is separately defined.

Response: As stated in this final rule, the revised MEQC definition of ''deficiency'' means a finding that does not meet the definition of an ''eligibility error.'' Therefore, we believe it is appropriate to also separately define the term ''eligibility error.'' However, we acknowledge that we made a technical error in that the proposed PERM definition of ''deficiency'' was inadvertently published as the MEQC definition of ''deficiency,'' which likely contributed to reader confusion and the request for clarification. As such, we finalize the MEQC definition for ''deficiency'' to read that deficiency means a finding in processing identified through active case review or negative case review that does not meet the definition of an eligibility error.

Comment: Multiple commenters requested clarification of the definition ''eligibility error.'' More specifically, one commenter questioned whether ''type of assistance'' referred to ''full service versus emergency service, MAGI versus Non-MAGI, Adult versus Parent Caretaker or Child or to a subgroup under one of these.'' Other commenters requested clarification for when a redetermination would not be considered timely in relationship to previous determinations, and claim payments. And some commenters requested clarification surrounding the meaning of the phrase ''a required element of the eligibility determination process cannot be verified as being performed/completed by the state.''

Response: In this context, ''type of assistance'' refers to the specific eligibility categories within Medicaid or CHIP, such as parents and caretakers, children, pregnant women, and adult expansion group, within which different benefits may be provided. States may use different terminology to refer to eligibility categories, including type of assistance. Next, federal regulations found at 42 CFR part 435 subpart J clearly define timely redeterminations. Lastly, documentation and record keeping requirements relevant to state determinations of eligibility are outlined in federal regulations, and, therefore, states should be maintaining information required for review. Federal eligibility regulations are very specific for certain elements of eligibility (such as, but not limited to, citizenship and immigration status) as to what the state must do to have successfully verified an individual's eligibility for medical assistance. Thus, if the state is unable to

provide the necessary documentation to support the state's eligibility determination, the payment under review may be cited as an error due to insufficient documentation. We are finalizing the definition of ''eligibility error'' as proposed.

Comment: Many commenters made recommendations on policies that should be included in the MEQC review instructions that will be provided by CMS following publication of the final rule.

Response: While we appreciate these recommendations, they are beyond the scope of the proposed changes of the rule. We may consider these recommendations when developing CMS guidance. The MEQC pilot program review procedures are outlined at § 431.812; states will be required to follow the review procedures as outlined there, in addition to other instructions established by CMS.

Comment: One commenter requested that CMS not remove the definition ''administrative period,'' stating that the current regulation excludes the additional errors discovered for a period of time following the discovery of the initial and/or original error, and that the ''administrative period'' recognizes Medicaid policy that requires states to provide notice to beneficiaries prior to discontinuing benefits. Further, the commenter stated that erroneous benefits issued between the time in which the error is discovered and the dates in which the change in benefit level can be applied are unavoidable.

Response: We removed the ''administrative period'' definition because the terminology is not applicable to the proposed changes to the MEQC program, and, therefore, no longer used in the regulation text. Thus, the definition will not be included in the regulation text.

As a result of the comments, and in light of the acknowledged technical error, the definition for ''deficiency'' has been replaced at § 431.804 with the appropriate MEQC definition. Additionally, we made minor stylistic changes to the definitions of ''PERM'' and ''PERM year.'' We received many comments supporting the changes to the MEQC program, which includes the definitions, and are finalizing all other added, revised, or removed definitions as proposed.

We proposed to revise § 431.806 to reflect the state requirements for the MEQC pilot program. Section 431.806 clarifies that following the end of a state's PERM year, it would have up to November 1 to submit its MEQC pilot planning document for our review and approval. We did not receive any comments on this proposal, and therefore, we are finalizing as proposed.

We proposed to revise § 431.810 to clarify the basic elements and requirements of the MEQC program. We did not receive any comments on this proposal, and therefore, we are finalizing as proposed.

We proposed to revise § 431.812 to clarify the review procedures for the MEQC program. As described previously, the CHIPRA required harmonizing the PERM and MEQC programs and authorized us to permit states to use PERM to fulfill the requirements of section 1903(u) of the Act; § 431.812(f), which permits states to substitute PERM-generated eligibility data to meet MEQC program requirements, was issued under the CHIPRA authority. Given that the Congress, in the CHIPRA, directed the Secretary to harmonize the PERM and MEQC programs and expressly permitted states to substitute PERM for MEQC data, we believe that the PERM program, with the proposed revisions discussed in subpart Q, meets the requirements of section 1903(u) of the Act.

Our approach will continue to harmonize the PERM and MEQC programs. It will reduce the redundancies associated with meeting the requirements of two distinct programs. As noted, the CHIPRA, with certain limitations, allows for substitution of MEQC data for PERM eligibility data. Through our approach, in their PERM year, states will participate in the PERM program, while during the 2 off-years between a state's PERM cycles they would conduct a MEQC pilot, markedly reducing states' burden. Moreover, we proposed to revise the methodology for PERM eligibility reviews, as discussed in sections §§ 431.960 through 431.1010. The MEQC pilots will focus on areas not addressed through PERM reviews, such as negative cases and understated/overstated liability, as well as permit states to conduct focused reviews on areas identified as error-prone through the PERM program, so the new cyclical PERM/MEQC rotation will yield a complementary approach to ensuring accurate eligibility determinations.

By conducting eligibility reviews of a sample of individuals who have received services matched with Title XIX or XXI funds, the PERM program will continue to focus on identifying individuals receiving medical assistance under the Medicaid or CHIP programs who are, in fact, ineligible. Such PERM eligibility reviews conform to the requirement at section 1903(u) of the Act's that states measure erroneous payments due to ineligibility. Likewise, these eligibility reviews will continue under the MEQC pilots during states' off-years and include a review of Medicaid spend-down as a condition of eligibility, conforming to other state measurement requirements of section 1903(u) of the Act. We will calculate a state's eligibility improper payment rate during its PERM year, which will remain frozen at that level during its 2 off-years when it conducts its MEQC pilot. Again, freezing states' eligibility improper payment rates between PERM cycles will allow states time to work on effective and efficacious corrective actions that would improve their eligibility determinations. This approach also encourages states to pursue prospective improvements to their eligibility determination systems, policies, and procedures before their next PERM cycle, in which an eligibility improper payment rate will be calculated with the potential for payment reductions and disallowances to be invoked, in the event that a state's eligibility improper payment rate is above the 3 percent threshold.

1. Revised MEQC Review Procedures

For more than 2 decades, the majority of states have used the flexibility of MEQC pilots to review state-specific areas of interest, such as high-cost or high-risk eligibility categories and problematic eligibility determination processes. This flexibility has been beneficial to states because it made MEQC more useful from a corrective action standpoint.

We proposed that MEQC pilots focus on cases that may not be fully addressed through the PERM review, including, but not limited to, negative cases and payment reviews of understated and overstated liability. Still, states will retain much of their current flexibility. In § 431.812, we proposed that states must use the MEQC pilots to perform both active and negative case reviews, but states would have flexibility surrounding their active case review pilot. In the event that a state's eligibility improper payment rate is above the 3 percent threshold for two consecutive PERM cycles, this flexibility will decrease as states will be required to comply with CMS guidance to tailor the active case reviews to a more appropriate MEQC pilot that would be based upon a state's PERM eligibility findings. To ensure that states with consecutive PERM eligibility improper payment rates over the threshold identify and conduct MEQC active case reviews that are appropriate during their off-years, we will provide direction for conducting a MEQC pilot

that would suitably address the error-prone areas identified through the state's PERM review. Both the PERM and MEQC pilot programs are operationally complementary, and should be treated in a manner that allows for states to review identified issues, develop corrective actions, and effectively implement prospective improvements to their eligibility determinations.

Active and negative cases represent the eligibility determinations made for individuals that either approve or deny an individual's eligibility to receive benefits and/or services under Medicaid or CHIP. Individuals who are found to be eligible and authorized to receive benefits/services are termed active cases, whereas individuals who are found to be ineligible for benefits are known as negative cases. As finalized at § 431.812(b)(3), a state must focus its active case reviews on three defined areas, unless otherwise directed by CMS, or, as finalized at § 431.812(b)(3)(i), it may perform a comprehensive review that does not limit its review of active cases. Additionally, we proposed that the MEQC pilots must include negative cases because we also proposed to eliminate PERM's negative case reviews; our proposal would ensure continuing oversight over negative cases to ensure the accuracy of state determinations to deny or terminate eligibility.

Under the new MEQC pilot program, we proposed that states review a minimum total of 400 Medicaid and CHIP active cases. We proposed that at least 200 of those reviews must be Medicaid cases and expect that states will include some CHIP cases, but beyond that, we proposed that states would have the flexibility to determine the precise distribution of active cases. For example, a state could sample 300 Medicaid and 100 CHIP active cases; it would describe its active sample distribution in its MEQC pilot planning document that it would submit to us for approval. Under the new MEQC pilot program, we also proposed that states review, at a minimum, 200 Medicaid and 200 CHIP negative cases. Currently, under the PERM program, states are required to conduct approximately 200 negative case reviews for both the Medicaid program and CHIP (204 is the base sample size, which may be adjusted up or down from cycle to cycle depending on a state's performance). We proposed a minimum total negative sample size of 400 (200 for each program) for the proposed MEQC pilots because, as mentioned above and discussed further below, we proposed to eliminate PERM's negative case reviews.

Historically, MEQC's case reviews (both active and negative) focused solely on Medicaid eligibility determinations. The new MEQC pilots will now include both Medicaid and CHIP eligibility case reviews. Because we proposed to eliminate PERM's negative case reviews, it is important that we concomitantly expand the MEQC pilots to include the review of no less than 200 CHIP negative cases to ensure that CHIP applicants are not inappropriately denied or terminated from a state's program. In the event that CHIP funding should end, then states would be required to review only Medicaid active and negative cases, as there would no longer be any cases associated with CHIP funding.

We will provide states with guidelines for conducting these MEQC pilots, and states must submit MEQC pilot planning documents for CMS's approval. This approach will ensure that states are planning to conduct pilots that are suitable and in accordance with our guidance.

This final rule will require states to conduct one MEQC pilot during their 2 off-years between PERM cycles. We proposed that the MEQC pilot review period span 12 months, beginning on January 1, following the end of the state's PERM review period. For instance, if a state's PERM review period is July 1, 2018 to June 30, 2019, the next proposed MEQC pilot review period would be January 1 to December 31, 2020. We proposed at § 431.806 that a state would have up to November 1 following the end of its PERM review period to submit its MEQC pilot planning document for CMS review and approval. Following a state's MEQC pilot review period, we proposed it would have up to August 1 to submit a CAP based on its MEQC pilot findings.

We realize that on the effective date of this final rule, states will not all be at the same point in the MEQC pilot program/PERM timeline. The impact of the proposed MEQC timeline for each cycle of states is clarified below to assist each cycle of states in understanding when the proposed MEQC requirements would apply.

Cycle 1 states	Cycle 2 states	Cycle 3 states
First PERM review period: July 2017–June 2018. First MEQC pilot planning document due: November 1, 2018. MEQC review period: January 1–December 31, 2019. MEQC findings and CAP due: August 1, 2020.	CMS will provide guidance regarding a modified MEQC pilot that will occur prior to the beginning of your first PERM cycle. First PERM review period: July 2018–June 2019.	First MEQC pilot planning document due: November 1, 2017. MEQC review period: January 1–December 31, 2018. MEQC findings and CAP due: August 1, 2019. First PERM review period: July 2019–June 2020.

The following is a summary of the comments we received regarding our proposal to revise the review procedures for the MEQC program.

Comment: A commenter requested that the personnel responsible for the MEQC activities not be required to be functionally and physically separate from the personnel responsible for Medicaid and CHIP policy and operations since there is no longer a disallowance under MEQC.

Response: We appreciate the commenter's suggestion, but we decline to change this requirement. We believe this separation is important to ensure accurate and unbiased review and reporting by states in order to maintain important oversight of eligibility determinations and to lower PERM improper payment rates.

Comment: A commenter requested clarification surrounding the MEQC negative case reviews, stating since each CHIP decision includes a Medicaid determination, the same case should be used to fulfill the requirement for both Medicaid and CHIP reviews of 200 negative cases.

Response: The regulation does not prevent the same case from being in both the Medicaid and CHIP negative case samples if applicable. States must submit a pilot planning document that meets the requirements of § 431.814 for both the active and negative case reviews, which is subject to CMS approval. However, we will not approve a negative case review pilot planning document for any state that chooses to only review cases that were denied

coverage by both Medicaid and CHIP, or a proposal that does not meet CMS requirements.

Comment: Several commenters requested that CMS include more details surrounding the MEQC pilot review procedures in the regulatory text of the final rule, including what will be in the future CMS subregulatory guidance.

Response: Forthcoming MEQC program operating instructions and procedures will provide further detail on review and reporting requirements. The regulatory text outlines the general framework for the pilot program and the forthcoming guidance will contain specific implementing and operating guidelines.

Comment: One commenter disagreed with the proposed new MEQC review schedule of 1 year on, and 2 years off. The commenter requested that CMS consider changing the proposed MEQC review schedule to an ongoing annual review cycle.

Response: We appreciate the commenter's suggestion, but decline to change the proposed MEQC review schedule. Our proposed review schedule for MEQC was created to provide necessary oversight of eligibility determinations between a state's PERM cycles, account for those areas that are not fully reviewed by PERM (for example, negative cases, and overstated and understated liability), and allow states a chance to implement prospective improvements in eligibility determinations before having their next PERM eligibility improper payment measurement performed. While we are not requiring an annual review cycle, nothing in this final rule or in the regulations in this subpart should be construed as limiting the state's program integrity measures, or affecting the state's obligation to ensure that only eligible individuals receive benefits or to provide for methods of administration that are in the best interest of applicants and beneficiaries and are necessary for the proper and efficient operation of the plan.

Comment: Several commenters requested that CMS strengthen the rules for the MEQC and PERM programs to include more specific requirements for states to examine how the verification rules and eligibility processes states have put in place affect the overall customer experience and timeliness of the eligibility decision.

Response: The evaluation of customer experience is not the role of the PERM or MEQC programs. However, if there are specific concerns around a state's processes, the MEQC pilots are flexible enough that the states will, if they choose, be able to include them as a part of their review and report on these items, in addition to improper payment information.

Comment: Several commenters requested that CMS expand the scope of the MEQC pilots to examine state processes for transferring cases to and from the exchange. Further, the commenter recommended that CMS needs to monitor account transfers to ensure that states are using the information applicants provide to the exchange and not asking for information or documentation that has already been provided, and that states are appropriately transferring denied Medicaid cases that originate with the state Medicaid agency to the exchanges.

Response: Appropriate use of applicant-provided information and transfer of denied Medicaid cases are currently a part of our eligibility review pilots, and we anticipate including instructions on review of these items in subregulatory guidance. Section 431.812 (b)(1) and (c)(1) will cover these type of process related issues as it requires states to identify deficiencies in processing subject to corrective actions.

Comment: A commenter requested that CMS direct all negative case reviews rather than leaving them to state discretion.

Response: We did propose to direct all negative case reviews and did not propose to leave them to state discretion. Negative case reviews are not given the same flexibility to focus on specific areas, like active case reviews. Additionally, all MEQC pilots, including both active and negative case reviews, require our approval. States must comply with § 431.812(a), which requires each state to conduct a MEQC pilot in accordance with the approved pilot planning document, as well as other instructions established by CMS.

Comment: A few commenters recommended that CMS direct the MEQC active case reviews immediately after a state's eligibility improper payment rate exceeds the 3 percent threshold. These commenters contend that waiting to impose this provision until a state has exceeded the 3 percent threshold in consecutive PERM cycles is too long.

Response: While we appreciate the commenter's recommendation, we are not accepting this recommendation at this time. We want to give states an opportunity to evaluate and appropriately address their PERM findings through their MEQC pilots before taking away the flexibility of a state's active case reviews. We will direct the focus of the active case reviews for those states that exceed the 3 percent in consecutive PERM cycles. However, we will continue to maintain oversight of states' reviews, and all states will need to follow CMS-provided guidance when conducting their MEQC pilot reviews. Both the PERM and MEQC pilot programs are operationally complementary, and should be treated in a manner that allows for states to review identified issues, develop corrective actions, and effectively implement prospective improvements to their eligibility determinations. This approach also encourages states to pursue prospective improvements to their eligibility determination systems, policies, and procedures before their next PERM cycle, in which an eligibility improper payment rate will be calculated with the potential for payment reductions and disallowances.

Comment: A commenter stated that § 431.812 should specify how to report payment findings and that the reference to § 431.814 does not include this information.

Response: Section 431.816 specifies requirements for case review completion and submission of reports that include the reporting of payment findings. As noted at § 431.816(b), states must submit a detailed case-level report in a format provided by CMS, and all case-level findings are due by August 1 following the end of the MEQC review period.

Comment: One commenter stated that the timing of the modified MEQC pilot program guidance will be critical for Cycle 2 states to have sufficient time to complete the pilot and implement corrective actions prior to the date of the eligibility determinations for the PERM review period beginning in 2018.

Response: We plan to issue necessary guidance upon publication of this final rule, and we believe Cycle 2 states will have sufficient time to meet the requirements of this final rule.

As a result of the comments, we do not have any revisions to the regulatory text, and, therefore, we are finalizing it as proposed.

2. MEQC Pilot Planning Document

We proposed to revise § 431.814 to clarify the revised sampling plan and procedures for the MEQC pilot program. We proposed that each state be required to submit, for our approval, a MEQC Pilot Planning Document that details how the state will perform its active and negative case reviews. This process is consistent with that used historically with MEQC pilots and also with the FY 2014 to FY 2017 Medicaid and CHIP Eligibility Review Pilots. Prior to the first submission cycle, we will provide states with guidance containing further

details informing them of what information will need to be included in the MEQC Pilot Planning Document.

The following is summary of the comments we received regarding our proposal to require states to submit a pilot planning document by November 1 following the end of the State's PERM year for each MEQC pilot that meets the requirements of § 431.814 and is subject to our approval.

Comment: Several commenters requested that CMS strengthen the pilot planning document provision to require states to include justification for the focus of the active case review, which should be based on the findings of the PERM review.

Response: We agree with this recommendation and have added the requirement to the regulatory text for states to include justification for the focus of their active case reviews. Although error prone areas would be based on each state's PERM review findings, the other options (comprehensive review, recent changes to eligibility policies and processes, or areas where the state suspects vulnerabilities) available for the active case reviews would not necessarily be tied to PERM.

Comment: One commenter stated that for the state to be timely, it is crucial that CMS have a deadline for approving a timely submitted pilot planning document because states cannot start their MEQC pilot plans without CMS approval, and recommends CMS include in the final rule a process to respond so that states can plan accordingly to meet their mandated deadlines.

Response: We intend to approve pilot planning documents as to not delay each state's MEQC pilot timeline. We cannot specify a timeline, as our approval will be dependent upon the content of each plan and the state's compliance with § 431.814.

As a result of the comments, we are revising § 431.814(1)(i) to require states to include justification for the focus of the active case reviews, and finalize the rest of § 431.814 as proposed.

3. Timeline and Reporting for MEQC Pilot Program

We proposed to revise § 431.816 to clarify the case review completion report submission deadlines. We proposed that states be required to report, through a CMS-approved Web site and in a CMS-specified format, on all sampled cases by August 1 following the end of the MEQC review period, which we believe will streamline the reporting process and ensure that all findings are contained in a central location.

We did not receive any comments on this proposal to clarify reporting and case review submission deadlines, and therefore, we are finalizing as proposed.

We proposed to revise § 431.818 to remove the mailing requirements and the time requirement.

We did not receive any comments on this proposal to remove the mailing and time requirements from § 431.818, and therefore, we are finalizing as proposed.

4. MEQC Corrective Actions

We proposed to revise § 431.820 to clarify the corrective action requirements under the proposed MEQC pilot program. Corrective actions are critical to ensuring that states continually improve and refine their eligibility processes. Under the existing MEQC program, states must conduct corrective actions on all identified case errors, including technical deficiencies, and we proposed that states continue to be required to conduct corrective actions on all errors and deficiencies identified through the proposed MEQC pilot program.

We proposed that states report their corrective actions to CMS by August 1 following completion of the MEQC pilot review period, and that such reports also include updates on the life cycles of previous corrective actions, from implementation through evaluation of effectiveness.

The following is summary of the comments we received regarding our proposal to report on corrective actions and include updates on the life cycles of previous corrective actions.

Comment: One commenter recommended that CMS require states to include in the corrective action plan specific deadlines for addressing errors and deficiencies found in the case reviews, and for implementing corrective actions.

Response: Specific deadlines for addressing errors and deficiencies, as well as for implementing corrective actions are highly dependent on the nature of the problem and the kind and extent of the corrective action needed. States do have an incentive to act quickly, as implementing effective correction actions through MEQC allows states to pursue prospective improvements to their eligibility determination systems, policies, and procedures before their next PERM cycle, in which an eligibility improper payment rate would be calculated with the potential for payment reductions and disallowances.

Comment: One commenter recommended CMS broaden the requirement that states provide updates on corrective actions reported for the previous MEQC pilot, to include all corrective actions, not just those reported in the MEQC pilot immediately preceding the current one that have not been addressed.

Response: We decline to accept the commenter's recommendation because such provisions would require states to report on corrective actions that may no longer be relevant. In the event that a past MEQC corrective action was not implemented by the state, similar findings would be identified during a state's PERM cycle as well as the immediately preceding MEQC pilot, and thus, would require the state to meet PERM CAP and MEQC CAP requirements.

As a result of the comments, we are finalizing this section as proposed.

We proposed to remove § 431.822, as we will no longer be performing a federal case eligibility review of the revised MEQC program.

We did not receive any comments on this proposal to remove § 431.822, and therefore, we are finalizing as proposed.

5. MEQC Disallowances

Section I.B.1 of the proposed rule, provided a detailed regulatory history of CMS's implementation of the MEQC program, and, in conformity with CMS's policy since 1993, we proposed not using the revised MEQC pilot program to reduce payments or to institute disallowances. Instead, we proposed to formalize the MEQC pilot process to align all states in one cohesive pilot approach to support and encourage states during their 2 off-years between PERM cycles to address, test, and implement corrective actions that would assist in the improvement of their eligibility determinations. This approach also better harmonizes and synchronizes the MEQC pilot and PERM programs, leaving them operationally complementary. Additionally, this provision will be advantageous to all states as they each will be exempt from potential payment reductions and disallowances while conducting their MEQC pilot; therefore placing the main focus of the pilots on the refinement and improvement of their eligibility determinations. Based on this approach, we proposed that each state's eligibility improper payment rate will be calculated in its PERM year, and that its rate will be frozen at that level during its off-years when it will conduct an MEQC pilot and implement corrective actions.

We proposed to remove § 431.865 because the CHIPRA authorized certain PERM and MEQC data substitution

allowances, upon which we believe that the PERM eligibility improper payment rate determination methodology satisfies the requirements of section 1903(u) of the Act to be used for that provision's payment reduction (and potential disallowance) requirement. Therefore, we are requiring states to use the PERM program to meet section 1903(u) of the Act requirements in their PERM years, and that potential payment reductions or disallowances only be invoked under the PERM program.

Commenters supported our proposal to remove § 431.865, and are finalizing as proposed.

6. Payment Error Rate Measurement (PERM) Program

We proposed revisions to the PERM program. Our proposed PERM eligibility component revisions have been tested and validated through multiple rounds of PERM model pilots with 15 states and through discussion with state and non-state stakeholders. The PERM model pilots were distinct from the separate FY 2014 to FY 2017 Medicaid and CHIP Eligibility Review Pilots, and were used to assess, test, and recommend changes to PERM's eligibility component review process based on the changes implemented by the Affordable Care Act. Specifically, we tested, and requested stakeholder feedback on, options in the following areas (below, there is more detail on each):

- Universe definition.
- Sample unit definition.
- Eligibility Case review approach.
- Feasibility of using a federal contractor to conduct the eligibility case reviews.
- Difference resolution and appeals process.

Through the PERM model pilots, we have determined that each of the proposed changes support the goals of the PERM program and will produce a valid, reliable eligibility improper payment rate. We also interviewed participating states, as well as a select group of other states, to receive feedback on the majority of the proposed changes, and, to the extent possible, we addressed state concerns in the proposed rule.

7. Payment Error Rate Measurement (PERM) Measurement Review Period

Since PERM began in 2006, the measurement has been structured around the federal fiscal year (FFY) with states submitting FFS claims and managed care payments with paid dates that fall in the FFY under review. But, a data collection centered on the FFY has made it perennially challenging to finalize the improper payment rate measurement and conduct all the related reporting to support an improper payment rate calculation by November of each year. Therefore, to provide states and CMS additional time to complete the work related to each PERM cycle prior to the annual improper payment rate publication in the AFR, to better align PERM with many state fiscal year timeframes, and to mirror the review period currently utilized in the Medicare FFS improper payment measurement program, we proposed to change the PERM review period from a FFY to a July through June period. We proposed to begin this change with the Cycle 1 states, whose PERM cycle would have started on October 1, 2017, so that Cycle 1 states would submit their 1st and 4th quarters of FFS claims and managed care payments with paid dates between, respectively, July 1 through September 30, 2017 and April 1 through June 30, 2018. Subsequent cycles would follow a similar review period.

The following is summary of the comments we received regarding our proposal to change the PERM review period.

Comment: A few commenters expressed concerns about the effective date of the new review period and when pre-cycle activities would start with the new review period. The commenters requested that CMS provide lead time to allow states sufficient time to schedule cycle kick-off activities and evaluate and prepare for the changes after the final rule is released.

Response: We will work with states as early as possible to prepare states for their next PERM cycle, regardless of the review period. We have already been working closely with states through the Medicaid and CHIP Eligibility Review Pilots over the past 3 to 4 years, while PERM eligibility reviews have been suspended. Prior to the publication of this final rule, we have worked closely with states by assisting them in evaluating their readiness for the resumption of PERM eligibility. Also, we anticipate conducting any preparation/pre-cycle work earlier than was done in previous cycles to give states advanced guidance before the cycle begins.

Comment: A commenter questioned why only the 1st and 4th quarters were mentioned, and not the 2nd and 3rd quarters for state submission of FFS and managed care payments.

Response: The 2nd and 3rd quarters will still be required. The 1st and 4th quarters are only mentioned to serve as examples to clearly display the shift in state's quarterly FFS and managed care submissions, based on the proposal to change the PERM review period. States are still responsible for submitting 4 quarters of FFS and managed care payments within the time period finalized in this rule.

Comment: One commenter expressed concern about potential areas of overlap between cycles, which would mean that states would have less time to implement corrective actions to reduce the next cycle's improper payment rates.

Response: Although there may be some overlap for states during the initial transition between the previous and new PERM review periods, states should not wait to begin implementing corrective actions to address all identified errors and deficiencies.

Comment: One commenter questioned how the rolling national improper payment rates would be affected by the new PERM review period.

Response: There is no expected impact to the national improper payment rate. During the transition period from a federal fiscal year to the July through June review period, the assumption implied with the national rate is that the cycle rate for the July through June sampling period does not differ statistically from the previous fiscal year sampling period. We believe this assumption is reasonable given the shift in the sampling frame is only three months.

In addition to the previous comments, many commenters supported our proposal to change the PERM review period, and therefore, we are finalizing this as proposed.

We proposed to revise § 431.950 to clarify the requirement for states and providers to submit information and provide support to federal contractors to produce national improper payment estimates for Medicaid and CHIP.

We did not receive any comments specifically regarding our proposed revisions at § 431.950. However, all comments regarding our proposal to transfer the PERM eligibility review responsibility from the states to a federal contractor are listed below under the ''Eligibility Federal Review Contractor and State Responsibilities'' section.

We proposed various revisions to § 431.958 to add, revise, or remove definitions to provide greater clarity for the proposed PERM program changes. Proposed additions and revisions include definitions for ''appeals,'' ''corrective action,'' ''deficiency,'' ''difference resolution,'' ''disallowance,'' ''Eligibility Review Contractor (ERC),'' ''error,'' ''federal contractor,'' ''Federally facilitated exchange-determination (FFE–D),'' ''Federal financial participation,'' ''finding,'' ''Improper payment rate,'' ''Lower limit,''

''PERMreview period,'' ''recoveries,'' ''Review Contractor (RC),'' ''Review year,'' ''State-specific sample size,'' ''State eligibility system,'' ''State error,'' ''State payment system,'' ''Statistical Contractor (SC),'' and removing the definitions of ''active case,'' ''active fraud investigation,'' ''agency,'' ''case,'' ''case error rate,'' ''case record,'' ''last action,'' ''negative case,'' ''payment error rate,'' ''payment review,'' ''review cycle,'' ''sample month,'' ''state agency,'' and ''undetermined.''

The following is summary of the comments we received regarding our proposal to add, revise or remove definitions.

Comment: One commenter stated that the definition of ''corrective action'' was not consistent with the rest of the language surrounding corrective actions.

Response: We agree with this comment and have revised the definition of ''corrective action'' to be more consistent with the language surrounding corrective actions, and revised it to read as actions to be taken by the state to reduce errors or other vulnerabilities.

Comment: A commenter requested that the term ''error'' be removed from the definition of ''deficiency,'' because the term ''error'' is a separate definition.

Response: We agree with the commenter that defining an ''error'' to include only improper payments means that an error which is defined as an improper payment cannot also be a deficiency, and have changed the definition ''error'' to ''payment error.''

Comment: One commenter requested clarification to the definition of ''difference resolution,'' stating that states should have the opportunity to dispute both error and deficiency findings.

Response: States currently do have the opportunity to dispute both error and deficiency findings. The proposed definition of difference resolution means a process that allows states to dispute the PERM Review Contractor and Eligibility Review Contractor ''error'' findings directly with the contractor. We will remove the term ''error'' from the definition of ''difference resolution'' for clarification that all findings, both errors and deficiencies, may be disputed to match the current practice.

Comment: A commenter requested that we add the term ''findings'' and/or ''eligibility review findings'' to the definition of ''error.''

Response: We respectfully disagree with the commenter and find the current definition of ''error'' to be adequate as proposed. An error is any payment where federal and/or state dollars were paid improperly based on PERM medical, data processing, and/or eligibility reviews.

Comment: Two commenters requested we clarify the definition of ''state error.'' The commenters stated that the way ''state error'' is currently worded seems to exclude medical review findings from the state improper payment rate.

Response: The definition of provider error, to which we made no proposed revisions, includes medical review errors at § 431.960(c). A state's improper payment rate includes both state errors and provider errors, or, in other words, all data processing, medical review, and eligibility errors, with the exception of errors described under § 431.960(e)(2).

Comment: One commenter questioned whether or not the definition of ''disallowance'' applies to CHIP, stating the definition only references Medicaid.

Response: As proposed at § 457.628, regulations at §§ 431.800 through 431.1010 (related to the PERM and MEQC programs) apply to state's CHIP programs in the same manner as they apply to state's Medicaid programs. For clarification, we will revise the definition of ''disallowance'' by exchanging the term ''Medical Assistance'' for ''Medicaid.''

Comment: Some commenters requested that CMS add a separate definition for the term ''eligibility improper payment rate,'' because they believe it would be disingenuous to calculate an eligibility improper payment rate which would be used in the calculation of any payment reductions and/or disallowances should a state exceed the 3 percent threshold, based on the absolute (rather than net) value of overpayments and underpayments.

Response: Although we appreciate these comments, we decline to alter the definition of the improper payment rate or to add a separate improper payment rate definition for PERM eligibility. To comply with IPERIA, ''improper payment rate'' is defined as an annual estimate of improper payments made under Medicaid and CHIP equal to the sum of the overpayments and underpayments in the sample, that is, the absolute value of such payments, expressed as a percentage of total payments made in the sample. As such, eligibility improper payments are included in the ''improper payment rate'' definition. Further, § 431.960(d) defines an ''eligibility error'' as an underpayment or an overpayment. In the 'PERM Disallowance' section of this final rule, we address commenters concerns surrounding the inclusion of underpayments in the payment reduction/disallowance calculations.

As a result of the comments, we have revised the definition of ''corrective action'' to be more consistent with the rest of the regulatory language surrounding corrective actions by revising to include actions to be taken by the state to reduce errors or other vulnerabilities, removed the term ''error'' from the definition of ''difference resolution,'' revised the definition of ''disallowance'' by exchanging the term ''Medical Assistance'' for ''Medicaid,'' and clarified the definition of ''error'' is a ''payment error.'' We made minor stylistic changes to the definitions of ''Eligibility Review Contractor (ERC),'' ''Federal financial participation,'' ''Lower limit,'' ''Recoveries,'' ''Review Contractor (RC),'' ''Review year,'' ''State eligibility system,'' ''State error,'' and ''Statistical Contractor (SC).'' We are finalizing all other added, revised, or removed definitions as proposed.

We proposed to revise § 431.960 to remove references to negative case reviews and improper payments because a separate negative case review will no longer be a part of the PERM review process, as well as to provide greater clarity for the proposed PERM program changes. Note that while a separate negative case review would not be conducted as part of the proposed PERM review process, it could be possible for a negative case to be reviewed because the claims universe includes claims that have been denied. If a sampled denied claim was denied because the beneficiary was not eligible for Medicaid/CHIP benefits on the date of service, PERM would review the state's decision to deny eligibility.

We did not receive any comments on this proposal to remove references to negative case reviews and improper payments from § 431.960, and, therefore, we are finalizing as proposed. Please note, comments received surrounding PERM's proposal to no longer include a separate negative case review are addressed under the 'Universe Definition' section.

We proposed to revise § 431.972(a) to specify that states would be required to submit FFS claims and managed care payments for the new PERM Review Period.

We did not receive any comments on this proposal to require states to submit FFS claims and managed care payments, and, therefore, we are finalizing as proposed.

8. Eligibility Federal Review Contractor and State Responsibilities

Under the existing § 431.974, states conduct PERM eligibility reviews. Since the first PERM eligibility cycle in FY

2007, we have found that state resources have been burdened by having to conduct PERM eligibility reviews, and because the reviews require substantial staff resources, many states have struggled to meet review timelines. Moreover, we have found that having states conduct PERM eligibility reviews has created significant opportunity for states to misinterpret and inconsistently apply the PERM eligibility review guidance, with, for example, states having difficulty interpreting the universe definitions and case review guidelines.

To confront these challenges, we proposed to utilize a federal contractor (known as the ERC) to conduct the eligibility reviews on behalf of states. This will concomitantly reduce states' PERM program burden and ensure more consistent guidance interpretation, thereby reducing case review inconsistencies across states and improving eligibility processes related to case reviews and reporting. A federal contractor will be able to apply consistent standards and quality control processes for the reviews and improve CMS's ability to oversee the process, so improper payments will be reported consistently across states. Moreover, the ERC will allow us to gain a better national view of improper payments to better support the corrective action process and ensure accurate and timely eligibility determinations, while a third-party review team will be more consistent with standard auditing practices and our other improper payment measurement programs.

Our PERM model pilot testing has confirmed that having a federal contractor conduct eligibility reviews is feasible and improves our oversight of the process, as an experienced federal contractor can apply PERM guidance consistently across states while continuing to recognize unique state eligibility policies, processes, and systems. Further, through the pilots, we have developed processes to ensure that the federal contractor works collaboratively with state staff to ensure that the reviews are consistent with state eligibility policies and procedures.

While states will not continue to conduct PERM eligibility reviews, we envision that they will still play a role, as needed, in supporting the federal contractor. Therefore, we proposed to add state supporting role requirements by revising § 431.970 to outline data submission and state systems access requirements to support the PERM eligibility reviews and the ERC.

Under § 431.10(c)(1)(i)(A)(*3*), state Medicaid agencies may delegate authority to determine eligibility for all, or a defined subset of, individuals to the Exchange, including Exchanges operated by a state or by HHS. Those states that have delegated the authority to make Medicaid/CHIP eligibility determinations to an Exchange operated by HHS, known as the Federally Facilitated Exchange (FFE), are described as determination states, or FFE–D states. By contrast, those states that receive information from the FFE, which makes assessments of Medicaid/CHIP eligibility, but where the applicant's account is transferred to the state for the final eligibility determination, are known as assessment states, or FFE–A states.

We proposed that states will be responsible for providing the ERC with eligibility determination policies and procedures, and any case documentation requested by the ERC, which could include the account transfer (AT) file for any claims where the individual was determined eligible by the FFE in a determination state (FFE–D), or was passed on to the state by the FFE for final determination in assessment states (FFE–A).

Further, if the ERC finds that it cannot complete a review due to insufficient supporting documentation, it will expect the state to provide it. States will determine how to obtain the requested documentation (we did not propose to charge the ERC with conducting additional outreach, such as client contact) and, if unable to do so to enable to ERC to complete the review, the ERC will cite the case as an improper payment due to insufficient documentation. In the event that additional documentation is needed for a sampled FFE–D case, we are aware that states may not have access to any other supporting documentation, aside from the AT file. For these cases, where the beneficiary's eligibility determination under review was made by the FFE, an insufficient documentation improper payment would be cited, but only included in the national improper payment rate, and not the state specific improper payment rate. We also proposed that states will be responsible for providing the ERC with direct access to their eligibility system(s). A state's eligibility system(s) (including any electronic document management system(s)) contains data the ERC must review, including application information, third party data verification results, and copies of required documentation (for example, pay stubs), and we believe that allowing the ERC direct access would best enable it to complete its reviews in a timely and accurate manner and reduce state burden that would otherwise be required to inform the ERC's reviews.

However, to ensure that states continue to have a measure of oversight, we proposed allowing states the opportunity to review the ERC's case findings prior to their being finalized and used to calculate the national and state improper payment rate. Through a difference resolution and appeals process, states would have the opportunity to resolve disagreements with the ERC. Based on our pilot testing, we believe that open communication between the state and the ERC would best foster states' understanding of the review process and the basis for any findings.

The following is summary of the comments we received regarding our proposal to add requirements which outline the state's role in supporting the federal contractor during the PERM eligibility reviews.

Comment: Several commenters expressed the importance of continued state involvement in the eligibility reviews. The commenters noted the need for the ERC to work collaboratively with states and to allow state experts to provide assistance, resources, and support to the ERC. Additionally, one commenter noted the need for states to understand in advance how the ERC will conduct reviews and have the opportunity to review the ERC's planned review process.

Response: We agree with the commenters and believe that open communication and collaboration between the state and the ERC is essential and would best foster states' understanding of the review process and the basis for any findings. We intend to minimize state burden, but envision that states will still play an important role in supporting the federal contractor. Our PERM model pilot testing has confirmed that having a federal contractor conduct eligibility reviews is feasible as an experienced federal contractor can apply PERM guidance consistently across states while continuing to recognize unique state eligibility policies, processes, and systems. Further, through the pilots, we have developed processes to ensure that the federal contractor works collaboratively with state staff. We tasked the ERC to develop state-specific eligibility review planning documents to ensure state and CMS buy-in for the review process that will be utilized in each state.

Comment: One commenter suggested that CMS make the eligibility review procedures available to the public so that stakeholders can understand the standards and processes used to evaluate the accuracy of Medicaid and CHIP determinations.

Response: Similar to CMS' current practice for the PERM medical review and data processing review processes and procedures, we intend to make eligibility review processes and procedures available through documents available on the CMS PERM Web site.

Comment: One commenter requested that CMS incorporate a mechanism or process to determine whether the automated eligibility processes required by the Affordable Care Act are functioning accurately and whether eligibility category assignments result in the appropriate federal match rate being applied.

Response: As defined at § 431.960(d)(1), an eligibility error is an error resulting in an overpayment or underpayment that is determined from a review of a beneficiary's eligibility determination, in comparison to the documentation used to establish a beneficiary's eligibility and applicable federal and state regulations and policies, resulting in Federal and/or State improper payments. This definition will be applied regardless of whether the error was caused by automated system or caseworker processes. For the commenter's second request, we intend to review eligibility determinations for correct eligibility category assignment. We proposed to clarify in § 431.960(b)(1), (c)(1), and (d)(1) that improper payments are defined as both federal and state improper payments. We believe this change would allow us to identify federal improper payments in circumstances where states make an incorrect eligibility category assignment that would result in the incorrect FMAP being claimed by the state.

Comment: A few commenters had expressed concerns around the requirement for states to provide the case documentation needed to support the eligibility review. One commenter stated that the ERC should be responsible for providing documentation to support the eligibility reviews because they are conducting the reviews. Another commenter questioned how the ERC would obtain all information the state used to determine eligibility if the supporting documentation exists only in hard copy.

Response: As case documentation is within the state's custody and control, the responsibility for providing documentation lies with the state. Moreover, states must provide case documentation as requested to support the eligibility determinations under review as proposed at § 431.970(a)(9). As stated in the proposed rule, if the state is unable to comply with all information submission requirements and the ERC is unable to complete the review, the payment under review may be cited as an error due to insufficient documentation. The ERC will accept both electronic and hard copy documentation.

Comment: One commenter requested that CMS allow and approve state waiver requests to maintain the PERM eligibility review responsibility, rather than transferring the responsibility to the federal contractor.

Response: To ensure the accuracy and consistency of the PERM improper payment rates, we will not allow or approve state waiver requests to maintain the PERM eligibility review responsibility. As noted in the proposed rule, the decision to transfer the PERM eligibility reviews to a federal contractor was proposed to reduce states' PERM program burden and ensure more consistent guidance interpretation, thereby reducing case review inconsistencies across states and improving eligibility processes related to case reviews and reporting.

Comment: One commenter requested that CMS include a provision requiring the review contractor to review the case according to state eligibility criteria and documented policies and procedures, as well as a provision that would prevent an error from being counted three times based on the data processing, medical, and eligibility reviews.

Response: The definition of an eligibility error at § 431.960(d)(1) states that an eligibility error is an error resulting in an overpayment or underpayment that is determined from a review of a beneficiary's eligibility determination, in comparison to the documentation used to establish a beneficiary's eligibility and applicable federal and state regulations and policies, resulting in Federal and/or State improper payments. Thus, the ERC will be conducting the eligibility reviews in accordance with applicable federal, as well as, state regulations and policies. Separate definitions for data processing and medical review errors are also detailed at § 431.960(b) and (c), respectively, which the ERC will use to conduct reviews. As the three payment error definitions are distinct, a single error would be prevented from being counted three times.

In addition to the comments above, we also received many comments supporting the transfer of the PERM eligibility review responsibility to a federal contractor, and therefore, are finalizing as proposed.

9. Eligibility Review Procedures

As discussed, we proposed that a federal contractor conduct the eligibility case reviews, and states' responsibilities would therefore be limited. Because we proposed state responsibilities at § 431.970, we proposed to remove § 431.974.

We did not receive any comments on this proposal to remove § 431.974, and therefore, we are finalizing as proposed.

10. Eligibility Sampling Plan

We proposed to remove § 431.978, because the ERC will conduct the eligibility reviews and states will no longer be required to submit a sampling plan. In place of the sampling plan, the ERC will draft state-specific eligibility case review planning documents outlining how it will conduct the eligibility review, including the relevant state-specific eligibility policy and system information.

We did not receive any comments on this proposal to remove § 431.978, and therefore, we are finalizing as proposed.

11. Eligibility Review Procedures

We proposed to remove § 431.980; this section presently specifies the review procedures required for states to follow while performing the PERM eligibility component reviews. States will no longer be required to conduct the PERM eligibility component reviews, because the ERC will conduct the eligibility reviews.

We did not receive any comments on this proposal to remove § 431.980, and therefore, we are finalizing as proposed.

12. Eligibility Case Review Completion Deadlines and Submittal of Reports

We proposed to remove § 431.988; this section presently specifies states' requirements and deadlines for reporting PERM eligibility review data, which functions we proposed to transition to an ERC.

We did not receive any comments on this proposal to remove § 431.988, and therefore, we are finalizing as proposed.

13. Payment System Access Requirements

The Claims Review Contractor (RC) currently conducts PERM reviews on FFS and managed care claims for the Medicaid program and CHIP, and is required to conduct Data Processing (DP) reviews on each sampled claim to validate that the claim was processed correctly based on information found in

the state's claim processing system and other supporting documentation maintained by the state. We believe that, in order for the RC to review claims during the review cycle, reviewers would need remote or on-site access to appropriate state systems. If the RC is unable to review pertinent claims information, and the state is not able to comply with all information submission and systems access requirements as specified in the proposed rule, the payment under review may be cited as an error due to insufficient documentation.

To facilitate the RC's reviews, we proposed that states grant it access to systems that authorize payments, including: FFS claims payments; Health Insurance Premium Payment (HIPP) payments; Medicare buy-in payments; aggregate payments for providers; capitation payments to health plans; and per member per month payments for Primary Care Case Management (PCCM) or non-emergency transportation programs. We proposed that states also grant the RC access to systems that contain beneficiary demographics and provider enrollment information to the extent such information is not included in the payment system(s), and to any imaging systems that contain images of paper claims and explanation of benefits (EOBs) from third party payers or Medicare.

Experience has demonstrated that some states have allowed the RC only partial and/or untimely systems access, which we believe has led to a slower review process. Based on our discussions with the states, we believed they are sometimes permitting limited systems access due to a lack of processes to grant access (for example, requiring contractors to complete access forms and training) rather than state bans on providing outside contractors with access due to privacy or cost concerns. Therefore, we proposed adding paragraphs (c) and (d) to § 431.970, which will require states to provide access to appropriate and necessary systems.

Comment: Many commenters stated concerns surrounding the proposed requirement for states to provide federal contractors with direct access to all eligibility systems necessary to conduct the eligibility review, all payment systems, any systems that include beneficiary demographic information and/or provider enrollment information necessary to conduct the medical and data processing reviews, any document imaging systems, and systems that house the results of third party data matches. The majority of concerns stemmed from the need for data privacy and security, as well as a concern around the data that can be shared and/or provided to federal contractors.

Response: Our contractors are subject to stringent federal security standards, including compliance with HIPAA requirements, and their systems are subject to annual security audits to ensure that protected health information (PHI) and personally identifiable information (PII) used in the PERM program is protected. Further, each CMS contractor is subject to any state-specific security requirements related to the access and use of PHI and PII. This includes entering into data use agreements and completion of any other security-related protocol required by the states. This final rule requires that contractors be provided direct access to any necessary state systems required to conduct Medicaid and CHIP claim and eligibility reviews and that access can be provided through remote means (preferred) or through onsite access. However, we understand that some data elements within a system, such as the IRS income amounts, cannot be viewed by the ERC due to rules around access to federal tax information (FTI). CMS and our contractors will work with states at the start of each cycle on the identification of systems needed for PERM reviews and potential access challenges.

Comment: One commenter requested that CMS clarify in regulation the systems for which the contractor would need direct access.

Response: Proposed § 431.970 outlined the system access requirements for federal contractors. This includes all payment system(s) necessary to conduct the medical and data processing review, including the Medicaid Management Information System (MMIS), any systems that include beneficiary demographic and/or provider enrollment information, and any document imaging systems that store paper claims. This also includes all eligibility system(s) necessary to conduct the eligibility review, including any eligibility systems of record, any electronic document management system(s) that house case file information, and systems that house the results of third party data matches. Because the number and types of systems differ between states, we will work with each state to determine which systems contractors will need direct access to meet the requirements of § 431.970.

Comment: One commenter requested that CMS clarify if there is a difference between the terms ''direct access'' and ''remote or on-site access.'' The commenter stated that CMS should allow states discretion to provide any combination of direct, remote, or on-site systems access.

Response: The terms ''direct access'' and ''remote or on-site access'' are equivalent. States are required to provide direct systems access to federal contractors. While we encourage and prefer states to provide remote access where possible, both remote and on-site access will meet the requirements of § 431.970.

Comment: Many commenters were concerned about the time it would take to train federal contractors to navigate numerous systems, ultimately increasing state burden. Commenters requested that CMS re-evaluate the efficiency of providing direct access to federal contractors.

Response: We recognize that the time and resources that could be required by a state to train federal contractors in navigating numerous systems will be increased initially. However, following this initial training, state burden should be reduced over the duration of the PERM cycle. Through previous PERM cycles, as well as the PERM model pilots, experience has demonstrated that when states have allowed federal contractors direct systems access, it has led to a more timely and less burdensome review process.

Comment: One commenter requested that CMS clarify if there were any alternatives should a state not provide direct access to the eligibility system.

Response: If the state is unable to comply with all information submission and systems access requirements and the ERC is unable to complete the review, the payment under review may be cited as an error due to insufficient documentation.

In addition to these comments, we received several comments supporting our proposal to require states grant direct systems access to federal contractors, and therefore, we are finalizing § 431.970(c) and (d) as proposed.

14. Universe Definition

To meet IPERIA requirements, the samples used for PERM eligibility reviews must be taken from separate universes: one that includes Title XIX Medicaid dollars, and one that includes Title XXI CHIP dollars. Section 431.978(d)(1) currently defines the Medicaid and CHIP active universes as all active Medicaid or CHIP cases funded through Title XIX or Title XXI for the sample month, with certain exclusions. Developing an accurate and complete universe is essential to

developing a valid, accurate improper payment rate.

In previous PERM cycles, sampling universe development has been one of the most difficult steps of the eligibility review. Varying data availability and system constraints have made it challenging to maintain consistency in state-developed eligibility universes; developing the eligibility universe may require substantial staff resources, and the process may take several data pulls that are often conducted by IT staff or outside contractors not closely involved in the PERM eligibility review process.

During the PERM model pilots, we tested three PERM eligibility review universe definition options, including defining the universe by: (1) Eligibility determinations and redeterminations (that is, a universe of eligibility decisions); (2) actual beneficiaries or recipients (that is, a universe of eligible individuals); and (3) claims/payments (that is, a universe of payments made). We found that the third approach, defining the universe by the claims/payments, was best; PERM was designed to meet the IPERIA requirements of calculating a national Medicaid and CHIP improper payment rate, so having the eligibility reviews tied directly to a paid claim ensures that PERM only reviews those beneficiaries or recipients who have had services paid for by the state Medicaid or CHIP agency. Accordingly, for the PERM eligibility review active universe we proposed using the definition at § 431.972(a), and deleting the current PERM eligibility review universe requirements in § 431.974 and § 431.978. The PERM claims component requires state submission of Medicaid and CHIP FFS claims and managed care payments on a quarterly basis; state submission responsibilities are defined under § 431.970. These claims and payments are rigorously reviewed by the federal statistical contractor, and the process has extensive, thorough quality control procedures that have been used for several PERM cycles and have been well-tested.

We believe that this universe definition leverages the claims component of PERM and supports efficient use of resources, as the universe would already be developed on a consistent basis for the PERM claims component. By this proposed change, eligibility reviews using a claims universe would be tied to payments and be more consistent with IPERIA, state burden would be minimized by harmonizing PERM claims and eligibility universe development, and federal and state resources would no longer be spent on eligibility reviews that potentially could not be tied to payments (for example, eligibility reviews conducted on beneficiaries that did not receive any services).

Through our pilot testing, we have also determined that the claims universe does not result in a substantially different rate of case error. However, sampling from this universe did result in a higher proportion of non-MAGI cases because enrollees in such eligibility categories are likely to have higher health care service utilization, and therefore, have more associated FFS claims. Because PERM is designed to focus on improper payments, we believe it is appropriate to use a sample that focuses on individuals who are linked to the bulk of Medicaid and CHIP payments. However, because eligibility will be reviewed for both FFS claims and managed care capitation payments, MAGI cases will be subject to a PERM eligibility review, primarily through the review of eligibility for individuals who have managed care capitations payments on their behalf, as many states have chosen to enroll individuals in MAGI eligibility categories in managed care. Further, states can choose to focus on further Medicaid and CHIP reviews of MAGI cases in the proposed MEQC pilot reviews they would conduct during their off-year pilots.

While it is possible for a claim to be associated with a negative case, as mentioned previously, the claims universe does not support a negative PERM eligibility case rate. Because IPERIA focuses on payments, the statute does not require determining a negative case rate. The proposed MEQC pilot reviews that states will conduct on off-years would be used to review Medicaid and CHIP negative cases.

The following is summary of the comments we received regarding our proposal to change the universe definition, which would no longer include a separate negative case review in PERM.

Comment: Several commenters expressed concern around the removal of the negative case reviews from PERM. Many commenters were concerned about the oversight of these cases if not reviewed by PERM, and recommended CMS reinstate negative case reviews as part of the PERM program.

Response: The purpose of the PERM program is to identify improper payments. We recognize the importance of negative case oversight and have proposed to do so through the MEQC pilot program. This important oversight will help assure states are not incorrectly denying coverage to individuals, who are in fact eligible to receive Medicaid/CHIP benefits. However, as recommended by the comment below, we have added PERM CAP requirements to require states to evaluate whether actions states take to reduce eligibility errors will also avoid increases in improper denials.

Comment: One commenter suggested additional PERM CAP requirements for states that would require consideration of whether actions states take to reduce eligibility errors will also avoid increases in improper denials, because the PERM universe will no longer include a review of negative cases to determine whether there were inappropriate denials.

Response: We agree with this comment and have added language to § 431.992 to include that states will be required to evaluate whether actions states take to reduce eligibility errors will also avoid increases in improper denials.

Comment: One commenter stated that denied claims should be removed from the universe of claims because denied claims have no federal funds attached. The commenter also questioned whether, if denied claims are included in the universe, there is a timeframe that the eligibility determinations associated with denied claims would not be reviewed and/or dropped, as the determination under review could have taken place a number of years earlier.

Response: One of the primary benefits of moving to a single sample to support medical reviews, data processing reviews, and eligibility reviews for the PERM program is to streamline the universe submission and sampling process and select just one sample from a universe of paid and denied FFS and managed care claims and payments. This effort will minimize state burden and better align the claims and eligibility review process for the PERM program. Further, based on IPERIA requirements, the PERM program must review for potential over- or under-payments. Denied claims are included in the PERM claims universe to account for possible underpayments. We will not make any adjustments in regulation regarding the inclusion of denied claims in the PERM universe nor to the potential for those claims to receive an eligibility review. However, we appreciate the commenter's concern regarding the sampling of claims where the last eligibility action for the individual associated with the claim occurred years earlier than the claim paid date. During the first 2 rounds of the PERM model pilots, we conducted an analysis to determine the average length of time between the claim paid date and the claim date of service to determine if a significant lag between

those two dates would result in eligibility reviews that occurred more than 1 to 2 years prior to the claim paid date.

This analysis showed that the average amount of time between a claim paid date and a claim date of service in the PERM sampled claims reviewed was approximately 40 to 45 days. Additionally, on average, the oldest eligibility actions were approximately 13 months prior to claim paid date. Further, to date, our pilot work has found no issues preventing the completion of eligibility reviews regardless of the claim paid date or claim date of service. We will continue to monitor the eligibility review of denied claims during Round 5 of the Medicaid and CHIP Eligibility Review Pilots, as well as during the initial cycles when PERM eligibility resumes. If issues are identified related to the review of denied claims for eligibility or, more generally, with the review of older claims, we will issue subregulatory guidance.

As a result of the comments, we are revising § 431.992 to include a state requirement to evaluate whether actions states take to reduce eligibility errors will also avoid increases in improper denials. Moreover, we have also received several comments supporting our proposed universe definition, and therefore, we are finalizing this as proposed.

15. Inclusion of FFE–D Cases in the PERM Review

As previously noted, § 431.10(c)(1)(i)(A)(3) permits state Medicaid agencies to delegate authority to determine eligibility for all or a defined subset of individuals to the Exchange, including Exchanges operated by a state or by HHS. We proposed that, in FFE–D states, cases determined by the FFE (referred to as FFE–D cases) could be reviewed if a FFS claim or managed care payment for an individual determined eligible by the FFE is sampled. Although FFE–D states are required to maintain oversight of their Medicaid/CHIP programs per § 435.1200(c)(3), they also enter into an agreement per § 435.1205(b)(2)(i)(A) by which they must accept the determinations of Medicaid/CHIP eligibility based on MAGI made by another insurance affordability program (in this case, the FFE).

Federal regulations permit states to delegate authority for MAGI-based Medicaid and CHIP eligibility determinations to the FFE and require them to accept those determinations. States have an overall responsibility for oversight of all Medicaid and CHIP eligibility determinations, but, with respect to the FFE delegation, they are required to accept FFE determinations without further review or discussion on a case-level basis, making it difficult for states to address improper payments on a case-level basis. Therefore, we proposed that case-level errors resulting solely from an FFE determination of MAGI-based eligibility that the state was required to accept be included only in the national improper payment rate, not the state rate. Conversely, we proposed that errors resulting from incorrect state action taken on cases determined and transferred from the FFE, or from the state's annual redetermination of cases that were initially determined by the FFE, be included in both state and national improper payment rates. Examples of errors that we proposed will be included in both state and national improper payment rates include, but are not limited to: (1) Where a case is initially determined and transferred from the FFE, but the state then fails to enroll an individual in the appropriate eligibility category; and (2) errors resulting from initial determinations made by a state-based Exchange.

We proposed revisions to § 431.960(e) and § (f) to clarify that we would distinguish between cases that are included in a state's, and the national, improper payment rate. Although we proposed this distinction for improper payment measurement program purposes, this distinction does not preclude the single state agency from exercising appropriate oversight over eligibility determinations to ensure compliance with all federal and state laws, regulations and policies. We also proposed revisions to § 431.992(b) to clarify that states would be required to submit PERM corrective actions only for errors included in state improper payment rates.

We did not receive any comments on this proposal to not include case-level errors resulting solely from an FFE determination of MAGI-based eligibility in the state improper payment rate, and therefore, we are finalizing as proposed.

16. Sample Size

Establishing adequate sample sizes is critical to ensuring that the PERM improper payment rate measurement meets IPERIA statistical requirements. In accordance with IPERIA, PERM is focused on establishing a national improper payment rate, which must meet the precision level established in OMB Circular A–123, which is a 2.5 percent precision level at a 90 percent confidence interval. Although not required by IPERIA, as an additional goal we have always strived to achieve state level improper payment rates within a 3 percent precision level at a 95 percent confidence interval. However, as discussed in the Regulatory Impact Analysis, we recognize achieving this level of precision in all states poses some challenges and is not always possible.

Previously, state-specific sample sizes were calculated prior to each cycle and the national annual sample size was the aggregate of the state-specific sample sizes. State-specific sample sizes were based on past state PERM improper payment rates. We proposed establishing a national annual sample size that would meet IPERIA's precision requirements at the national level, and then distributing the sample across states to maximize precision at the state level, where possible. We also proposed that the state-specific sample sizes would be chosen to maximize precision based on state characteristics, including a history of high expenditures and/or past state PERM improper payment rates. We recognize that the precision of past estimates of state-specific improper payment rates has varied. We requested public comment on this proposed approach, its benefits, limitations, and any potential alternatives. We believe that, relative to our prior approach, the proposed approach would more effectively measure and reduce national improper payments and would also provide more stable state-specific sample sizes, as the sample size would be less responsive to changes in improper payment rates from cycle to cycle. A more stable state-specific sample size may assist with state level planning. Further, it will allow us to exercise more control over the PERM program's budget by establishing a national sample size. On the other hand, like its predecessor, the proposed approach may not yield improper payment estimates at the state level within a 3 percent precision level at a 95 percent confidence interval for all states (due to underpowered sample size). We will develop specific sampling plans for PERM cycles that occur after publication of the final rule. We will continue to calculate a national improper payment rate within a 2.5 percent precision level at a 90 percent confidence interval as required by IPERIA. Likewise, we will continue to strive to achieve state improper payment rates within a 3 percent precision level at a 95 percent confidence interval precision. In the future, as information improves or new priorities are identified, we may identify additional factors that should be taken

into account in developing state-specific sample sizes.

In practice, we anticipate having the ability to vary the number of data processing, medical, and eligibility reviews performed on each of the sampled claims. Under this approach, each sampled claim may not undergo all three types of reviews, which would allow us to more efficiently allocate the types of reviews performed. Conducting more reviews on payments that are likely to have problems gives us better information to implement effective corrective actions, which could assist in reducing improper payments. For example, after eligibility reviews resume, we may determine that there are few eligibility improper payments for clients associated with managed care claims; thus, there might be a limited benefit to conducting eligibility reviews on all sampled managed care claims, and we might reduce the number of those reviews. This approach would allow us to optimize PERM program expenditures so we do not waste resources conducting reviews unlikely to provide valuable insight on the causes of improper payments.

We note above that conducting reviews on areas more likely to have problems results in more information to inform corrective actions versus conducting more reviews on areas that are likely to be correct. It is important to note that state corrective actions are not impacted by varying levels of state-specific improper payment rate precision. As we describe later in this final rule, states are required to submit corrective action plans that address all improper payments and deficiencies identified.

The following is a summary of the comments we received regarding our proposals to: (1) Establish a national annual sample size that would meet IPERIA's precision requirements at the national level, and then distributing the sample across states to maximize precision at the state level, where possible, and (2) choose state-specific sample sizes that would maximize precision based on state characteristics, including a history of high expenditures and/or past state PERM improper payment rates.

Comment: Commenters requested clarification around the phrase ''In practice, we anticipate having the ability to vary the number of data processing, medical, and eligibility reviews performed on each of the sampled claims. Under this approach, each sampled claim may not undergo all three types of reviews, which would allow us to more efficiently allocate the types of reviews performed.'' Commenters questioned when this approach would first go into effect, and were concerned with how this allocation of reviews would be determined.

Response: The new sample size methodology, where the national sample will be distributed across states and when sampled claims will receive some combination of data processing (DP), medical review (MR), and eligibility review, will go into effect upon the effective date of the final rule. The first PERM measurement impacted by the changes in this regulation, including the sample size methodology change, will be Cycle 1 states, whose review period is from July 1, 2017, through June 30, 2018. Beginning with these reviews, we anticipate setting the number of DP, MR, and eligibility reviews at the national level, which would then be distributed across states.

Comment: Many commenters requested clarification of the phrase ''Conducting more reviews on payments that are likely to have problems gives us better information to implement effective corrective actions, which could assist in reducing improper payments.'' Commenters stated that this approach would inaccurately overstate the error rate, target eligibility cases that are more likely to have problems, and not produce a statistically valid sample.

Response: It is our goal to select a sample that is both representative of the universe of claims in the State and is descriptive enough that potential error causes will be present in the sample so they can be addressed by the State in corrective actions. All claims sampled are applied the respective sampling weight that accurately reflects the state's improper payment rate. That is, if the PERM program were to sample high risk claims at a greater frequency compared to other claims, the high risk claims would receive a relatively lower statistical weight, which prevents overstating of a state's improper payment rate. This weighting process helps make sure the resulting improper payment rate is statistically valid and representative of the universe of claims.

Comment: Two commenters requested that CMS provide detailed information of an estimated state-specific sample size and the method used to make that determination. One commenter requested that CMS allow states to enhance their state-specific sample based on the state's characteristics and suggested that defining the state's sample based on high expenditure claims and prior payment errors does not reflect the overall performance of the state.

Response: We will continue to strive to achieve state level improper payment rates within a 3 percent precision level at a 95 percent confidence interval. We will distribute the national annual sample across states to maximize precision at the state level, where possible. State-specific sample sizes would be chosen to maximize precision based on state characteristics, including a history of high expenditures and/or past state PERM improper payment rates. In the future, as information improves or new priorities are identified, we may identify additional factors that should be taken into account in developing state-specific sample sizes. Therefore, more detailed statistical methodology information will be made available in a subregulatory form so that we can make updates to the methodology as additional factors are identified.

After considering the comments, we did not make any revisions to the regulatory text, and therefore, are finalizing as proposed.

17. Data Processing, Medical, and Eligibility Improper Payment Definitions

We proposed clarifying in § 431.960(b)(1), (c)(1), and (d)(1) that improper payments are defined as both federal and state improper payments. We believe this change would allow us to cite federal improper payments in circumstances where states make an incorrect eligibility category assignment that would result in the incorrect FMAP being claimed by the state. Previously, improper payments were only cited if the total computable amount—the federal share plus the state share—was incorrect. Under the Affordable Care Act, beneficiaries in the newly eligible adult group receive a higher FMAP rate than other eligibility categories. As a result, incorrect enrollment of an individual in the newly eligible adult category may result in improper federal payments even though the total computable amount may be correct. Although there were eligibility categories that could receive higher FMAP rates previously, the size of the newly eligible adult category makes it critical for us to have the ability to cite federal improper payments to achieve an accurate PERM improper payment rate.

The following is summary of the comments we received regarding our proposal to clarify in § 431.960(b)(1), (c)(1), and (d)(1) that improper payments are defined as both federal and state improper payments.

Comment: A commenter requested we modify the definition of federal

improper payments, stating if the total computable payment is correct that the payment should not be cited as an error.

Response: We believe this proposed change would allow us to state federal improper payments in circumstances where states make an incorrect eligibility category assignment that would result in the incorrect federal medical assistance percentage (FMAP) being claimed by the state. Previously, improper payments were only stated if the total computable amount—the federal share plus the state share—was incorrect. Under the Affordable Care Act, beneficiaries in the newly eligible adult group receive a higher FMAP rate than other eligibility categories. As a result, incorrect enrollment of an individual in the newly eligible adult category may result in improper federal payments even though the total computable amount may be correct. Although there were eligibility categories that could receive higher FMAP rates previously, the size of the newly eligible adult category makes it critical for us to have the ability to state federal improper payments to achieve an accurate PERM improper payment rate.

Comment: Commenters requested clarification of the eligibility error definition in regard to the phrase ''lacked or had insufficient documentation in his or her case record,'' specifically regarding whether or not states have the opportunity to provide the missing documentation that proves the eligibility determination was correct before it is determined an error.

Response: States are required to provide documentation to support their eligibility determination. We intend to accept documentation to support accurate payments that is provided in time to be included in the improper payment rate calculation and meets criteria set forth by CMS in future subregulatory guidance regarding the provision of documentation for eligibility reviews.

Comment: One commenter stated the eligibility error definition for both PERM and MEQC was likely to increase error rates, as citing errors when a case does not contain sufficient documentation to support the eligibility determination decision overlooks the possibility that the documentation could not be attained for legitimate reasons. The commenter also stated that, currently, these cases are removed from the sample as the inaccuracy of the decision cannot be proven and requests CMS to continue its practice of excluding these cases from the sample unit.

Response: We respectfully disagree with the commenter. We must include cases of insufficient documentation as improper payments to comply with OMB's implementing guidance for IPERIA, which states that ''when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment.'' Consistent with this guidance, PERM has never allowed for cases of insufficient or lack of documentation to be excluded.

Comment: One commenter requested that CMS clarify if PERM eligibility errors would include both caseworker and systems errors.

Response: The definition of an eligibility error at § 431.960(d)(1) states that an eligibility error is an error resulting in an overpayment or underpayment that is determined from a review of a beneficiary's eligibility determination, in comparison to the documentation used to establish a beneficiary's eligibility and applicable federal and state regulations and policies, resulting in Federal and/or State improper payments. This definition will be applied regardless of whether the error finding was caused by a caseworker or system.

In addition to the comments above, we also received several comments supporting our proposal to clarify in § 431.960(b)(1), (c)(1), and (d)(1) that improper payments are defined as both federal and state improper payments. Therefore, we are finalizing § 431.960 as proposed.

18. Difference Resolution and Appeals Process

Because we proposed to use an ERC to conduct the eligibility case reviews, we likewise proposed that the ERC conduct the eligibility difference resolution and appeals process, which would mirror how that process is conducted with respect to FFS claims and managed care payments. The difference resolution and appeals process used for the FFS and managed care components of the PERM program is well developed and has allowed us to adequately resolve disagreements between the RC and states. We have revised § 431.998 to include the proposed eligibility changes for the difference resolution and appeals process.

Additionally, we proposed deleting the statement in the regulation text currently at § 431.998(d) about CMS recalculating state-specific improper payment rates, upon state request, in the event of any reversed disposition of unresolved claims; Instead proposing that the recalculation be performed whenever there is a reversed disposition, such that no state request is needed.

The following is summary of the comments we received regarding our proposal for the ERC to conduct the eligibility difference resolution and appeals.

Comment: One commenter requested that CMS include in regulation the requirements for the ERC to respond and collaborate with states to resolve differences in a timely manner.

Response: PERM review contractors have requirements in their contracts for responding to state requests for difference resolutions in a timely manner. Currently, the PERM review contractors are contractually required to respond to state requests for difference resolutions in 15 days. Requirements such as state collaboration are also included in these contracts and the contractors are held accountable to be in compliance. Additionally, through the PERM model pilots we learned that state collaboration and communication are essential in making the new eligibility review process with the ERC a success, which is also a priority to us.

Comment: A commenter requested that CMS re-evaluate the time allowed for the difference resolution and appeals processes, especially for the eligibility component, as the current time allowances are insufficient. The commenter recommended that CMS allow for 60 calendar days for difference resolution requests and 30 calendar days for appeal requests.

Response: We find the request to re-evaluate the difference resolution and appeals timeframes reasonable, but disagree with the specific timeframes recommended by the commenter. Instead, we will extend the difference resolution time allowance to 25 business days and the appeal time allowance to 15 business days, which will allow states more time to research errors while still allowing the PERM process to be completed within a reasonable timeframe.

Comment: One commenter requested clarification as to whether or not CMS would be able to complete all recalculated state improper payment rates to enable them to be published in the AFR and state report.

Response: Changing the PERM review period provides states and CMS additional time to complete the work related to each PERM cycle prior to the annual improper payment rate publication in the AFR and state reports. Therefore, we anticipate the need for state improper payment rate

recalculations to be limited. Per § 431.998(d), all differences that are not overturned in time for improper payment rate calculation will be considered as errors in the improper payment rate calculation to meet the reporting requirements of the IPIA (as amended). In the event of any reversed disposition of unresolved claims, a state improper payment rate recalculation will be performed.

Comment: One commenter requested that CMS clarify the types of reports that will be provided to states to determine if a difference resolution or appeal should be pursued or requested for findings. Additionally, the commenter requested that detailed case information will be needed, not only for determining whether or not to file a difference resolution/appeal, but for developing and implementing corrective actions.

Response: As proposed, the difference resolution and appeals process would mirror how that process is conducted for FFS and managed care payments. Detailed information on the payment under review, as well as the reason for the error/deficiency citation, is provided to allow states to determine whether they should request difference resolution and/or an appeal, as well as develop appropriate corrective actions.

As a result of the comments, we have revised § 431.998(b) and (d) to include the new time allowances for both difference resolution and appeal requests. We are finalizing all other provisions this section as proposed.

19. Corrective Action Plans

Under § 431.992, states are required to submit CAPs to address all improper payments and deficiencies found through the PERM review. We proposed that states would continue to submit CAPs that address eligibility improper payments, along with improper payments found through the FFS and managed care components. We proposed to revise § 431.992(a) to clarify that states would be required to address all errors included in the state improper payment rate at § 431.960(f)(1).

We proposed to revise § 431.992 to provide additional clarification for the PERM CAP process. We proposed minor revisions to the regulatory text to reflect the current corrective action process and provide additional state requirements, consistent with the CHIPRA. Proposed revisions include replacing ''major tasks'' at § 431.992(b)(3)(ii)(A) with ''corrective action,'' to improve clarity. Other proposed clarifications would also be provided at § 431.992(b)(3)(ii)(A) through (E).

We also proposed adding language to clarify the state responsibility to evaluate corrective actions from the previous PERM cycle at § 431.992(b)(4), and a requirement for states, annually and when requested by CMS, to update us on the status of corrective actions. We proposed to request updates on state corrective action implementation progress on an annual basis, a frequency that would enable us fully monitor corrective actions and ensure that states are continually evaluating the effectiveness of their corrective actions.

Additionally, we proposed to add language in § 431.992 to specify further CAP requirements should a state's PERM eligibility improper payment rate exceed the allowable threshold of 3 percent per section 1903(u) of the Act for consecutive PERM years. This proposal only pertains to a state's additional CAP requirements related to the PERM eligibility improper payment rate, and does not extend to the FFS and managed care components. As the allowable threshold for eligibility is set by section 1903(u) of the Act, this will not change from year to year. The improper payment rate targets for FFS and managed care are not constant, therefore, it is not judicious to hold states accountable to meet a target that is variable.

We proposed to require states whose eligibility improper payment rates exceed the 3 percent threshold for consecutive PERM years to provide status updates on all corrective actions on a more frequent basis, as well as include more details surrounding the state's implementation and evaluation of all corrective actions, than would be required for those states that did not have eligibility improper payment rates over the 3 percent threshold for consecutive PERM years. As noted above, we anticipate typically requesting updates on corrective actions on an annual basis, however, for those states with consecutive PERM eligibility improper payment rates above the allowable threshold, we proposed to require updates every other month. Such states would also be required to submit information about any setbacks and provide alternate corrective actions or manual workarounds, in the event that their original corrective actions are unattainable or no longer feasible. This would ensure that states have additional plans in place, if the original corrective action cannot be implemented as planned. Also, states would be required to submit actual examples demonstrating that the corrective actions have led to improvements in operations, and explanations for how these improvements are efficacious and will assist the state to reduce both the number of errors cited and the state's next PERM eligibility improper payment rate. Moreover, we proposed that states be required to submit an overall summary that clearly demonstrates how the corrective actions planned and implemented would provide the state with the ability to meet the 3 percent threshold upon their next PERM eligibility improper payment rate measurement.

The following is summary of the comments we received regarding our proposals to revise § 431.992 by (1) clarifying that states would be required to address all errors included in the state improper payment rate at § 431.960(f)(1); (2) adding language to clarify the state responsibility to evaluate corrective actions from the previous PERM cycle at § 431.992(b)(4), and a requirement for states, annually and when requested by CMS, to update us on the status of corrective actions; and (3) adding language to specify further CAP requirements should a state's PERM eligibility improper payment rate exceed the allowable threshold of 3 percent per section 1903(u) of the Act for consecutive PERM years.

Comment: One commenter requested that CMS impose a 1-year timeframe for completing the corrective actions, with tighter timeframes when feasible.

Response: Specific deadlines for addressing errors and deficiencies, as well as for implementing corrective actions, are highly dependent on the nature of the problem, and the kind and extent of the corrective action needed. Therefore, we do not believe that imposing a timeframe for states' completing corrective actions would be feasible.

Comment: One commenter suggested CMS clarify that the evaluation look-back period applies to all previous CAPs and is not limited to only the CAP from the most recent PERM measurement.

Response: Implementing such provisions would require states to report on corrective actions that could potentially be no longer relevant. In the event that a corrective action was not implemented by the state, similar findings would be identified during their MEQC pilots and PERM reviews, and, thus, have to meet MEQC CAP and PERM CAP requirements. Additionally, should a state exceed the 3 percent threshold for consecutive PERM years, more stringent CAP requirements are required per § 431.992(e).

As a result of the comments, and as previously mentioned in the responses to commenter concerns regarding the exclusion of negative case reviews from

PERM's review, we are revising § 431.992 to include that states be required to evaluate whether actions states take to reduce eligibility errors will also avoid increases in improper denials in their PERM CAPs. Additionally, we also received several comments supporting the proposed changes to § 431.992 and are therefore, finalizing all other provisions of § 431.992 as proposed.

20. PERM Disallowances

As previously stated regarding MEQC Disallowances, we proposed to require states to use PERM to meet the requirements of section 1903(u) of the Act in their PERM years, and to no longer require the proposed MEQC pilot program to satisfy the requirements of section 1903(u) of the Act. We proposed to require states to use PERM to meet section 1903(u) of the Act requirements, as this approach has been supported by the CHIPRA through its certain data substitution authorization between the PERM and MEQC programs. Moreover, requiring the PERM program to satisfy IPERIA requirements and requiring a separate program to satisfy the erroneous excess payment measurement and payment reduction/disallowance requirements of section 1903(u) of the Act, when PERM is capable of meeting the requirements of both, would be contrary to the CHIPRA's requirement to harmonize PERM and MEQC. Therefore, based on the ability of the PERM program to meet both the requirements of section 1903(u) of the Act and IPERIA, we proposed that in a state's PERM year, a state's PERM eligibility improper payment rate be used to satisfy both IPERIA's improper payment requirements and 1903(u) the Act's erroneous excess payments and payment reduction/disallowance requirements.

If a state's PERM eligibility improper payment rate is above the 3 percent allowable threshold per section 1903(u) of the Act, it would be subjected to potential payment reductions and disallowances. However, if the state has taken the action it believed was needed to meet the threshold and still failed to achieve that level, the state may be eligible for a good faith waiver as outlined in § 431.1010. Essential elements of a state's showing of a good faith effort include the state's participation in the MEQC pilot program in accordance with subpart P (§ 431.800 through § 431.820) and implementation of PERM CAPs in accordance with § 431.992.

Absent CMS's approval, a state's failure to comply with the requirements of both the MEQC pilot program and PERM CAP would be considered a failure to demonstrate a good faith effort to reduce its eligibility improper payment rate. Again, absent our approval, we would not grant a good faith waiver for any state that either does not comply with the MEQC pilot program requirements or does not implement a PERM corrective action plan. We also proposed that the requirements under section 1903(u) of the Act would not become effective until a state's second PERM eligibility improper payment rate measurement has occurred, as an earlier effective date would not give states a chance to demonstrate, if needed, a good faith effort.

Under this proposed regulation, we would reduce a state's FFP for medical assistance by the percentage by which the lower limit of the state's eligibility improper payment rate exceeds the 3 percent threshold should a state fail to demonstrate a good faith effort. We proposed to use the lower limit of the improper payment rate, because we believe that utilizing the lower limit of the error rate for disallowance purposes will assist in ensuring there is reliable evidence that a state's error rate exceeds the 3 percent threshold. This approach addresses the varying levels of state-specific improper payment rate precision as discussed in the sample size section above. Therefore, we proposed to add § 431.1010, which establishes rules and procedures for payment reductions and disallowances of FFP in erroneous medical assistance payments due to eligibility improper payments, as detected through the PERM program. Federal medical assistance funds include all service-based fee-for-service, managed care, and aggregate payments which are included in the PERM universe. Exclusions from the federal medical assistance funds for disallowance purposes include non-service related costs (for example, administrative, staffing, contractors, systems) as well as certain payments for services not provided to individual beneficiaries such as Disproportionate Share Hospital (DSH) payments to facilities, grants to State agencies or local health departments, and cost-based reconciliations to non-profit providers and Federally-Qualified Health Centers (FQHCs). If expenditures included in the PERM universe are adjusted, we may also need to adjust the universe definition to meet program needs.

The following is summary of the comments we received regarding our proposal for PERM to meet section 1903(u) of the Act in state's PERM years.

Comment: Several commenters were concerned with whether the 3 percent eligibility improper payment threshold was realistic and reasonable given the changes to the PERM program. Additionally, many of those commenters requested that CMS demonstrate the validity of this figure to ensure that states would not be inappropriately penalized as a result of these substantial changes.

Response: The 3 percent threshold for eligibility-related improper payments in any fiscal year is established by section 1903(u) of the Act. Payment reductions/disallowances become effective on and after July 1, 2020, at which time states, within their respective PERM cycles, will be reviewed for the second time under this final rule.

Comment: One commenter stated that CMS should revisit the establishment of the 3 percent threshold, as, historically, MEQC processes allowed for the dropping of undetermined cases, wherein PERM will include undetermined cases among the errors.

Response: Historically, MEQC allowed for the dropping of undetermined cases due to the nature of the required MEQC review that made undetermined cases likely to be prevalent. MEQC required states to determine if cases were eligible for services during all or parts of a month under review. Under MEQC, state agencies were required to collect and verify all information necessary to determine eligibility, including conducting field investigations and in-person beneficiary interviews. However, under PERM, the ERC will review the last action performed by the state that resulted in the eligibility for the beneficiary on the date of service associated with the sampled claim. Documentation and record keeping requirements relevant to state determinations of eligibility are outlined in federal regulations, and, therefore, states should be maintaining information required for review. Thus, eligibility errors will continue to include cases that lacked or had insufficient documentation to make a definitive review decision as defined in § 431.960(d)(2)(iii).

Comment: A few commenters requested that CMS show how disallowances would be calculated and to provide an example.

Response: For each state, along with the improper payment rate, we calculate a 95 percent confidence interval, which has a lower limit and an upper limit. Under the proposed regulation, if a state's eligibility error rate is above the 3 percent allowable threshold (as established by section 1903(u) of the

Act), and the state fails to demonstrate a good faith effort in reducing its eligibility improper payment rate, then further action will be taken. Using the lower limit of the state's eligibility improper payment rate, the state's FFP for medical assistance will be reduced by the amount that the lower limit of the state's eligibility improper payment rate (excluding underpayments) exceeds the 3 percent threshold. For example, a state has a Medicaid eligibility improper payment rate of 10 percent. The lower limit of the 95 percent confidence interval is 5 percent and the upper limit is 15 percent. Thus, the lower limit exceeds the 3 percent threshold by 2 percentage points (the 5 percent lower limit less the 3 percent threshold is 2 percent). The state's FFP for Medicaid will then be reduced by 2 percent. The 2 percent reduction will be based on the total FFP received for the state's Medicaid program during the period spanning the state's PERM review year.

Comment: Commenters requested that CMS revise the proposed § 431.1010 to include authority to disallow only those expenditures that actually produced a cost to the federal government.

Response: As specified in § 431.972, the PERM claims universe includes payments which are eligible for FFP (or would have been if the claim had not been denied) through Title XIX (Medicaid) or Title XXI (CHIP). Therefore, all improper payments identified through PERM and included in improper payment rates used for calculation of payment reductions/disallowances would include FFP.

Comment: A few commenters stated that a state should only be required to return funds based on a calculation of excess FFP, and not for any under claiming of FFP.

Response: While the occurrence of eligibility underpayments is expected to be extremely rare, we agree and will revise the regulatory text to remove underpayments from any payment reduction/disallowance calculations. We are revising § 431.1010(a)(2) to specify that, after the state's eligibility improper rate has been established for each PERM review period, we will compute the amount of the disallowance, removing any underpayments due to eligibility errors, and adjust the FFP payable to each state.

Comment: One commenter requested that CMS clarify if FFP will be reduced or disallowed at a program and/or waiver level only. The commenter stated that disallowances tied to Medicaid and/or CHIP in total will inappropriately reduce or disallow FFP and will put beneficiaries at risk for not receiving medically necessary services.

Response: For each state, along with the improper payment rate, we calculate a 95 percent confidence interval, which has a lower limit and an upper limit. Under the proposed rule, if a state's Medicaid and/or CHIP eligibility improper payment rate is above the 3 percent allowable threshold per section 1903(u) of the Act, and the state fails to demonstrate a good faith effort in reducing its eligibility improper payment rate, then further action will be taken. Using the lower limit of the state's eligibility improper payment rate (excluding underpayments), the state's FFP for the Medicaid program and/or CHIP will be reduced by the amount that the lower limit of the state's program-specific eligibility improper payment rate exceeds the 3 percent threshold. Payment reductions/disallowances will only be pursued after each state has been measured twice under this regulation. This provision affords states with the ability to demonstrate a good faith effort as defined in this regulation.

Comment: One commenter requested clarification for whether payment reductions and disallowances would also be applied to the years between PERM cycles for a state whose last PERM eligibility improper payment rate was above the 3 percent threshold, and that state failed to demonstrate a good faith effort.

Response: The disallowance of FFP for states whose PERM eligibility improper payment rate is over the 3 percent threshold and who fail to demonstrate a good faith effort applies to each state only in the state's PERM year. Although this rate remains frozen until the state's next PERM eligibility improper payment rate, the disallowance will not be extended to the 2 years between a state's PERM years. For clarification purposes, we have added language to § 431.1010(a)(2) to specifically state the period of payment reduction/disallowance.

Comment: One commenter requested that CMS strengthen the requirement for what it means for states to demonstrate a good faith effort to obtain a waiver from payment reductions/disallowances, should a state exceed the 3 percent threshold. The commenter recommended that a state should have to show a reduction in the eligibility improper payment rate from the first PERM year to the second PERM year in order to be granted a good faith waiver.

Response: Factors impacting PERM eligibility improper payment rates are complex and vary from year to year. Thus, even though a state's improper payment rate does not decrease between PERM years, it does not mean the same errors and/or deficiencies exist, or necessarily mean that the state did not implement effective corrective actions. We continue to believe that the proposed requirements of a state's participation in the MEQC pilot program in conformity with §§ 431.800 through 431.820 and its implementation of PERM CAPs in accordance with § 431.992 are essential elements to the showing of a state's good faith effort.

Comment: One commenter suggested CMS clarify that the good faith waiver is limited to one PERM cycle and will not be extended.

Response: In the event that a state does receive a good faith waiver, it will not be extended beyond the PERM year in which it was received. Any state whose PERM eligibility improper payment rate is above the 3 percent threshold for consecutive cycles must meet the good faith waiver requirements for each cycle.

Comment: A commenter requested that CMS clarify additional exemptions states can meet in addition to the MEQC pilots that would allow states to be eligible for a good faith waiver.

Response: The good faith waiver requirements are outlined at § 431.1010(b)(2). There are no additional exemptions. We will grant a good faith waiver only if a state both participates in the MEQC pilot program and implements PERM CAPs.

We also received many comments supporting our proposal to require PERM to meet section 1903(u) of the Act in states PERM years. Therefore, in response to the comments received, we are adding language at § 431.1010(a)(2) and (a)(3)(i) to exclude underpayments from any payment reduction/disallowance calculations. We also revised the definition of ''disallowance'' at § 431.958 and added clarification at § 431.1010(a)(2) to state that payment reduction/disallowance is only applicable to a state's PERM year. We are finalizing the remaining provisions as proposed.

III. Provisions of the Final Regulations

With the exception of the following provisions and other minor stylistic revisions, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

- In § 431.804, we are replacing the proposed definition of ''deficiency'' with the correct MEQC definition of ''deficiency.''
- At § 431.814(b)(1)(i), we are adding the requirement for states to provide the justification for the focus of the active case reviews.

• In § 431.958, we are revising the definitions of ''corrective action,'' ''difference resolution,'' ''disallowance,'' and changing the definition ''error'' to ''payment error'' as a result of issues raised by commenters.

• At § 431.992(a)(2), we are adding a requirement for states to provide an evaluation of whether actions states take to reduce eligibility errors will also avoid increases in improper denials.

• At § 431.998(d), we are updating the time allowances for states to request difference resolutions and appeals.

• At § 431.1010(a)(2), we are adding that payment reduction/disallowance calculations will not include underpayments, and that payment reductions/disallowances are only applicable to the state's PERM year.

• At § 431.1010(a)(3)(i), we are adding that underpayments will be excluded from payment reduction/disallowance calculations.

IV. Collection of Information

Under the Paperwork Reduction Act of 1995 (PRA), we are required to publish a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our burden estimates.

• The quality, utility, and clarity of the information to be collected.

• Our effort to minimize the information collection burden on the affected public, including the use of automated collection techniques.

The estimates in this collection of information were derived from feedback received from states during the PERM cycle. We solicited public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following information collection requirements (ICRs).

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2014 National Industry-Specific Occupational Employment and Wage Estimates for State Government (NAICS 999200) (*http://www.bls.gov/oes/current/naics4_999200.htm#13-0000*). In this regard, Table 1 presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 1—(SUMMARY OF 2014 BLS STATE GOVERNMENT WAGE ESTIMATES)

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Claims Adjusters, Appraisers, Examiners, and Investigators	13–1031	27.60	27.60	55.20
Medical Secretaries	43–6013	16.50	16.50	33.00

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

A. ICRs Regarding Review Procedures (§ 431.812)

Section 431.812 requires states to conduct one MEQC pilot during the 2 years between their designated PERM years. Revisions to § 431.812 requires that states must use the MEQC pilots to perform both active and negative case reviews, while providing states with some flexibility surrounding their active case review pilot. States will review a minimum total of 400 Medicaid and CHIP active cases, with at least 200 of the active cases being Medicaid cases. States will have the flexibility to determine the precise distribution of active cases (for example, states could sample 300 Medicaid cases and 100 CHIP cases), and states will describe the active sample distribution in the MEQC pilot planning document at § 431.814. States will also, at a minimum, be required to review 200 Medicaid and 200 CHIP negative cases. Currently, under the PERM program, states are required to conduct approximately 200 negative case reviews for each the Medicaid program and CHIP. Therefore, a total minimum negative sample size of 400 (200 for each program) will be reviewed under the MEQC pilots.

Section 431.812 aligns with § 431.816 and outlines the case review completion deadlines and submission of reports. Additionally, § 431.820 is also considered to be a part of a state's MEQC pilot reporting. Therefore, burden estimates are combined for the case reviews, the reporting of findings, including corrective actions. The time, effort, and costs listed in this section will be identical to the sections where § 431.816 and § 431.820 are described, but should not be considered additional or separate costs.

The ongoing burden associated with the requirements under § 431.812 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to a maximum of 34 total respondents each PERM off-year) to perform the required number of eligibility case reviews as mentioned above, and report on their findings and corrective actions.

We estimate that it will take 1,200 hours annually per state program to report on all case review findings (900 hours) and corrective actions (300 hours). This estimate assumes that states spend approximately 100 hours a month on the related activities (100 hours x 12 months = 1,200 hours) during the State's MEQC reporting year. The total estimated annual burden is 40,800 hours (1,200 hours x 34 respondents), at a total estimated cost per respondent of $66,240 (1,200 hours x ($55.20/hour)) and a total estimated cost of $2,252,160 (($66,240 per respondent) x 34 respondents) for all respondents. The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection request currently approved under control number 0938–0147.

B. ICRs Regarding Pilot Planning Document (§ 431.814)

Revised § 431.814 requires states to submit a MEQC Pilot Planning Document. The Pilot Planning Document must be approved by us as outlined in § 431.814 of this final rule and is critical to ensuring that the state will conduct a MEQC pilot that complies with our guidance. The Pilot

Planning Document submitted by the state would include details surrounding how the state will perform both its active and negative case reviews.

The ongoing burden associated with the requirements under § 431.814 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP programs for 17 states equates to a maximum of 34 total respondents each PERM off-year) to develop, submit and gain CMS approval of its MEQC Pilot Planning Document.

We estimate that it will take 48 hours per MEQC pilot per state program to submit its Pilot Planning Document and gain approval under § 431.814. We have based the estimated 48 hours off of the pilot proposal process currently utilized in the FY 2014–2017 Medicaid and CHIP Eligibility Review Pilots, and have estimated the burden associated accordingly. The total estimated annual burden across all respondents is 1,632 hours ((48 hours/respondent) x 34 respondents). The total estimated cost per respondent is $2,649.60 (48 hours x ($55.20/hour)) and the total estimated annual cost across all respondents is $90,086.40 (($2,649.60/respondent) x 34 respondents). As the MEQC program is currently suspended, and will be operationally different under this final rule, this estimate is not based on real time data. Once real time data is available, we will solicit information from the states and update our burden estimates accordingly.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0146.

C. ICRs Regarding Case Review Completion Deadlines and Submittal of Reports (§ 431.816)

Revised § 431.816 provides clarification surrounding the case review completion deadlines and submittal of reports. States would be required to report on all sampled cases in a CMS-specified format by August 1 following the end of the MEQC review period.

As mentioned above, § 431.816 aligns with § 431.812 and § 431.820, thus, the burden estimates are identical for these sections and should not be thought of as separate estimates or a duplication of effort. The ongoing burden associated with the requirements under § 431.816 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM off-year) to complete the required number of eligibility case reviews, and report on their findings. Refer back to section IV.A., ICRs Regarding Review Procedures (§ 431.812), for the expanded burden estimate.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0147.

D. ICRs Regarding Corrective Action Under the MEQC Program (§ 431.820)

Under the current MEQC program, states are required to conduct corrective actions on all case errors, including technical deficiencies, found through the review. Corrective actions are critical to ensuring that states continually improve and refine their eligibility processes. Therefore, revisions to § 431.820 require states to implement corrective actions on any errors or deficiencies identified through the revised MEQC program as outlined under § 431.820.

We proposed that states report their corrective actions to us by August 1 following completion of the MEQC review period. The report would also include updates on previous corrective actions, including information regarding the status of corrective action implementation and an evaluation of those corrective actions.

The ongoing burden associated with the requirements under § 431.820 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM off-year) to develop and report its corrective actions in response to its MEQC pilot program findings. Refer back to section IV.A. of this final rule for the expanded burden estimate.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control number 0938–0147.

E. ICRs Regarding Information Submission and Systems Access Requirements (§ 431.970)

Currently, the PERM claims component requires state submission of Medicaid and CHIP FFS claims and managed care payments on a quarterly basis; and provider submission of medical records; state and provider submission responsibilities are defined under § 431.970. These claims and payments are rigorously reviewed by the federal statistical contractor. We are proposing to utilize this same claims universe to complete the PERM eligibility component. Previously, states had to pull a separate case universe for the PERM eligibility component. With this proposed change, states would only be required to submit one universe to satisfy all components of PERM.

Additionally, states are required to collect and submit (with an estimate of 4 submissions) state policies. With this proposed change, states will still be required to collect and submit state policies surrounding FFS and managed care, but would now also have to submit all state eligibility policies. There would be an initial submission and quarterly updates. There are no proposed changes for the provider submission of medical records.

The ongoing burden associated with the requirements under § 431.970 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents each PERM year) to submit its claims universe, and collect and submit state policies, and the time and effort it would take providers to furnish medical record documentation.

We estimate that it will take 1,350 hours annually per state program to develop and submit its claims universe and state policies. The total estimated hours is broken down between the FFS, managed care, and eligibility components and is estimated at 900 hours for universe development and submission, and 450 hours for policy collection and submission. Per component it is estimated at 1,150 FFS hours, 100 managed care hours, and 100 eligibility hours for a total of 45,900 annual hours (1,350 hours × 34 respondents). The total estimated annual cost per respondent is $74,520 (1,350 hours × ($55.20/hour), and the total estimated annual cost across all respondents is $2,533,680 (($74,520/respondent) × 34 respondents).

However, as a federal contractor has not previously conducted the eligibility component of PERM, the hours assessed related to the state burden associated with the revised eligibility component are not based on real time data, but rather based off information solicited from the states. The information received was from those states that participated in the PERM model eligibility pilots that were conducted by a federal contractor, but on a much smaller scale than that of PERM.

We estimate that it will take 2,824 hours annually per PERM cycle per program (Medicaid and CHIP) for providers to furnish medical record documentation to substantiate claim submission. The total estimated annual burden on providers is 5,648 hours (2,824 hours/program × 2 programs). We estimate the total cost to providers per program annually to be $93,192 (2,824

hours × $33.00/hour). The total estimated cost for providers is $186,384 ($93,192/program × 2 programs). These estimates are based on the average number of medical reviews conducted per PERM cycle and the average amount of time it takes for providers to comply with the medical record request. These estimates are for FFS claims only, as medical review is only completed on sampled FFS claims.

The preceding requirements and burden estimates will be submitted to OMB as a revision to the information collection currently approved under control numbers 0938–0974, 0938–0994, and 0938–1012.

F. ICRs Regarding Corrective Action Plan Under the PERM Program (§ 431.992)

Currently, under § 431.992, states are required to submit corrective action plans to address all improper payments and deficiencies found through the PERM review. Proposed revisions to § 431.992(a) clarify that states would be required to address all improper payments and deficiencies included in the state improper payment rate as defined at § 431.960(f)(1). Additional language was also added to § 431.992 to clarify the state responsibility to evaluate corrective actions from the previous PERM cycle at § 431.992(b)(4).

The ongoing burden associated with the requirements under § 431.992 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents per PERM cycle) to submit its corrective action plan.

We estimate that it will take 750 hours (250 hours for FFS, 250 hours for managed care and an additional 250 hours for eligibility), per PERM cycle per state program to submit its corrective action plan for a total estimated annual burden of 25,500 hours ((750 hours/respondent) × 34 respondents). We estimate the total cost per respondent to be $41,400 (750 hours × ($55.20/hour)). The total estimated cost for all respondents is $1,407,600 (($41,400/respondent) × 34 respondents).

However, as a federal contractor has not previously conducted the eligibility component of PERM, the hours assessed related to the state burden associated with the revised eligibility component are not based on real time data, but rather based off information solicited from the states. The information received was from those states that participated in the PERM model eligibility pilots which were conducted by a federal contractor, but on a much smaller scale than that of PERM.

The preceding requirements and burden estimates will be submitted to OMB as part of revisions to the information collections currently approved under control numbers 0938–0974, 0938–0994, and 0938–1012. Not to be confused with the burden set outlined above, the revised PERM PRA packages' total burden would amount to: 34 annual respondents, 34 annual responses, and 750 hours per corrective action plan.

G. ICRs Regarding Difference Resolution and Appeal Process (§ 431.998)

Currently, the difference resolution and appeals process used for the FFS and managed care components of the PERM program is well developed and has allowed us to adequately resolve disagreements between the RC and states. Revisions to § 431.998 now include the proposed eligibility changes for the difference resolution and appeals process. Because we proposed to use an ERC to conduct the eligibility case reviews, we likewise proposed that the ERC conduct the eligibility difference resolution and appeals process, which would mirror how that process is conducted with respect to FFS claims and managed care payments.

The ongoing burden associated with the requirements under § 431.998 is the time and effort it would take each of the 34 state programs (17 Medicaid and 17 CHIP agencies for 17 states equates to maximum 34 total respondents per PERM cycle) to review PERM findings and inform the federal contractor(s) of any additional information and/or dispute requests.

We estimate that it will take 1625 hours (500 hours for FFS, 475 hours for managed care and an additional 650 hours for eligibility) per PERM cycle per state program to review PERM findings and inform federal contractor(s) of any additional information or dispute requests for FFS, managed care, and eligibility components total estimated annual burden of 55,250 hours ((1,625 hours/respondent) × 34 respondents). We estimate the total cost per respondent to be $89,700 (1,625 hours × ($55.20/hour)). The total estimated cost for all respondents is $3,049,800 (($89,700/respondent) × 34 respondents).

The preceding requirements and burden estimates will be submitted to OMB as revisions to the information collections currently approved under control numbers 0938–0974, 0938–0994, and 0938–1012. Not to be confused with the burden set outlined above, the revised PERM PRA packages' total burden would amount to: 34 annual respondents, 34 annual responses, and 1,625 hours per PERM cycle.

TABLE 2—SUMMARY OF ANNUAL INFORMATION COLLECTION BURDEN ESTIMATES

Regulation section(s)	OCN	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)
§ 431.812	0938–0147	34	34	1,200	40,800	$66,240.00	$2,252,160.00
§ 431.814	0938–0146	34	34	48	1,632	2,649.60	90,086.40
§ 431.816	0938–0147	34	*34	*1,200	*40,800	*66,240.00	*2,252,160.00
§ 431.820	0938–0147	34	*34	*1,200	*40,800	*66,240.00	*2,252,160.00
§ 431.970	0938–0974; 0938–0994; 0938–1012.	34	34	1,350	45,900	74,520.00	2,533,680.00
§ 431.970	Provider Submissions.	Varies	Varies	Varies	5,648	93,192.00	186,384.00
§ 431.992	0938–0974; 0938–0994; 0938–1012.	34	34	750	25,500	41,400.00	1,407,600.00
§ 431.998	0938–0974; 0938–0994; 0938–1012.	34	34	1,625	55,250	89,700.00	3,049,800.00

TABLE 2—SUMMARY OF ANNUAL INFORMATION COLLECTION BURDEN ESTIMATES—Continued

Regulation section(s)	OCN	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)
Total	.....	34	34	.....	174,730	367,701.60	9,519,710.404

*Not included in totals, as these represent the combined estimated hours/cost for 3 sections as mentioned above. These numbers should only be counted once.

The following is a summary of the comments we received regarding our information collection requirements.

Comment: Two commenters requested that CMS revisit the PERM collection of information estimates, as both commenters stated they were vastly underestimated.

Response: We solicited information from the states prior to developing these estimates. We received several responses, and as a result averaged the information provided from the states regarding the hours spent on PERM activities. We acknowledged that there will be outliers that fall above and below these estimates; however, the estimates represent a national average of the time and costs for states to perform PERM activities based on the previous PERM ICR estimates, as well as the information received from states. We also acknowledged that, as a federal contractor has not previously conducted the eligibility component of PERM, the hours assessed related to the state burden associated with the revised eligibility component are not based on real time data, but, rather, based off of the information solicited from the states. The information received was from those states that participated in the PERM model eligibility pilots that were conducted by a federal contractor, but on a much smaller scale than that of PERM. We plan to update these estimates once real time data is available, and, also, as needed in the future to ensure an adequate representation of the national averages.

Comment: One commenter requested that CMS review the combined costs of MEQC activities.

Response: As the MEQC program is currently suspended, and will be operationally different under this final rule, this estimate is not based on real time data. Once real time data is available, we will solicit information from the states and update our burden estimates accordingly. These estimates were based on information we solicited from the states regarding the time spent performing activities associated with the FY 2014–2017 Medicaid and CHIP Eligibility Review Pilots. We received several responses and this information was then averaged to obtain the estimates above.

Comment: One commenter stated she did not support the requirement for states to collect and submit all state eligibility policies, due to states having limited staff and resources.

Response: This requirement was developed to ensure the ERC was provided with the most up-to-date state eligibility policy information. We will implement a process which is intended to limit state burden; however, states are required to comply with the requirement.

As a result of the comments, we are finalizing the information collection requirements as proposed. However, upon review, one technical miscalculation was found and corrected in Table 2. The one technical miscalculation was due to human error, as the 'Total' under the ''Total Annual Burden (hours)'' column was entered incorrectly. Addition of the numbers in the ''Total Annual Burden (hours)'' column was correct as published, but the number entered as the total in the 'Total' field was incorrect. Also, we have clarified this information for easier reading, by separating out the ''Provider Submission'' estimates from the section it was under at time of the proposed rule's publication.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule will make small changes to the administration of the existing MEQC and PERM programs. It would therefore have a relatively small economic impact; as a result, this final rule does not reach the $100 million threshold and thus is neither an ''economically significant'' rule under E.O. 12866, nor a ''major rule'' under the Congressional Review Act.

The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief of small entities, and to prepare a final regulatory flexibility analysis for final rules that would have a ''significant economic impact on a substantial number of small entities.'' For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. These entities may incur costs due to collecting and submitting medical records to support medical reviews, but we estimate that these costs will not be significantly changed under this final rule. Therefore, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we are not preparing an analysis for section 1102(b) of the Act because we have determined that this

final rule will not have a direct economic impact on the operations of a substantial number of small rural hospitals.

Please note, a state will be reviewed only once, per program, every 3 years and it is unlikely for a provider to be selected more than once per program to provide supporting documentation.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately $148 million. For the preceding reasons, we have determined that this final rule does not mandate any spending that would approach the $148 million threshold for state, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final rule will shift minor costs and burden for conducting PERM eligibility reviews from states to the federal government and its contractors. However, these reductions would be largely offset by federal government savings in reduced payments to states in matching funds. The net effect of this regulation on state or local governments is minor.

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have estimated the cost savings of this final rule for the PERM program to be $8,387,860.80. This cost savings estimate is quantifiable for only the PERM program, includes both federal and state savings, and is attributable to reduced burden in the PERM program by shifting the eligibility review responsibility from the states to a federal contractor. While we believe this final rule would generate cost savings for the MEQC program as well, we are unable to quantify the cost savings. This rule is an E.O. 13771 deregulatory action.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the OMB.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 457

Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 2. Section 431.800 and the undesignated center heading preceding the section are revised to read as follows:

Medicaid Eligibility Quality Control (MEQC) Program

§ 431.800 Basis and scope.

This subpart establishes State requirements for the Medicaid Eligibility Quality Control (MEQC) Program designed to reduce erroneous expenditures by monitoring eligibility determinations and a claims processing assessment that monitors claims processing operations. MEQC will work in conjunction with the Payment Error Rate Measurement (PERM) Program established in subpart Q of this part. In years in which the State is required to participate in PERM, as stated in subpart Q of this part, it will only participate in the PERM program and will not be required to conduct a MEQC pilot. In the 2 years between PERM cycles, the State is required to conduct a MEQC pilot, as set forth in this subpart.

■ 3. Section 431.804 is revised to read as follows:

§431.804 Definitions.

As used in this subpart—

Active case means an individual determined to be currently authorized as eligible for Medicaid or CHIP by the State.

Corrective action means action(s) to be taken by the State to reduce major error causes, trends in errors or other vulnerabilities for the purpose of reducing improper payments in Medicaid and CHIP.

Deficiency means a finding in processing identified through active case review or negative case review that does not meet the definition of an eligibility error.

Eligibility means meeting the State's categorical and financial criteria for receipt of benefits under the Medicaid or CHIP programs.

Eligibility error is an error resulting from the States' improper application of Federal rules and the State's documented policies and procedures that causes a beneficiary to be determined eligible when he or she is ineligible for Medicaid or CHIP, causes a beneficiary to be determined eligible for the incorrect type of assistance, causes applications for Medicaid or CHIP to be improperly denied by the State, or causes existing cases to be improperly terminated from Medicaid or CHIP by the State. An eligibility error may also be caused when a redetermination did not occur timely or a required element of the eligibility determination process (for example income) cannot be verified as being performed/completed by the state.

Medicaid Eligibility Quality Control (MEQC) means a program designed to reduce erroneous expenditures by monitoring eligibility determinations and work in conjunction with the PERM program established in subpart Q of this part.

MEQC pilot refers to the process used to implement the MEQC Program.

MEQC review period is the 12-month timespan from which the State will sample and review cases.

Negative case means an individual denied or terminated eligibility for Medicaid or CHIP by the State.

Off-years are the scheduled 2-year period of time between a States' designated PERM years.

Payment Error Rate Measurement (PERM) Program means the program set forth at subpart Q of this part utilized to calculate a national improper payment rate for Medicaid and CHIP.

PERM year is the scheduled and designated year for a State to participate in, and be measured by, the PERM Program set forth at subpart Q of this part.

■ 4. Section 431.806 is revised to read as follows:

§ 431.806 State requirements.

(a) *General requirements.* (1) In a State's PERM year, the PERM measurement will meet the requirements of section 1903(u) of the Act.

(2) In the 2 years between each State's PERM year, the State is required to conduct one MEQC pilot, which will span parts of both off years.

(i) The MEQC pilot review period will span 12 months of a calendar year, beginning the January 1 following the end of the State's PERM year through December 31.

(ii) The MEQC pilot planning document described in § 431.814 is due no later than the first November 1

following the end of the State's PERM year.

(iii) A State must submit its MEQC pilot findings and its plan for corrective action(s) by the August 1 following the end of its MEQC pilot review period.

(b) *PERM measurement.* Requirements for the State PERM review process are set forth in subpart Q of this part.

(c) *MEQC pilots.* MEQC pilot requirements are specified in §§ 431.812 through 431.820.

(d) *Claims processing assessment system.* Except in a State that has an approved Medicaid Management Information System (MMIS) under subpart C of part 433 of this subchapter, a State plan must provide for operating a Medicaid quality control claims processing assessment system that meets the requirements of §§431.830 through 431.836.

■ 5. The undesignated center heading preceding § 431.810 is removed and § 431.810 is revised to read as follows:

§ 431.810 Basic elements of the Medicaid Eligibility Quality Control (MEQC) Program

(a) *General requirements.* The State must operate the MEQC pilot in accordance with this section and §§ 431.812 through 431.820, as well as other instructions established by CMS.

(b) *Review requirements.* The State must conduct reviews for the MEQC pilot in accordance with the requirements specified in § 431.812 and other instructions established by CMS.

(c) *Pilot planning requirements.* The State must develop a MEQC pilot planning proposal in accordance with requirements specified in § 431.814 and other instructions established by CMS.

(d) *Reporting requirements.* The State must report the finding of the MEQC pilots in accordance with the requirements specified in § 431.816 and other instructions established by CMS.

(e) *Corrective action requirements.* The State must conduct corrective actions based on the findings of the MEQC pilots in accordance with the requirements specified in § 431.820 and other instructions established by CMS.

■ 6. Section 431.812 is revised to read as follows:

§ 431.812 Review procedures.

(a) *General requirements.* Each State is required to conduct a MEQC pilot during the 2 years between required PERM cycles in accordance with the approved pilot planning document specified in § 431.814, as well as other instructions established by CMS. The agency and personnel responsible for the development, direction, implementation, and evaluation of the MEQC reviews and associated activities, must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, including eligibility determinations.

(b) *Active case reviews.* (1) The State must review all active cases selected from the universe of cases, as established in the State's approved MEQC pilot planning document, under § 431.814 to determine if the cases were eligible for services, as well as to identify deficiencies in processing subject to corrective actions.

(2) The State must select and review, at a minimum, 400 active cases in total from the Medicaid and CHIP universe.

(i) The State must review at least 200 Medicaid cases.

(ii) The State will identify in the pilot planning document at § 431.814 the sample size per program.

(iii) The State may sample more than 400 cases.

(3) The State may propose to focus the active case reviews on recent changes to eligibility policies and processes, areas where the state suspects vulnerabilities, or proven error prone areas.

(i) Unless otherwise directed by CMS, the State must propose its active case review approach in the pilot planning document described at § 431.814 or perform a comprehensive review.

(ii) When the State has a PERM eligibility improper payment rate that exceeds the 3 percent national standard for two consecutive PERM cycles, the State must follow CMS direction for its active case reviews. CMS guidance will be provided to any state meeting this criteria.

(c) *Negative case reviews.* (1) As established in the State's approved MEQC pilot planning document under § 431.814, the State must review negative cases selected from the State's universe of cases that are denied or terminated in the review month to determine if the denial, or termination, was correct, as well as to identify deficiencies in processing subject to corrective actions.

(2) The State must review, at a minimum, 200 negative cases from Medicaid and 200 negative cases from CHIP.

(i) The State may sample more than 200 cases from Medicaid and/or more than 200 cases from CHIP.

(ii) [Reserved]

(d) *Error definition.* (1) An active case error is an error resulting from the State's improper application of Federal rules and the State's documented policies and procedures that causes a beneficiary to be determined eligible when he or she is ineligible for Medicaid or CHIP, causes a beneficiary to be determined eligible for the incorrect type of assistance, or when a determination did not occur timely or cannot be verified.

(2) Negative case errors are errors, based on the State's documented policies and procedures, resulting from either of the following:

(i) Applications for Medicaid or CHIP that are improperly denied by the State.

(ii) Existing cases that are improperly terminated from Medicaid or CHIP by the State.

(e) *Active case payment reviews.* In accordance with instructions established by CMS, the State must also conduct payment reviews to identify payments for active case errors, as well as identify the individual's understated or overstated liability, and report payment findings as specified in § 431.816.

■ 7. Section 431.814 is revised to read as follows:

§ 431.814 Pilot planning document.

(a) *Plan approval.* For each MEQC pilot, the State must submit a MEQC pilot planning document that meets the requirements of this section to CMS for approval by the first November 1 following the end of the State's PERM year. The State must receive approval for a plan before the plan can be implemented.

(b) *Plan requirements.* The State must have an approved pilot planning document in effect for each MEQC pilot that must be in accordance with instructions established by CMS and that includes, at a minimum, the following for—

(1) *Active case reviews.* (i) Focus of the active case reviews in accordance with § 431.812(b)(3) and justification for focus.

(ii) Universe development process.

(iii) Sample size per program.

(iv) Sample selection procedure.

(v) Case review process.

(2) *Negative case reviews.* (i) Universe development process.

(ii) Sample size per program.

(iii) Sample selection procedure.

(iv) Case review process.

■ 8. Section 431.816 is revised to read as follows:

§ 431.816 Case review completion deadlines and submittal of reports.

(a) The State must complete case reviews and submit reports of findings to CMS as specified in paragraph (b) of this section in the form and at the time specified by CMS.

(b) In addition to the reporting requirements specified in § 431.814 relating to the MEQC pilot planning

document, the State must complete case reviews and submit reports of findings to CMS in accordance with paragraphs (b)(1) and (2) of this section.

(1) For all active and negative cases reviewed, the State must submit a detailed case-level report in a format provided by CMS.

(2) All case-level findings will be due by August 1 following the end of the MEQC review period.

■ 9. Section 431.818 is revised to read as follows:

§ 431.818 Access to records.

The State, upon written request, must submit to the HHS staff, or other designated entity, all records, including complete local agency eligibility case files or legible copies and all other documents pertaining to its MEQC reviews to which the State has access, including information available under part 435, subpart I of this chapter.

■ 10. Section 431.820 is revised to read as follows:

§ 431.820 Corrective action under the MEQC program.

The State must—

(a) Take action to correct any active or negative case errors, including deficiencies, found in the MEQC pilot sampled cases in accordance with instructions established by CMS;

(b) By the August 1 following the MEQC review period, submit to CMS a report that—

(1) Identifies the root cause and any trends found in the case review findings.

(2) Offers corrective actions for each unique error and deficiency finding based on the analysis provided in paragraph (b)(1) of this section.

(c) In the corrective action report, the State must provide updates on corrective actions reported for the previous MEQC pilot.

§ 431.822 [Removed]

■ 11. Section 431.822 is removed.

§§ 431.861—431.865 [Removed]

■ 12. The undesignated center heading ''Federal Financial Participation'' and §§ 431.861 through 431.865 are removed.

■ 13. Section 431.950 is revised to read as follows:

§ 431.950 Purpose.

This subpart requires States and providers to submit information and provide support to Federal contractors as necessary to enable the Secretary to produce national improper payment estimates for Medicaid and the Children's Health Insurance Program (CHIP).

■ 14. Section 431.958 is amended by—

■ a. Removing the definitions of ''Active case'', ''Active fraud investigation'', and ''Agency''.

■ b. Revising the definition of ''Annual sample size''.

■ c. Adding a definition, in alphabetical order, for ''Appeals''.

■ d. Removing the definitions of ''Application'', ''Case'', ''Case error rate'', and ''Case record''.

■ e. Adding definitions, in alphabetical order, for ''Corrective action'', ''Deficiency'', ''Difference resolution'', ''Disallowance'', ''Eligibility Review Contractor (ERC)'', ''Federal contractor'', ''Federally Facilitated Exchange (FFE)'', ''Federally Facilitated Exchange-Determination (FFE–D)'', ''Federal financial participation'', ''Finding'', and ''Improper payment rate''.

■ f. Removing the definition of ''Last action''.

■ g. Adding a definition, in alphabetical order, for ''Lower limit''.

■ h. Removing the definition of ''Negative case''.

■ i. Adding a definition, in alphabetical order, for ''Payment error''.

■ j. Removing the definitions of ''Payment error rate'' and ''Payment review''.

■ k. Adding definitions, in alphabetical order, for ''PERM Review Period'', ''Recoveries'', and ''Review Contractor (RC)''.

■ l. Removing the definitions of ''Review cycle'' and ''Review month''.

■ m. Revising the definition of ''Review year''.

■ n. Removing the definitions of ''Sample month'' and ''State agency''.

■ o. Adding a definition, in alphabetical order, for ''State eligibility system''.

■ p. Revising the definition of ''State error''.

■ q. Adding definitions, in alphabetical order, for ''State payment system'', ''State-specific sample size'', and ''Statistical Contractor (SC)''.

■ r. Removing the definition of ''Undetermined''.

The additions and revisions read as follows:

§ 431.958 Definitions and use of terms.

* * * * *

Annual sample size means the number of fee-for-service claims, managed care payments, or eligibility cases that will be sampled for review in a given PERM cycle.

Appeals means a process that allows the State to dispute the PERM Review Contractor and Eligibility Review Contractor findings with CMS after the difference resolution process has been exhausted.

* * * * *

Corrective action means actions to be taken by the State to reduce errors or other vulnerabilities for the purpose of reducing improper payments in Medicaid and CHIP.

Deficiency means a finding in which a claim or payment had a medical, data processing, and/or eligibility error that did not result in federal and/or state improper payment.

Difference resolution means a process that allows the State to dispute the PERM Review Contractor and Eligibility Review Contractor findings directly with the contractor.

Disallowance means the percentage of Federal medical assistance funds the State is required to return to CMS in accordance with section 1903(u) of the Act.

* * * * *

Eligibility Review Contractor (ERC) means the CMS contractor responsible for conducting state eligibility reviews for the PERM Program.

Federal contractor means the ERC, RC, or SC which support CMS in executing the requirements of the PERM program.

Federally Facilitated Exchange (FFE) means the health insurance exchange established by the Federal government with responsibilities that include making Medicaid and CHIP determinations for states that delegate authority to the FFE.

Federally Facilitated Exchange—Determination (FFE–D) means cases determined by the FFE in states that have delegated the authority to make Medicaid/CHIP eligibility determinations to the FFE.

Federal financial participation means the Federal Government's share of the State's expenditures under the Medicaid program and CHIP.

Finding means errors and/or deficiencies identified through the medical, data processing, and eligibility reviews.

* * * * *

Improper payment rate means an annual estimate of improper payments made under Medicaid and CHIP equal to the sum of the overpayments and underpayments in the sample, that is, the absolute value of such payments, expressed as a percentage of total payments made in the sample.

Lower limit means the lower bound of the 95-percent confidence interval for the State's eligibility improper payment rate.

* * * * *

Payment error means any claim or payment where federal and/or state dollars were paid improperly based on

medical, data processing, and/or eligibility reviews.

* * * * *

PERM review period means the timeframe in which claims and eligibility are reviewed for national annual improper payment rate calculation purposes, July through June.

* * * * *

Recoveries mean those monies for which the State is responsible to pay back to CMS based on the identification of Federal improper payments.

Review Contractor (RC) means the CMS contractor responsible for conducting state data processing and medical record reviews for the PERM Program.

Review year means the year being analyzed for improper payments under the PERM Program.

* * * * *

State eligibility system means any system, within the State or with a state-delegated contractor, that is used by the state to determine Medicaid and/or CHIP eligibility and/or that maintains documentation related to Medicaid and/or CHIP eligibility determinations.

State error includes, but is not limited to, data processing errors and eligibility errors as described in § 431.960(b) and (d), as determined in accordance with documented State and Federal policies. State errors do not include the errors described in paragraph § 431.960(e)(2).

State payment system means any system within the State or with a state-delegated contractor that is used to adjudicate and pay Medicaid and/or CHIP FFS claims and/or managed care payments.

* * * * *

State-specific sample size means the sample size determined by CMS that is required from each individual State to support national improper payment rate precision requirements.

Statistical Contractor (SC) means the contractor responsible for collecting and sampling fee-for-service claims and managed care capitation payment data, as well as calculating Medicaid and CHIP state and national improper payment rates.

■ 15. Section 431.960 is revised to read as follows:

§ 431.960 Types of payment errors.

(a) *General rule.* Errors identified for the Medicaid and CHIP improper payments measurement under the Improper Payments Information Act of 2002 must affect payment under applicable Federal or State policy, or both.

(b) *Data processing errors.* (1) A data processing error is an error resulting in an overpayment or underpayment that is determined from a review of the claim and other information available in the State's Medicaid Management Information System, related systems, or outside sources of provider verification resulting in Federal and/or State improper payments.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with federal and state documented policies, is the dollar measure of the payment error.

(3) Data processing errors include, but are not limited to, the following:

(i) Payment for duplicate items.

(ii) Payment for non-covered services.

(iii) Payment for fee-for-service claims for managed care services.

(iv) Payment for services that should have been paid by a third party but were inappropriately paid by Medicaid or CHIP.

(v) Pricing errors.

(vi) Logic edit errors.

(vii) Data entry errors.

(viii) Managed care rate cell errors.

(ix) Managed care payment errors.

(c) *Medical review errors.* (1) A medical review error is an error resulting in an overpayment or underpayment that is determined from a review of the provider's medical record or other documentation supporting the service(s) claimed, Code of Federal Regulations that are applicable to conditions of payment, the State's written policies, and a comparison between the documentation and written policies and the information presented on the claim resulting in Federal and/or State improper payments.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid, in accordance with the applicable conditions of payment per 42 CFR parts 440 through 484, this part (431), and in accordance with the State's documented policies, is the dollar measure of the payment error.

(3) Medical review errors include, but are not limited to, the following:

(i) Lack of documentation.

(ii) Insufficient documentation.

(iii) Procedure coding errors.

(iv) Diagnosis coding errors.

(v) Unbundling.

(vi) Number of unit errors.

(vii) Medically unnecessary services.

(viii) Policy violations.

(ix) Administrative errors.

(d) *Eligibility errors.* (1) An eligibility error is an error resulting in an overpayment or underpayment that is determined from a review of a beneficiary's eligibility determination, in comparison to the documentation used to establish a beneficiary's eligibility and applicable federal and state regulations and policies, resulting in Federal and/or State improper payments.

(2) Eligibility errors include, but are not limited to, the following:

(i) Ineligible individual, but authorized as eligible when he or she received services.

(ii) Eligible individual for the program, but was ineligible for certain services he or she received.

(iii) Lacked or had insufficient documentation in his or her case record, in accordance with the State's documented policies and procedures, to make a definitive review decision of eligibility or ineligibility.

(iv) Was ineligible for managed care but enrolled in managed care.

(3) The dollars paid in error due to an eligibility error is the measure of the payment error.

(4) A State eligibility error does not result from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements in Federal law or guidance, or, if applicable, has the Secretary's approval.

(e) *Errors for purposes of determining the national improper payment rates.* (1) The Medicaid and CHIP national improper payment rates include, but are not limited to, the errors described in paragraphs (b) through (d) of this section.

(2) Eligibility errors resulting solely from determinations of Medicaid or CHIP eligibility delegated to, and made by, the Federally Facilitated Exchange will be included in the national improper payment rate.

(f) *Errors for purposes of determining the State improper payment rates.* The Medicaid and CHIP State improper payment rates include, but are not limited to, the errors described in paragraphs (b) through (d) of this section, and do not include the errors described in paragraph (e)(2) of this section.

(g) *Error codes.* CMS will define different types of errors within the above categories for analysis and reporting purposes. Only Federal and/or State dollars in error will factor into the State's PERM improper payment rate.

■ 16. Section 431.970 is revised to read as follows:

§ 431.970 Information submission and systems access requirements.

(a) The State must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and CHIP, that include, but are not limited to—

(1) Adjudicated fee-for-service or managed care claims information, or both, on a quarterly basis, from the review year;

(2) Upon request from CMS, provider contact information that has been verified by the State as current;

(3) All medical, eligibility, and other related policies in effect, and any quarterly policy updates;

(4) Current managed care contracts, rate information, and any quarterly updates applicable to the review year;

(5) Data processing systems manuals;

(6) Repricing information for claims that are determined during the review to have been improperly paid;

(7) Information on claims that were selected as part of the sample, but changed in substance after selection, for example, successful provider appeals;

(8) Adjustments made within 60 days of the adjudication dates for the original claims or line items, with sufficient information to indicate the nature of the adjustments and to match the adjustments to the original claims or line items;

(9) Case documentation to support the eligibility review, as requested by CMS;

(10) A corrective action plan for purposes of reducing erroneous payments in FFS, managed care, and eligibility; and

(11) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining improper payment rates in Medicaid and CHIP.

(b) Providers must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and CHIP, which include but are not limited to Medicaid and CHIP beneficiary medical records, within 75 calendar days of the date the request is made by CMS. If CMS determines that the documentation is insufficient, providers must respond to the request for additional documentation within 14 calendar days of the date the request is made by CMS.

(c) The State must provide the Federal contractor(s) with access to all payment system(s) necessary to conduct the medical and data processing review, including the Medicaid Management Information System (MMIS), any systems that include beneficiary demographic and/or provider enrollment information, and any document imaging systems that store paper claims.

(d) The State must provide the Federal contractor(s) with access to all eligibility system(s) necessary to conduct the eligibility review, including any eligibility systems of record, any electronic document management system(s) that house case file information, and systems that house the results of third party data matches.

■ 17. Section 431.972 is revised to read as follows:

§ 431.972 Claims sampling procedures.

(a) *General requirements.* The State will submit quarterly FFS claims and managed care payments, as identified in § 431.970(a), to allow federal contractors to conduct data processing, medical record, and eligibility reviews to meet the requirements of the PERM measurement.

(b) *Claims universe.* (1) The PERM claims universe includes payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the PERM review period, and for which there is FFP (or would have been if the claim had not been denied) through Title XIX (Medicaid) or Title XXI (CHIP).

(2) The State must establish controls to ensure FFS and managed care universes are accurate and complete, including comparing the FFS and managed care universes to the Form CMS–64 and Form CMS–21 as appropriate.

(c) *Sample size.* CMS estimates each State's annual sample size for the PERM review at the beginning of the PERM cycle.

(1) *Precision and confidence levels.* The national annual sample size will be estimated to achieve at least a minimum National-level improper payment rate with a 90 percent confidence interval of plus or minus 2.5 percent of the total amount of all payments for Medicaid and CHIP.

(2) *State-specific sample sizes.* CMS will develop State-specific sample sizes for each State. CMS may take into consideration the following factors in determining each State's annual state-specific sample size for the current PERM cycle:

(i) State-level precision goals for the current PERM cycle;

(ii) The improper payment rate and precision of that improper payment rate from the State's previous PERM cycle;

(iii) The State's overall Medicaid and CHIP expenditures; and

(iv) Other relevant factors as determined by CMS.

§ 431.974 [Removed]

■ 18. Section 431.974 is removed.

§ 431.978 [Removed]

■ 19. Section 431.978 is removed.

§ 431.980 [Removed]

■ 20. Section 431.980 is removed.

§ 431.988 [Removed]

■ 21. Section 431.988 is removed.

■ 22. Section 431.992 is revised to read as follows:

§ 431.992 Corrective action plan.

(a) The State must develop a separate corrective action plan for Medicaid and CHIP for each improper payment rate measurement, designed to reduce improper payments in each program based on its analysis of the improper payment causes in the FFS, managed care, and eligibility components.

(1) The corrective action plan must address all errors that are included in the State improper payment rate defined at § 431.960(f)(1) and all deficiencies.

(2) For eligibility, the corrective action plan must include an evaluation of whether actions the State takes to reduce eligibility errors will also avoid increases in improper denials.

(b) In developing a corrective action plan, the State must take the following actions:

(1) *Error analysis.* The State must conduct analysis such as reviewing causes, characteristics, and frequency of errors that are associated with improper payments. The State must review the findings of the analysis to determine specific programmatic causes to which errors are attributed (for example, provider lack of understanding of the requirement to provide documentation), if any, and to identify root improper payment causes.

(2) *Corrective action planning.* The State must determine the corrective actions to be implemented that address the root improper payment causes and prevent that same improper payment from occurring again.

(3) *Implementation and monitoring.* (i) The State must develop an implementation schedule for each corrective action and implement those actions in accordance with the schedule.

(ii) The implementation schedule must identify all of the following for each action:

(A) The specific corrective action.

(B) Status.

(C) Scheduled or actual implementation date.

(D) Key personnel responsible for each activity.

(E) A monitoring plan for monitoring the effectiveness of the action.

(4) *Evaluation.* The State must submit an evaluation of the corrective action plan from the previous measurement. The State must evaluate the effectiveness of the corrective action(s) by assessing all of the following:

(i) Improvements in operations.

(ii) Efficiencies.

(iii) Number of errors.

(iv) Improper payments.

(v) Ability to meet the PERM improper payment rate targets assigned by CMS.

(c) The State must submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 90 calendar days after the date on which the State's Medicaid or CHIP improper payment rates are posted on the CMS contractor's Web site.

(d) The State must provide updates on corrective action plan implementation progress annually and upon request by CMS.

(e) In addition to paragraphs (a) through (d) of this section, each State that has an eligibility improper payment rates over the allowable threshold of 3 percent for consecutive PERM years, must submit updates on the status of corrective action implementation to CMS every other month. Status updates must include, but are not limited to the following:

(1) Details on any setbacks along with an alternate corrective action or workaround.

(2) Actual examples of how the corrective actions have led to improvements in operations, and explanations for how the improvements will lead to a reduction in the number of errors, as well as the State's next PERM eligibility improper payment rate.

(3) An overall summary on the status of corrective actions, planning, and implementation, which demonstrates how the corrective actions will provide the State with the ability to meet the 3 percent threshold.

■ 23. Section 431.998 is revised to read as follows:

§ 431.998 Difference resolution and appeal process.

(a) The State may file, in writing, a request with the relevant Federal contractor to resolve differences in the Federal contractor's findings based on medical, data processing, or eligibility reviews in Medicaid or CHIP.

(b) The State must file requests to resolve differences based on the medical, data processing, or eligibility reviews within 25 business days after the report of review findings is shared with the State.

(c) To file a difference resolution request, the State must be able to demonstrate all of the following:

(1) Have a factual basis for filing the request.

(2) Provide the appropriate Federal contractor with valid evidence directly related to the finding(s) to support the State's position.

(d) For a finding in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution by filing an appeal within 15 business days from the date the relevant Federal contractor's finding as a result of the difference resolution is shared with the State. There is no minimum dollar threshold required to appeal a difference in findings.

(e) To file an appeal request, the State must be able to demonstrate all of the following:

(1) Have a factual basis for filing the request.

(2) Provide CMS with valid evidence directly related to the finding(s) to support the State's position.

(f) All differences, including those pending in CMS for final decision that are not overturned in time for improper payment rate calculation, will be considered as errors in the improper payment rate calculation in order to meet the reporting requirements of the IPIA.

■ 24. Section 431.1010 is added to subpart Q to read as follows:

§ 431.1010 Disallowance of Federal financial participation for erroneous State payments (for PERM review years ending after July 1, 2020).

(a) *Purpose.* (1) This section establishes rules and procedures for disallowing Federal financial participation (FFP) in erroneous medical assistance payments due to eligibility improper payment errors, as detected through the PERM program required under this subpart, in effect on and after July 1, 2020.

(2) After the State's eligibility improper rate has been established for each PERM review period, CMS will compute the amount of the disallowance, removing any underpayments due to eligibility errors, and adjust the FFP payable to each State. The disallowance or withholding is only applicable to the State's PERM year.

(3) CMS will compute the amount to be withheld or disallowed as follows:

(i) Subtract the 3 percent allowable threshold from the lower limit of the State's eligibility improper payment rate percentage excluding underpayments.

(ii) If the difference is greater than zero, the Federal medical assistance funds for the period, are multiplied by that percentage. This product is the amount of the disallowance or withholding.

(b) *Notice to States and showing of good faith.* (1) If CMS is satisfied that the State did not meet the 3 percent allowable threshold despite a good faith effort, CMS will reduce the funds being disallowed in whole.

(2) CMS may find that a State did not meet the 3 percent allowable threshold despite a good faith effort if the State has taken the action it believed was needed to meet the threshold, but the threshold was not met. CMS will grant a good faith waiver only if the State both:

(i) Participates in the MEQC pilot program in accordance with §§ 431.800 through 431.820, and

(ii) Implements PERM CAPs in accordance with § 431.992.

(3) Each State that has an eligibility improper payment rate above the allowable threshold will be notified by CMS of the amount of the disallowance.

(c) *Disallowance subject to appeal.* If the State does not agree with a disallowance imposed under paragraph (e) of this section, it may appeal to the Departmental Appeals Board within 30 days from the date of the final disallowance notice from CMS. The regular procedures for an appeal of a disallowance will apply, including review by the Appeals Board under 45 CFR part 16.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 25. The authority citation for part 457 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 26. Section 457.628(a) is revised to read as follows:

§ 457.628 Other applicable Federal regulations.

* * * * *

(a) HHS regulations in §§ 431.800 through 431.1010 of this chapter (related to the PERM and MEQC programs); §§ 433.312 through 433.322 of this chapter (related to Overpayments); § 433.38 of this chapter (Interest charge on disallowed claims of FFP); §§ 430.40 through 430.42 of this chapter (Deferral of claims for FFP and Disallowance of claims for FFP); § 430.48 of this chapter (Repayment of Federal funds by installments); §§ 433.50 through 433.74 of this chapter (sources of non-Federal share and Health Care-Related Taxes and Provider Related Donations); and § 447.207 of this chapter (Retention of Payments)

apply to State's CHIP programs in the same manner as they apply to State's Medicaid programs.

* * * * *

Dated: April 4, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 16, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–13710 Filed 6–29–17; 4:15 pm]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 414

[CMS–1674–P]

RIN 0938–AT04

Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, and End-Stage Renal Disease Quality Incentive Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to update and make revisions to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) for calendar year (CY) 2018, as well as to update the payment rate for renal dialysis services furnished by an ESRD facility to individuals with acute kidney injury (AKI). This rule also proposes to set forth requirements for the ESRD Quality Incentive Program (QIP), including for payment years (PYs) 2019 through 2021.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. August 28, 2017.

ADDRESSES: In commenting, please refer to file code CMS–1674–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1674–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1674–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1810.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *ESRDPayment@cms.hhs.gov*, for issues related to the ESRD PPS and coverage and payment for renal dialysis services furnished to individuals with AKI.

Delia Houseal, (410) 786–2724, for issues related to the ESRD QIP.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys/*.

Table of Contents

To assist readers in referencing sections contained in this preamble, we are providing a Table of Contents. Some of the issues discussed in this preamble affect the payment policies, but do not require changes to the regulations in the Code of Federal Regulations (CFR).

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

Affordable Care Act the Patient Protection and Affordable Care Act
ABLE Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014
AKI Acute Kidney Injury
AMP Average Manufacturer Price
ASP Average Sales Price
ATRA American Taxpayer Relief Act of 2012
BLS Bureau of Labor Statistics
BSI Bloodstream Infection
CBSA Core Based Statistical Area
CCN CMS Certification Number
CDC Centers for Disease Control and Prevention
CEO Chief Executive Officer
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
CROWNWeb Consolidated Renal Operations in a Web-Enabled Network
CY Calendar Year
DFR Dialysis Facility Report
ECE Extraordinary Circumstances Exception
EPO Epoetin
ESA Erythropoiesis stimulating agent
ESRD End-Stage Renal Disease
ESRDB End-Stage Renal Disease Bundled
ESRD PPS End-Stage Renal Disease Prospective Payment System
ESRD QIP End-Stage Renal Disease Quality Incentive Program
FFS Fee-For-Service
FDA Food and Drug Administration
FDL Fixed-Dollar Loss
ICD International Classification of Diseases
ICH CAHPS In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems
IGI IHS Global Inc.
IPPS Inpatient Prospective Payment System
IQR Interquartile Range
Kt/V A measure of dialysis adequacy where K is dialyzer clearance, t is dialysis time, and V is total body water volume
MAP Medicare Allowable Payment
MFP Multifactor Productivity
MIPPA Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275)
NHSN National Healthcare Safety Network
NQF National Quality Forum

OMB Office of Management and Budget
PAMA Protecting Access to Medicare Act of 2014
PPS Prospective Payment System
PY Payment Year
QIP Quality Incentive Program
RFA Regulatory Flexibility Act
SBA Small Business Administration
SHR Standardized Hospitalization Ratio
SRR Standardized Readmission Ratio
STrR Standardized Transfusion Ratio
TCV Truncated Coefficient of Variation
TDAPA Transitional Drug Add-on Payment Adjustment
TEP Technical Expert Panel
The Act Social Security Act
The Secretary Secretary of the Department of Health and Human Services
TPEA Trade Preferences Extension Act of 2015
TPS Total Performance Score
VAT Vascular Access Type
WAMP Widely Available Market Price

I. Executive Summary

A. Purpose

1. End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

On January 1, 2011, we implemented the end-stage renal disease (ESRD) prospective payment system (PPS), a case-mix adjusted, bundled prospective payment system for renal dialysis services furnished by ESRD facilities. This rule proposes to update and make revisions to the ESRD PPS for calendar year (CY) 2018. Section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), and section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), established that beginning CY 2012, and each subsequent year, the Secretary of the Department of Health and Human Services (the Secretary) shall annually increase payment amounts by an ESRD market basket increase factor, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

2. Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury (AKI)

On June 29, 2015, the President signed the Trade Preferences Extension Act of 2015 (TPEA) (Pub. L. 114–27). Section 808(a) of TPEA amended section 1861(s)(2)(F) of the Act to provide coverage for renal dialysis services furnished on or after January 1, 2017, by a renal dialysis facility or a provider of services paid under section 1881(b)(14) of the Act to an individual with AKI. Section 808(b) of TPEA amended section 1834 of the Act by adding a new subsection (r) that provides for payment for renal dialysis services furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with AKI at the ESRD PPS base rate beginning January 1, 2017.

3. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

This rule also proposes to set forth requirements for the end-stage renal disease (ESRD) quality incentive program (QIP), including for payment years (PYs) 2019, 2020, and 2021. The program is authorized under section 1881(h) of the Social Security Act (the Act). The ESRD QIP is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by the Centers for Medicare & Medicaid Services (CMS).

B. Summary of the Major Provisions

1. ESRD PPS

- *Update to the ESRD PPS base rate for CY 2018:* The proposed CY 2018 ESRD PPS base rate is $233.31. This amount reflects a reduced market basket increase as required by section 1881(b)(14)(F)(i)(I) of the Act (0.7 percent), and application of the wage index budget-neutrality adjustment factor (1.000605), equaling $233.31 ($231.55 × 1.007 × 1.000605 = $233.31).
- *Annual update to the wage index:* We adjust wage indices on an annual basis using the most current hospital wage data and the latest core-based statistical area (CBSA) delineations to account for differing wage levels in areas in which ESRD facilities are located. For CY 2018, we are not proposing any changes to the application of the wage index floor and we propose to continue to apply the current wage index floor (0.4000) to areas with wage index values below the floor.
- *Update to the outlier policy:* Consistent with our proposal to annually update the outlier policy using the most current data, we are proposing to update the outlier services fixed-dollar loss (FDL) amounts for adult and pediatric patients and Medicare Allowable Payment (MAP) amounts for adult and pediatric patients for CY 2018 using CY 2016 claims data. Based on the use of more current data, the FDL amount for pediatric beneficiaries would decrease from $68.49 to $49.55 and the MAP amount would decrease from $38.29 to $38.25, as compared to CY 2017 values. For adult beneficiaries, the FDL amount would increase from $82.92 to $83.12 and the MAP amount would decrease from $45.00 to $42.70. The 1 percent target for outlier payments was not achieved in CY 2016. Outlier payments represented approximately 0.78 percent of total payments rather than 1.0 percent. We believe using CY 2016 claims data to update the outlier MAP and FDL amounts for CY 2018 would increase payments for ESRD beneficiaries requiring higher resource utilization in accordance with a 1 percent outlier percentage.
- *Update to the pricing of drugs and biologicals under the outlier policy:* We are proposing a change to the ESRD PPS outlier policy to allow the use of any pricing methodology available under section 1847A of the Act to determine the cost of certain eligible outlier service drugs and biologicals in computing outlier payments when average sales price (ASP) data is not available.

2. Payment for Renal Dialysis Services Furnished to Individuals With AKI

We are proposing to update the AKI payment rate for CY 2018. The proposed CY 2018 payment rate is $233.31, which is the same base rate proposed under the ESRD PPS.

3. ESRD QIP

This rule proposes to set forth requirements for the ESRD QIP, including for payment years (PYs) 2019, 2020 and 2021 as follows:

- *Updating the Performance Score Certificate Beginning in PY 2019:* In section IV.C of this proposed rule, we set forth the updates we are proposing to make to the Performance Score Certificate (PSC) beginning in PY 2019. Specifically, in response to feedback from stakeholders about the length and complexity of the PSC, and in an effort to make the document more effective and understandable for the community, we propose to shorten and simplify the PSC. Specifically, we are proposing to shorten the PSC by removing some of the information we had previously finalized would be included in the document. We are proposing that the revised PSC would indicate the facility's TPS, as required under section 1881(h)(6)(c) of the Act, as well as information sufficient to identify the facility and information showing how the facility's TPS compared to the national average TPS for that specific payment year. We are not making any proposals to change the other requirements associated with this document. Facilities would still be required to post their PSC in a public

location in both English and Spanish (77 FR 67517).

• *Proposed Changes to the Extraordinary Circumstances Exception (ECE) Policy:* In section IV.D.2 of this proposed rule, we set forth the updates we are proposing to the Extraordinary Circumstances Exception (ECE) Policy for the ESRD QIP. In an effort to bring our policy into alignment with other quality reporting and value based purchasing programs, we are proposing to (1) allow facilities to submit a form signed by the facility's CEO or designated personnel; (2) expand the reasons for which an ECE can be requested by a facility or granted by CMS of its own accord to include an unresolved issue with a CMS data system, which affected the ability of the facility to submit data (an unresolved data system issue, in this case, would be one which did not allow the facility to submit data by the data submission deadline and one which was unable to be resolved with a work-around); and (3) specify that a facility does not need to be closed in order to request and receive consideration for an ECE, as long as the facility can demonstrate that its normal operations have been significantly affected by an extraordinary circumstance outside of its control. We are also clarifying that our intent is to notify a facility of our decision on a facility's ECE request within 90 days of the date that we receive it.

• *Proposed PY 2021 Measure Set:* As discussed in section IV.E.1 of this proposed rule, in the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969), we previously finalized 16 measures to be included in the PY 2020 ESRD QIP. For PY 2021, we are proposing to update the Standardized Transfusion Ratio (STrR) Clinical Measure to bring the measure into alignment with the National Quality Forum (NQF)-endorsed specifications, and replace the two existing Vascular Access Type (VAT) measures with newly endorsed vascular access measures that address long-held concerns of the community. Specifically, we are proposing to replace the VAT measures with the Proposed Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure and the Proposed Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure. There would be no increase in burden associated with the proposed measure changes.

• *Data Validation:* In section IV.D.7 of this proposed rule, we set forth the updates we are proposing to make to the data validation program in the ESRD QIP. For PY 2020, we are proposing to continue the pilot validation study for validation of Consolidated Renal Operations in a Web-Enabled Network (CROWNWeb) data. Under this continued validation study, we are proposing to continue using the same methodology used for the PY 2018 and PY 2019 ESRD QIP. Under this methodology, we would sample approximately 10 records per facility from 300 facilities during CY 2018.

For PY 2020, we are proposing to continue a National Healthcare Safety Network (NHSN) Bloodstream Infection (BSI) Data Validation study similar to the one that we finalized in the CY 2017 ESRD PPS final rule. Under that methodology, we would select 35 facilities to participate in an NHSN dialysis event validation study for two quarters of data reported in CY 2018. The CMS data validation contractor would then send these facilities requests for medical records for all patients with ''candidate events'' during the evaluation period, as well as randomly selected patient records. Each facility selected would be required to submit 10 records total to the CMS validation contractor. The CMS contractor would utilize a methodology for reviewing and validating the candidate events that is consistent with the Centers for Disease Control and Prevention's (CDC's) validation protocol, and analyze those records to determine whether the facility reported dialysis events for those patients in accordance with the NHSN Dialysis Event Protocol. Information from the validation study would be used to develop a methodology to score facilities based on the accuracy of their reporting of the NHSN BSI Clinical Measure.

C. Summary of Costs and Benefits

In section IX of this proposed rule, we set forth a detailed analysis of the impacts that the proposed changes would have on affected entities and beneficiaries. The impacts include the following:

1. Impacts of the Proposed ESRD PPS

The impact chart in section IX of this proposed rule displays the estimated change in payments to ESRD facilities in CY 2018 compared to estimated payments in CY 2017. The overall impact of the CY 2018 changes is projected to be a 0.8 percent increase in payments. Hospital-based ESRD facilities have an estimated 1.0 percent increase in payments compared with freestanding facilities with an estimated 0.8 percent increase.

We estimate that the aggregate ESRD PPS expenditures would increase by approximately $100 million from CY 2017 to CY 2018. This reflects a $90 million increase from the payment rate update and a $10 million increase due to the updates to the outlier threshold amounts. As a result of the projected 0.8 percent overall payment increase, we estimate that there would be an increase in beneficiary co-insurance payments of 0.8 percent in CY 2018, which translates to approximately $20 million.

2. Impacts of the Proposed Payment for Renal Dialysis Services Furnished to Individuals With AKI

We anticipate an estimated $2.0 million would be paid to ESRD facilities in CY 2018 as a result of AKI patients receiving renal dialysis services in the ESRD facility at the ESRD PPS base rate versus receiving those services in the hospital outpatient setting.

3. Impacts of the Proposed ESRD QIP

We estimate that the overall economic impact of the ESRD QIP would be approximately $113 million in PY 2020 and $113 million in PY 2021. The $113 million figure for PY 2020 includes costs associated with the collection of information requirements, which we estimate would be approximately $91 million.[1] For PY 2021, we estimate that ESRD facilities would experience an aggregate impact of approximately $120 million as a result of the PY 2021 ESRD QIP. For PY 2021, these estimates have not significantly changed because we are not proposing to add any new measures to the program which would require an increased burden associated with the collection of information requirements. We are proposing to replace two existing measures but no new burdens are being proposed. Similarly, we are not proposing to increase the size of either of the Data Validation Studies proposed for PY 2020 so facilities would not experience an increase in burden with respect to being selected to participate in either of those two studies. Therefore, the overall economic impact of the ESRD QIP would be similar in PY 2021 to what it was in PY 2020.

The ESRD QIP would continue to incentivize facilities to provide high-quality care to beneficiaries.

[1] We note that the aggregate impact of the PY 2020 ESRD QIP was included in the CY 2017 ESRD PPS Final Rule (81 FR 77957). The previously finalized aggregate impact of $113 million reflects the PY 2020 estimated payment reductions and the collection of information requirements finalized in the PY 2020 ESRD QIP Final Rule.

II. Calendar Year (CY) 2018 End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

A. Background

1. Statutory Background

On January 1, 2011, we implemented the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS), a case-mix adjusted bundled PPS for renal dialysis services furnished by ESRD facilities as required by section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275). Section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), established that beginning with calendar year (CY) 2012, and each subsequent year, the Secretary of the Department of Health and Human Services (the Secretary) shall annually increase payment amounts by an ESRD market basket increase factor, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act.

Section 632 of the American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112–240) included several provisions that apply to the ESRD PPS. Section 632(a) of ATRA added section 1881(b)(14)(I) to the Act, which required the Secretary, by comparing per patient utilization data from 2007 with such data from 2012, to reduce the single payment for renal dialysis services furnished on or after January 1, 2014 to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals (excluding oral-only ESRD-related drugs). Consistent with this requirement, in the CY 2014 ESRD PPS final rule we finalized $29.93 as the total drug utilization reduction and finalized a policy to implement the amount over a 3- to 4-year transition period (78 FR 72161 through 72170).

Section 632(b) of ATRA prohibited the Secretary from paying for oral-only ESRD-related drugs and biologicals under the ESRD PPS prior to January 1, 2016. And section 632(c) of ATRA required the Secretary, by no later than January 1, 2016, to analyze the case-mix payment adjustments under section 1881(b)(14)(D)(i) of the Act and make appropriate revisions to those adjustments.

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 217 of PAMA included several provisions that apply to the ESRD PPS. Specifically, sections 217(b)(1) and (2) of PAMA amended sections 1881(b)(14)(F) and (I) of the Act and replaced the drug utilization adjustment that was finalized in the CY 2014 ESRD PPS final rule (78 FR 72161 through 72170) with specific provisions that dictated the market basket update for CY 2015 (0.0 percent) and how the market basket should be reduced in CYs 2016 through CY 2018.

Section 217(a)(1) of PAMA amended section 632(b)(1) of ATRA to provide that the Secretary may not pay for oral-only ESRD-related drugs under the ESRD PPS prior to January 1, 2024. Section 217(a)(2) of PAMA further amended section 632(b)(1) of ATRA by requiring that in establishing payment for oral-only drugs under the ESRD PPS, the Secretary must use data from the most recent year available. Section 217(c) of PAMA provided that as part of the CY 2016 ESRD PPS rulemaking, the Secretary shall establish a process for (1) determining when a product is no longer an oral-only drug; and (2) including new injectable and intravenous products into the ESRD PPS bundled payment.

Finally, on December 19, 2014, the President signed the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) (Pub. L. 113–295). Section 204 of ABLE amended section 632(b)(1) of ATRA, as amended by section 217(a)(1) of PAMA, to provide that payment for oral-only renal dialysis services cannot be made under the ESRD PPS bundled payment prior to January 1, 2025.

2. System for Payment of Renal Dialysis Services

Under the ESRD PPS, a single, per-treatment payment is made to an ESRD facility for all of the renal dialysis services defined in section 1881(b)(14)(B) of the Act and furnished to individuals for the treatment of ESRD in the ESRD facility or in a patient's home. We have codified our definitions of renal dialysis services at 42 CFR 413.171, which is in subpart H of 42 CFR part 413. Our other payment policies are also included in regulations in subpart H of 42 CFR part 413. The ESRD PPS base rate is adjusted for characteristics of both adult and pediatric patients and accounts for patient case-mix variability. The adult case-mix adjusters include five categories of age, body surface area, low body mass index, onset of dialysis, four co-morbidity categories, and pediatric patient-level adjusters consisting of two age categories and two dialysis modalities (42 CFR 413.235(a) and (b)).

The ESRD PPS provides for three facility-level adjustments. The first payment adjustment accounts for ESRD facilities furnishing a low volume of dialysis treatments (42 CFR 413.232). The second adjustment reflects differences in area wage levels developed from Core Based Statistical Areas (CBSAs) (42 CFR 413.231). The third payment adjustment accounts for ESRD facilities furnishing renal dialysis services in a rural area (42 CFR 413.233).

The ESRD PPS allows for a training add-on for home and self-dialysis modalities (42 CFR 413.235(c)) and an additional payment for high cost outliers due to unusual variations in the type or amount of medically necessary care when applicable (42 CFR 413.237).

The ESRD PPS also provides for a transitional drug add-on payment adjustment (TDAPA) to pay for a new injectable or intravenous product that is not considered included in the ESRD PPS base rate, meaning a product that is used to treat or manage a condition for which there is not an existing ESRD PPS functional category (42 CFR 413.234). The ESRD PPS functional categories represent distinct groupings of drugs or biologicals, as determined by CMS, whose end action effect is the treatment or management of a condition or conditions associated with ESRD. New injectable or intravenous products that are not included in a functional category in the ESRD PPS base rate are paid for using the TDAPA for a minimum of 2 years, until sufficient claims data for rate setting analysis is available. At that point, utilization would be reviewed and the ESRD PPS base rate modified, if appropriate, to account for these products. The TDAPA is based on pricing methodologies under section 1847A of the Act (42 CFR 413.234(c)).

3. Updates to the ESRD PPS

Policy changes to the ESRD PPS are proposed and finalized annually in the **Federal Register**. The CY 2011 ESRD PPS final rule was published on August 12, 2010 in the **Federal Register** (75 FR 49030 through 49214). That rule implemented the ESRD PPS beginning on January 1, 2011 in accordance with section 1881(b)(14) of the Act, as added by section 153(b) of MIPPA, over a 4-year transition period. Since the implementation of the ESRD PPS, we have published annual rules to make routine updates, policy changes, and clarifications.

On November 4, 2016, we published in the **Federal Register** a final rule (81 FR 77384 through 77969) entitled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System,

Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program Bid Surety Bonds, State Licensure and Appeals Process for Breach of Contract Actions, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program and Fee Schedule Adjustments, Access to Care Issues for Durable Medical Equipment; and the Comprehensive End-Stage Renal Disease Care Model; Final Rule'' (hereinafter referred to as the CY 2017 ESRD PPS final rule). In that rule, we updated the ESRD PPS base rate for CY 2017, the wage index and wage index floor, the outlier policy, and the home and self-dialysis training add-on payment adjustment. For further detailed information regarding these updates, see 81 FR 77384.

B. Provisions of the Proposed Rule

1. Pricing Eligible Outlier Drugs and Biologicals That Were or Would Have Been, Prior to January 1, 2011, Separately Billable Under Medicare Part B

a. Summary of Outlier Calculation

Our regulations at 42 CFR 413.237 specify the methodology used to calculate outlier payments. Under the ESRD PPS outlier policy, an ESRD facility is eligible for an outlier payment when the facility's per treatment imputed MAP amount for ESRD outlier services furnished to a beneficiary exceeds the predicted ESRD outlier services MAP amount for outlier services plus the FDL amount, as specified in § 413.237(b). In the CY 2011 ESRD PPS final rule (75 FR 49134 through 49147), we discuss the details of establishing the outlier policy under the ESRD PPS, including determining eligibility for outlier payments. We discuss the proposed CY 2018 updates to the outlier policy in section II.B.2.c of this proposed rule.

Under 42 CFR 413.237(a)(1), ESRD outlier services include (1) certain items and services included in the ESRD PPS bundle that were or would have been separately billable under Medicare Part B prior to the implementation of the ESRD PPS, including ESRD-related drugs and biologicals, ESRD-related laboratory tests, and other ESRD-related medical/surgical supplies; and (2) certain renal dialysis service drugs included in the ESRD PPS bundle that were covered under Medicare Part D prior to the implementation of the ESRD PPS. For CMS to calculate outlier eligibility and payments, ESRD facilities must identify on the monthly claim which outlier services have been furnished. CMS provides a list of outlier services on the CMS Web site, *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/Outlier_Services.html*, which is subject to certain additions and exclusions as discussed in the CY 2012 ESRD PPS final rule (76 FR 70246) and Chapter 8 Section 20.1 of CMS Publication 100–04 (*https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c08.pdf*).

It is important for ESRD facilities to report the outlier services on the claim because imputed outlier service MAP amounts for a beneficiary are based on the actual utilization of outlier services. Specifically, we estimate an ESRD facility's imputed costs for ESRD outlier services based on available pricing data. In the CY 2011 ESRD PPS final rule we finalized the pricing data that we use to estimate imputed outlier services MAP amounts for the different categories of outlier services (75 FR 49141). With regard to Part B ESRD-related drugs and biologicals that were separately billable prior to implementation of the ESRD PPS, we finalized a policy to base the prices for these items on the most current Average Sales Price (ASP) data plus 6 percent. Our rationale for this decision was that ASP data for ESRD-related drugs and biologicals is updated quarterly and was the basis for payment of these drugs and biologicals prior to the implementation of the ESRD PPS.

b. Use of ASP Methodology Under the ESRD PPS

Since the implementation of the ESRD PPS, we have referred to the use of the ASP methodology when we needed to price ESRD-related drugs and biologicals previously paid separately under Part B (prior to the ESRD PPS) for purposes of ESRD PPS policies or calculations. For example, as discussed above, in the CY 2011 ESRD PPS final rule, we finalized the use of the ASP plus 6 percent methodology for pricing Part B ESRD-related drugs and biologicals under the outlier policy (75 FR 49141). In the CY 2012 ESRD PPS final rule (76 FR 20244), we stated that under the outlier policy, we use the ASP methodology.

In the CY 2013 ESRD PPS final rule (77 FR 67463), we finalized that for CY 2013 and subsequent years we will continue to use the ASP methodology, including any modifications finalized in the Physician Fee Schedule (PFS) final rules, to compute outlier MAP amounts. (We referred to the PFS since this is typically the rulemaking vehicle CMS uses for provisions related to covered Part B drugs and biologicals, however, we note that other vehicles such as standalone rules, are used as well.) In the CY 2013 ESRD PPS final rule, we also finalized the use of the ASP methodology for any other policy that requires the use of payment amounts for drugs and biologicals that, absent the ESRD PPS, would be paid separately.

In accordance with this policy, in the CY 2016 ESRD PPS proposed rule (80 FR 37829 through 37833), we proposed to use ASP methodology for purposes of two policies under the ESRD PPS drug designation process. Specifically, we proposed that any new injectable or intravenous product *that fits* into one of the ESRD functional categories would be considered included in the ESRD PPS and would count toward the calculation of an outlier payment. We further explained that in calculating the outlier payment, we price drugs using the ASP methodology, which is currently ASP + 6 percent (80 FR 37831). In addition, we proposed that for a new injectable or intravenous product that is used to treat or manage a condition for which there *is not* an ESRD PPS functional category, the new injectable or intravenous product would be eligible for the TDAPA if it meets specific criteria (80 FR 37831 through 37832). We further proposed that we would base the TDAPA on the ASP methodology and pay this amount during the utilization data collection time period (80 FR 37832 through 37833).

As we discussed in the CY 2016 ESRD PPS final rule (80 FR 69023 through 69024), commenters expressed concern regarding the availability of ASP data when including new injectable or intravenous products into the ESRD PPS bundled payment, for purposes of both the outlier calculation and TDAPA. A commenter pointed out that under the proposal, new products would qualify as outlier services, and if we fail to allow separate payment at launch, there would be no ASP upon which to base an outlier payment. That commenter recommended that we consider how to avoid jeopardizing beneficiary access by implementing an outlier payment based on wholesale acquisition cost (WAC) or another readily available price. We agreed with the commenter, and stated that in the event we do not establish an ASP, WAC could be used. We explained that we consider WAC pricing to be a part of the pricing methodologies specified in section 1847A of the Act, and we would use the methodologies available to us under that authority in order to accurately determine a price for the calculation of outlier payments for

new injectable and intravenous drugs that fit into one of the existing ESRD PPS functional categories. However, we did not address extending this policy to Part B ESRD-related drugs and biologicals that are currently eligible for outlier consideration that may not have ASP data.

Also, in the CY 2016 ESRD PPS final rule (80 FR 69024), other commenters expressed concern regarding the use of ASP data for purposes of the TDAPA. The commenters suggested that ASP would not be truly reflective of the actual cost of the drugs. One commenter pointed out that there is often a data lag between ASP and the actual cost of the drugs and as a result, the TDAPA may not reflect the actual cost of the drug. We responded that the ASP methodology is a part of the pricing methodologies specified in section 1847A of the Act, which may also include WAC pricing during the first quarter of sales as specified in section 1847A(c)(4) of the Act. We agreed with commenters that ASP pricing may not always be the most appropriate way to calculate the TDAPA. Therefore, we revised the regulation text at § 413.234(c)(1) to refer to the pricing methodologies under section 1847A of the Act, rather than ASP pricing methodology, because these methodologies include ASP, as well as WAC.

c. Pricing Methodologies Under Section 1847A of the Act

Medicare Part B follows the provisions under section 1847A of the Act for purposes of determining the payment amounts for drugs and biologicals that are described in section 1842(o)(1)(C) of the Act and that are furnished on or after January 1, 2005. While most Part B drugs (excluding those paid on a cost or prospective payment basis) are paid at ASP plus 6 percent, there are cases where ASP is unavailable. For example, when a new drug or biological is brought to market, sales data is not sufficiently available for the manufacturer to compute an ASP. In these cases, the payment amount for these drugs could be determined using WAC (as specified in section 1847A(c)(4) of the Act) or, when WAC is not available, the Medicare Administrative Contractor has discretion in determining the payment amount. Under section 1847A(d) of the Act, CMS also has the authority to substitute an Average Manufacturer Price (AMP) or Widely Available Market Price (WAMP)-based payment amount for the ASP-based payment amount when the ASP exceeds the AMP or WAMP by a threshold amount. As discussed in the CY 2013 PFS final rule (77 FR 69140 through 69141), the AMP price substitution policy is not utilized frequently and WAMP-based price substitutions are not currently implemented. CMS also uses a carryover pricing policy in the very rare situations when a manufacturer's ASP data for a multiple source drug product is missing, as discussed in the CY 2011 PFS final rule (75 FR 73461 through 73462).

d. Proposal for Pricing Eligible Outlier Drugs and Biologicals That Were or Would Have Been, Prior to January 1, 2011, Separately Billable Under Medicare Part B

As we have described above, section 1847A of the Act provides methods that are used to determine payment amounts for most separately paid Part B drugs, that is, drugs and biologicals that are not paid on a cost or PPS basis (see section 1842(o)(1) of the Act). We are aware of several circumstances in which an ASP-based payment amount is not available. For example, an ASP-based payment amount is not available when there is no longer a Medicare program need for a drug to remain on the ASP fee schedule, or when drugs or biologicals are new to market and manufacturers have not yet reported ASP data. However, based on CMS' experience with determining Part B drug payment limits under section 1847A of the Act, we believe there are limited situations in which ASP data would not be available for drugs or biologicals that could qualify for the outlier calculation. Nevertheless, we believe that these drugs and biologicals, when they are determined to be an ESRD outlier service, should count toward the outlier calculation.

In this proposed rule, we propose to extend the use of all pricing methodologies under section 1847A of the Act for purposes of the ESRD PPS outlier policy, specifically for current ESRD-related drugs and biologicals that were or would have been separately billable under Part B prior to the implementation of the ESRD PPS and are outlier eligible for CY 2018 and subsequent years. As explained above, we have already established a policy under the drug designation process in the CY 2016 ESRD PPS final rule (80 FR 69023) whereby we use the pricing methodologies specified in section 1847A of the Act to determine the TDAPA for a new injectable or intravenous product that is not considered included in the ESRD PPS base rate (42 CFR 413.234(c)). In addition, we have established that we use these methodologies to determine a price for the calculation of outlier payments for new injectable and intravenous drugs that fit into one of the existing the functional categories (80 FR 69023).

We believe that using the pricing methodologies under section 1847A of the Act is consistent with the ESRD PPS drug designation process and how covered drugs and biologicals are paid under Medicare Part B. We believe that consistency with Medicare Part B payment for drugs and biologicals would be beneficial to ESRD facilities because this is the way CMS pays for injectable drugs and biologicals on the ESRD claim with the AY modifier; and therefore facilities would be able to predict outlier payments. We are proposing to apply any pricing methodology available under section 1847A of the Act as appropriate when ASP pricing is unavailable for eligible drugs and biologicals under the outlier policy that were or would have been separately billable under Part B prior to the implementation of the ESRD PPS. In situations where ASP data is not available and other methodologies under section 1847A of the Act do not apply (including but not limited to AMP price substitution or carryover pricing), we believe that a WAC-based payment amount can be determined instead. Based on our experience with determining Part B drug payments under section 1847A of the Act, we believe that drugs and biologicals that are approved by the Food and Drug Administration and are being sold in the United States nearly always have WAC amounts published in pricing compendia. We believe this proposal is consistent with the intent of the ESRD PPS outlier policy, which is to provide a payment adjustment for high cost patients due to unusual variations in the type or amount of medically necessary care. If there are drugs and biologicals that ESRD facilities furnish for the treatment of ESRD that qualify as ESRD outlier services and do not have ASP data, we would want these items counted toward an outlier payment since they are a part of the cost the facility is incurring. When a drug or biological does not have ASP data or WAC data or cannot otherwise be priced under section 1847A of the Act, we propose that it would not count toward the outlier calculation. When the utilization of a drug or biological is not counted toward the outlier calculation, it may result in a lower outlier payment or no outlier payment to the ESRD facility.

We are soliciting comment on our proposal to use any pricing methodology available under section 1847A of the Act for purposes of the ESRD PPS outlier policy. We are also

soliciting comment on our proposal that when pricing methodologies are not available under section 1847A of the Act, the drug or biological would not count toward the outlier calculation.

2. Proposed CY 2018 ESRD PPS Update

a. ESRD Bundled Market Basket

i. Proposed CY 2018 ESRD Market Basket Update, Productivity Adjustment, and Labor-Related Share for ESRD PPS

In accordance with section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by an ESRD market basket increase factor and reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The application of the productivity adjustment may result in the increase factor being less than 0.0 for a year and may result in payment rates for a year being less than the payment rates for the preceding year. The statute also provides that the market basket increase factor should reflect the changes over time in the prices of an appropriate mix of goods and services used to furnish renal dialysis services.

Section 1881(b)(14)(F)(i)(I) of the Act, as added by section 217(b)(2)(A) of PAMA, provides that in order to accomplish the purposes of subparagraph (I) with respect to 2016, 2017, and 2018, after determining the market basket percentage increase factor for each of 2016, 2017, and 2018, the Secretary shall reduce such increase factor by 1.25 percentage points for each of 2016 and 2017 and by 1.0 percentage point for 2018. Accordingly, for CY 2018, we will reduce the proposed amount of the market basket percentage increase factor by 1.0 percent as required by section 1881(b)(14)(F)(i)(I) of the Act, and will further reduce it by the productivity adjustment.

As required under section 1881(b)(14)(F)(i) of the Act, CMS developed an all-inclusive ESRDB input price index (75 FR 49151 through 49162) and subsequently revised and rebased the ESRDB input price index in the CY 2015 ESRD PPS final rule (79 FR 66129 through 66136). Although ''market basket'' technically describes the mix of goods and services used for ESRD treatment, this term is also commonly used to denote the input price index (that is, cost categories, their respective weights, and price proxies combined) derived from a market basket. Accordingly, the term ''ESRDB market basket,'' as used in this document, refers to the ESRDB input price index.

We propose to use the CY 2012-based ESRDB market basket as finalized and described in the CY 2015 ESRD PPS final rule (79 FR 66129 through 66136) to compute the CY 2018 ESRDB market basket increase factor and labor-related share based on the best available data. Consistent with historical practice, we estimate the ESRDB market basket update based on IHS Global Inc.'s (IGI), forecast using the most recently available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

Using this methodology and the IGI forecast for the first quarter of 2017 of the CY 2012-based ESRDB market basket (with historical data through the fourth quarter of 2016), and consistent with our historical practice of estimating market basket increases based on the best available data, the proposed CY 2018 ESRDB market basket increase factor is 2.2 percent. As required by section 1881(b)(14)(F)(I)(i) of the Act as amended by section 217(b)(2) of PAMA, we must reduce the amount of the market basket increase factor by 1.0 percent, resulting in a proposed CY 2018 ESRDB market basket percentage increase factor of 1.2 percent.

Under section 1881(b)(14)(F)(i) of the Act, as amended by section 3401(h) of the Affordable Care Act, for CY 2012 and each subsequent year, the ESRD market basket percentage increase factor shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The multifactor productivity (MFP) is derived by subtracting the contribution of labor and capital input growth from output growth. The detailed methodology for deriving the MFP projection was finalized in the CY 2012 ESRD PPS final rule (76 FR 40503 through 40504). The most up-to-date MFP projection methodology is available on the CMS Web site at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html*.

Using IGI's first quarter 2017 forecast, the MFP adjustment for CY 2018 (the 10-year moving average of MFP for the period ending CY 2018) is projected to be 0.5 percent.

For the CY 2018 ESRD payment update, we propose to continue using a labor-related share of 50.673 percent for the ESRD PPS payment, which was finalized in the CY 2015 ESRD PPS final rule (79 FR 66136).

ii. Proposed CY 2018 ESRDB Market Basket Update, Adjusted for Multifactor Productivity (MFP)

Under section 1881(b)(14)(F) of the Act, beginning in CY 2012, ESRD PPS payment amounts shall be annually increased by an ESRD market basket percentage increase factor reduced by the productivity adjustment. For CY 2018, section 1881(b)(14)(F)(i)(I) of the Act, as amended by section 217(b)(2)(A)(ii) of PAMA, requires the Secretary to implement a 1.0 percentage point reduction to the ESRDB market basket increase factor in addition to the productivity adjustment.

As a result of these provisions, the proposed CY 2018 ESRD market basket increase is 0.7 percent. This market basket increase is calculated by starting with the proposed CY 2018 ESRDB market basket percentage increase factor of 2.2 percent, reducing it by the mandated legislative adjustment of 1.0 percent (required by section 1881(b)(14)(F)(i)(I) of the Act), and reducing it further by the MFP adjustment (the 10-year moving average of MFP for the period ending CY 2018) of 0.5 percent. As is our general practice, if more recent data are subsequently available (for example, a more recent estimate of the market basket or MFP adjustment), we will use such data to determine the CY 2018 market basket update and MFP adjustment in the CY 2018 ESRD PPS final rule.

b. The Proposed CY 2018 ESRD PPS Wage Indices

i. Annual Update of the Wage Index

Section 1881(b)(14)(D)(iv)(II) of the Act provides that the ESRD PPS may include a geographic wage index payment adjustment, such as the index referred to in section 1881(b)(12)(D) of the Act, as the Secretary determines to be appropriate. In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized the use of the Office of Management and Budget's (OMB's) CBSAs-based geographic area designations to define urban and rural areas and their corresponding wage index values. OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. The latest bulletin, as well as subsequent bulletins, is available online at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins*.

For CY 2018, we would continue to use the same methodology as finalized in the CY 2011 ESRD PPS final rule (75 FR 49117) for determining the wage indices for ESRD facilities. Specifically, we would update the wage indices for

CY 2018 to account for updated wage levels in areas in which ESRD facilities are located. We use the most recent pre-floor, pre-reclassified hospital wage data collected annually under the inpatient prospective payment system. The ESRD PPS wage index values are calculated without regard to geographic reclassifications authorized under sections 1886(d)(8) and (d)(10) of the Act and utilize pre-floor hospital data that are unadjusted for occupational mix. The proposed CY 2018 wage index values for urban areas are listed in Addendum A (Wage Indices for Urban Areas) and the proposed CY 2018 wage index values for rural areas are listed in Addendum B (Wage Indices for Rural Areas). Addenda A and B are located on the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ESRDpayment/End-Stage-Renal-Disease-ESRD-Payment-Regulations-and-Notices.html*.

In the CY 2011 and CY 2012 ESRD PPS final rules (75 FR 49116 through 49117 and 76 FR 70239 through 70241, respectively), we also discussed and finalized the methodologies we use to calculate wage index values for ESRD facilities that are located in urban and rural areas where there is no hospital data. For urban areas with no hospital data, we compute the average wage index value of all urban areas within the State and use that value as the wage index. For rural areas with no hospital data, we compute the wage index using the average wage index values from all contiguous CBSAs to represent a reasonable proxy for that rural area.

We apply the wage index for Guam as established in the CY 2014 ESRD PPS final rule (78 FR 72172) (0.9611) to American Samoa and the Northern Mariana Islands. We apply the statewide urban average based on the average of all urban areas within the state (78 FR 72173) (0.8478) to Hinesville-Fort Stewart, Georgia. We note that if hospital data becomes available for these areas, we will use that data for the appropriate CBSAs instead of the proxy.

A wage index floor value has been used instead of the calculated wage index values below the floor in making payment for renal dialysis services under the ESRD PPS. Currently, all areas with wage index values that fall below the floor are located in Puerto Rico. However, the wage index floor value is applicable for any area that may fall below the floor.

In the CY 2011 ESRD PPS final rule (75 FR 49116 through 49117), we finalized that we would continue to reduce the wage index floor by 0.05 for each of the remaining years of the ESRD PPS transition, that is, until CY 2014. In the CY 2012 ESRD PPS final rule (76 FR 70241), we finalized the 0.05 reduction to the wage index floor for CYs 2012 and 2013, resulting in a wage index floor of 0.5500 and 0.5000, respectively. We continued to apply and to reduce the wage index floor by 0.05 in the CY 2013 ESRD PPS final rule (77 FR 67459 through 67461). Although our intention initially was to provide a wage index floor only through the 4-year transition to 100 percent implementation of the ESRD PPS (75 FR 49116 through 49117; 76 FR 70240 through 70241), in the CY 2014 ESRD PPS final rule (78 FR 72173), we continued to apply the wage index floor and continued to reduce the floor by 0.05 per year for CY 2014 and for CY 2015.

In the CY 2016 ESRD PPS final rule (80 FR 69006 through 69008), we finalized the continuation of the application of the wage index floor of 0.4000 to areas with wage index values below the floor, rather than reducing the floor by 0.05. We stated in that rule that we needed more time to study the wage indices that are reported for Puerto Rico to assess the appropriateness of discontinuing the wage index floor. Also, in that rule a commenter provided three alternative wage indices for Puerto Rico for the CY 2016 ESRD PPS final rule: (1) Utilize our policy for areas that do not have reliable hospital data by applying the wage index for Guam as we did in implementing the ESRD PPS in the Northern Marianas and American Samoa; (2) use the U.S. Virgin Islands as a proxy for Puerto Rico, given the geographic proximity and its ''non-mainland'' or ''island'' nature; or (3) reestablish the wage index floor in effect in 2010 when Puerto Rico became the only location with wage areas subject to the floor, that is, 0.65.

In the CY 2017 proposed rule (81 FR 42817), we presented the findings from analyses of ESRD facility cost report and claims data submitted by facilities located in Puerto Rico and mainland facilities. We solicited public comments on the wage index for CBSAs in Puerto Rico as part of our continuing effort to determine an appropriate course of action. We did not propose to change the wage index floor for CBSAs in Puerto Rico, but we requested public comments in which stakeholders can provide useful input for consideration in future decision-making. Specifically, we solicited comment on the useful suggestions that were submitted in the CY 2016 ESRD PPS final rule (80 FR 69007). After considering the public comments we received regarding the wage index floor, we finalized the wage index floor of 0.4000 in the CY 2017 ESRD PPS final rule (81 FR 77858).

In this proposed rule, for CY 2018 and subsequent years, we are proposing to maintain the current wage index floor of 0.4000 for CBSAs that have wage values that fall below the floor. The cost report analyses we have conducted over the past several years are inconclusive and have not convinced us that an increase in the wage index floor is warranted at this time.

We continue to believe maintaining the current wage index floor value of 0.4000 is appropriate as it continues to provide additional payment support to the lowest wage areas and avoids the need for an additional budget-neutrality adjustment that would reduce the ESRD PPS base rate, beyond the adjustment needed to reflect updated hospital wage data, in order to maintain budget neutrality for wage index updates. We will continue to monitor and analyze ESRD facility cost reports and projected impacts to guide future rulemaking with regard to the wage index floor.

ii. Application of the Wage Index Under the ESRD PPS

A facility's wage index is applied to the labor-related share of the ESRD PPS base rate. In the CY 2015 ESRD PPS final rule (79 FR 66136), we finalized the labor-related share of 50.673 percent, which is based on the 2012-based ESRDB market basket. Thus, for CY 2018, the labor-related share to which a facility's wage index would be applied is 50.673 percent.

c. CY 2018 Update to the Outlier Policy

Section 1881(b)(14)(D)(ii) of the Act requires that the ESRD PPS include a payment adjustment for high cost outliers due to unusual variations in the type or amount of medically necessary care, including variability in the amount of erythropoiesis stimulating agents (ESAs) necessary for anemia management. Some examples of the patient conditions that may be reflective of higher facility costs when furnishing dialysis care would be frailty, obesity, and comorbidities, such as cancer. The ESRD PPS recognizes high cost patients, and we have codified the outlier policy in our regulations at 42 CFR 413.237. The policy provides the following ESRD outlier items and services are included in the ESRD PPS bundle: (1) ESRD-related drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (2) ESRD-related laboratory tests that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (3) medical/surgical supplies, including syringes, used to administer ESRD-related drugs that were or would

have been, prior to January 1, 2011, separately billable under Medicare Part B; and (4) renal dialysis services drugs that were or would have been, prior to January 1, 2011, covered under Medicare Part D, including ESRD-related oral-only drugs effective January 1, 2025.

In the CY 2011 ESRD PPS final rule (75 FR 49142), we stated that for purposes of determining whether an ESRD facility would be eligible for an outlier payment, it would be necessary for the facility to identify the actual ESRD outlier services furnished to the patient by line item (that is, date of service) on the monthly claim. Renal dialysis drugs, laboratory tests, and medical/surgical supplies that are recognized as outlier services were originally specified in Attachment 3 of Change Request 7064, Transmittal 2033 issued August 20, 2010, rescinded and replaced by Transmittal 2094, dated November 17, 2010. Transmittal 2094 identified additional drugs and laboratory tests that may also be eligible for ESRD outlier payment. Transmittal 2094 was rescinded and replaced by Transmittal 2134, dated January 14, 2011, which was issued to correct the subject on the Transmittal page and made no other changes.

Furthermore, we use administrative issuances and guidance to continually update the renal dialysis service items available for outlier payment via our quarterly update CMS Change Requests, when applicable. We use this separate guidance to identify renal dialysis service drugs that were or would have been covered under Medicare Part D for outlier eligibility purposes and in order to provide unit prices for calculating imputed outlier services. In addition, we also identify through our monitoring efforts items and services that are either incorrectly being identified as eligible outlier services or any new items and services that may require an update to the list of renal dialysis items and services that qualify as outlier services, which are made through administrative issuances.

Our regulations at 42 CFR 413.237 specify the methodology used to calculate outlier payments. An ESRD facility is eligible for an outlier payment if its actual or imputed MAP amount per treatment for ESRD outlier services exceeds a threshold. The MAP amount represents the average incurred amount per treatment for services that were or would have been considered separately billable services prior to January 1, 2011. The threshold is equal to the ESRD facility's predicted ESRD outlier services MAP amount per treatment (which is case-mix adjusted) plus the fixed-dollar loss (FDL) amount. In accordance with § 413.237(c) of our regulations, facilities are paid 80 percent of the per treatment amount by which the imputed MAP amount for outlier services (that is, the actual incurred amount) exceeds this threshold. ESRD facilities are eligible to receive outlier payments for treating both adult and pediatric dialysis patients.

In the CY 2011 ESRD PPS final rule, using 2007 data, we established the outlier percentage at 1.0 percent of total payments (75 FR 49142 through 49143). We also established the FDL amounts that are added to the predicted outlier services MAP amounts. The outlier services MAP amounts and FDL amounts are different for adult and pediatric patients due to differences in the utilization of separately billable services among adult and pediatric patients (75 FR 49140). As we explained in the CY 2011 ESRD PPS final rule (75 FR 49138 through 49139), the predicted outlier services MAP amounts for a patient are determined by multiplying the adjusted average outlier services MAP amount by the product of the patient-specific case-mix adjusters applicable using the outlier services payment multipliers developed from the regression analysis to compute the payment adjustments.

For the CY 2018 outlier policy, we would use the existing methodology for determining outlier payments by applying outlier services payment multipliers that were developed for the CY 2016 ESRD PPS final rule (80 FR 68993–68994, 69002). We used these outlier services payment multipliers to calculate the predicted outlier service MAP amounts and projected outlier payments for CY 2018.

For CY 2018, we propose that the outlier services MAP amounts and FDL amounts would be derived from claims data from CY 2016. Because we believe that any adjustments made to the MAP amounts under the ESRD PPS should be based upon the most recent data year available in order to best predict any future outlier payments, we propose the outlier thresholds for CY 2018 would be based on utilization of renal dialysis items and services furnished under the ESRD PPS in CY 2016. We recognize that the utilization of ESAs and other outlier services have continued to decline under the ESRD PPS, and that we have lowered the MAP amounts and FDL amounts every year under the ESRD PPS.

In the CY 2017 ESRD PPS final rule (81 FR 77860), we stated that based on the CY 2015 claims data, outlier payments represented approximately 0.93 percent of total payments. For this proposed rule, as discussed below, CY 2016 claims data show outlier payments represented approximately 0.78 percent of total payments. We believe that trends in the utilization of the ESAs could be a reason for the decrease. Beginning in 2015 and continuing into 2016, there were large shifts in the composition of the utilization of ESA drugs. Specifically, utilization of Epoetin (EPO) alfa decreased and utilization of the longer-acting ESA drugs, darbepoetin and EPO beta, increased, based on estimates of average ESA utilization per session. As EPO alfa is measured in different units than both darbepoetin and EPO beta, it is difficult to compare the overall utilization of ESAs between 2014 and 2016 by units alone.

In examining the claims data, we find that compositional shift away from use of EPO alfa to the longer acting darbepoetin and EPO beta was a significant factor in the decrease in total ESA costs in 2016. We first calculated the actual cost for ESAs administered during 2016. We then calculated the projected cost of ESAs that was used for the CY 2016 ESRD PPS final rule, using total utilization from 2014 and drug prices from 2015 Q3 inflated to 2016 prices. The actual costs of ESAs administered in 2016 were roughly 20 percent lower than the value projected in the CY 2016 ESRD PPS final rule. We then calculated the projected cost of ESAs assuming that the utilization of various ESAs per dialysis session in 2014 and 2016 were similar and also used the prices and total dialysis session count from 2016. The projected costs from these two scenarios were similar and suggest that compositional change in ESA utilization was likely a significant factor in the decrease in the total cost of ESAs between 2014 and 2016. We continue to believe that the decline is leveling off and that 1.0 percent is an appropriate threshold for outlier payments.

i. CY 2018 Update to the Outlier Services MAP Amounts and FDL Amounts

For CY 2018, we are not proposing any change to the methodology used to compute the MAP or FDL amounts. Rather, we will continue to update the outlier services MAP amounts and FDL amounts to reflect the utilization of outlier services reported on 2016 claims. For this proposed rule, the outlier services MAP amounts and FDL amounts were updated using 2016 claims data. The impact of this update is shown in Table 1, which compares the outlier services MAP amounts and

FDL amounts used for the outlier policy in CY 2017 with the updated proposed estimates for this rule. The estimates for the proposed CY 2018 outlier policy, which are included in Column II of Table 1, were inflation adjusted to reflect projected 2018 prices for outlier services.

TABLE 1—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY

	Column I Final outlier policy for CY 2017 (based on 2015 data, price inflated to 2017) *		Column II Proposed outlier policy for CY 2018 (based on 2016 data, price inflated to 2018)	
	Age <18	Age >=18	Age <18	Age >=18
Average outlier services MAP amount per treatment	$38.77	$47.00	$38.20	$44.52
Adjustments				
Standardization for outlier services	1.0078	0.9770	1.0218	0.9788
MIPPA reduction	0.98	0.98	0.98	0.98
Adjusted average outlier services MAP amount	$38.29	$45.00	$38.25	$42.70
Fixed-dollar loss amount that is added to the predicted MAP to determine the outlier threshold	$68.49	$82.92	$49.55	$83.12
Patient-months qualifying for outlier payment	4.6%	6.7%	7.4%	6.3%

* Note that Column I was obtained from Column II of Table 1 from the CY 2017 ESRD PPS final rule.

As demonstrated in Table 1, the estimated FDL amount per treatment that determines the CY 2018 outlier threshold amount for adults (Column II; $83.12) is higher than that used for the CY 2017 outlier policy (Column I; $82.92). The higher threshold is accompanied by a decrease in the adjusted average MAP for outlier services from $45.00 to $42.70. For pediatric patients, there is a decrease in the FDL amount from $68.49 to $49.55. There is a slight decrease in the adjusted average MAP for outlier services among pediatric patients, from $38.29 to $38.25.

We estimate that the percentage of patient months qualifying for outlier payments in CY 2018 will be 6.3 percent for adult patients and 7.4 percent for pediatric patients, based on the 2016 claims data. The pediatric outlier MAP and FDL amounts continue to be lower for pediatric patients than adults due to the continued lower use of outlier services (primarily reflecting lower use of ESAs and other injectable drugs).

ii. Outlier Percentage

In the CY 2011 ESRD PPS final rule (75 FR 49081), under § 413.220(b)(4), we reduced the per treatment base rate by 1 percent to account for the proportion of the estimated total payments under the ESRD PPS that are outlier payments as described in § 413.237. Based on the 2016 claims, outlier payments represented approximately 0.78 percent of total payments, slightly below the 1 percent target due to small overall declines in the use of outlier services. Recalibration of the thresholds using 2016 data is expected to result in aggregate outlier payments close to the 1 percent target in CY 2018. We believe the update to the outlier MAP and FDL amounts for CY 2018 would increase payments for ESRD beneficiaries requiring higher resource utilization and move us closer to meeting our 1 percent outlier policy. We note that recalibration of the FDL amounts in this proposed rule would result in no change in payments to ESRD facilities for beneficiaries with renal dialysis items and services that are not eligible for outlier payments, but would increase payments to ESRD facilities for beneficiaries with renal dialysis items and services that are eligible for outlier payments. Therefore, beneficiary co-insurance obligations would also increase for renal dialysis services eligible for outlier payments.

d. Proposed Impacts to the CY 2018 ESRD PPS Base Rate

i. ESRD PPS Base Rate

In the CY 2011 ESRD PPS final rule (75 FR 49071 through 49083), we discussed the development of the ESRD PPS per treatment base rate that is codified in the Medicare regulations at § 413.220 and § 413.230. The CY 2011 ESRD PPS final rule also provides a detailed discussion of the methodology used to calculate the ESRD PPS base rate and the computation of factors used to adjust the ESRD PPS base rate for projected outlier payments and budget neutrality in accordance with sections 1881(b)(14)(D)(ii) and 1881(b)(14)(A)(ii) of the Act, respectively. Specifically, the ESRD PPS base rate was developed from CY 2007 claims (that is, the lowest per patient utilization year as required by section 1881(b)(14)(A)(ii) of the Act), updated to CY 2011, and represented the average per treatment MAP for composite rate and separately billable services. In accordance with section 1881(b)(14)(D) of the Act and regulations at § 413.230, the ESRD PPS base rate is adjusted for the patient specific case-mix adjustments, applicable facility adjustments, geographic differences in area wage levels using an area wage index, as well as applicable outlier payments, training add-on payments, or transitional drug add-on payments.

ii. Annual Payment Rate Update for CY 2018

We are proposing an ESRD PPS base rate for CY 2018 of $233.31. This update reflects several factors, described in more detail as follows:

- *Market Basket Increase:* Section 1881(b)(14)(F)(i)(I) of the Act provides that, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by the ESRD market basket percentage increase factor. The latest CY 2018 projection for the ESRDB market basket is 2.2 percent. In CY 2018, this amount must be reduced by 1.0 percentage point as required by section 1881(b)(14)(F)(i)(I) of the Act, as amended by section 217(b)(2)(A) of PAMA, which is calculated as $2.2 - 1.0 = 1.2$ percent. This amount is then reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act, as required by section 1881(b)(14)(F)(i)(II) of the Act. The proposed MFP adjustment for CY 2018 is 0.5 percent, thus yielding a proposed update to the base rate of 0.7 percent for CY 2018 ($1.2 - 0.5 = 0.7$ percent). Therefore, the proposed ESRD PPS base rate for CY 2018 before application of the wage index budget-neutrality adjustment factor would be $233.17 ($231.55 × 1.007 = $233.17).
- *Wage Index Budget-Neutrality Adjustment Factor:* We compute a wage

index budget-neutrality adjustment factor that is applied to the ESRD PPS base rate. For CY 2018, we are not proposing any changes to the methodology used to calculate this factor which is described in detail in the CY 2014 ESRD PPS final rule (78 FR 72174). The CY 2018 proposed wage index budget-neutrality adjustment factor is 1.000605. This application would yield a CY 2018 ESRD PPS proposed base rate of $233.31 ($233.17 × 1.000605 = $233.31).

In summary, we are proposing a CY 2018 ESRD PPS base rate of $233.31. This amount reflects a market basket increase of 0.7 percent and the CY 2018 wage index budget-neutrality adjustment factor of 1.000605.

III. CY 2018 Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury (AKI)

A. Background

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) (Pub. L. 114–27) was enacted. In the TPEA, the Congress amended the Act to include coverage and provide for payment for dialysis furnished by an ESRD facility to an individual with acute kidney injury (AKI). Specifically, section 808(a) of the TPEA amended section 1861(s)(2)(F) of the Act to provide coverage for renal dialysis services furnished on or after January 1, 2017, by a renal dialysis facility or a provider of services paid under section 1881(b)(14) of the Act to an individual with AKI. Section 808(b) of the TPEA amended section 1834 of the Act by adding a new subsection (r) to the Act. Subsection (r)(1) of section 1834 of the Act provides for payment, beginning January 1, 2017, for renal dialysis services furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with AKI at the ESRD PPS base rate, as adjusted by any applicable geographic adjustment applied under section 1881(b)(14)(D)(iv)(II) of the Act and may be adjusted by the Secretary (on a budget neutral basis for payments under section 1834(r) of the Act) by any other adjustment factor under section 1881(b)(14)(D) of the Act.

In the CY 2017 ESRD PPS final rule, we finalized several coverage and payment policies in order to implement subsection (r) of section 1834 of the Act and the amendments to section 1881(s)(2)(F) of the Act, including the payment rate for AKI dialysis (81 FR 77866 through 77872). We interpret section 1834(r)(1) of the Act to mean the amount of payment for AKI dialysis services is the base rate for renal dialysis services determined for such year under the ESRD base rate as set forth in 42 CFR 413.220, updated by the ESRD bundled market basket percentage increase factor minus a productivity adjustment as set forth in § 413.196(d)(1), adjusted for wages as set forth in § 413.231, and adjusted by any other amounts deemed appropriate by the Secretary under § 413.373. We codified this policy in 42 CFR 413.372.

B. Annual Payment Rate Update for CY 2018

1. CY 2018 AKI Dialysis Payment Rate

The payment rate for AKI dialysis is the ESRD PPS base rate determined for a year under section 1881(b)(14) of the Act, which is the finalized ESRD PPS base rate. We note that ESRD facilities have the ability to bill Medicare for non-renal dialysis items and services and receive separate payment in addition to the payment rate for AKI dialysis.

As discussed in section II.B.2.d of this proposed rule, the CY 2018 proposed ESRD PPS base rate is $233.31, which reflects the ESRD bundled market basket and multifactor productivity adjustment. Accordingly, we are proposing a CY 2018 per treatment payment rate of $233.31 for renal dialysis services furnished by ESRD facilities to individuals with AKI.

2. Geographic Adjustment Factor

Section 1834(r)(1) of the Act further provides that the amount of payment for AKI dialysis services shall be the base rate for renal dialysis services determined for a year under section 1881(b)(14) of the Act, as adjusted by any applicable geographic adjustment factor applied under section 1881(b)(14)(D)(iv)(II) of the Act. We interpret the reference to ''any applicable geographic adjustment factor applied under subparagraph (D)(iv)(II) of such section'' to mean the geographic adjustment factor that is actually applied to the ESRD PPS base rate for a particular facility. Accordingly, we apply the same wage index that is used under the ESRD PPS, as discussed in section II.B.2.d of this proposed rule. In the CY 2017 ESRD PPS final rule (81 FR 77868), we finalized that the AKI dialysis payment rate will be adjusted for wage index for a particular ESRD facility in the same way that the ESRD PPS base rate is adjusted for wage index for that facility. Specifically, we apply the wage index to the labor-related share of the ESRD PPS base rate that we utilize for AKI dialysis to compute the wage adjusted per-treatment AKI dialysis payment rate. As stated above, we are proposing a CY 2018 AKI dialysis payment rate of $233.31, adjusted by the ESRD facility's wage index.

IV. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP) for Payment Year (PY) 2021

A. Background

For over 30 years, monitoring the quality of care provided to end-stage renal disease (ESRD) patients by dialysis providers or facilities (hereinafter referred to collectively as ''facility'' or ''facilities'') has been an important component of the Medicare ESRD payment system. The ESRD quality incentive program (QIP) is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by the Centers for Medicare & Medicaid Services (CMS).

Under the ESRD QIP, payments made to a dialysis facility by Medicare under section 1881(b)(14) of the Social Security Act (the Act) are reduced by up to 2 percent if the facility does not meet or exceed the total performance score with respect to performance standards established by the Secretary of the Department of Health and Human Services (the Secretary) with respect to certain specified measures.

The calendar year (CY) 2012 ESRD PPS final rule (76 FR 70228), published in the **Federal Register** on November 10, 2011, among other things, set forth certain requirements for the ESRD QIP for payment years (PYs) 2013 and 2014.

The CY 2013 ESRD PPS final rule (77 FR 67450), published in the **Federal Register** on November 9, 2012, set forth requirements for the ESRD QIP, including for payment year 2015 and beyond. In that rule, CMS added several new measures to the ESRD QIP's measure set and expanded the scope of some of the existing measures. CMS also established CY 2013 as the performance period for the PY 2015 ESRD QIP, established performance standards and adopted scoring and payment methodologies similar to those finalized for the PY 2014 ESRD QIP.

The CY 2014 ESRD PPS final rule (78 FR 72156), published in the **Federal Register** on December 2, 2013, set forth requirements for the ESRD QIP, including for PY 2016 and beyond. In that rule, CMS added several new measures to the ESRD QIP's measure set, established the performance period for the PY 2016 ESRD QIP, established performance standards for the PY 2016 measures, and adopted scoring and payment reduction methodologies that

were similar to those finalized for the PY 2015 ESRD QIP.

The CY 2015 ESRD PPS final rule (79 FR 66120), published in the **Federal Register** on November 6, 2014, finalized requirements for the ESRD QIP, including for PYs 2017 and 2018. In that rule, CMS finalized the measure set for both PYs 2017 and 2018, revised the In-Center Hemodialysis Consumer Assessment of Healthcare Providers (ICH CAHPS) reporting measure, revised the Mineral Metabolism Reporting Measure, finalized an Extraordinary Circumstances Exemption, and finalized a new scoring methodology beginning with PY 2018.

The CY 2016 ESRD PPS final rule (80 FR 68968), published in the **Federal Register** on November 6, 2015, set forth requirements for the ESRD QIP, including for PYs 2017 through 2019. In that rule, CMS finalized the PY 2019 Measure Set, reinstated the ICH CAHPS Attestation beginning with PY 2017, and revised the Small Facility Adjuster (SFA) beginning with PY 2017.

The CY 2017 ESRD PPS final rule (81 FR 77834), published in the **Federal Register** on November 4, 2016, set forth new requirements for the ESRD QIP, including the inclusion of new quality measures beginning with PYs 2019 and 2020, and updated other policies for the program.

The ESRD QIP is authorized by section 1881(h) of the Act, which was added by section 153(c) of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Section 1881(h) of the Act requires the Secretary to establish an ESRD QIP by (1) selecting measures; (2) establishing the performance standards that apply to the individual measures; (3) specifying a performance period with respect to a year; (4) developing a methodology for assessing the total performance of each facility based on the performance standards with respect to the measures for a performance period; and (5) applying an appropriate payment reduction to facilities that do not meet or exceed the established Total Performance Score (TPS). This proposed rule discusses each of these elements and our proposals for their application to the ESRD QIP.

B. Accounting for Social Risk Factors in the ESRD QIP Program

We understand that social risk factors such as income, education, race and ethnicity, employment, disability, community resources, and social support (certain factors of which are also sometimes referred to as socioeconomic status factors or socio-demographic status factors), play a major role in health. One of our core objectives is to improve beneficiary outcomes, including reducing health disparities, and we want to ensure that all beneficiaries, including those with social risk factors, receive high quality care. In addition, we seek to ensure that the quality of care furnished by facilities is assessed as fairly as possible under our programs while ensuring that beneficiaries have adequate access to excellent care.

We have been reviewing reports prepared by the Office of the Assistant Secretary for Planning and Evaluation (ASPE) [2] and the National Academies of Sciences, Engineering, and Medicine on the issue of accounting for social risk factors in CMS' value-based purchasing and quality reporting programs, and considering options on how to address the issue in these programs. On December 21, 2016, ASPE submitted a Report to Congress on a study it was required to conduct under section 2(d) of the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014. The study analyzed the effects of certain social risk factors in Medicare beneficiaries on quality measures and measures of resource use that are used in one or more of nine Medicare value-based purchasing programs, including the ESRD QIP.[3] The report also included considerations for strategies to account for social risk factors in these programs. In a January 10, 2017 report released by The National Academies of Sciences, Engineering, and Medicine, that body provided various potential methods for measuring and accounting for social risk factors, including stratified public reporting.[4]

As noted in the fiscal year (FY) 2017 Inpatient Prospective Payment System/Long-Term Care Hospital Prospective Payment System (IPPS/LTCH PPS) final rule (81 FR 56762 through 57345), the National Quality Forum (NQF) has undertaken a 2-year trial period in which certain new measures, measures undergoing maintenance review, and measures endorsed with the condition that they enter the trial period can be assessed to determine whether risk adjustment for selected social risk factors is appropriate for these measures. This trial entails temporarily allowing inclusion of social risk factors in the risk-adjustment approach for these measures. At the conclusion of the trial, NQF will issue recommendations on the future inclusion of social risk factors in risk adjustment for these quality measures, and we will closely review its findings.

As we continue to consider the analyses and recommendations from these reports and await the results of the NQF trial on risk adjustment for quality measures, we are continuing to work with stakeholders in this process. As we have previously communicated, we are concerned about holding facilities to different standards for the outcomes of their patients with social risk factors because we do not want to mask potential disparities or minimize incentives to improve the outcomes for disadvantaged populations. Keeping this concern in mind, while we sought input on this topic previously, we continue to seek public comment on whether we should account for social risk factors in the ESRD QIP, and if so, what method or combination of methods would be most appropriate for accounting for social risk factors. Examples of methods include: (1) Adjustment of the payment adjustment methodology under the ESRD QIP; (2) adjustment of provider performance scores (for instance, stratifying facilities based on the proportion of their patients who are dual eligible); (3) confidential reporting of stratified measure rates to facilities; public reporting of stratified measure rates; (4) risk adjustment of a particular measure as appropriate based on data and evidence; and (5) redesigning payment incentives (for instance, rewarding improvement for facilities caring for patients with social risk factors or incentivizing facilities to achieve health equity).

We note that in section V.I.9 of the FY 2018 IPPS proposed rule (82 FR 19796), we discuss considerations for stratifying hospitals into peer groups for purposes of assessing payment adjustments under the Hospital Readmissions Reduction Program, as required under the 21st Century Cures Act of 2016 (Cures Act). We refer readers to that rule for a detailed discussion of these alternatives; while this discussion and corresponding proposal are specific to the Hospital Readmissions Reduction Program, they reflect the level of analysis we would undertake when evaluating methods and combinations of methods for accounting for social risk factors in

[2] Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at: *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[3] Office of the Assistant Secretary for Planning and Evaluation. 2016. Report to Congress: Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. Available at: *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[4] National Academies of Sciences, Engineering, and Medicine. 2017. Accounting for social risk factors in Medicare payment. Washington, DC: The National Academies Press.

CMS' other value-based purchasing programs, such as the ESRD QIP. While we consider whether and to what extent we currently have statutory authority to implement one or more of the above-described methods, we are seeking comments on whether any of these methods should be considered, and if so, which of these methods or combination of methods would best account for social risk factors in the ESRD QIP.

In addition, we are seeking public comment on which social risk factors might be most appropriate for stratifying measure scores and/or potential risk adjustment of a particular measure. Examples of social risk factors include, but are not limited to, dual eligibility/low-income subsidy, race and ethnicity, and geographic area of residence. We are seeking comments on which of these factors, including current data sources where this information would be available, could be used alone or in combination, and whether other data should be collected to better capture the effects of social risk. We will take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the ESRD QIP. We note that any such changes would be proposed through future notice-and-comment rulemaking.

We look forward to working with stakeholders as we consider the issue of accounting for social risk factors and reducing health disparities in the Medicare programs. Implementing any of the above methods would be taken into consideration in the context of how this and other Medicare programs operate (for example, data submission methods, availability of data, statistical considerations relating to reliability of data calculations, among others). We also welcome comment on operational considerations. CMS is committed to ensuring that its beneficiaries have access to and receive excellent care, and that the quality of care furnished by facilities is assessed fairly in the Medicare programs.

C. Proposed Change to the Performance Score Certificate Beginning With the Payment Year (PY) 2019 ESRD QIP

In a final rule, which published in the **Federal Register** on January 5, 2011, we finalized a policy for informing the public of facility performance through facility-posted certificates (76 FR 637). We finalized that these Performance Score Certificates (PSCs) would include the following information: (1) The TPS achieved by the facility under the ESRD QIP with respect to the payment year involved; (2) comparative data that shows how well the facility's TPS compares to the national TPS; (3) the performance result that the facility achieved on each individual measure with respect to the year involved; and (4) comparative data that shows how well the facility's individual quality measure performance scores compare to the national performance result for each quality measure (76 FR 637). As the ESRD QIP has become more complex over the years and as new measures have been added to the program, the PSC has become a lengthy document that facilities are required to print and post in both English and Spanish for their patients to view (77 FR 67517). We have received feedback from the community about the difficulty patients and their families have with interpreting and understanding the information contained on the PSC due to its sheer volume and complexity.

Section 1881(h)(6)(C) of the Act only requires that the PSC indicate the TPS achieved by the facility with respect to a program year. Therefore, in an effort to make the PSC a more effective and understandable document for the community, we are proposing to shorten the PSC by removing some of the information we had previously finalized would be included in the document. We propose that beginning in PY 2019 and continuing in future years, the PSC will indicate the facility's TPS, as required under section 1881(h)(6)(C) of the Act, as well as information sufficient to identify the facility (name, address, etc.). Additionally, we are proposing to include on the PSC information showing how the facility's TPS compared to the national average TPS for that specific payment year.

We are not proposing any other changes to the requirements we previously finalized for the PSC.

We seek comments on this proposal, and we are particularly interested in comments on whether the reduced amount of information on the PSC would both benefit facilities and enhance the public's understanding of the TPS.

D. Proposed Requirements Beginning With the PY 2020 ESRD QIP

1. Proposal To Clarify the Minimum Data Policy for Scoring Measures Finalized for the PY 2020 ESRD QIP

Under our current policy, we begin counting the number of months in which a facility is open on the first day of the month after the facility's CCN Open Date. In the CY 2017 ESRD PPS final rule (81 FR 77926), we inadvertently made errors in finalizing how we intended this policy to apply to a number of measures in the PY 2020 ESRD QIP, and we are proposing the intended application of this policy for PY 2020 in this proposed rule. We are not proposing any changes to the methodology we use to count the number of months for which a facility is open for purposes of scoring facilities on clinical and reporting measures, or to the minimum number of cases (qualifying patients, survey-eligible patients, index discharges, or patient-years at risk) that applies to each measure. Table 2 displays the proposed patient minimum requirements for each of the measures finalized for PY 2020, as well as the proposed CCN Open Dates after which a facility would not be eligible to receive a score on a reporting measure.

TABLE 2—PROPOSED MINIMUM DATA REQUIREMENTS FOR THE PY 2020 ESRD QIP

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Dialysis Adequacy (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Catheter (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Vascular Access Type: Fistula (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hypercalcemia (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
NHSN Bloodstream Infection (Clinical).	11 qualifying patients	Before January 1, 2018	11–25 qualifying patients.
NHSN Dialysis Event (Reporting).	11 qualifying patients	Before January 1, 2018	11–25 qualifying patients.
SRR (Clinical)	11 index discharges	N/A	11–41 index discharges.

TABLE 2—PROPOSED MINIMUM DATA REQUIREMENTS FOR THE PY 2020 ESRD QIP—Continued

Measure	Minimum data requirements	CCN open date	Small facility adjuster
STrR (Clinical)	10 patient-years at risk	N/A	10–21 patient years at risk.
SHR (Clinical)	5 patient-years at risk	N/A	5–14 patient-years at risk.
ICH CAHPS (Clinical)	Facilities with 30 or more survey-eligible patients during the calendar year preceding the performance period must submit survey results. Facilities will not receive a score if they do not obtain a total of at least 30 completed surveys during the performance period.	Before January 1, 2018	N/A.
Anemia Management (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Serum Phosphorus (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Depression Screening and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
Pain Assessment and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.
NHSN Healthcare Personnel Influenza Vaccination (Reporting).	N/A	Before January 1, 2018	N/A.
Ultrafiltration Rate (Reporting).	11 qualifying patients	Before July 1, 2018	N/A.

We welcome comments on this proposal.

2. Proposed Changes to the Extraordinary Circumstances Exception (ECE) Policy

Many of our quality reporting and value-based purchasing programs share a common process for requesting an exception from program reporting due to an extraordinary circumstance not within a facility's control. The Hospital Inpatient Quality Reporting, Hospital Outpatient Quality Reporting, Inpatient Psychiatric Facility Quality Reporting, Ambulatory Surgical Center Quality Reporting, PPS-Exempt Cancer Hospital Quality Reporting, the Hospital Acquired Condition Reduction Program, and the Hospital Readmissions Reduction Program all share common processes for ECE requests. In reviewing the policies for these programs, we recognized that there are five areas in which these programs have variance in comparison to the policy within the ESRD QIP regarding ECE requests. These are: (1) Allowing the facilities or hospitals to submit a form signed by the facility's or hospital's CEO versus CEO or designated personnel; (2) requiring the form be submitted within 30 days following the date that the extraordinary circumstance occurred versus within 90 days following the date the extraordinary circumstance occurred; (3) inconsistency regarding specification of a timeline for us to provide our response notifying the facility or hospital of our decision; (4) inconsistency regarding whether we would grant ECEs based on a facility's inability to timely and completely report data due to CMS data system issues; and (5) referring to this policy as ''extraordinary extensions/exemptions'' versus as ''extraordinary circumstances exceptions.'' We believe that aligning the way the ECE policy is implemented in our program, with the way it is implemented in the programs listed above, can improve the overall administrative efficiencies for affected facilities or hospitals.

In the CY 2015 ESRD PPS final rule (79 FR 66120 through 66265), we finalized that to receive consideration for an exception from the ESRD QIP requirements in effect during the time period that a facility is affected by an extraordinary circumstance, facilities would need to be closed and provide CMS with a CMS Disaster Extension/Exception Request Form within 90 calendar days of the date of the disaster or extraordinary circumstance (79 FR 66190). We finalized that the facility would need to provide the following information on the form:

- Facility CMS Certification Number (CCN).
- Facility name.
- CEO name and contact information.
- Additional contact name and contact information.
- Reason for requesting an exception.
- Dates affected.
- Date facility will start submitting data again, with justification for this date.
- Evidence of the impact of the extraordinary circumstances, including but not limited to photographs, newspaper, and other media articles.

We also finalized that we would consider granting an ECE to facilities absent a request, if we determine that an extraordinary circumstance affected an entire region or locale (79 FR 66190).

We are proposing to update these policies by: (1) Allowing the facility to submit a form signed by the facility's CEO or designated personnel; (2) expanding the reasons for which an ECE can be requested to include an unresolved issue with a CMS data system, which affected the ability of the facility to submit data (an unresolved data system issue would be one which did not allow the facility to submit data by the data submission deadline and which was unable to be resolved with a work-around), and (3) specifying that a facility does not need to be closed in order to request and receive consideration for an ECE, as long as the facility can demonstrate that its normal operations have been significantly affected by an extraordinary circumstance outside of its control. These proposed policies generally align with policies in the Hospital Inpatient Quality Reporting Program (76 FR 51651 through 51652), (78 FR 50836 through 50837) and (81 FR 57181 through 57182), Hospital Outpatient Quality Reporting Program (77 FR 68489 and 81 FR 79795), as well as ECE policies we have finalized for other quality reporting and value-based purchasing programs. We are proposing that these policies would apply beginning with the PY 2020 ESRD QIP program, as related to extraordinary circumstance events that occur on or after January 1, 2018.

We note that there may be circumstances in which it is not feasible for a facility's CEO to sign the ECE request form. In these circumstances, we believe that facilities affected by such

circumstances should be able to submit an ECE request regardless of the CEO's availability to sign. This proposed change would allow facilities to designate an appropriate, non-CEO contact for this purpose. We would accept ECE forms which have been signed by designated personnel.

Although we do not anticipate that unresolved issues with CMS data systems will happen on a regular basis, we also recognize that there may be times when CMS experiences issues with its data systems that inhibits facilities' ability to submit data. We are often able to resolve such issues and will allow facilities an extended period of time to report the data. However, in the case that the issue inhibits the complete reporting of data (even under an extended deadline), we believe it would be inequitable to take the absence of such unreported data into account when computing a facility's TPS for a payment year. Therefore, we are proposing to address these situations in one of two ways. In some cases, CMS may issue a blanket exemption to facilities that have been affected by an unresolved technical issue. In such cases, facilities would not be required to submit an ECE request to CMS, and CMS would send communications about the blanket waiver to the affected facilities using routine communication channels. In other cases, CMS may not issue a blanket exemption to facilities. In these cases, facilities would be required to submit an ECE request to CMS using the regular ECE request process, and would need to indicate how they were directly affected by the technical issue.

Furthermore, we believe that it is important for facilities to receive timely feedback regarding the status of ECE requests. We strive to complete our review of each ECE request as quickly as possible. However, we recognize that the number of requests we receive, and the complexity of the information provided impacts the actual timeframe to make ECE determinations. To improve transparency of our process, we believe it is appropriate to specify that we will strive to complete our review of each request within 90 days of receipt.

We seek comments on these proposals.

3. Solicitation of Comments on the Inclusion of Acute Kidney Injury (AKI) Patients in the ESRD QIP

The services for which quality is measured under the ESRD QIP are renal dialysis services defined in section 1881(b)(14)(B) of the Act. Prior to January 1, 2017, these services could only be covered and reimbursed under Medicare if they were furnished to individuals with ESRD, but they are now also covered and reimbursed if they are furnished by renal dialysis facilities or providers of services paid under section 1881(b)(14) of the Act to individuals with acute kidney injury (AKI) (see section 1861(s)(2)(F) and 1834(r) of the Act).

We currently do not require facilities to report AKI patient data for any of our measures in the ESRD QIP, including the NHSN BSI Clinical and Reporting Measures.[5] However, we now have the authority to collect data on this patient population and believe that it is vitally important to monitor and measure the quality of care furnished to these patients.

In the future, we intend to require facilities to report data on AKI patients under the ESRD QIP. We are seeking comments on whether and how to adapt any of our current measures to include this population, as well as the type of measures that might be appropriate to develop for future inclusion in the program that would address the unique needs of beneficiaries with AKI.

4. Estimated Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures Finalized for the PY 2020 ESRD QIP

In the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969), we finalized that for PY 2020, the performance standards, achievement thresholds, and benchmarks for the clinical measures would be set at the 50th, 15th and 90th percentile, respectively, of national performance in CY 2016, because this will give us enough time to calculate and assign numerical values to the proposed performance standards for the PY 2020 program prior to the beginning of the performance period (81 FR 77915). At this time, we do not have the necessary data to assign numerical values to those performance standards, achievement thresholds, and benchmarks because we do not yet have complete data from CY 2016. Nevertheless, we are able to estimate these numerical values based on the most recent data available. For the VAT, Hypercalcemia, NHSN BSI, In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS), Standardized Readmission Ratio (SRR), and Standardized Transfusion Ratio (STrR) clinical measures, this data comes from the period of January through December 2015. In Table 3, we have provided the estimated numerical values for all finalized PY 2020 ESRD QIP clinical measures. We will publish updated values for the clinical measures, using data from the first part of CY 2017, in the CY 2018 ESRD PPS final rule.

[5] To the extent that the CDC requires facilities to report AKI patient data under its own, separate, statutory authority, data on these patients is not shared with CMS or used in the calculation of any ESRD QIP measures, including the NHSN Clinical and Reporting Measures.

TABLE 3 – Estimated Numerical Values for the Performance Standards for the PY 2020 ESRD QIP Clinical Measures Using the Most Recently Available Data

Measure	Achievement Threshold	Benchmark	Performance Standard
VAT			
% Fistula	53.66%	79.62%	65.93%
%Catheter	17.20%	2.95%	9.19%
Kt/V Dialysis Adequacy Comprehensive	87.37%	97.74%	93.20%
Hypercalcemia	4.24%	0.32%	1.85%
STrR	1.488	0.421	0.901
SRR	1.271	0.624	0.998
NHSN BSI	1.738	0	0.797
Standardized Hospitalization Ratio measure (SHR)	1.244	0.672	0.970
ICH CAHPS: Nephrologists' Communication and Caring	56.41%	77.06%	65.89%
ICH CAHPS: Quality of Dialysis Center Care and Operations	52.88%	71.21%	60.75%
ICH CAHPS: Providing Information to Patients	72.09%	85.55%	78.59%
ICH CAHPS: Overall Rating of Nephrologists	49.33%	76.57%	62.22%
ICH CAHPS: Overall Rating of Dialysis Center Staff	48.84%	77.42%	62.26%
ICH CAHPS: Overall Rating of the Dialysis Facility	51.18%	80.58%	65.13%

Data sources: VAT measures: 2015 CROWNWeb; SRR, STrR, SHR: 2015 Medicare claims; Kt/V: 2015 CROWNWeb; Hypercalcemia: 2015 CROWNWeb; NHSN: 2015 CDC, ICH CAHPS: CMS 2015.

In previous rulemaking, we have finalized that if final numerical values for the performance standard, achievement threshold, and/or benchmark are worse than they were for that measure in the previous year of the ESRD QIP, then we would substitute the previous year's performance standard, achievement threshold, and/or benchmark for that measure. We finalized this policy because we believe that the ESRD QIP should not have lower performance standards than in previous years. In the CY 2017 ESRD PPS final rule, we finalized an update to that policy because in certain cases, it may be appropriate to re-baseline the NHSN BSI Clinical Measure, such that expected infection rates are calculated on the basis of a more recent year's data (81 FR 77886). In such cases, numerical values assigned to performance standards may appear to decline, even though they represent higher standards for infection prevention. For PY 2020 and future payment years, we propose to continue use of this policy for the reasons explained above. Therefore, for PY 2020, with the exception of the NHSN BSI Clinical Measure, we will substitute the PY 2019 performance standard, achievement threshold, and/or benchmark for any measure that has a final numerical value for a performance standard, achievement threshold, and/or benchmark that is worse than it was for that measure in the PY 2019 ESRD QIP. Based upon the estimated values shown above, we do not anticipate needing to substitute the performance standards from PY 2019 for any measures included in the PY 2020 ESRD QIP.

Although we are not proposing any changes to this policy, we are seeking comments on whether we should continue to use this policy in the future.

5. Policy for Weighting the Clinical Measure Domain for PY 2020

In the CY 2017 ESRD PPS final rule, we finalized our policy for weighting the Clinical Measure Domain for PY 2020. With the addition of the Safety Measure Domain to the ESRD QIP Program, we finalized that the Clinical Measure Domain would comprise 75 percent of the TPS, the Safety Measure Domain would comprise 15 percent of the TPS and the Reporting Measure Domain would comprise 10 percent of the TPS. Table 4 shows the weights finalized for PY 2020 for the Clinical Measure Domain.

TABLE 4—FINALIZED CLINICAL MEASURE DOMAIN WEIGHTING FOR THE PY 2020 ESRD QIP

Measures/measure topics by subdomain	Measure weight in the clinical domain score (percent)	Measure weight as percent of TPS (updated)
Patient and Family Engagement/Care Coordination Subdomain.	40.	
ICH CAHPS measure	25	18.75.
SRR Measure	15	11.25.
Clinical Care Subdomain	60.	
STrR measure	11	8.25.
Dialysis Adequacy measure	18	13.5.
VAT measure topic	18	13.5.
Hypercalcemia measure	2	1.5.
SHR measure	11	8.25.
Total	100% (of Clinical Measure Domain)	75% (of TPS).

Note: The percentages listed in this Table represent the measure weight as a percent of the Clinical Domain Score for PY 2020.

We are not proposing any changes to these weights finalized in the CY 2017 ESRD PPS final rule at 81 FR 77918.

6. Proposed Payment Reductions for the PY 2020 ESRD QIP

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the ESRD QIP scoring methodology results in an appropriate distribution of payment reductions across facilities, such that facilities achieving the lowest TPS receive the largest payment reductions. In the CY 2017 ESRD PPS final rule, we finalized our proposal for calculating the minimum TPS for PY 2020 and future payment years (81 FR 77927). Under our current policy, a facility will not receive a payment reduction if it achieves a minimum TPS that is equal to or greater than the total of the points it would have received if: (1) It performs at the performance standard for each clinical measure; and (2) it receives the number of points for each reporting measure that corresponds to the 50th percentile of facility performance on each of the PY 2018 reporting measures (81 FR 77927).

We were unable to calculate a minimum TPS for PY 2020 in the CY 2017 ESRD PPS final rule because we were not yet able to calculate the performance standards for each of the clinical measures. We therefore stated that we would publish the minimum TPS for the PY 2020 ESRD QIP in the CY 2018 ESRD PPS final rule (81 FR 77927).

Based on the estimated performance standards listed above, we estimate that a facility must meet or exceed a minimum TPS of 61 for PY 2020. For all of the clinical measures, these data come from CY 2015. We are proposing that a facility failing to meet the minimum TPS, which we will finalize in the CY 2018 ESRD PPS final rule, will receive a payment reduction based on the estimated TPS ranges indicated in Table 5.

TABLE 5—ESTIMATED PAYMENT REDUCTION SCALE FOR PY 2020 BASED ON THE MOST RECENTLY AVAILABLE DATA

Total performance score	Reduction (%)
100–61	0
60–51	0.5
50–41	1.0
40–31	1.5
30–21	2.0

7. Data Validation

One of the critical elements of the ESRD QIP's success is ensuring that the data submitted to calculate measure scores and TPSs are accurate. We began a pilot data validation program in CY 2013 for the ESRD QIP, and procured the services of a data validation contractor that was tasked with validating a national sample of facilities' records as reported to CROWNWeb. For validation of CY 2014 data, our priority was to develop a methodology for validating data submitted to CROWNWeb under the pilot data validation program. That methodology was fully developed and adopted through the rulemaking process. For the PY 2016 ESRD QIP (78 FR 72223 through 72224), we finalized a requirement to sample approximately 10 records from 300 randomly selected facilities; these facilities had 60 days to comply once they received requests for records. We continued this pilot for the PY 2017, PY 2018 and PY 2019 ESRD QIP, and propose to continue doing so for the PY 2020 ESRD QIP. Using the data collected thus far, we are exploring options for refining the methodology used in order to improve the effectiveness and reliability of the data collected. For future payment years, we will consider whether this validation effort should continue in pilot status or as a permanent feature of the ESRD QIP program. Under the continued validation study, we will sample the same number of records (approximately 10 per facility) from the same number of facilities, which totaled 300 facilities during CY 2018. If a facility is randomly selected to participate in the pilot validation study but does not provide us with the requisite medical records within 60 calendar days of receiving a request, then we propose to deduct 10 points from the facility's TPS.

In the CY 2015 ESRD PPS final rule (79 FR 66120 through 66265), we also finalized that there would be a feasibility study for validating data reported to CDC's NHSN Dialysis Event Module for the NHSN BSI Clinical Measure (OMB #0938–NEW). Healthcare-acquired infections are relatively rare, and we finalized that the feasibility study would target records with a higher probability of including a dialysis event, because this would enrich the validation sample while reducing the burden on facilities. This methodology resembles the methodology we use in the Hospital Inpatient Quality Reporting Program to validate the central line-associated BSI measure, the catheter-associated urinary tract infection measure, and the surgical site infection measure (77 FR 53539 through 53553).

For the PY 2020 ESRD QIP, we propose to continue conducting the same NHSN dialysis event validation study, that we finalized in the CY 2017 ESRD PPS final rule for PY 2019 (81 FR 77894). For PY 2020, we would continue to select 35 facilities to participate in an NHSN dialysis event validation study by submitting 10 patient records covering two quarters of data reported in CY 2018. However, for PY 2020, the sampling method used to select the 35 facilities would be adjusted

such that a more representative sample of facility data can be analyzed, including data from high performing facilities as well as facilities identified as being at risk of underreporting. A CMS contractor would send these facilities requests for medical records for all patients with ''candidate events'' during the evaluation period; that is, patients who had any positive blood cultures; received any intravenous antimicrobials; had any pus, redness, or increased swelling at a vascular access site; and/or were admitted to a hospital during the evaluation period. Facilities would have 60 calendar days to respond to the request for medical records based on candidate events either electronically or on paper. If the contractor determines that additional medical records are needed to reach the 10-record threshold from a facility to validate whether the facility accurately reported the dialysis events, then the contractor would send a request for additional, randomly selected patient records from the facility. The facility would have 60 calendar days from the date of the letter to respond to the request. With input from CDC, the CMS contractor would utilize a methodology for reviewing and validating records from selected patients, in order to determine whether the facility reported dialysis events for those patients in accordance with the NHSN Dialysis Event Protocol. If a facility is selected to participate in the validation study but does not provide CMS with the requisite lists of information or medical records within 60 calendar days of receiving a request, then we propose to deduct 10 points from the facility's TPS. Information from the validation study may be used in future years of the program to inform our consideration of future policies that would incorporate NHSN data accuracy into the scoring process. In future years of the program we may also look to improve the NHSN dialysis event validation study by validating records from a greater number of facilities or by validating a larger sample of records from each facility participating in the study.

E. Proposed Requirements for the PY 2021 ESRD QIP

1. Proposed Measures for the PY 2021 ESRD QIP

We previously finalized 16 measures in the CY 2017 ESRD PPS final rule for the PY 2020 ESRD QIP. In accordance with our policy to continue using measures unless we propose to remove or replace them, (77 FR 67477), we will continue to use all but 2 of these measures in the PY 2021 ESRD QIP. These measures are summarized in Table 6 below. We are proposing to replace the two VAT Clinical Measures with the proposed Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure and the proposed Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure beginning with PY 2021.

TABLE 6—PY 2020 ESRD QIP MEASURES BEING CONTINUED IN PY 2021

NQF No.	Measure title and description
0258	ICH CAHPS Survey Administration, a clinical measure. Measure assesses patients' self-reported experience of care through percentage of patient responses to multiple testing tools.
2496	SRR, a clinical measure. Ratio of the number of observed unplanned 30-day hospital readmissions to the number of expected unplanned 30-day readmissions.
2979	STrR, a clinical measure. Risk-adjusted standardized transfusion ratio for all adult Medicare dialysis patients. Number of observed eligible red blood cell transfusion events occurring in patients dialyzing at a facility to the number of eligible transfusions that would be expected.
N/A	Kt/V Dialysis Adequacy Comprehensive, a clinical measure. Percentage of all patient months for patients whose delivered dose of dialysis (either hemodialysis or peritoneal dialysis) met the specified threshold during the reporting period.
1454	Hypercalcemia, a clinical measure. Proportion of patient-months with 3-month rolling average of total uncorrected serum or plasma calcium greater than 10.2 mg/dL.
1463*	SHR, a clinical measure. Risk-adjusted SHR of the number of observed hospitalizations to the number of expected hospitalizations.
0255	Serum Phosphorus, a reporting measure. Percentage of all adult (≥18 years of age) peritoneal dialysis and hemodialysis patients included in the sample for analysis with serum or plasma phosphorus measured at least once within month.
N/A	Anemia Management Reporting, a reporting measure. Number of months for which facility reports erythropoiesis-stimulating agent (ESA) dosage (as applicable) and hemoglobin/hematocrit for each Medicare patient, at least once per month.
Based on NQF #0420	Pain Assessment and Follow-Up, a reporting measure. Facility reports in CROWNWeb one of six conditions for each qualifying patient once before August 1 of the performance period and once before February 1 of the year following the performance period.
Based on NQF #0418	Clinical Depression Screening and Follow-Up, a reporting measure. Facility reports in CROWNWeb one of six conditions for each qualifying patient once before February 1 of the year following the performance period.
Based on NQF #0431	NHSN Healthcare Personnel Influenza Vaccination, a reporting measure. Facility submits Healthcare Personnel Influenza Vaccination Summary Report to CDC's NHSN system, according to the specifications of the Healthcare Personnel Safety Component Protocol, by May 15 of the performance period.
N/A	Ultrafiltration Rate, a reporting measure. Number of months for which a facility reports elements required for ultrafiltration rates for each qualifying patient.
Based on NQF #1460	NHSN BSI in Hemodialysis Patients, a clinical measure. The Standardized Infection Ratio (SIR) of BSIs will be calculated among patients receiving hemodialysis at outpatient hemodialysis centers.
N/A	NHSN Dialysis Event Reporting Measure. Number of months for which facility reports NHSN Dialysis Event data to CDC.

*We note that the complete lists of ICD–10 codes associated with the Standardized Readmission Ratio Clinical Measure and the Standardized Hospitalization Ratio Clinical Measure included in the ESRD QIP for PY 2020 are included in the Measure Technical Reports, available here: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html.*

2. Proposed Replacement of the Vascular Access Type (VAT) Clinical Measures Beginning With the PY 2021 Program Year

We consider a quality measure for removal or replacement if: (1) Measure performance among the majority of ESRD facilities is so high and unvarying that meaningful distinctions in improvements or performance can no longer be made (in other words, the measure is topped-out); (2) performance or improvement on a measure does not result in better or the intended patient outcomes; (3) a measure no longer aligns with current clinical guidelines or practice; (4) a more broadly applicable (across settings, populations, or conditions) measure for the topic becomes available; (5) a measure that is more proximal in time to desired patient outcomes for the particular topic becomes available; (6) a measure that is more strongly associated with desired patient outcomes for the particular topic becomes available; or (7) collection or public reporting of a measure leads to negative or unintended consequences (77 FR 67475). In the CY 2015 ESRD PPS final rule, we adopted statistical criteria for determining whether a clinical measure is topped out, and adopted a policy under which we could retain an otherwise topped-out measure if we determined that its continued inclusion in the ESRD QIP measure set would address the unique needs of a specific subset of the ESRD population (79 FR 66174).

Subsequent to the publication of the CY 2017 ESRD PPS final rule, we evaluated the finalized PY 2020 ESRD QIP measures that would be continued in PY 2021 against all of these criteria. We determined that none of these measures met criterion (1), (2), (3), (4), (5) or (7). As part of this evaluation for criterion one, we performed a statistical analysis of the PY 2020 measures we plan to continue using for PY 2021 and future payment years to determine whether any measures were ''topped out.'' The full results of this analysis can be found at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html* and a summary of our topped-out analysis results appears in Table 7.

As Table 7 illustrates, the distributions of the PY 2020 clinical measures were assessed in order to determine if any measures were ''topped out.'' In order for a measure to be considered topped out, two conditions had to be met. First, a measure was considered topped out if the 75th percentile, or 25th percentile for measures where lower percentiles indicate better performance, was statistically indistinguishable from the 90th (or 10th) percentile, and second, the truncated coefficient of variation (TCV) was less than or equal to 10 percent, or 0.10. We note that the percentiles were considered statistically indistinguishable if the 75th/25th percentile was within two standard errors of the 90th/10th percentile. Additionally, for each measure the TCV was calculated by first removing the lower and upper 5th percentiles, then dividing the standard deviation by the mean of this truncated distribution ($SD_{truncated}/Mean_{truncated}$). The TCV was then converted to a decimal by dividing the TCV by 100.

Measures evaluated included the combined Kt/V (that is, a measure of dialysis adequacy where K is dialyzer clearance, t is dialysis time, and V is total body water volume measure), Fistula, Catheter, Hypercalcemia, NHSN Standardized Infection Ratio (SIR), SRR, STrR, SHR, and the six individual CAHPS clinical measures. Medicare claims data from 2015 were used in Fistula and Catheter calculations. CROWNWeb data from 2015 was used for Hypercalcemia, the combination of 2015 CROWNWeb data and 2015 Medicare claims data were used for Kt/V measure, and the SRR, STrR, and SHR measures were based on both combination of 2014 CROWNWeb data and 2014 Medicare claims data. The NHSN BSI Clinical Measure was calculated using the CY 2015 NHSN data from the CDC, and the six components of the ICH–CAHPS measure were calculated using the CY 2015 ICH–CAHPS data.

Table 7 presents the percentiles, standard error, and TCV for each measure. In this analysis, all facilities with the minimum eligible patient requirement per measure were included. The results indicate none of the PY 2020 clinical measures met both ''topped out'' conditions.

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Table 7: PY 2020 Clinical Measures Continuing in PY 2021 including facilities with minimum eligible patient requirement per measure

Measure	N	75th/25th percentile	90th/10th percentile	Std Error	Statistically Indistinguishable	Trun-cated Mean	Trun-cated SD	TCV	TCV ≤ 0.10
Kt/V delivered dose above minimum (%)	6101	96.0	97.7	0.084	No	92.6	3.88	0.04	Yes
Serum Calcium>10.2	6258	0.91	0.32	0.050	No	97.8[a]	1.49	<0.01	Yes
ICH-CAHPS: Nephrologists Communication and Caring (%)	3349	71.8	77.1	0.159	No	65.7	7.11	0.11	No
ICH-CAHPS: Quality of Dialysis Center Care and Operations (%)	3349	66.2	71.2	0.134	No	60.9	6.20	0.10	No
ICH-CAHPS: Providing Information to Patients (%)	3349	82.4	85.6	0.101	No	78.4	4.61	0.06	Yes
ICH-CAHPS: Percent, Rating of Nephrologist	3349	69.9	76.6	0.204	No	62.0	9.29	0.15	No
ICH-CAHPS: Percent, Rating of Dialysis Facility Staff	3349	70.9	77.4	0.215	No	62.0	9.92	0.16	No
ICH-CAHPS: Percent, Rating of Dialysis Center	3349	73.8	80.6	0.221	No	64.8	10.18	0.16	No
NHSN- SIR	5805	0.40	0.00	0.011	No	0.964	0.57	<0.01	Yes
SRR	6178	0.78	0.63	0.003	No	0.969	0.21	<0.01	Yes
STrR	5742	0.63	0.42	0.007	No	0.955	0.39	<0.01	Yes
SHR	6298	0.81	0.67	0.004	No	0.978	0.20	<0.01	Yes

[a]Truncated mean for percentage is reversed (100 percent - truncated mean) for measures where lower score = better performance.

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As the information in Table 7 indicates, none of these clinical measures are currently topped-out in the ESRD QIP. Accordingly, we are not proposing to remove any of these measures from the ESRD QIP for PY 2021 because they are topped out.

Over the past few years, we have received numerous public comments regarding the two VAT measures included in the ESRD QIP's measure set. Specifically, commenters have recommended that CMS adjust the weights of the VAT measures to place more emphasis on reducing catheters to encourage the use of fistulas and grafts (81 FR 77904). Another commenter specifically supported CMS' submission of new VAT Measures to the NQF Renal Standing Committee to address the small number of patients for whom a catheter may be the most appropriate vascular access type when life expectancy is limited (81 FR 77905). We also note that the VAT measures currently used in the ESRD QIP measure set are calculated using claims data. This limits the applicability of the measures to Medicare Fee-For-Service (FFS) patients, while excluding all others.

Although there is no evidence to suggest that the current VAT measures are leading to negative or unintended consequences, we are proposing to

remove both from the ESRD QIP measure set beginning with the PY 2021 program based on criterion (6) listed earlier, because measures that are more strongly associated with desired patient outcomes for the particular topic are now available. As discussed more fully below, we are proposing to replace the VAT measures with the Proposed Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure (NQF #2977) and the Proposed Hemodialysis Vascular Access: Long-Term Catheter Rate Clinical Measure (NQF #2978). These proposed measures will address the methodological concerns the community has shared regarding the existing measures. Additionally, they have both been endorsed by the NQF and are supported by the Measures Application Partnership. Both of the proposed measures are being considered for reporting on Dialysis Facility Compare and in the Dialysis Facility Compare Star Ratings for 2018 and both measures can be calculated using data that facilities are already required to report in CROWNWeb in order to meet 42 CFR 494.180(h) of the 2008 updated Conditions for Coverage for ESRD Dialysis Facilities. Because CROWNWeb collects data on all patients, we believe that the adoption of these measures will enable us to more accurately assess the quality of care furnished by facilities.

We seek comments on our proposal to remove the current VAT measures from the ESRD QIP measure set beginning with the PY 2021 program year.

3. Proposed Revision of the Standardized Transfusion Ratio (STrR) Clinical Measure Beginning With the PY 2021 Program Year

We believe that changes during the past several years to the way ESRD services are reimbursed under Medicare, as well as changes to how ESRD care is measured under the ESRD QIP and through other quality reporting initiatives, may have impacted how anemia is clinically managed. Some of these changes include the identification of safety concerns associated with aggressive erythropoiesis-stimulating agent (ESA) use, the expansion of the ESRD PPS bundled payment methodology to include ESAs, and the continued growth and expansion of the ESRD QIP. There are concerns that these changes could result in the underutilization of ESAs, with lower achieved hemoglobin values that may increase the frequency of red blood cell transfusion in the US chronic dialysis population.

Excessive rates of blood transfusion may be an indicator for underutilization of clinical treatments to increase endogenous red blood cell production (for example, ESA, iron). Dialysis patients who are eligible for kidney transplant and have received transfusions are at increased risk of becoming sensitized to the donor pool thereby making transplant more difficult to accomplish. Blood transfusions carry a small risk of transmitting blood borne infections and/or the development of a transfusion reaction, and using infusion centers or hospitals to transfuse patients is expensive, inconvenient, and could compromise future vascular access.[6]

Monitoring the risk-adjusted transfusion rate at the dialysis facility level, relative to national standards, allows for detection of treatment patterns in dialysis-related anemia management. This is of particular importance due to recommendations by the Food and Drug Administration regarding more conservative ESA dosing.[7] As providers use less ESAs in an effort to minimize the risks associated with aggressive anemia treatment, it becomes more important to monitor for an overreliance on transfusions. Beginning with PY 2017, we adopted the STrR to address gaps in the quality of anemia management. We also submitted that measure to the NQF for consensus endorsement, but the Renal Standing Committee did not recommend it for endorsement, in part due to concerns that variability in hospital coding practices with respect to the use of 038 and 039 revenue codes might unduly bias the measure rates. Upon reviewing the committee's feedback, we revised the STrR measure to address these concerns. Following this revision, we resubmitted the STrR (NQF #2979) to NQF for consensus endorsement, and the NQF endorsed it in 2016. The change we are proposing to the STrR beginning with the PY 2021 ESRD QIP will align the measure specifications we use for the ESRD QIP with the measure specifications that the NQF endorsed in 2016 (NQF #2979).

Summary of Change

The proposed updated specifications to the STrR measure contain a more restricted definition of transfusion events than is used in the current STrR measure. Specifically, the revised definition excludes inpatient transfusion events for claims that include only 038 or 039 revenue codes without an accompanying ICD–9 or ICD–10 Procedure Code or Value Code. As a result of requiring that all inpatient transfusion events include an appropriate ICD–9 or ICD–10 Procedure Code or Value Code, the measure will identify transfusion events more specifically and with less bias related to regional coding variation. As a result, it will assess a smaller number of events as well as a smaller range of total events.

2016 Measures Application Partnership Review

We determined that the proposed revision to the STrR (NQF #2979) constituted a substantive change to the measure, and we submitted that revision to the Measures Application Partnership for consideration as part of the pre-rulemaking process. The Measures Application Partnership recommended that this measure be refined and resubmitted due to concerns that measuring transfusions in dialysis facilities may not be feasible.[8] The Measures Application Partnership also expressed concern that the decision to administer a blood transfusion may be outside of the dialysis facility's control because in general, clinicians in hospitals make the decisions about blood transfusions. The Measures Application Partnership also expressed concern that variability in blood transfusion coding practices could inadvertently affect a dialysis facility's performance on this measure.

Although we acknowledge that the Measures Application Partnership recommended that we refine and resubmit the updated version of the STrR measure, we note that the Measures Application Partnership's recommendation is at odds with the earlier conclusion of the NQF to endorse this change. On the issue of whether it is feasible to measure transfusions in dialysis facilities, the NQF concluded that these events can be identified using the same Medicare claims code algorithm that we use to identify transfusion events in other outpatient settings. The STrR measure identifies

[6] FDA Drug Safety Communication: Modified dosing recommendations to improve the safe use of Erythropoiesis-Stimulating Agents (ESAs) in chronic kidney disease. *http://www.fda.gov/Drugs/DrugSafety/ucm259639.htm.*

Kidney Disease: Improving Global Outcome (KDIGO) Anemia Work Group. KDIGO Clinical Practice Guideline for Anemia in Chronic Kidney Disease. Kidney inter., Suppl. 2012; 2: 279–335. *http://www.kdigo.org/clinical_practice_guidelines/pdf/KDIGO-Anemia%20GL.pdf.*

Obrador and Macdougall. Effect of Red Cell Transfusions on Future Kidney Transplantation. Clin J Am Soc Nephrol 8: 852–860, 2013.

Ibrahim, et al. Blood transfusions in kidney transplant candidates are common and associated with adverse outcomes. Clin Transplant 2011: 25: 653–659.

[7] *https://www.fda.gov/Drugs/DrugSafety/ucm259639.htm.*

[8] *http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=84452.*

transfusion events during at-risk periods for patients cared for in a dialysis facility.

With respect to the MAP's concern that the decision to administer a blood transfusion might be outside of the dialysis facility's control, we note that the issue of whether anemia management practices in a dialysis facility can be linked to transfusion risk was specifically considered by the NQF during the endorsement process.

The NQF Renal Standing Committee concluded that this transfusion avoidance measure would incentivize facilities to properly manage anemia, with the result of lowering the patient's transfusion risk. The NQF Renal Standing Committee also found that although the decision to transfuse might ultimately be made by a hospital, the need to do so is dictated not only by clinical circumstances observed by the hospital, but also by the way the patient's anemia was managed by the facility.

Although the Measures Application Partnership was concerned that variability in blood transfusion coding practices could inadvertently affect a dialysis facility's performance on this measure, we note that the definition of transfusion events used in the revised STrR measure is consistent with the definition used in numerous scientific publications, including several peer reviewed publications.[9] Under this definition, transfusion events are included in the measure only if they are coded with specific transfusion procedure or value codes. We believe this coding requirement reduces the potential for inadvertently capturing non-transfusion events in the measure. In addition, the exclusion of revenue code only transfusion events from the measure decreases the potential that the measure results would be influenced by differences in hospital coding practices.

We agree with the NQF Standing Committee's assessment that the STrR (NQF #2979) is an appropriate measure of quality for dialysis facilities. We further believe that the measure is appropriate for the ESRD QIP because the measure (1) demonstrates variation in performance among facilities, (2) is an outcome of care that is modifiable by dialysis providers through effective management of anemia in patients, and (3) is a valid and reliable indicator of quality at the facility level. Proper management of anemia is an important quality of care issue for dialysis patients, and a topic for which the ESRD QIP must include measures (see section 1881(h)(2)(A)(i)).

For these reasons, we believe the revision to the STrR measure should be reflected in the ESRD QIP, and beginning with the PY 2021 program year, we propose to use the updated version of the STrR (NQF #2979). Full measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*.

We note that the complete list of ICD–10 codes that would be included in the measure is included in the Technical Report for the measure, provided at the link listed above.

We seek comments on this proposal.

4. Proposed New Vascular Access Measures Beginning With the PY 2021 ESRD QIP

As discussed in sections IV.E.4, IV.E.4.a, and IV.E.4.b of this proposed rule, for PY 2021, we propose to remove the two VAT measures from the ESRD QIP and to replace them with two Vascular Access measures that were recently endorsed by the NQF. We are proposing to score these measures the same way that we score the current VAT measures, and to include them within the Vascular Access Measure Topic.

Background

Beginning with the PY 2015 ESRD QIP, we adopted the Minimizing Catheter Use as Chronic Dialysis Access (NQF #0256) and Maximizing Placement of Arterial Venous (AV) fistula (NQF #0257), paired measures of the rate of catheter and fistula placement for chronic dialysis access, respectively, for the ESRD QIP (77 FR 67479). These measures were developed in accordance with the National Kidney Foundation Kidney Disease Outcomes Quality Initiative Guidelines that state the following: (1) AV fistulas have the lowest rate of thrombosis and require the fewest interventions, (2) cost of AV fistula use and maintenance is the lowest, (3) fistulas have the lowest rates of infection, and (4) fistulas are associated with the highest survival and lowest hospitalization rates. A number of epidemiologic studies consistently demonstrate the reduced morbidity and mortality associated with greater use of AV fistulas for vascular access in maintenance hemodialysis.

Based upon data we collected during the CMS Fistula First/Catheter Last Initiative,[10] a gradual trend towards lower catheter use has been observed among prevalent maintenance hemodialysis patients in the United States, declining from approximately 28 percent in 2006 to approximately 18 percent by August 2015. Furthermore, the percentage of maintenance HD patients using a catheter for at least 3 months has declined during this time period from nearly 12 percent to 10.8 percent. Continued monitoring of chronic catheter use is needed to sustain this trend.

Since the Maximizing Placement of AV fistula (NQF #0257) was first implemented, we have received public comments expressing concerns that in certain cases, such as patients with a low life expectancy, placement of a fistula may not be appropriate. A growing number of studies report that creating AV fistulas in some patients is less likely to be successful in the presence of certain comorbidities. In addition, certain patient groups may have less incremental benefit from an AV fistula relative to an AV graft.

Since the implementation of Minimizing Catheter Use as Chronic Dialysis Access (NQF #0256), we have received comments from stakeholders raising concerns about its inability to account for patients with a limited life expectancy, for whom a fistula, with its extended maturation period, may not represent an improved quality of life. By incorporating additional exclusion criteria to account for such patients, this measure avoids setting a quality standard that may penalize facilities for providing appropriate vascular access.

In 2015, we convened a Technical Expert Panel (TEP) to review the existing vascular access measures to consider how best to address these concerns. A copy of the summary TEP report is available at *https://www.cms.gov/Medicare/Quality-*

[9] Hirth, Turenne, Wilk et al. Blood transfusion practices in dialysis patients in a dynamic regulatory environment. Am J Kidney Dis. 2014 Oct;64(4):616–21. Doi: 10.1053/j.ajkd.2014.01.011. Epub 2014 Feb 19.

Gilbertson, Monda, Bradbury & Collins. RBC Transfusions Among Hemodialysis Patients (1999–2010): Influence of Hemoglobin Concentrations Below 10 g/dL. Am J Kidney Dis. 2013; Volume 62, Issue 5, 919–928.

Collins et al. Effect of Facility-Level Hemoglobin Concentration on Dialysis Patient Risk of Transfusion. Am J Kidney Dis. 2014; 63(6):997–1006.

Cappell et al. Red blood cell (RBC) transfusion rates among US chronic dialysis patients during changes to Medicare end-stage renal disease (ESRD) reimbursement systems and erythropoiesis stimulating agent (ESA) labels. BMC Nephrology 2014, 15:116.

Ibrahim, et al. Blood transfusions in kidney transplant candidates are common and associated with adverse outcomes. Clin Transplant 2011: 25: 653–659.

Molony, et al. Effects of epoetin alfa titration practices, implemented after changes to product labeling, on hemoglobin levels, transfusion use, and hospitalization rates. Am J Kidney Dis 2016: epub before print (published online March 12, 2016).

[10] Fistula First Catheter Last Dashboard August 2015 *http://fistulafirst.esrdncc.org/ffcl/for-ffcl-professionals/archive/*.

Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html. The TEP made the following recommendations:

- The fistula measure should be risk-adjusted for factors that are associated with decreased likelihood of AV fistula success, including:
  - ++ Diabetes.
  - ++ Heart diseases.
  - ++ Peripheral vascular disease.
  - ++ Cerebrovascular disease.
  - ++ Chronic obstructive pulmonary disease.
  - ++ Anemia (unrelated to ESRD/Chronic Kidney Disease).
  - ++ Non-Vascular Access-Related Infections.
  - ++ Drug Dependence.
- The measures should include all eligible hemodialysis patients, not just Medicare beneficiaries.
- The measures should include patients in the first 90 days of dialysis because this is a critical time for access planning/placement.
- The measures should include in the numerator only patients with an AV fistula using 2 needles (or an approved single needle device).
- The measures should exclude conditions associated with a limited life expectancy where an AV fistula may not be the appropriate choice for access (for example, hospice, metastatic cancer, end stage liver disease, and coma/brain injury).

We responded to the TEP's recommendations by developing two new VAT measures intended to be jointly reported to assess the placement of vascular access among ESRD dialysis patients. These two vascular access quality measures, when used together, consider AV fistula use as a positive outcome and prolonged use of a tunneled catheter as a negative outcome. With the growing recognition that some patients have exhausted options for an AV fistula or have comorbidities that may limit the success of AV fistula creation, joint reporting of the measures accounts for all three vascular access options. This paired incentive structure that relies on both measures (standardized fistula rate and long-term catheter rate) reflects consensus-based best practice, and supports maintenance of the gains in vascular access success achieved via the Fistula First/Catheter Last Project over the last decade.

a. Proposed New Hemodialysis Vascular Access: Standardized Fistula Rate Clinical Measure (NQF #2977)

Summary of Changes

This proposed measure replaces NQF #0257, Maximizing Placement of AV fistula, and it incorporates changes that reflect input from the 2015 Vascular Access TEP:

- Risk Adjustment for the following conditions that affect the success of fistula placement:
  - ++ Diabetes.
  - ++ Heart diseases.
  - ++ Peripheral vascular disease.
  - ++ Cerebrovascular disease.
  - ++ Chronic obstructive pulmonary disease.
  - ++ Anemia (unrelated to ESRD/Chronic Kidney Disease).
  - ++ Non-Vascular Access-Related Infections.
  - ++ Drug Dependence.
- Inclusion of all eligible hemodialysis patients, not just Medicare beneficiaries.
- Inclusion of patients in the first 90 days of dialysis because this is a critical time for access planning/placement.
- Inclusion in the numerator of only patients with an AV fistula using 2 needles (or an approved single needle device).
- Exclusion of conditions associated with a limited life expectancy where an AV fistula may not be the appropriate choice for access (for example, hospice, metastatic cancer, end-stage liver disease, and coma/brain injury).

Data Sources

CROWNWeb, Medicare claims and the CMS Medical Evidence form 2728 (OMB No. 0938–0046) are used as the data sources for establishing the denominator. CROWNWeb is the data source for establishing the numerator. Medicare claims and the CMS Medical Evidence form 2728 are data sources for the risk adjustment factors. Medicare claims and CROWNWeb are used for the exclusion criteria. Using CROWNWeb as the primary data source allows us to expand the Standardized Fistula Rate to include all ESRD dialysis patients, rather than only Medicare FFS patients, providing a more complete quality assessment for dialysis facilities. This was a key consideration by the TEP that recommended the development of this measure.

Outcome

The outcome of the Standardized Fistula Rate is the use of an AV fistula as the sole means of vascular access as of the last hemodialysis treatment session of the month.

Cohort

The cohort includes adult ESRD dialysis patients who are determined to be maintenance hemodialysis patients (in-center or home) for the entire reporting month at the same facility.

Inclusion and Exclusion Criteria

The Standardized Fistula Rate excludes pediatric patients (<18 years old), patients on peritoneal dialysis, and patient-months where the patient was not on hemodialysis (in-center or home) at the same facility for the entire reporting month. The measure additionally excludes patients with a catheter who have a limited life expectancy.

Risk Adjustment

The Standardized Fistula Rate is a directly standardized percentage, with each facility's percentage of fistula use adjusted by a series of risk factors, including patient demographic and clinical characteristics based on a logistic regression model. The demographic and clinical characteristics were chosen in order to adjust for factors outside the control of a facility that are associated with a decreased likelihood of AV fistula success.

We submitted the measure to NQF, where the Renal Standing Committee recommended it for consensus endorsement, and the NQF endorsed the measure in December 2016. The Standardized Fistula Rate (NQF #2977) was submitted to the Measure Applications Partnership in 2016, which supported the measure for implementation in the ESRD QIP.

We propose implementing Hemodialysis Vascular Access: Standardized Fistula Rate (NQF #2977) beginning with the PY 2021 program year. Detailed measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*. We seek comments on this proposal.

b. Proposed New Hemodialysis Vascular Access: Long-Term Catheter Rate (NQF #2978) Beginning With the PY 2021 ESRD QIP

Summary of Changes

This proposed measure replaces NQF #0256, Minimizing Use of Catheters as Chronic Dialysis Access, and it incorporates the following changes that reflect input from the 2015 Vascular Access TEP:

- Inclusion of all eligible hemodialysis patients, not just Medicare beneficiaries, since the measure is now specified to be calculated from CROWNWeb.
- Patients using a catheter continuously for 3 months or longer, even if combined with an AV fistula (or graft), are now counted in the numerator. The current measure does

not count patients in the numerator if they have a catheter combined with an AV fistula or graft.

- Patients with missing VAT are counted in both the denominator and the numerator. That is, ''missing'' access type is considered a ''failure'' and therefore counts against the facility.
- Exclusion criteria have been added to the measure for conditions associated with a limited life expectancy where a catheter may be an appropriate choice for access. These are the same exclusions applied to the Standardized Fistula Rate measure (for example, hospice, metastatic cancer, end stage liver disease, and coma/brain injury).

Data Sources

CROWNWeb, Medicare Claims and the CMS Medical Evidence form 2728 are used as the data sources for establishing the denominator. CROWNWeb is the data source for establishing the numerator. Medicare claims and CROWNWeb are used for the exclusion criteria. Medicare claims and the CMS Medical Evidence Form 2728 are used for risk adjustment. Using CROWNWeb as the primary data source allows us to expand the Long-Term Catheter Rate to include all ESRD dialysis patients, rather than only Medicare FFS patients, providing a more complete quality assessment for dialysis facilities. This was a key consideration by the TEP that recommended the development of this measure.

Outcome

The outcome of the Long-Term Catheter Rate is the use of a catheter continuously for 3 months or longer as of the last hemodialysis treatment session of the month.

Cohort

The cohort includes adult ESRD dialysis patients who are determined to be maintenance hemodialysis patients (in-center or home) for the entire reporting month at the same facility.

Inclusion and Exclusion Criteria

The Long-Term Catheter Rate excludes pediatric patients (<18 years old), patients on peritoneal dialysis, and patient-months not on hemodialysis (in-center or home) for the entire reporting month at the same facility. The measure additionally excludes patients with a catheter who have a limited life expectancy.

We submitted the Long-Term Catheter Rate (NQF #2978) to NQF, where the Renal Standing Committee recommended it for consensus endorsement, and the NQF endorsed the measure in December 2016. The measure was submitted to the Measure Application Partnership in 2016, which supported it for implementation in the ESRD QIP.

We propose to introduce the Long-Term Catheter Rate (NQF #2978) into the ESRD QIP beginning with the PY 2021 program year. Full measure specifications and testing data are available at *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/ESRDQIP/061_TechnicalSpecifications.html*.

We seek comments on this proposal.

5. Proposed Performance Period for the PY 2021 ESRD QIP

We are proposing to establish CY 2019 as the performance period for the PY 2021 ESRD QIP for all but the NHSN Healthcare Personnel Influenza Vaccination reporting measure because it is consistent with the performance periods we have historically used for these measures and accounts for seasonal variations that might affect a facility's measure score.

We are proposing that the performance period for the NHSN Healthcare Personnel Influenza Vaccination reporting measure will be from October 1, 2018 through March 31, 2019, because this period spans the length of the 2018–2019 influenza season.

We seek comments on these proposals.

6. Proposed Performance Standards, Achievement Thresholds, and Benchmarks for the PY 2021 ESRD QIP

Section 1881(h)(4)(A) of the Act provides that ''the Secretary shall establish performance standards with respect to measures selected . . . for a performance period with respect to a year.'' Section 1881(h)(4)(B) of the Act further provides that the ''performance standards . . . shall include levels of achievement and improvement, as determined appropriate by the Secretary.'' We use the performance standards to establish the minimum score a facility must achieve to avoid a Medicare payment reduction.

a. Proposed Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures in the PY 2021 ESRD QIP

For the same reasons stated in the CY 2013 ESRD PPS final rule (77 FR 67500 through 76502), we are proposing for PY 2021 to set the performance standards, achievement thresholds, and benchmarks for the clinical measures at the 50th, 15th, and 90th percentile, respectively, of national performance in CY 2017, because this will give us enough time to calculate and assign numerical values to the proposed performance standards for the PY 2021 program prior to the beginning of the performance period. We continue to believe these standards will provide an incentive for facilities to continuously improve their performance, while not reducing incentives to facilities that score at or above the national performance rate for the clinical measures.

We seek comments on our proposal to continue this policy for PY 2021.

b. Performance Standards, Achievement Thresholds, and Benchmarks for the Clinical Measures Proposed for the PY 2021 ESRD QIP

At this time, we do not have the necessary data to assign numerical values to the proposed performance standards for the clinical measures, because we do not yet have data from CY 2017 or the first portion of CY 2018. We will publish values for the clinical measures, using data from CY 2017 and the first portion of CY 2018 in the CY 2019 ESRD PPS final rule.

c. Proposed Performance Standards for the PY 2021 Reporting Measures

In the CY 2014 ESRD PPS final rule, we finalized performance standards for the Anemia Management and Mineral Metabolism reporting measures (78 FR 72213). In the CY 2016 ESRD PPS final rule, we finalized performance standards for the Screening for Clinical Depression and Follow-Up, Pain Assessment and Follow-Up, and NHSN Healthcare Provider Influenza Vaccination reporting measures (79 FR 66209). In the CY 2017 ESRD PPS final rule, we finalized performance standards for the Ultrafiltration Rate Reporting Measure (81 FR 77916), the Serum Phosphorus Reporting measure (81 FR 77916), and the NHSN Dialysis Event Reporting measure (81 FR 77916).

We are proposing to continue use of these performance standards for the Reporting Measures included in the PY 2021 ESRD QIP.

7. Proposal for Scoring the PY 2021 ESRD QIP

a. Scoring Facility Performance on Clinical Measures Based on Achievement

In the CY 2014 ESRD PPS final rule, we finalized a policy for scoring performance on clinical measures based on achievement (78 FR 72215). Under this methodology, facilities receive points along an achievement range based on their performance during the performance period for each measure,

which we define as a scale between the achievement threshold and the benchmark. In determining a facility's achievement score for each clinical measure under the PY 2021 ESRD QIP, we propose to continue using this methodology for all clinical measures.

We also propose to use this same methodology for scoring the two new Vascular Access measures proposed in sections IV.E.4.a and IV.E.4.b.

Aside from the proposed addition of the two Vascular Access measures, we are not proposing any changes to this policy. We propose to continue use of this policy for the PY 2021 ESRD QIP.

b. Proposal for Scoring Facility Performance on Clinical Measures Based on Improvement

In the CY 2014 ESRD PPS final rule, we finalized a policy for scoring performance on clinical measures based on improvement (78 FR 72215 through 72216). In determining a facility's improvement score for each measure under the PY 2021 ESRD QIP, we propose to continue using this methodology for all clinical measures. Under this methodology, facilities receive points along an improvement range, defined as a scale running between the improvement threshold and the benchmark. We propose to define the improvement threshold as the facility's performance on the measure during CY 2018. The facility's improvement score would be calculated by comparing its performance on the measure during CY 2019 (the proposed performance period) to the improvement threshold and benchmark.

We also propose to use this same methodology for scoring the two new Vascular Access measures proposed in sections IV.E.4.a and IV.E.b.

Aside from the proposed addition of the two new Vascular Access measures, we are not proposing any changes to this policy. We propose to continue use of this policy for the PY 2021 ESRD QIP.

c. Scoring the ICH CAHPS Clinical Measure

In the CY 2015 ESRD PPS final rule, we finalized a policy for scoring performance on the ICH CAHPS clinical measure based on both achievement and improvement (79 FR 66209 through 66210). We are proposing to use this scoring methodology for the PY 2021 ESRD QIP. Under this methodology, facilities will receive an achievement score and an improvement score for each of the three composite measures and three global ratings in the ICH CAHPS survey instrument. A facility's ICH CAHPS score will be based on the higher of the facility's achievement or improvement score for each of the composite measures and global ratings, and the resulting scores on each of the composite measures and global ratings will be averaged together to yield an overall score on the ICH CAHPS clinical measure. For PY 2021, the facility's achievement score would be calculated by comparing where its performance, on each of the three composite measures and three global ratings during CY 2019, falls relative to the achievement threshold and benchmark for that measure and rating based on CY 2017 data. The facility's improvement score would be calculated by comparing its performance on each of the three composite measures and three global ratings during CY 2019 to its performance rates on these items during CY 2018.

We seek comments on this proposal.

d. Proposal for Scoring the Proposed Hemodialysis Vascular Access: Standardized Fistula Rate and Long-Term Catheter Rate Measures and the Vascular Access Measure Topic

In the CY 2013 ESRD PPS final rule we established a methodology for deriving the overall scores for measure topics (77 FR 67507). We are proposing to use the same methodology described in the CY 2013 ESRD PPS to calculate the VAT Measure Topic Score.

We seek comments on this proposal.

e. Proposal for Calculating Facility Performance on Reporting Measures

In the CY 2013 ESRD PPS final rule, we finalized policies for scoring performance on the Anemia Management and Mineral Metabolism reporting measures in the ESRD QIP (77 FR 67506). In the CY 2015 ESRD PPS final rule, we finalized policies for scoring performance on the Clinical Depression Screening and Follow-Up, Pain Assessment and Follow-Up, and NHSN Healthcare Provider Influenza Vaccination reporting measures (79 FR 66210 through 66211). In the CY 2017 ESRD PPS final rule, we finalized policies for scoring performance on the Ultrafiltration Rate, Serum Phosphorus, and NHSN Dialysis Event reporting measures (81 FR 77917).

We propose to continue use of these policies for the PY 2021 ESRD QIP.

8. Proposal for Weighting the Clinical Measure Domain, and Weighting the TPS

a. Proposal for Weighting the Clinical Measure Domain for PY 2021

In the CY 2017 ESRD PPS final rule, we discussed our policy priorities for quality improvement for patients with ESRD (81 FR 77887). These priorities have not changed since that time. Accordingly, in an effort to remain consistent in the weighting of measures included in the program, we propose to weight the following measures in the following subdomains of the clinical measure domain (see Table 8):

TABLE 8—PROPOSED MEASURE DOMAIN WEIGHTING FOR THE PY 2021 ESRD QIP

Measures/measure topics by subdomain	Measure weight within the domain (proposed for PY 2021) (%)	Measure weight as percent of TPS (proposed for PY 2021)
Clinical Measure Domain		
Patient and Family Engagement/Care Coordination Subdomain	40	30
ICH CAHPS Measure	25	18.75
SRR Measure	15	11.25
Clinical Care Subdomain	60	45
STrR measure	11	8.25
Kt/V Dialysis Adequacy Comprehensive Measure	18	13.5
Vascular Access Type Measure Topic	18	13.5
Hypercalcemia measure	2	1.5
SHR Measure	11	8.25

TABLE 8—PROPOSED MEASURE DOMAIN WEIGHTING FOR THE PY 2021 ESRD QIP—Continued

Measures/measure topics by subdomain	Measure weight within the domain (proposed for PY 2021) (%)	Measure weight as percent of TPS (proposed for PY 2021)
Total: Clinical Measure Domain	100% of Clinical Measure Domain	75% of Total Performance Score.
Reporting Measure Domain		
Serum Phosphorus reporting measure	20	2
Anemia Management reporting measure	20	2
Pain Assessment and Follow-Up reporting measure	20	2
Clinical Depression Screening and Follow-Up reporting measure	20	2
NHSN HCP Influenza Vaccination reporting measure	20	2
Total: Reporting Measure Domain	100% of Reporting Measure Domain	10% of Total Performance Score.
Safety Measure Domain		
NHSN BSI Clinical Measure	60	9
NHSN Dialysis Event Reporting Measure	40	6
Total: Safety Measure Domain	100% of Safety Measure Domain	15% of Total Performance Score.

Specifically, for PY 2021 we are proposing to maintain the weight of the Safety Measure Domain at 15 percent of a facility's TPS without raising it further, in light of validation concerns discussed in the CY 2017 ESRD PPS final rule (81 FR 77887). Specifically, we identified two distinct types of accidental or intentional under-reporting. First, there is a belief that many facilities do not consistently report monthly dialysis event data for the full 12-month performance period. Second, even with respect to the facilities that do report monthly dialysis event data, there is a concern that many of those facilities do not consistently report all of the dialysis events that they should be reporting (81 FR 77879). Additionally, as discussed above, although we are not proposing to change the total number of measures in the ESRD QIP's measure set for PY 2021, we are proposing to replace the existing Vascular Access measures with the proposed Standardized Fistula and Catheter Clinical measures. We believe these measures hold the same importance and value as the measures they are replacing and are therefore not proposing any changes to the weights finalized for PY 2020 in the CY 2017 ESRD PPS final rule. We may, in future years of the program, consider increasing the weight of the NHSN BSI Clinical Measure and/or the NHSN BSI Measure Topic once we see that facilities are completely and accurately reporting to NHSN and once we have analyzed the data from the recently increased NHSN Data Validation Study.

We seek comments on these proposals.

b. Proposal for Weighting the Domains Used To Calculate the TPS

We continue to believe that while the reporting measures are valuable, the clinical measures assess facility performance on actual patient care processes and outcomes and therefore justify a higher combined weight (78 FR 72217). In the CY 2017 ESRD PPS final rule, we finalized that the weight of the Safety Measure Domain would be 15 percent of a facility's TPS, the weight of the Clinical Measure Domain would be 75 percent of a facility's TPS and the weight of the Reporting Measure Domain would be 10 percent of a facility's TPS. We are not proposing any changes to this and are proposing to apply it to the PY 2021 program year.

In the CY 2017 ESRD PPS final rule, we finalized that, to be eligible to receive a TPS, a facility must be eligible to be scored on at least one measure in the Clinical Measure Domain and at least one measure in the Reporting Measure Domain. We are not proposing any changes to this policy for the PY 2021 ESRD QIP.

We seek comments on the continued use of these policies.

9. Example of the Proposed PY 2021 ESRD QIP Scoring Methodology

In this section, we provide an example to illustrate the proposed scoring methodology for PY 2021. Figures 1 through 4 illustrate how to calculate the Clinical Measure Domain score, the Reporting Measure Domain score, the Safety Measure Domain score, and the TPS. Figure 5 illustrates the full proposed scoring methodology for PY 2021. Note that for this example, Facility A, a hypothetical facility, has performed very well.

Figure 1 illustrates the methodology used to calculate the Clinical Measure Domain score for Facility A.

FIGURE 1:

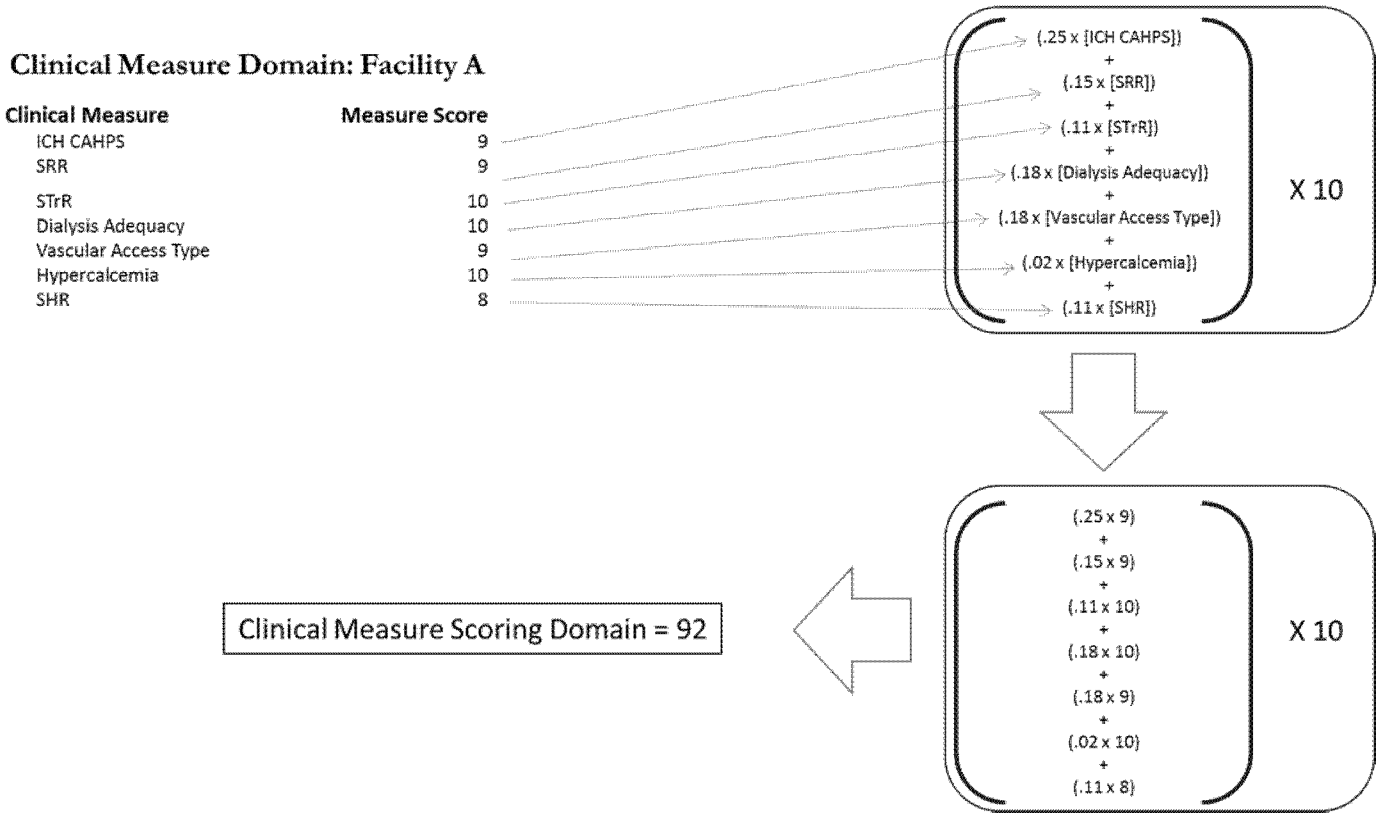


Figure 2 illustrates the general methodology for calculating the Reporting Measure Domain score for Facility A.

FIGURE 2:

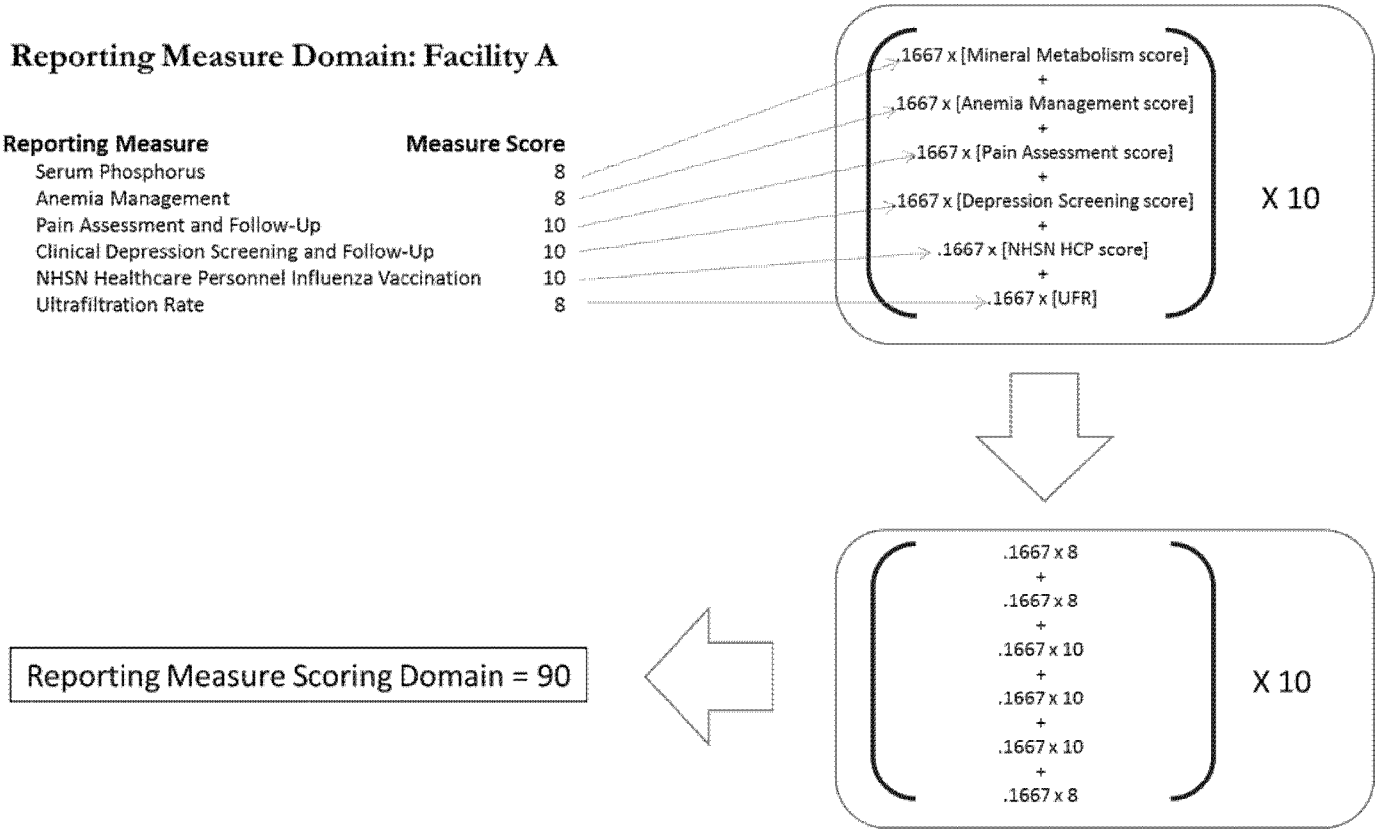


Figure 3 illustrates the methodology used for calculating the Safety Measure Domain score for Facility A.

FIGURE 3:

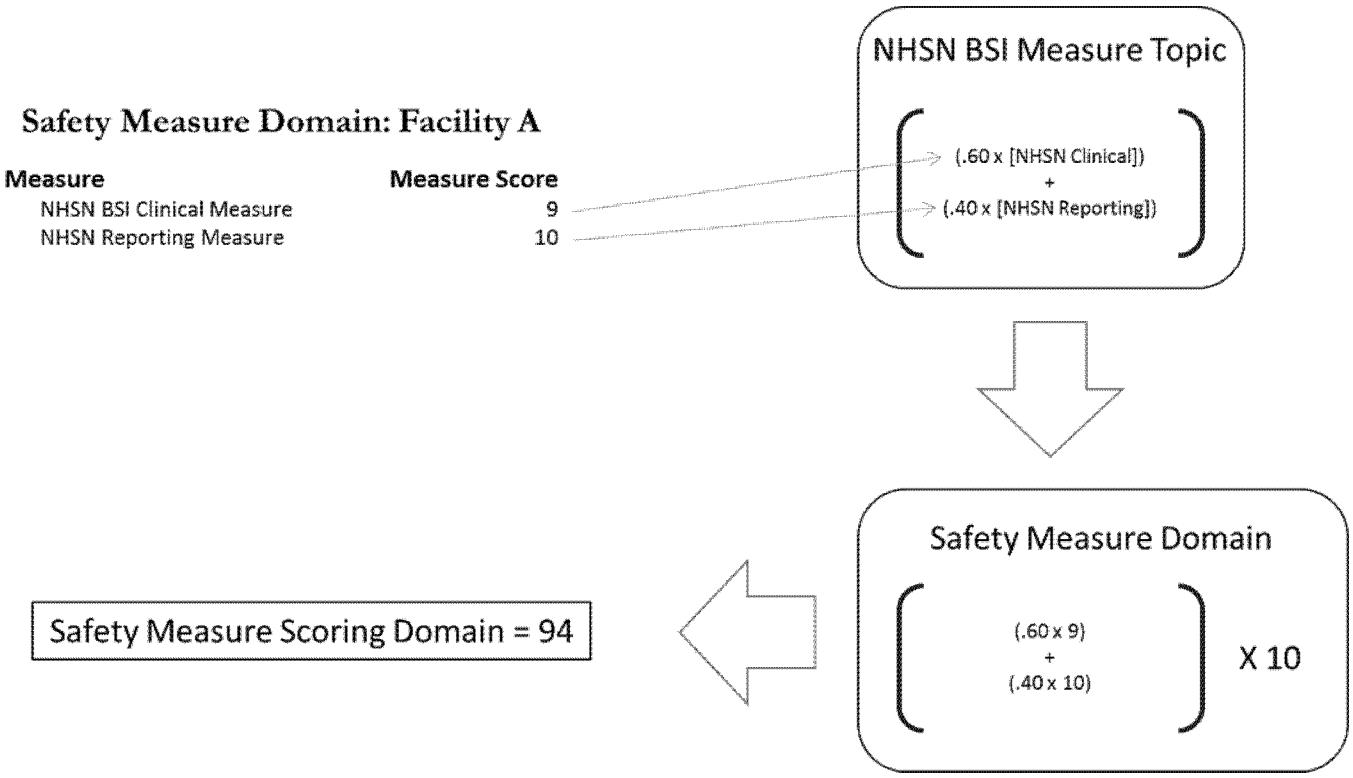


Figure 4 illustrates the methodology used to calculate the TPS for Facility A.

FIGURE 4:

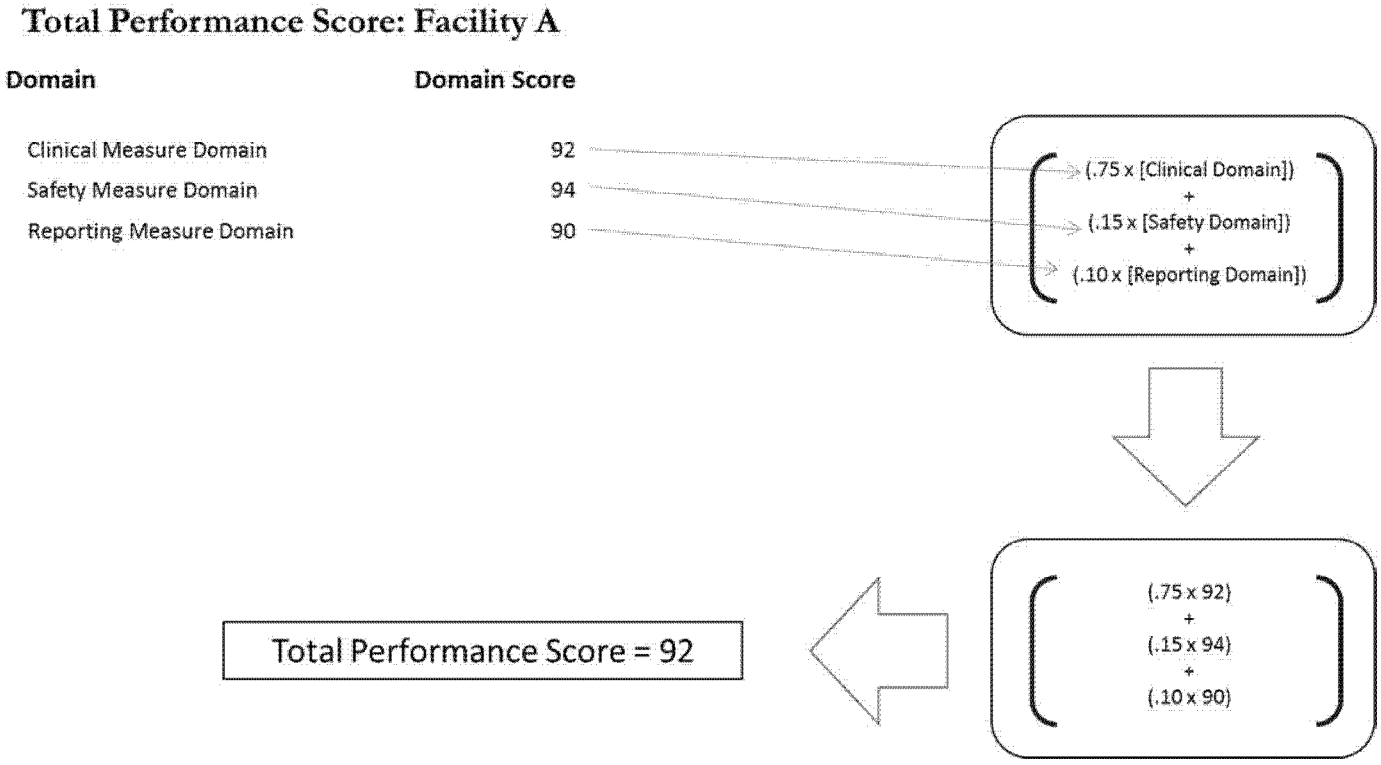
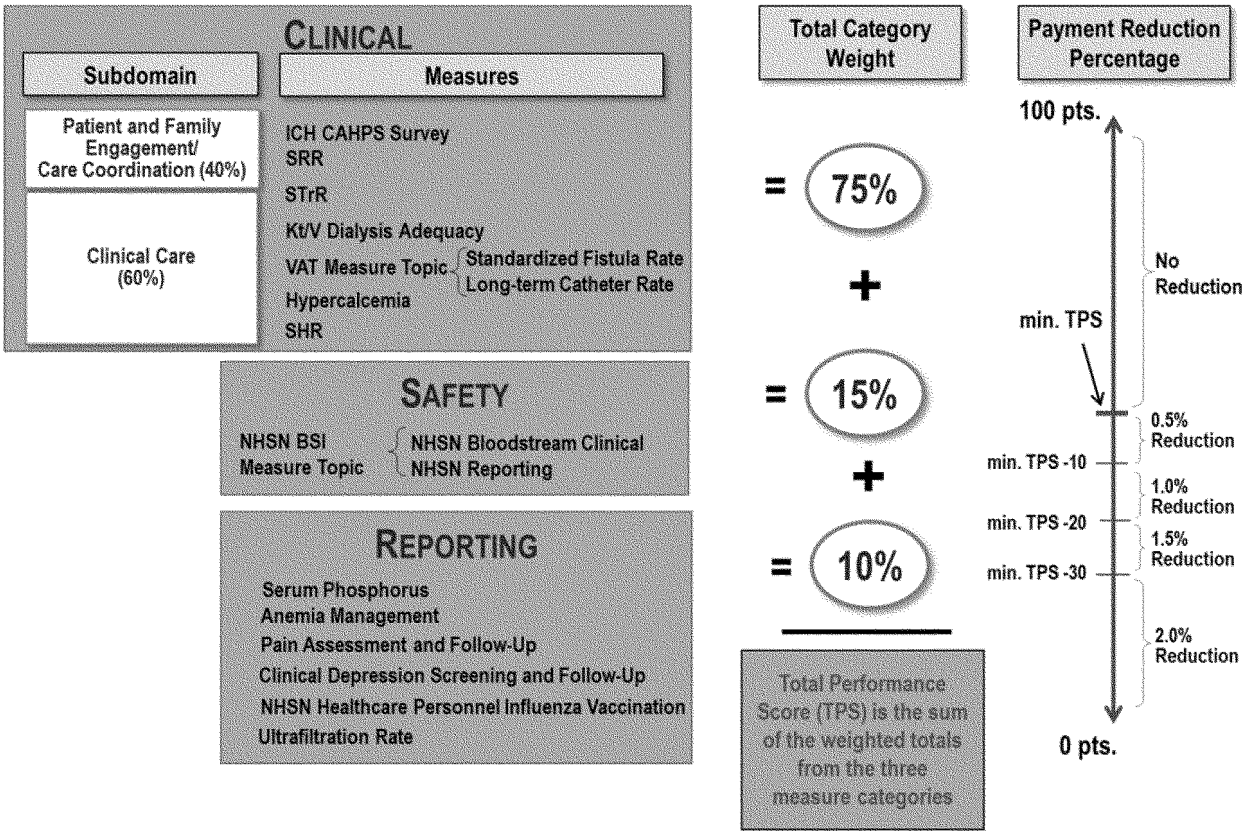


Figure 5 illustrates the full scoring methodology for PY 2021.

FIGURE 5:



10. Proposed Minimum Data for Scoring Measures for the PY 2021 ESRD QIP

Our policy is to score facilities on clinical and reporting measures for which they have a minimum number of qualifying patients during the performance period. With the exception of the Standardized Readmission Ratio, Standardized Hospitalization Ratio, Standardized Transfusion Ratio, NHSN Healthcare Personnel Influenza Vaccination, and ICH CAHPS clinical measures, a facility must treat at least 11 qualifying cases during the performance period in order to be scored on a clinical or reporting measure. A facility must have at least 11 index discharges to be eligible to receive a score on the SRR clinical measure, 10 patient-years at risk to be eligible to receive a score on the STrR clinical measure, and 5 patient-years at risk to be eligible to receive a score on the SHR clinical measure. The NHSN Healthcare Personnel Influenza Vaccination measure does not assess patient level data and therefore does not have a minimum qualifying patient count. In order to receive a score on the ICH CAHPS clinical measure, a facility must have treated at least 30 survey-eligible patients during the eligibility period and receive 30 completed surveys during the performance period. We propose to continue use of these minimum data policies for the measures that we have proposed to continue including in the PY 2021 ESRD QIP measure set. Additionally, we propose to use these same minimum data policies for the proposed Vascular Access Measures discussed above.

Under our current policy, we begin counting the number of months for which a facility is open on the first day of the month after the facility's CMS Certification Number (CCN) Open Date. In section IV.D.1 of the preamble, we proposed clarifications to our CCN Open Date Policy and to the patient minimum requirements for each of the measures finalized for the PY 2020 ESRD QIP. For the PY 2021 ESRD QIP, only facilities with a CCN Open Date before July 1, 2019 would be eligible to be scored on the Anemia Management, Serum Phosphorous, Ultrafiltration Rate, Pain Assessment and Follow-Up, Clinical Depression Screening and Follow-Up reporting measures, and only facilities with a CCN Open Date before January 1, 2019 would be eligible to be scored on the NHSN BSI Clinical and Reporting Measures, the ICH CAHPS Clinical Measure, and the NHSN Healthcare Personnel Influenza Vaccination reporting measure. We propose to continue applying these CCN open date policies to the measures proposed for PY 2021.

Table 9 displays the proposed patient minimum requirements for each of the measures, as well as the proposed CCN Open Dates after which a facility would not be eligible to receive a score on a reporting measure. We note that the 11 qualifying patient minimum used for the majority of the measures shown in the table below is a long-standing policy in the ERSD QIP.

TABLE 9—PROPOSED MINIMUM DATA REQUIREMENTS FOR THE PY 2021 ESRD QIP

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Dialysis Adequacy (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.

TABLE 9—PROPOSED MINIMUM DATA REQUIREMENTS FOR THE PY 2021 ESRD QIP—Continued

Measure	Minimum data requirements	CCN open date	Small facility adjuster
Hemodialysis Vascular Access: Standardized Fistula Rate (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hemodialysis Vascular Access: Standardized Catheter Rate (Clinical).	11 qualifying patients	N/A	11–25 qualifying patients.
Hypercalcemia (Clinical)	11 qualifying patients	N/A	11–25 qualifying patients.
NHSN BSI (Clinical)	*11 qualifying patients	Before January 1, 2019	11–25 qualifying patients.
NHSN Dialysis Event (Reporting)	*11 qualifying patients	Before January 1, 2019	N/A.
SRR (Clinical)	11 index discharges	N/A	11–41 index discharges.
STrR (Clinical)	10 patient-years at risk	N/A	10–21 patient-years at risk.
SHR (Clinical)	5 patient-years at risk	N/A	5–14 patient-years at risk.
ICH CAHPS (Clinical)	Facilities with 30 or more survey-eligible patients during the CY preceding the performance period must submit survey results. Facilities will not receive a score if they do not obtain a total of at least 30 completed surveys during the performance period.	Before January 1, 2019	N/A.
Anemia Management (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.
Serum Phosphorus (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.
Depression Screening and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2019	N/A.
Pain Assessment and Follow-Up (Reporting).	11 qualifying patients	Before July 1, 2019	N/A.
NHSN Healthcare Personnel Influenza Vaccination (Reporting).	N/A	Before January 1, 2019	N/A.
Ultrafiltration Rate (Reporting)	11 qualifying patients	Before July 1, 2019	N/A.

*For the NHSN BSI Clinical Measure and the NHSN Dialysis Event Reporting Measure, qualifying patients include only in-center hemodialysis patients. Inpatient hemodialysis patients and home hemodialysis or peritoneal dialysis patients are excluded from this measure.

11. Proposed Payment Reductions for the PY 2021 ESRD QIP

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the scoring methodology results in an appropriate distribution of payment reductions across facilities, such that facilities achieving the lowest TPSs receive the largest payment reductions. We propose that, for the PY 2021 ESRD QIP, a facility will not receive a payment reduction if it achieves a minimum TPS that is equal to or greater than the total of the points it would have received if:

- It performed at the performance standard for each clinical measure.
- It received the number of points for each reporting measure that corresponds to the 50th percentile of facility performance on each of the PY 2019 reporting measures. We note this proposed policy for PY 2021 is identical to the policy finalized for PY 2020.

We recognize that we are not proposing a policy regarding the inclusion of measures for which we are not able to establish a numerical value for the performance standard through the rulemaking process before the beginning of the performance period in the PY 2020 minimum TPS. We have not proposed such a policy because no measures in the proposed PY 2021 measure set meet this criterion. However, should we choose to adopt a clinical measure in future rulemaking without the baseline data required to calculate a performance standard before the beginning of the performance period, we will propose a criterion accounting for that measure in the minimum TPS for the applicable payment year at that time.

The PY 2019 program is the most recent year for which we will have calculated final measure scores before the beginning of the proposed performance period for PY 2021 (that is, CY 2019). Because we have not yet calculated final measure scores, we are unable to determine the 50th percentile of facility performance on the PY 2019 reporting measures. We will publish that value once we have calculated final measure scores for the PY 2019 program.

Section 1881(h)(3)(A)(ii) of the Act requires that facilities achieving the lowest TPSs receive the largest payment reductions. In the CY 2014 ESRD PPS final rule (78 FR 72223 through 72224), we finalized a payment reduction scale for PY 2016 and future payment years: For every 10 points a facility falls below the minimum TPS, the facility would receive an additional 0.5 percent reduction on its ESRD PPS payments for PY 2016 and future payment years, with a maximum reduction of 2.0 percent. We are not proposing any changes to this policy for the PY 2021 ESRD QIP.

Because we are not yet able to calculate the performance standards for each of the clinical measures, we are also not able to calculate a proposed minimum TPS at this time. We will propose a minimum TPS, based on data from CY 2017 and the first part of CY 2018, in the CY 2019 ESRD PPS proposed rule.

We are not proposing any changes to these policies.

V. Advancing Health Information Exchange

HHS has a number of initiatives designed to improve health and health care quality through the adoption of health information technology (health IT) and nationwide health information exchange. Health IT facilitates the secure, efficient, and effective sharing and use of health-related information when and where it is needed, and is an important tool for settings across the continuum of care, including ESRD facilities. Health IT plays an important role in developing care plans to manage dialysis related care and co-morbid conditions for patients with ESRD, as well as enabling electronic coordination and communication among multidisciplinary teams. Such tools can promote quality improvement, improve

efficiencies and reduce unnecessary costs.

HHS continues to make important strides promoting the availability of technology tools to support providers, including those in ESRD settings. For instance, the Office of the National Coordinator for Health Information Technology (ONC) released a document entitled ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap Version 1.0 (Roadmap) (available at *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*), which describes barriers to interoperability across the current health IT landscape, the desired future state that the industry believes will be necessary to enable a learning health system, and a suggested path for moving from the current state to the desired future state. In the near term, the Roadmap focuses on actions that will enable a majority of individuals and providers across the care continuum to send, receive, find and use a common set of electronic clinical information at the nationwide level by the end of 2017. Moreover, the vision described in the Roadmap significantly expands the types of electronic health information, information sources, and information users well beyond clinical information derived from electronic health records.

In addition, ONC has released the 2017 Interoperability Standards Advisory (available at *https://www.healthit.gov/standards-advisory*), a coordinated catalog of standards and implementation specifications to enable priority health information exchange functions. Providers, payers, and vendors are encouraged to take these health IT standards into account as they implement interoperable health information exchange across the continuum of care.

We encourage stakeholders to utilize health information exchange and certified health IT to effectively and efficiently help providers improve internal care delivery practices, support management of care across the continuum, enable the reporting of electronically specified clinical quality measures, and improve efficiencies and reduce unnecessary costs. As adoption of certified health IT increases and interoperability standards continue to mature, HHS will seek to reinforce standards through relevant policies and programs.

VI. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection requirement should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

B. Requirements in Regulation Text

We are not proposing any changes to the regulatory text for the ESRD PPS or for AKI dialysis payment in CY 2018.

C. Additional Information Collection Requirements

This proposed rule does not impose any new information collection requirements in the regulation text, as specified above. However, there are changes in some currently approved information collections. The following is a discussion of these information collections.

1. ESRD QIP

a. Wage Estimates

To derive wage estimates, we used data from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates. In the CY 2016 ESRD PPS final rule (80 FR 69069), we stated that it was reasonable to assume that Medical Records and Health Information Technicians, who are responsible for organizing and managing health information data,[11] are the individuals tasked with submitting measure data to CROWNWeb and NHSN for purposes of the Data Validation Studies rather than a Registered Nurse, whose duties are centered on providing and coordinating care for patients.[12] The mean hourly wage of a Medical Records and Health Information Technician is $19.93 per hour. Fringe benefit is calculated at 100 percent. Therefore, using these assumptions, we estimate an hourly labor cost of $39.86 as the basis of the wage estimates for all collection of information calculations in the ESRD QIP. We have adjusted these employee hourly wage estimates by a factor of 100 percent to reflect current HHS department-wide guidance on estimating the cost of fringe benefits and overhead. These are necessarily rough adjustments, both because fringe benefits and overhead costs vary significantly from employer to employer and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that these are reasonable estimation methods.

b. Time Required To Submit Data Based on Proposed Reporting Requirements

In the CY 2016 ESRD PPS final rule (80 FR 69070), we estimated that the time required to submit measure data using CROWNWeb is 2.5 minutes per data element submitted, which takes into account the small percentage of data that is manually reported, as well as the human interventions required to modify batch submission files such that they meet CROWNWeb's internal data validation requirements.

c. Data Validation Requirements for the PY 2020 ESRD QIP

Section IV.D.7 of this proposed rule outlines our data validation proposals for PY 2020. Specifically, for the CROWNWeb validation, we propose to continue randomly sampling records from 300 facilities as part of our continuing pilot data-validation program. Each sampled facility would be required to produce approximately 10 records, and the sampled facilities will be reimbursed by our validation contractor for the costs associated with copying and mailing the requested records. The burden associated with these validation requirements is the time and effort necessary to submit the requested records to a CMS contractor. We estimate that it will take each facility approximately 2.5 hours to comply with this requirement. If 300 facilities are asked to submit records, we estimate that the total combined annual burden for these facilities will be 750 hours (300 facilities × 2.5 hours). Since we anticipate that Medical Records and Health Information Technicians or

[11] *https://www.bls.gov/oes/current/oes292071.htm.*

[12] *https://www.bls.gov/oes/current/oes291141.htm.*

similar administrative staff would submit this data, we estimate that the aggregate cost of the CROWNWeb data validation would be approximately $29,895 (750 hours × $39.86/hour), or a total of approximately $93 ($29,895/300 facilities) per facility in the sample. The burden associated with these requirements is captured in an information collection request (OMB control number 0938–1289).

Under the proposed continued data validation study for validating data reported to the NHSN Dialysis Event Module, we are proposing to continue using the methodology finalized in the CY 2017 ESRD PPS final rule, however we have proposed a modification to our sampling methodology (81 FR 77956). A CMS contractor would send these facilities requests for medical records for all patients with ''candidate events'' during the evaluation period. Overall, we estimate that, on average, quarterly lists would include two positive blood cultures per facility, but we recognize these estimates may vary considerably from facility to facility. We estimate that it would take each facility approximately 60 minutes to comply with this requirement (30 minutes from each of the two quarters in the evaluation period). If 35 facilities are asked to submit records, we estimate that the total combined annual burden for these facilities would be 35 hours (35 facilities × 1 hour). Since we anticipate that Medical Records and Health Information Technicians or similar administrative staff would submit this data, we estimate that the aggregate cost of the NHSN data validation would be $1,395.10 (35 hours × $39.86/hour), or a total of $39.86 ($1,395.10/35 facilities) per facility in the sample. The burden associated with these requirements is captured in an information collection request (OMB control number 0938–NEW).

To determine the burden associated with new collection of information requirements, we look at each of these elements together: The total number of patients nationally, the number of elements per patient-year required for each measure, the amount of time required for data entry, and the estimated wage plus benefits of the individuals within facilities who are most likely to be entering data into CROWNWeb. Therefore, based on this methodology, in the CY 2017 ESRD PPS final rule, we anticipated the burden associated with the new collection of information requirements was approximately $91 million for the PY 2020 ESRD QIP (81 FR 77957).[13] We are not changing our data collection methodology for PY 2021; however, we are proposing to replace two existing measures for PY 2021. We believe replacing the two existing measures would have a de minimis effect on the overall burden associated with collection of information requirements in PY 2021. Accordingly, the PY 2021 burden estimate remains the same at $91 million. The net incremental burden from PY 2020 to PY 2021 is $0.

VII. Request for Information on Medicare Flexibilities and Efficiencies

CMS is committed to transforming the health care delivery system—and the Medicare program—by putting an additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes. We seek to reduce burdens for hospitals, physicians, and patients, improve the quality of care, decrease costs, and ensure that patients and their providers and physicians are making the best health care choices possible. These are the reasons we are including this Request for Information in this proposed rule.

As we work to maintain flexibility and efficiency throughout the Medicare program, we would like to start a national conversation about improvements that can be made to the health care delivery system that reduce unnecessary burdens for clinicians, other providers, and patients and their families. We aim to increase quality of care, lower costs, improve program integrity, and make the health care system more effective, simple and accessible.

We would like to take this opportunity to invite the public to submit their ideas for regulatory, subregulatory, policy, practice, and procedural changes to better accomplish these goals. Ideas could include payment system redesign, elimination or streamlining of reporting, monitoring and documentation requirements, aligning Medicare requirements and processes with those from Medicaid and other payers, operational flexibility, feedback mechanisms and data sharing that would enhance patient care, support of the physician-patient relationship in care delivery, and facilitation of individual preferences. Responses to this Request for Information could also include recommendations regarding when and how CMS issues regulations and policies and how CMS can simplify rules and policies for beneficiaries, clinicians, physicians, providers, and suppliers. Where practicable, data and specific examples would be helpful. If the proposals involve novel legal questions, analysis regarding CMS' authority is welcome for CMS' consideration. We are particularly interested in ideas for incentivizing organizations and the full range of relevant professionals and paraprofessionals to provide screening, assessment and evidence-based treatment for individuals with opioid use disorder and other substance use disorders, including reimbursement methodologies, care coordination, systems and services integration, use of paraprofessionals including community paramedics and other strategies. We are requesting commenters to provide clear and concise proposals that include data and specific examples that could be implemented within the law.

We note that this is a Request for Information only. Respondents are encouraged to provide complete but concise responses. This Request for Information is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This Request for Information does not commit the United States Government to contract for any supplies or services or make a grant award.

Further, CMS is not seeking proposals through this Request for Information and will not accept unsolicited proposals. Responders are advised that the United States Government will not pay for any information or administrative costs incurred in response to this Request for Information; all costs associated with responding to this Request for Information will be solely at the interested party's expense. We note that not responding to this Request for Information does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this Request for Information announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this Request for Information. CMS will not respond to comment submissions in response to this Request for Information in the CY 2018 ESRD PPS final rule. Rather, CMS

[13] We note that the aggregate impact of the PY 2020 ESRD QIP was included in the CY 2017 ESRD PPS final rule (81 FR 77834 through 77969). The previously finalized aggregate impact of $113 million reflects the PY 2020 estimated payment reductions and the collection of information requirements for the Ultrafiltration Rate Reporting Measure, finalized in the CY 2017 ESRD PPS final rule (81 FR 77915).

will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. CMS may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this Request for Information. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this Request for Information may be used by the Government for program planning on a nonattribution basis. Respondents should not include any information that might be considered proprietary or confidential. This Request for Information should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become United States Government property and will not be returned. CMS may publicly post the public comments received, or a summary of those public comments.

VIII. Response to Comments

Because of the large number of public comments we normally receive on Federal Register documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule is economically significant within the meaning of section 3(f)(1) of the Executive Order, since it meets the $100 million threshold. Additionally, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, OMB has reviewed these proposed regulations, and the Departments have provided the following assessment of their impact. We solicit comments on the regulatory impact analysis provided.

2. Statement of Need

This rule proposes a number of routine updates and one policy change to the ESRD PPS in CY 2018. The proposed routine updates include the CY 2018 wage index values, the wage index budget-neutrality adjustment factor, and outlier payment threshold amounts. The proposed policy change involves an update to the outlier pricing policy. Failure to publish this proposed rule would result in ESRD facilities not receiving appropriate payments in CY 2018 for renal dialysis services furnished to ESRD patients.

This rule proposes routine updates to the payment for renal dialysis services furnished by ESRD facilities to individuals with AKI. Failure to publish this proposed rule would result in ESRD facilities not receiving appropriate payments in CY 2018 for renal dialysis services furnished to patients with AKI in accordance with section 1834(r) of the Act.

This rule proposes to implement requirements for the ESRD QIP, including a proposal to adopt a measure set for the PY 2021 program, as directed by section 1881(h) of the Act. Failure to propose requirements for the PY 2021 ESRD QIP would prevent continuation of the ESRD QIP beyond PY 2020. In addition, proposing requirements for the PY 2021 ESRD QIP provides facilities with more time to review and fully understand new measures before their implementation in the ESRD QIP.

3. Overall Impact

We estimate that the proposed revisions to the ESRD PPS will result in an increase of approximately $100 million in payments to ESRD facilities in CY 2018, which includes the amount associated with updates to the outlier thresholds, outlier policy, and updates to the wage index. We are estimating approximately $2 million that would now be paid to ESRD facilities for dialysis treatments provided to AKI beneficiaries.

For PY 2021, we estimate that the proposed revisions to the ESRD QIP will result in a savings of $29 million, which includes a zero incremental burden due to collection of information requirements and $29 million in estimated payment reductions across all facilities.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that

each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption.

Using the wage information from the BLS (*https://www.bls.gov/oes/2015/may/naics4_621100.htm*) for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $105.00 per hour, including overhead and fringe benefits. Assuming an average reading speed, we estimate that it would take approximately 1.25 hours for the staff to review half of this proposed rule. For each ESRD facility that reviews the rule, the estimated cost is $131.25 (1.25 hours × $105.00). Therefore, we estimate that the total cost of reviewing this regulation is $19,162.50 ($131.25 × 146 reviewers).

B. Detailed Economic Analysis

1. CY 2018 End-Stage Renal Disease Prospective Payment System

a. Effects on ESRD Facilities

To understand the impact of the changes affecting payments to different categories of ESRD facilities, it is necessary to compare estimated payments in CY 2017 to estimated payments in CY 2018. To estimate the impact among various types of ESRD facilities, it is imperative that the estimates of payments in CY 2017 and CY 2018 contain similar inputs. Therefore, we simulated payments only for those ESRD facilities for which we are able to calculate both current payments and new payments.

For this proposed rule, we used CY 2016 data from the Part A and B Common Working Files, as of February 17, 2017, as a basis for Medicare dialysis treatments and payments under the ESRD PPS. We updated the 2016 claims to 2017 and 2018 using various updates. The updates to the ESRD PPS base rate are described in section II.B.2.d of this proposed rule. Table 10 shows the impact of the estimated CY 2018 ESRD payments compared to estimated payments to ESRD facilities in CY 2017.

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Table 10 – Impact of Proposed Changes in Payment to ESRD Facilities for CY 2018 Proposed Rule

Facility Type	Number of Facilities A	Number of Treatments (in millions) B	Effect of 2018 Changes in Outlier Policy C	Effect of 2018 Changes in Wage Indices and Wage Floor D	Effect of 2018 Changes in payment rate update E	Effect of Total 2018 Proposed Changes F
All Facilities	6,754	44.3	0.1%	0.0%	0.7%	0.8%
Type						
Freestanding	6,325	41.9	0.1%	0.0%	0.7%	0.8%
Hospital based	429	2.4	0.2%	0.1%	0.7%	1.0%
Ownership Type						
Large dialysis organization	5,001	33.3	0.1%	0.0%	0.7%	0.8%
Regional chain	881	5.9	0.1%	0.1%	0.7%	1.0%
Independent	502	3.2	0.1%	0.0%	0.7%	0.8%
Hospital based[1]	368	2.0	0.2%	0.1%	0.7%	1.1%
Unknown	2	0.0	0.1%	-0.8%	0.7%	-0.1%
Geographic Location						
Rural	1,235	6.4	0.1%	-0.2%	0.7%	0.6%
Urban	5,519	37.9	0.1%	0.0%	0.7%	0.8%
Census Region						
East North Central	1,094	6.2	0.1%	-0.1%	0.7%	0.8%
East South Central	546	3.3	0.1%	-0.1%	0.7%	0.7%
Middle Atlantic	732	5.4	0.1%	0.1%	0.7%	0.9%
Mountain	380	2.2	0.1%	-0.2%	0.7%	0.6%
New England	190	1.5	0.1%	-0.1%	0.7%	0.8%
Pacific[2]	800	6.3	0.1%	0.0%	0.7%	0.8%
Puerto Rico and Virgin Islands	50	0.4	0.1%	0.1%	0.7%	0.8%
South Atlantic	1,556	10.3	0.1%	-0.1%	0.7%	0.7%
West North Central	482	2.2	0.1%	0.2%	0.7%	1.1%
West South Central	924	6.5	0.1%	0.2%	0.7%	1.0%
Facility Size						
Less than 4,000 treatments	1,272	3.6	0.1%	-0.1%	0.7%	0.7%
4,000 to 9,999 treatments	2,372	10.9	0.1%	-0.1%	0.7%	0.8%
10,000 or more treatments	2,860	28.6	0.1%	0.0%	0.7%	0.8%
Unknown	250	1.2	0.2%	0.2%	0.7%	1.1%
Percentage of Pediatric Patients						
Less than 2%	6,650	44.0	0.1%	0.0%	0.7%	0.8%
Between 2% and19%	39	0.3	0.1%	0.1%	0.7%	1.0%
Between 20% and 49%	12	0.0	0.2%	-0.4%	0.7%	0.5%
More than 50%	53	0.0	0.3%	0.3%	0.7%	1.2%

[1]Includes hospital-based ESRD facilities not reported to have large dialysis organization or regional chain ownership.

[2]Includes ESRD facilities located in Guam, American Samoa, and the Northern Mariana Islands

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Column A of the impact table indicates the number of ESRD facilities for each impact category and column B indicates the number of dialysis treatments (in millions). The overall effect of the proposed changes to the outlier payment policy described in section II.B.2.c of this proposed rule is shown in column C. For CY 2018, the impact on all ESRD facilities as a result of the changes to the outlier payment policy would be a 0.1 percent increase in estimated payments. Nearly all ESRD facilities are anticipated to experience a positive effect in their estimated CY 2018 payments as a result of the proposed outlier policy changes.

Column D shows the effect of the proposed CY 2018 wage indices and the wage index floor of 0.4000. The

categories of types of facilities in the impact table show changes in estimated payments ranging from a 0.8 percent decrease to a 0.3 percent increase due to these proposed updates in the wage indices.

Column E shows the effect of the proposed CY 2018 ESRD PPS payment rate update. The proposed ESRD PPS payment rate update is 0.7 percent, which reflects the proposed ESRDB market basket percentage increase factor for CY 2018 of 2.2 percent, the 1.0 percent reduction as required by the section 1881(b)(14)(F)(i)(I) of the Act, and the MFP adjustment of 0.5 percent.

Column F reflects the overall impact, that is, the effects of the proposed outlier policy changes, the proposed wage index floor, and payment rate update. We expect that overall ESRD facilities would experience a 0.8 percent increase in estimated payments in CY 2018. The categories of types of facilities in the impact table show impacts ranging from a decrease of 0.1 percent to an increase of 1.2 percent in their CY 2018 estimated payments.

b. Effects on Other Providers

Under the ESRD PPS, Medicare pays ESRD facilities a single bundled payment for renal dialysis services, which may have been separately paid to other providers (for example, laboratories, durable medical equipment suppliers, and pharmacies) by Medicare prior to the implementation of the ESRD PPS. Therefore, in CY 2018, we estimate that the proposed ESRD PPS would have zero impact on these other providers.

c. Effects on the Medicare Program

We estimate that Medicare spending (total Medicare program payments) for ESRD facilities in CY 2018 would be approximately $10.0 billion. This estimate takes into account a projected increase in fee-for-service Medicare dialysis beneficiary enrollment of 1.8 percent in CY 2018.

d. Effects on Medicare Beneficiaries

Under the ESRD PPS, beneficiaries are responsible for paying 20 percent of the ESRD PPS payment amount. As a result of the projected 0.8 percent overall increase in the proposed CY 2018 ESRD PPS payment amounts, we estimate that there will be an increase in beneficiary co-insurance payments of 0.8 percent in CY 2018, which translates to approximately $20 million. The $20 million is based on 20 percent of CY 2018 estimated total payment increase of $100 million.

e. Alternatives Considered

In section II.B.2.b of this proposed rule, we propose maintaining the wage index floor at 0.4000. We considered increasing the wage index floor to 0.5000 as well as increasing the wage index floor to 0.6000 and determined that maintaining the wage index floor at 0.4000 provided the appropriate adjustment related to the cost of furnishing dialysis in areas with a wage index less than 0.4000.

2. Proposed Payment for Renal Dialysis Services Furnished to Individuals With AKI

a. Effects on ESRD Facilities

We analyzed CY 2016 hospital outpatient claims to identify the number of treatments furnished historically for AKI patients. We identified 8,900 outpatient treatments with AKI that also had dialysis treatments that were furnished in CY 2016. We then inflated the 8,900 treatments to 2018 values using estimated population growth for fee-for service non-ESRD beneficiaries. This results in an estimated 9,170 treatments that would now be paid to ESRD facilities for furnishing dialysis to beneficiaries with AKI. Using the proposed CY 2018 ESRD base rate of $233.31 and an average wage index multiplier, we are estimating approximately $2 million that would now be paid to ESRD facilities for dialysis treatments provided to AKI beneficiaries.

Ordinarily, we would provide a table showing the impact of this provision on various categories of ESRD facilities. Because we have no way to project how many patients with AKI requiring dialysis will choose to have dialysis treatments at an ESRD facility, we are unable to provide a table at this time.

b. Effects on Other Providers

Under section 1834(r) of the Act, as added by section 808(b) of TPEA, we are proposing to update the payment rate for renal dialysis services furnished by ESRD facilities to beneficiaries with AKI. The only two Medicare providers authorized to provide these outpatient renal dialysis services are hospital outpatient departments and ESRD facilities. The decision about where the renal dialysis services are furnished is made by the patient and his or her physician. Therefore, this proposal will have zero impact on other Medicare providers.

c. Effects on the Medicare Program

We estimate approximately $2 million would be paid to ESRD facilities in CY 2018 as a result of AKI patients receiving renal dialysis services in the ESRD facility at the lower ESRD PPS base rate versus receiving those services only in the hospital outpatient setting.

d. Effects on Medicare Beneficiaries

Currently, beneficiaries have a 20 percent co-insurance obligation when they receive AKI dialysis in the hospital outpatient setting. When these services are furnished in an ESRD facility, the patients would continue to be responsible for a 20 percent co-insurance. Because the AKI dialysis payment rate paid to ESRD facilities is lower than the outpatient prospective payment system's payment amount, we would expect beneficiaries to pay less co-insurance when AKI dialysis is furnished by ESRD facilities.

e. Alternatives Considered

As we discussed in the CY 2017 ESRD PPS proposed rule (81 FR 42870), we considered adjusting the AKI payment rate by including the ESRD PPS case-mix adjustments, and other adjustments at section 1881(b)(14)(D) of the Act, as well as not paying separately for AKI specific drugs and laboratory tests. We ultimately determined that treatment for AKI is substantially different from treatment for ESRD and the case-mix adjustments applied to ESRD patients may not be applicable to AKI patients and as such, including those policies and adjustment would be inappropriate. We will monitor utilization and trends of items and services furnished to individuals with AKI for purposes of refining the payment rate in the future. This monitoring will assist us in developing knowledgeable, data-driven proposals.

3. ESRD QIP

a. Effects of the PY 2021 ESRD QIP on ESRD Facilities

The ESRD QIP provisions are intended to prevent possible reductions in the quality of ESRD dialysis facility services provided to beneficiaries as a result of payment changes under the ESRD PPS. The methodology that we are proposing to use to determine a facility's TPS for the PY 2021 ESRD QIP is described in section IV.E.8 of this proposed rule. Any reductions in ESRD PPS payments as a result of a facility's performance under the PY 2021 ESRD QIP would apply to ESRD PPS payments made to the facility in CY 2021.

For the PY 2021 ESRD QIP, we estimate that, of the 6,453 dialysis facilities (including those not receiving a TPS) enrolled in Medicare, approximately 40 percent or 2,551 of the facilities would receive a payment

reduction in PY 2021. The total payment reduction for all of the 2,551 facilities expected to receive a reduction is approximately $29 million ($29,017,218). Facilities that do not receive a TPS are not eligible for a payment reduction.

Table 11 shows the overall estimated distribution of payment reductions resulting from the PY 2021 ESRD QIP.

TABLE 11—ESTIMATED DISTRIBUTION OF PY 2021 ESRD QIP PAYMENT REDUCTIONS

Payment reduction (%)	Number of facilities	Percent of facilities
0.0	3,469	57.6
0.5	1,507	25.0
1.0	754	12.5
1.5	228	3.8
2.0	62	1.0

Note: This table excludes 433 facilities that we estimate will not receive a payment reduction because they will not report enough data to receive a TPS.

To estimate whether or not a facility would receive a payment reduction in PY 2021, we scored each facility on achievement and improvement on several measures we have previously finalized and for which there were available data from CROWNWeb and Medicare claims. Measures used for the simulation are shown in Table 12.

TABLE 12—DATA USED TO ESTIMATE PY 2021 ESRD QIP PAYMENT REDUCTIONS

Measure	Period of time used to calculate achievement thresholds, performance standards, benchmarks, and improvement thresholds	Performance period
VAT:		
Standardized Fistula Ratio	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
% Catheter	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
Kt/V Dialysis Adequacy Comprehensive	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
Hypercalcemia	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
STrR	Jan 2014–Dec 2014	Jan 2014–Dec 2014.
ICH CAHPS Survey	Jan 2015–Dec 2015	Jan 2015–Dec 2015.
SRR	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
NHSN BSI	Jan 2014–Dec 2014	Jan 2015–Dec 2015.
SHR	Jan 2014–Dec 2014	Jan 2015–Dec 2015.

For all measures except STrR and SHR, clinical measure topic areas with less than 11 cases for a facility were not included in that facility's TPS. For SHR and STrR, facilities were required to have at least 5 and 10 patient-years at risk, respectively, in order to be included in the facility's TPS. Each facility's TPS was compared to an estimated minimum TPS and an estimated payment reduction table that were consistent with the proposals outlined in section IV.E.8 of this proposed rule. Facility reporting measure scores were estimated using available data from CY 2014 and 2015. Facilities were required to have a score on at least one clinical and one reporting measure to receive a TPS.

To estimate the total payment reductions in PY 2021 for each facility resulting from this proposed rule, we multiplied the total Medicare payments to the facility during the 1-year period between January 2015 and December 2015 by the facility's estimated payment reduction percentage expected under the ESRD QIP, yielding a total payment reduction amount for each facility: Total ESRD payment in January 2015 through December 2015 times the estimated payment reduction percentage.

Table 13 shows the estimated impact of the finalized ESRD QIP payment reductions to all ESRD facilities for PY 2021. The table details the distribution of ESRD facilities by facility size (both among facilities considered to be small entities and by number of treatments per facility), geography (both urban/rural and by region), and by facility type (hospital based/freestanding facilities). Given that the time periods used for these calculations will differ from those we propose to use for the PY 2021 ESRD QIP, the actual impact of the PY 2021 ESRD QIP may vary significantly from the values provided here.

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TABLE 13: Impact of Proposed QIP Payment Reductions to ESRD Facilities for PY 2021

	Number of Facilities	*Number of Treatments 2015 (in millions)*	*Number of Facilities with QIP Score*	*Number of Facilities Expected to Receive a Payment Reduction*	*Payment Reduction (percent change in total ESRD payments)*
All Facilities	6,453	40.0	6,020	2,551	-0.32%
Facility Type:					
Freestanding	6,022	37.8	5,852	2,502	-0.33%
Hospital-based	431	2.2	168	49	-0.20%
Ownership Type:					
Large Dialysis	4,541	28.6	4,432	1,910	-0.32%
Regional Chain	989	6.2	929	316	-0.26%
Independent	568	3.5	536	282	-0.50%
Hospital-based (non-chain)	354	1.8	123	43	-0.25%
Unknown	1	0.0	0	0	-
Facility Size:					
Large Entities	5,530	34.8	5,361	2,226	-0.31%
Small Entities[1]	922	5.2	659	325	-0.45%
Unknown	1	0.0	0	0	-
Rural Status:					
1) Yes	1,260	6.0	1,146	325	-0.19%
2) No	5,193	34.0	4,874	2,226	-0.35%
Census Region:					
Northeast	879	6.2	786	340	-0.32%
Midwest	1,511	7.6	1,356	557	-0.31%
South	2,852	18.2	2,743	1,276	-0.36%
West	1,142	7.6	1,084	341	-0.22%
US Territories[2]	69	0.4	51	37	-0.56%
Census Division:					
Unknown	1	0.0	0	0	-
East North Central	1,045	5.5	951	443	-0.36%
East South Central	522	3.0	515	202	-0.30%
Middle Atlantic	702	4.9	623	300	-0.37%
Mountain	368	2.0	336	86	-0.17%
New England	182	1.3	164	40	-0.14%
Pacific	782	5.7	753	257	-0.24%
South Atlantic	1,458	9.4	1,388	719	-0.41%
West North Central	469	2.1	406	115	-0.19%
West South Central	875	5.8	841	355	-0.33%

	Number of Facilities	Number of Treatments 2015 (in millions)	Number of Facilities with QIP Score	Number of Facilities Expected to Receive a Payment Reduction	Payment Reduction (percent change in total ESRD payments)
US Territories[2]	49	0.3	43	34	-0.62%
Facility Size (# of total treatments)					
Less than 4,000 treatments	1,211	2.7	1,006	357	-0.30%
4,000-9,999 treatments	2,401	11.0	2,324	880	-0.29%
Over 10,000 treatments	2,680	26.1	2,603	1,256	-0.35%
Unknown	161	0.2	87	58	-0.66%

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b. Effects on Other Providers

The ESRD QIP is applicable to outpatient dialysis facilities. Therefore, this proposal will have zero impact on other Medicare providers. We are aware that several of our measures do impact other providers. For example, with the introduction of the Standardized Readmission Ratio Clinical measure in PY 2017 and the Standardized Hospitalization Ratio Clinical Measure in PY 2020, we anticipate that hospitals may experience financial savings as dialysis facilities work to reduce the number of unplanned readmissions and hospitalizations. We are actively exploring various methods to assess the impact these measures have on hospitals and other outpatient facilities.

c. Effects on the Medicare Program

For PY 2021, we estimate that ESRD QIP will contribute approximately $29 million ($29,017,218) in Medicare savings. For comparison, Table 14 shows the payment reductions achieved by the ESRD QIP program for PYs 2016 through 2021.

TABLE 14—PAYMENT REDUCTIONS PAYMENT YEAR 2016 THROUGH 2021

Payment year	Estimated payment reductions (citation)
PY 2021 ...	$29,017,218.
PY 2020 ...	$31,581,441 (81 FR 77960).
PY 2019 ...	$15,470,309 (80 FR 69074).
PY 2018 ...	$11,576,214 (79 FR 66257).
PY 2017 ...	$11,954,631 (79 FR 66255).
PY 2016 ...	$15,137,161 (78 FR 72247).

d. Effects on Medicare Beneficiaries

The ESRD QIP is applicable to outpatient dialysis facilities. Since the program's inception, there is evidence of improved performance on ESRD QIP measures. As we stated in the CY 2017 ESRD PPS final rule, one objective measure we can examine to demonstrate the improved quality of care over time is the improvement of performance standards (81 FR 77873). As the ESRD QIP has refined its measure set and as facilities have gained experience with the measures included in the program, performance standards have generally continued to rise. We view this as evidence that facility performance (and therefore the quality of care provided to Medicare beneficiaries) is objectively improving. To date we have been unable to examine the impact of the ESRD QIP on Medicare beneficiaries including the financial impact of the program or the impact on the health outcomes of beneficiaries. However, in future years we are interested in examining these impacts through the addition of new measures to the program and through the analysis of available data from our existing measures.

e. Alternatives Considered

In an effort to reduce administrative and financial burden on dialysis facilities, we considered the burden associated with each of the measures included in the ESRD QIP to determine whether any of the measures could feasibly be removed from the program at this time. The Ultrafiltration Rate Reporting measure, finalized for inclusion in the program beginning with PY 2020, adds a significant burden to facilities because of the number of data elements required to be entered for each patient treated by the facility. We carefully considered whether this measure could be removed from the program in an effort to reduce burden for facilities, but as we noted in the CY 2017 ESRD PPS final rule, this measure is extremely valuable from a clinical perspective. Studies suggest that higher ultrafiltration rates are associated with higher mortality and higher odds of an ''unstable'' dialysis session, and that rapid rates of fluid removal at dialysis can precipitate events such as intradialytic hypotension, subclinical, yet significantly decreased organ perfusion, and in some cases myocardial damage and heart failure (81 FR 77912). Therefore we continue to believe that, despite the high burden associated with this measure, it is clinically valuable and important to continue including this measure in the ESRD QIP's measure set and that the clinical benefits outweigh the burden associated with the measure.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 15 below, we have prepared an accounting statement showing the classification of the transfers and costs associated with the various provisions of this proposed rule.

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS/SAVINGS

Category	Transfers
ESRD PPS and AKI	
Annualized Monetized Transfers	$80 million.
From Whom to Whom	Federal government to ESRD providers.
Increased Beneficiary Co-insurance Payments	$20 million.
From Whom to Whom	Beneficiaries to ESRD providers.
ESRD QIP for PY 2021	
Annualized Monetized Transfers	$ −29 million.
From Whom to Whom	Federal government to ESRD providers (payment reductions).
Category	Costs
Annualized Monetized ESRD Provider Costs	$0.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

X. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354) (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Approximately 13 percent of ESRD dialysis facilities are considered small entities according to the Small Business Administration's (SBA) size standards, which classifies small businesses as those dialysis facilities having total revenues of less than $38.5 million in any 1 year. Individuals and States are not included in the definitions of a small entity. For more information on SBA's size standards, see the Small Business Administration's Web site at *http://www.sba.gov/content/small-business-size-standards* (Kidney Dialysis Centers are listed as 621492 with a size standard of $38.5 million).

We do not believe ESRD facilities are operated by small government entities such as counties or towns with populations of 50,000 or less, and therefore, they are not enumerated or included in this estimated RFA analysis. Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we estimate that approximately 13 percent of ESRD facilities are small entities as that term is used in the RFA (which includes small businesses, nonprofit organizations, and small governmental jurisdictions). This amount is based on the number of ESRD facilities shown in the ownership category in Table 10. Using the definitions in this ownership category, we consider the 502 facilities that are independent and the 368 facilities that are shown as hospital-based to be small entities. The ESRD facilities that are owned and operated by Large Dialysis Organizations (LDOs) and regional chains would have total revenues of more than $38.5 million in any year when the total revenues for all locations are combined for each business (individual LDO or regional chain), and are not, therefore, included as small entities.

For the ESRD PPS updates proposed in this rule, a hospital-based ESRD facility (as defined by type of ownership, not by type of dialysis facility) is estimated to receive a 1.1 percent increase in payments for CY 2018. An independent facility (as defined by ownership type) is also estimated to receive a 0.8 percent increase in payments for CY 2018.

For AKI dialysis, we are unable to estimate whether patients will go to ESRD facilities, however, we have estimated there is a potential for $2.0 million in payment for AKI dialysis treatments that could potentially be furnished in ESRD facilities.

We estimate that of the 2,551 ESRD facilities expected to receive a payment reduction in the PY 2021 ESRD QIP, 325 are ESRD small entity facilities. We present these findings in Table 11 (''Estimated Distribution of PY 2021 ESRD QIP Payment Reductions'') and Table 13 (''Impact of Proposed QIP Payment Reductions to ESRD Facilities for PY 2021'') above. We estimate that the payment reductions will average approximately $11,375 per facility across the 2,551 facilities receiving a payment reduction, and $13,885 for each small entity facility. Using our estimates of facility performance, we also estimated the impact of payment reductions on ESRD small entity facilities by comparing the total estimated payment reductions for 922 small entity facilities with the aggregate ESRD payments to all small entity facilities. We estimate that there are a total of 922 small entity facilities, and that the aggregate ESRD PPS payments to these facilities would decrease 0.45 percent in PY 2021.

Therefore, the Secretary has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. We solicit comment on the RFA analysis provided.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this proposed rule will have a significant impact on operations of a substantial number of small rural hospitals because most dialysis facilities are freestanding. While there are 132 rural hospital-based dialysis facilities, we do not know how many of them are based at hospitals with fewer than 100 beds. However, overall, the 132 rural hospital-based dialysis facilities will experience an estimated 0.7 percent decrease in payments. As a result, this proposed rule is not estimated to have a

significant impact on small rural hospitals.

Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

XI. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2017, that is approximately $148 million. This proposed rule does not include any mandates that would impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $141 million. Moreover, HHS interprets UMRA as applying only to unfunded mandates. We do not interpret Medicare payment rules as being unfunded mandates, but simply as conditions for the receipt of payments from the federal government for providing services that meet federal standards. This interpretation applies whether the facilities or providers are private, State, local, or Tribal.

XII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or Tribal governments.

XIII. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. This proposed rule is not expected to be subject to the requirements of E.O. 13771 because, if finalized as proposed, it is expected to result in no more than de minimis costs.

XIV. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

XV. Files Available to the Public via the Internet

The Addenda for the annual ESRD PPS proposed and final rulemakings will no longer appear in the **Federal Register**. Instead, the Addenda will be available only through the Internet and is posted on the CMS Web site at *http://www.cms.gov/ESRDPayment/PAY/list.asp* In addition to the Addenda, limited data set (LDS) files are available for purchase at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/EndStageRenalDiseaseSystemFile.html*. Readers who experience any problems accessing the Addenda or LDS files, should contact *ESRDPayment@cms.hhs.gov*.

Dated: June 27, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 27, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–13908 Filed 6–29–17; 4:15 pm]

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FEDERAL REGISTER

Vol. 82 Wednesday,
No. 127 July 5, 2017

Part IV

The President

Federal Register
Vol. 82, No. 127
Wednesday, July 5, 2017

Presidential Documents

Title 3—

The President

Memorandum of June 29, 2017

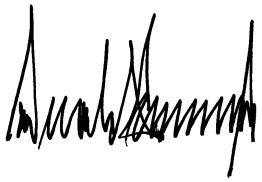
Delegation of Authority Under the Department of State Authorities Act, Fiscal Year 2017

Memorandum for the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby delegate to the Secretary of Homeland Security the authority to submit the report required under section 710 of the Department of State Authorities Act, Fiscal Year 2017 (Public Law 114–323) (the ''Act'').

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 710 of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 29, 2017

[FR Doc. 2017–14252
Filed 7–3–17; 11:15 am]
Billing code 4410–10–P

Presidential Documents

Memorandum of June 29, 2017

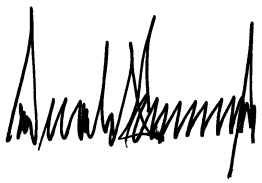
Delegation of Authority Under the National Defense Authorization Act for Fiscal Year 1998

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Commerce the functions and authorities vested in the President under section 1211 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) (the ''Act''), to prepare and submit required reports and justifications to appropriate congressional committees on changes to levels governing prior notification for exports to Computer Tier 3 countries, or removal of a country from Computer Tier 3 status, in the Department of Commerce's Export Administration Regulations.

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 1211 of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 29, 2017

[FR Doc. 2017–14253
Filed 7–3–17; 11:15 am]
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Vol. 82, No. 127

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FEDERAL REGISTER PAGES AND DATE, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 30, 2017

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