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Contents

Federal Register

Vol. 83, No. 4

Friday, January 5, 2018

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 83, No. 4
Friday, January 5, 2018

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–17–0045; SC17–927–1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Processed Pear Committee (Committee) to increase the assessment rate established for the 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton of ''summer/fall'' pears for canning. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated. This rule also makes administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective February 5, 2018.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (hereinafter referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers, handlers, and processors of processed pears grown in Oregon and Washington, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in 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).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable ''summer/fall'' pears for canning beginning July 1, 2017, and to continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton for ''summer/fall'' pears for canning handled under the Order. The assessment rate for ''winter'' and ''other'' pears for processing would remain unchanged at zero.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers, handlers, and processors of pears grown in Oregon and Washington, and a public member. They are familiar with the Committee's needs, and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012–2013 and subsequent fiscal periods, the Committee recommended, and USDA approved, the following three base rates of assessment: (a) $7.00 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'', excluding pears for other methods of processing; (b) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''winter''; and (c) $0.00 per ton for any or all varieties or subvarieties of pears for processing classified as ''other''. The assessment on ''summer/fall'' pears applies only to pears for canning and excludes pears for other methods of processing defined in § 927.15, as pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate structure continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 31, 2017, and unanimously recommended

expenditures of $800,150 for the 2017–2018 fiscal period. In comparison, the previous fiscal period's budgeted expenditures were $855,268. The assessment rate of $8.00 per ton for ''summer/fall'' pears for canning established by this rule is $1.00 higher than the rate currently in effect.

The major expenditures recommended by the Committee for the 2017–2018 fiscal period include $605,606 for promotion and paid advertising, $147,694 for research, $25,000 for administration, and $21,850 for Committee expenses. In comparison, major expenditures for the 2016–2017 fiscal period included $682,130 for promotion and paid advertising, $127,288 for research, $25,000 for administration, and $20,850 for Committee expenses.

Committee members estimate the 2017–2018 crop to be 100,000 tons, which would be less than the 2016–2017 production of 103,000 tons by 3,000 tons. Pear production tends to fluctuate due to the effects of weather, pollination, and tree health. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for ''summer/fall'' pears in order to align assessment income with expenses.

The Committee's recommended assessment rate was derived by dividing the 2017–2018 anticipated expenses by the expected shipments of ''summer/fall'' pears for canning, while also taking into account interest income and the Committee's monetary reserve. Shipments of ''summer/fall'' pears for canning for 2017–2018 fiscal period are estimated at 100,000 tons, which should provide $800,000 (100,000 tons × $8.00 per ton) in assessment income. The projected revenue from handler assessments, together with funds from interest income, should be adequate to cover the 2017–2018 fiscal period budgeted expenses of $800,150.

Section 927.42(a) authorizes the Committee to carry over excess funds into subsequent fiscal periods as a reserve, provided that funds do not exceed approximately one year's operational expenses. The Committee expects its monetary reserve, which was estimated to be $544,990 at the end of the 2016–2017 fiscal period, to remain unchanged during the 2017–2018 fiscal period. The reserve will be kept within the established limits of the Order and will provide the Committee with greater ability to absorb fluctuations in assessment income and expenses into the future.

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

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

Final Regulatory Flexibility Analysis

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

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

There are approximately 1,200 growers of processed pears in the regulated production area and approximately 50 processed pear handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the Noncitrus Fruits and Nuts 2016 Summary issued in June 2017 by the National Agricultural Statistics Service, the total farm-gate value of ''summer/fall'' processed pears grown in Oregon and Washington for 2016 was $27,874,000. Based on the number of ''summer/fall'' processed pear growers in the Oregon and Washington, the average gross revenue for each grower can be estimated at approximately $23,228 ($27,874,000 divided by 1,200). Furthermore, based on Committee records, the Committee has estimated that all of the Oregon-Washington pear handlers currently ship less than $7,500,000 worth of processed pears each on an annual basis. From this information, it is concluded that the majority of growers and handlers of Oregon and Washington processed pears may be classified as small entities.

This rule increases the assessment rate collected from handlers, for the 2017–2018 and subsequent fiscal periods from $7.00 to $8.00 per ton for ''summer/fall'' pears for canning. The Committee unanimously recommended 2017–2018 expenditures of $800,150 and an assessment rate of $8.00 per ton for ''summer/fall'' pears for canning. The assessment rate of $8.00 is $1.00 higher than the rate established for the 2012–2013 fiscal period. Because of the anticipated smaller crop, the Committee recommended to both lower budgeted expenses and increase the assessment rate for ''summer/fall'' pears in order to align assessment income with expenses.

The 2017–2018 estimate of ''summer/fall'' pears for canning is 100,000 tons. At the $8.00 per ton assessment rate, the Committee anticipates that assessment income of approximately $800,000, along with interest income, should be adequate to cover budgeted expenses for the 2017–2018 fiscal period of $800,150. With the recommended assessment rate and budgeted expense level, the Committee does not anticipate utilizing any funds from the monetary reserve. As such, reserve funds are estimated to be $544,990 at the end of the 2017–2018 fiscal period on June 30, 2018. That reserve level is within the maximum permitted by the Order of approximately one fiscal period's operational expenses (§ 927.42(a)).

The major expenditures recommended by the Committee for the 2017–2018 fiscal period include $605,606 for promotion and paid advertising; $147,694 for research; $25,000 for administration; and $21,850 for Committee expenses. In comparison, major expenditures for the 2016–2017 fiscal period included $682,130 for promotion and paid advertising; $127,288 for research; $25,000 for administration; and $20,850 for Committee expenses.

The Committee discussed alternatives to this action, including recommending alternative expenditure levels and assessment rates. Although lower assessment rates were considered, none were selected because they would not have generated sufficient income to administer the Order. Similarly, the

Committee did not recommend lower levels of budgeted expenditures than it did because it would have reduced the effectiveness of the program.

A review of historical data and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017–2018 fiscal period could range between $325 and $346 per ton of ''summer/fall'' processed pears. Therefore, the estimated assessment revenue for the 2017–2018 fiscal period, as a percentage of total grower revenue, could range between 2.31 and 2.46 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the Order.

In addition, the Committee's meeting was widely publicized throughout the processed pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 31, 2017, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 (Generic Fruit Crops). No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in **Federal Register** on September 18, 2017 (82 FR 43504). Copies of the proposed rule were emailed to the Committee office. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending October 3, 2017, was provided for interested persons to respond to the proposal.

Three comments were received during the comment period in response to the proposed rule. One comment was generally in support of the proposal. The other two comments, while not expressly opposed to the proposed action, raised concerns regarding the impact that the increased assessment rate would have on growers and consumers.

Specifically, one of the two commenters questioned how the increased assessment rate would affect growers and whether the increased assessment would lead to an increase in farm profits. The commenter also questioned the impact on consumers and if the action would lead to higher canned pear prices. Lastly, the commenter wanted to know when growers and handlers will receive back-pay for the ''summer/fall'' pears for canning that were sold after July 1, 2017, and before the effective date of this final rule. The other commenter was concerned about the impact that the increased assessment rate would have on small growers.

USDA considered the comments submitted and reached the following conclusions. First, marketing orders assess handlers, not growers. As such, growers will not be directly impacted by this action. However, as mentioned previously in this rule, some of the additional costs to handlers as a result of this action may be passed on to growers. Nevertheless, USDA believes that such additional costs would be offset by the economic benefits derived by the operation of the Order. Any impact of this action on growers would not affect small growers more than large growers.

Additionally, as mentioned previously in this rule, assessments upon processed pear handlers are used by the Committee to fund the reasonable and necessary expenses of the Order. Section 927.15 authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Assessments are not considered additional payments for sold product. Therefore, growers and handlers will not receive back-pay for previously sold ''summer/fall'' pears for canning.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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

This final rule also makes administrative revisions to the subpart headings of the regulations.

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

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart A—[Amended]

■ 2. Designate the subpart labeled ''Order Regulating Handling'' as subpart A.

Subpart B—Administrative Provisions

■ 3. Designate the subpart labeled ''Rules and Regulations'' as subpart B and revise the heading as shown above.

■ 4. Amend § 927.237 by revising the introductory text and paragraph (a) to read as follows:

§ 927.237 Processed pear assessment rate.

On and after July 1, 2017, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $8.00 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: December 29, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–28505 Filed 1–4–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–17–0040; SC17–959–1 FR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the South Texas Onion Committee (Committee) to increase the assessment rate established for the 2017–18 and subsequent fiscal periods from $0.05 to $0.065 per 50-pound equivalent of onions handled under the Marketing Order (Order). The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 5, 2018.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Richard.Lower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (hereinafter referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of onions operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in 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).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Marketing Order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on August 1, 2017, and continue until amended, suspended, or terminated.

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

This rule increases the assessment rate established for the 2017–18 and subsequent fiscal periods from $0.05 to $0.065 per 50-pound equivalent of onions handled.

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

For the 2015–16 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 7, 2017, and unanimously recommended 2017–18 expenditures of $149,807, the same as budgeted last fiscal year, and an assessment rate of $0.065 per 50-pound equivalent of onions. The assessment rate of $0.065 is $0.015 higher than the rate currently in effect. The Committee recommended the increase so assessments would be sufficient to cover the Committee's anticipated expenditures while providing additional funds to help replenish the Committee's reserve fund, which has been depleted due to declines in production. With the Committee's recommended $0.015 increase and estimated shipments of approximately three million 50-pound equivalents, assessment income should be approximately $195,000.

The major expenditures recommended by the Committee for the 2017–18 fiscal year include $50,000 for compliance, $37,050 for administrative, and $32,942 for management costs. Budgeted expenses for these items were the same in 2016–17.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas onions, and the level of funds in reserve. As mentioned earlier, onion shipments for the year are estimated at three million 50-pound equivalents, which should provide $195,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. The Committee currently has no money in reserves.

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2017–18 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the Marketing Order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South Texas onions during the 2015–16 season was approximately $12.30 per 50-pound equivalent. According to Committee data, total shipments were approximately three million 50-pound equivalents. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of producers would have annual receipts of less than $750,000. The average handler price for South Texas onions during the 2015–16 season was approximately $14.05 per 50-pound equivalent. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of less than $7,500,000. Thus, the majority of South Texas onion producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2017–18 and subsequent fiscal periods from $0.05 to $0.065 per 50-pound equivalent of Texas onions. The Committee unanimously recommended 2017–18 expenditures of $149,807 and an assessment rate of $0.065 per 50-pound equivalent. The assessment rate of $0.065 is $0.015 higher than the 2016–17 rate. The quantity of assessable onions for the 2017–18 fiscal period is estimated at three million 50-pound equivalents. Thus, the $0.065 rate should provide $195,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2017–18 year include $50,000 for compliance, $37,050 for administrative, and $32,942 for management. Budgeted expenses for these items were the same in 2016–17.

With the 2017–18 crop estimated to be three million 50-pound equivalents, the current assessment rate would be sufficient to cover the Committee's anticipated expenditures but would not provide any additional monies to help replenish the Committee's reserve fund, which has been depleted due to declines in production. The Committee considered the proposed expenses and the state of the reserve fund and recommended the assessment increase. With the Committee's recommended $0.015 increase, assessment income should be approximately $195,000 and be adequate to cover anticipated expenses and add funds to the authorized reserve.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various activities to the South Texas onion industry. The Committee ultimately determined that 2017–18 expenditures of $149,807 were appropriate, and the recommended assessment rate would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017–18 season could be approximately $12.00 per 50-pound equivalent of Texas onions. Therefore, the estimated assessment revenue for the 2017–18 fiscal period as a percentage of total grower revenue could be about 0.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the Marketing Order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 (Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on September 19, 2017 (82 FR 43713). Copies of the proposed rule were also mailed or sent via facsimile to all South Texas onion handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day

comment period ending October 19, 2017, was provided for interested persons to respond to the proposal.

Two comments were received in support of the rule. One commenter stated the increase would help the fair trade movement. The other commenter stated the increase in the assessment rate was reasonable to cover the increased costs of goods and services. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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

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

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart A—[Amended]

■ 2. Designate the subpart labeled ''Order Regulating Handling'' as subpart A.

Subpart B—Administrative Provisions

■ 3. Designate the subpart labeled ''Rules and Regulations'' as subpart B and revise the heading as shown above.

Subparts ''Assessment Rates'' and ''Handling Regulations''—[Amended]

■ 4. Remove the subpart headings ''Assessment Rates'' and ''Handling Regulations''.

■ 5. Transfer §§ 959.237 and 959.322 to subpart B.

■ 6. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2017, an assessment rate of $0.065 per 50-pound equivalent is established for South Texas onions.

Dated: December 29, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–28504 Filed 1–4–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1183; Product Identifier 2013–NM–022–AD; Amendment 39–19147; AD 2018–01–06]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. This AD was prompted by a report of an engine multiple fan blade release event. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 22, 2018.

We must receive comments on this AD by February 20, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2017–1183; 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 regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0010, January 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F28 Mark 0070 and 0100. The MCAI states:

> Recently, a Tay 620 engine multiple fan blade release event occurred on an F28 Mk. 0070 aeroplane. As a result, low energy fan blade fragments exited the engine by penetrating the engine nose cowl. Although the investigation is still on-going, one of the findings was an incorrect adjustment of the (emergency) maximum reverse thrust stop. Consequently, attempts to select (emergency) maximum reverse thrust led to stabilized engine operation in an N1 speed range that, in combination with other contributing factors, may have caused high fan blade stresses due to flutter.
>
> This condition, if not detected and corrected, could lead to further cases of multiple fan blade release, possibly resulting in damage to the aeroplane and injury to occupants.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection to verify the correct adjustment of the (emergency) maximum reverse thrust stop position and, if an incorrect adjustment is found, accomplishment of applicable corrective action(s). To support the investigation, this [EASA] AD also requires that all findings are reported to Fokker Services.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1183.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) stated above, we find that good cause exists for making this amendment effective in less than 30 days.

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–2017–1183; Product Identifier 2013–NM–022–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 based on those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition, and doing the actions specified in those instructions. Based on the actions specified in the MCAI AD, we are providing the following cost estimates for an affected airplane that is placed on the U.S. Register in the future:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection	6 work-hours × $85 per hour = $510	$0	$510
Reporting	1 work-hour × $85 per hour = $85	0	85

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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):

2018–01–06 Fokker Services B.V.: Amendment 39–19147; Docket No. FAA–2017–1183; Product Identifier 2013–NM–022–AD.

(a) Effective Date

This AD becomes effective January 22, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category, equipped with Rolls-Royce Tay 620–15 engines.

(d) Subject

Air Transport Association (ATA) of America Code 76, Engine controls.

(e) Reason

This AD was prompted by a report of an engine multiple fan blade release event. We are issuing this AD to detect and correct an incorrect adjustment of the (emergency) maximum reverse thrust stop, which could result in engine fan blade release causing injury to occupants, damage to the airplane, and consequent uncontrollability of the airplane.

(f) Compliance

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

(g) Required Action(s)

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the actions at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2013–0010, January 14, 2013.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Section, Transport Standards Branch, 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 Section, send it to the attention of the person identified in paragraph (i)(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.

(i) Related Information

(1) Refer to MCAI EASA AD 2013–0010, January 14, 2013 for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1183.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149.

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on December 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28486 Filed 1–4–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1182; Product Identifier 2013–NM–093–AD; Amendment 39–19146; AD 2018–01–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage frames are subject to widespread fatigue damage (WFD). We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 22, 2018.

We must receive comments on this AD by February 20, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2017–1182; 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 regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions

necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0102, dated May 2, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

> From service experience, it was concluded that the fuselage frames, which act as back-up structure for the hook latch fitting brackets of the large cargo doors, are sensitive to fatigue cracking. To ensure the continued structural integrity with respect to fatigue, a repetitive inspection was included in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness under tasks 533026–00–03 and 533026–01–03.
>
> Since those tasks were implemented, it was determined, as part of a re-evaluation for Widespread Fatigue Damage, that the current repetitive fatigue inspections in the ALS do not provide a sufficient level of protection against fatigue-induced cracks.
>
> This condition, if not corrected, would affect the structural integrity of the centre fuselage.
>
> For the reasons described above, this [EASA] AD requires modification of the affected fuselage frames.
>
> Post-modification inspections will be included in a revision to the ALS, which will likely be the subject of further [EASA] AD action.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1182.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) stated above, we find that good cause exists for making this amendment effective in less than 30 days.

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–2017–1182; Product Identifier 2013–NM–093–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 based on those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition, and doing the actions specified in those instructions. Based on the actions specified in the MCAI AD, we are providing the following cost estimates for an affected airplane that is placed on the U.S. Register in the future:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	102 work-hours × $85 per hour = $8,670	$18,600	$27,270

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

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):

2018–01–05 Fokker Services B.V.: Amendment 39–19146; Docket No. FAA–2017–1182; Product Identifier 2013–NM–093–AD.

(a) Effective Date

This AD becomes effective January 22, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category, having serial numbers 11268 through 11283 inclusive, 11286, 11289, 11291, 11293, 11295, 11300, 11303, 11306, 11308, 11310, 11312 through 11314 inclusive, 11316, 11318, 11321, 11323 through 11335 inclusive, 11337, 11338, 11340, 11345, 11349, 11352 through 11361 inclusive, 11365 through 11367 inclusive, 11369, 11370, 11372, 11373, 11376 through 11380 inclusive, 11387, 11388, 11391, 11395, 11397, 11399, 11404, 11405, 11407, 11411 through 11419 inclusive, 11425 through 11428 inclusive, 11432, 11435 through 11439 inclusive, 11444 through 11450 inclusive, 11456 through 11460 inclusive, 11464 through 11469 inclusive. and 11475 through 11585 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage frames are subject to widespread fatigue damage (WFD). We are issuing this AD to prevent cracking of the center fuselage, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Action(s)

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the actions at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2013–0102, dated May 2, 2013.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Section, Transport Standards Branch, 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 Section, send it to the attention of the person identified in paragraph (i)(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.

(i) Related Information

(1) Refer to MCAI EASA AD 2013–0102, dated May 2, 2013, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1182.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149.

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on December 26, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–28487 Filed 1–4–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 11, 16, 106, 110, 111, 112, 114, 117, 120, 123, 129, 179, 211, and 507

[Docket No. FDA–2017–N–6908]

Policy Regarding Certain Entities Subject to the Current Good Manufacturing Practice and Preventive Controls, Produce Safety, and/or Foreign Supplier Verification Programs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''Policy Regarding Certain Entities Subject to the Current Good Manufacturing Practice and Preventive Controls, Produce Safety, and/or Foreign Supplier Verification Programs.'' This guidance states agency compliance policy regarding certain entities and/or activities related to the ''farm'' definition, written assurances, food contact substances, and human food by-products for use as animal food.

DATES: The announcement of the guidance is published in the **Federal Register** on January 5, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–6908 for ''Enforcement Policy for Certain Entities Subject to Requirements in the CGMP and Preventive Controls Regulations, the Produce Safety Regulation, and the Foreign Supplier Verification Programs Regulation.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–300), 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Human Food: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jeanette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246.

For questions relating to Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: Rebecca Buckner, Office of Foods and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4576.

For questions relating to Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Samir Assar, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1636.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Policy Regarding Certain Entities Subject to the Current Good Manufacturing Practice and Preventive Controls, Produce Safety, and/or Foreign Supplier Verification Programs: Guidance for Industry.'' We are issuing the guidance consistent with our good guidance practices regulation (21 CFR 10.115). In accordance with § 10.115(g)(2), we are implementing the guidance immediately because we have determined that prior public participation is not feasible or appropriate. Although the guidance document is immediately in effect, FDA will accept comments at any time. The guidance is not subject to Executive Order 12866.

This guidance document concerns four of the seven foundational rules that we have established in Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (FSMA; Pub. L. 111–353). The four final rules are entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (published in the **Federal Register** of September 17, 2015, 80 FR 55908) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm334115.htm*) (part 117); ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals'' (published in the **Federal Register** of September 17, 2015, 80 FR 51670) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm366510.htm*) (part 507); ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (published in the **Federal Register** of November 27, 2015, 80 FR 74226) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm361902.htm*) (FSVP regulation); and ''Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' (published in the **Federal Register** of November 27, 2015, 80 FR 74354) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm334114.htm*) (produce safety regulation or part 112).

In the guidance, we state compliance policy for certain entities and/or activities under these four rules:

• Specific facilities subject to part 117 and/or part 507:

○ Certain facilities that would qualify as secondary activities farms except for the ownership of the facility (*e.g.,* certain produce packinghouses and warehouses, egg packinghouses, grain elevators, cotton ginners);

○ Facilities that would qualify as farms if they did not color RACs;

○ Facilities that would qualify as secondary activities farms except that they pack, package, label, and/or hold processed food that consists only of RACs that have been dried/dehydrated to create a distinct commodity (*e.g.,* dried beans);

○ Farm mixed-type facilities making silage food for animals;

• Written assurances under the ''customer provisions'' in part 117 and related rules;

• Importation of food contact substances under the FSVP regulation; and

• Certain human food by-products for use as animal food, with regard to certain requirements under part 507.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 117 have been approved under OMB control number 0910–0751. The collections of information in part 507 have been approved under OMB control number 0910–0789. The collections of information in 21 CFR part 1, subpart L have been approved under OMB control number 0910–0752. The collections of information in part 112 have been approved under OMB control number 0910–0816.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 2, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00050 Filed 1–4–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA–2017–N–6539]

Medical Devices; Radiology Devices; Classification of the Absorbable Perirectal Spacer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the absorbable perirectal spacer into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the absorbable perirectal spacer's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective January 5, 2018. The classification was applicable on April 1, 2015.

FOR FURTHER INFORMATION CONTACT: Steven Tjoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4550, Silver Spring, MD 20993–0002, 301–796–5866, *steven.tjoe@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the absorbable perirectal spacer as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 1, 2014, Augmenix, Inc. submitted a request for De Novo classification of the SpaceOAR System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 1, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 892.5725. We have named the generic type of device absorbable perirectal spacer, and it is identified as a device composed of biodegradable material that temporarily positions the anterior rectal wall away from the prostate during radiotherapy for prostate cancer with the intent to reduce the radiation dose delivered to the anterior rectum. The absorbable spacer maintains space for the entire course of prostate radiotherapy treatment and is completely absorbed by the patient's body over time.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—ABSORBABLE PERIRECTAL SPACER RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures/21 CFR section
Device functional failure or the device is unable to maintain space stability during the course of radiation therapy.	Special Controls (1)(i) (21 CFR 892.5725(b)(1)(i)), (1)(ii) (21 CFR 892.5725(b)(1)(ii)), (1)(iv) (21 CFR 892.5725(b)(1)(iv)), and (1)(vi) (21 CFR 892.5725(b)(1)(vi)).
Prolonged or delayed procedure	Special Controls (1)(iii) (21 CFR 892.5725(b)(1)(iii)), (1)(iv) (21 CFR 892.5725(b)(1)(iv)), (2) (21 CFR 892.5725(b)(2)), and (3) (21 CFR 892.5725(b)(3)).
Needle penetration and/or spacer material injection into bloodstream, bladder, prostate, rectal wall, rectum, or urethra.	Special Controls (1)(iv) (21 CFR 892.5725(b)(1)(iv)), (2) (21 CFR 892.5725(b)(2)), and (3) (21 CFR 892.5725(b)(3)).
Incomplete absorption	Special Controls (1)(iii) (21 CFR 892.5725(b)(1)(iii)), (1)(iv) (21 CFR 892.5725(b)(1)(iv)), and (1)(vii) (21 CFR 892.5725(b)(1)(vii)).
Infection or local tissue inflammatory reactions	Special Controls (1)(iv) (21 CFR 892.5725(b)(1)(iv)), (1)(v) (21 CFR 892.5725(b)(1)(v)), (1)(vi) (21 CFR 892.5725(b)(1)(vi)), (1)(vii) (21 CFR 892.5725(b)(1)(vii)), and (3) (21 CFR 892.5725(b)(3)).
Pain or discomfort associated with spacer	Special Controls (1)(iv) (21 CFR 892.5725(b)(1)(iv)) and (3) (21 CFR 892.5725(b)(3)).
Urine retention, bleeding, rectal mucosal damage, ulcers, necrosis, constipation, or rectal urgency.	Special Controls (1)(iii) (21 CFR 892.5725(b)(1)(iii)), (1)(iv) (21 CFR 892.5725(b)(1)(iv)), (1)(vii) (21 CFR 892.5725(b)(1)(vii)), (2) (21 CFR 892.5725(b)(2)), and (3) (21 CFR 892.5725(b)(3)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in part 820 have been approved under OMB control number 0910–0073; and, the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 892.5725 to subpart F to read as follows:

§ 892.5725 Absorbable perirectal spacer.

(a) *Identification.* An absorbable perirectal spacer is composed of biodegradable material that temporarily positions the anterior rectal wall away from the prostate during radiotherapy for prostate cancer with the intent to

reduce the radiation dose delivered to the anterior rectum. The absorbable spacer maintains space for the entire course of prostate radiotherapy treatment and is completely absorbed by the patient's body over time.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The premarket notification submission must include methodology and results of the following non-clinical and clinical performance testing. For all clinical investigations used to support premarket notification submissions for this type of device, line listings of the study data must be provided.

(i) Performance bench testing must demonstrate appropriate perirectal space creation and maintenance for the duration of prostate radiotherapy.

(ii) Performance bench testing must demonstrate that therapeutic radiation levels do not alter the performance of the device.

(iii) Performance in vivo testing must demonstrate appropriate deployment of spacer as indicated in the accompanying labeling, and demonstrate appropriate expansion and absorption characteristics in a clinically relevant environment.

(iv) Clinical study must demonstrate appropriate spacer stability and lack of migration for the entire course of radiotherapy, complete absorption, and lack of long term toxicity.

(v) Sterility testing must demonstrate the sterility of the device and the effects of the sterilization process on the physical characteristics of the spacer.

(vi) Shelf-life testing must demonstrate the stability of the physical characteristics of the spacer throughout the shelf-life as indicated in the accompanying labeling.

(vii) The device must be demonstrated to be biocompatible.

(2) The risk management activities performed as part of the manufacturer's § 820.30 design controls must document an appropriate end user initial training program which will be offered as part of efforts to mitigate the risk of failure to correctly operate the device, including, but not limited to, documentation of an appropriate end user initial training program on the proper spacer deployment technique.

(3) The device labeling must include the following:

(i) A detailed summary of reported or observed complications related to the use of the device;

(ii) Appropriate warnings;

(iii) Detailed instructions for system preparations and detailed implant procedure instructions; and

(iv) An expiration date that is supported by performance data as specified in paragraph (b)(1)(vi) of this section.

Dated: January 2, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00051 Filed 1–4–18; 8:45 am]

BILLING CODE 4164–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 300–70, 301–10, 301–70, Appendix C to Chapter 301, Parts 302–1, 302–4, and 304–2

[FTR Amendment 2017–01; FTR Case 2017–301; Docket No. 2017–0004, Sequence 1]

RIN 3090–AJ89

Federal Travel Regulation; Transportation Network Companies (TNC), Innovative Mobility Technology Companies, and Reporting Travel, Transportation, and Relocation Costs

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Direct final rule; request for comments.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by adding terms and definitions for ''innovative mobility technology company'', ''taxi'', and ''transportation network company (TNC)'', and designating ''innovative mobility technology company'' and ''TNC'' as forms of special conveyances. In addition, this direct final rule adds a due date by which agencies must report travel, transportation, and relocation costs and data to GSA. These actions are required by the Modernizing Government Travel Act.

DATES: This rule is effective on February 20, 2018 without further notice, unless GSA receives adverse comments by February 5, 2018.

GSA will consider whether these comments are significant enough to publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. Please see **SUPPLEMENTARY INFORMATION** for more information on significant adverse comments.

ADDRESSES: Submit comments identified by FTR Case 2017–301 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FTR Case 2017–301'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FTR Case 2017–301'' and follow the instructions provided on the screen. Please include your name, company name (if any), and ''FTR Case 2017–301'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), Attn: Lois Mandell, 1800 F Street NW, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FTR Case 2017–301'' in all correspondence related to this case.

All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Government-wide Policy, at 202–219–2349 or *cy.greenidge@gsa.gov.* For more information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405, 202–501–4755. Please cite FTR Case 2017–301.

SUPPLEMENTARY INFORMATION:

A. Public Participation

GSA is publishing this direct final rule without a prior proposed rule because this is a noncontroversial action required by statute, and GSA anticipates no significant adverse comments.

A significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, GSA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. GSA notes that comments that are frivolous, insubstantial, or outside the scope of the rule would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional

change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (*e.g.,* where a rule deletes several unrelated regulations), GSA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. For further information about commenting on this rule, please see the **ADDRESSES** section of this document.

B. Authority for This Rulemaking

With the passage of Public Law (Pub. L.) 115–34, the Modernizing Government Travel Act (May 16, 2017), the Administrator of General Services was mandated to prescribe regulations to provide for reimbursement for the use of a TNC or innovative mobility technology company by Federal employees traveling on official business under title 5, chapter 57, subchapter I of the United States Code. In addition, Public Law 115–34 establishes a due date by which all Federal agencies must report travel, transportation, and relocation costs and data to the Administrator of General Services.

C. Background

In recent years, a new kind of transportation service provider, known as TNCs, have begun operating across the United States and the world. TNCs connect paying passengers with drivers for hire via websites and mobile applications (''apps''). TNCs are a form of special conveyance under the Federal Travel Regulation (FTR), and when permissible under local laws and ordinances, may be an efficient and cost-effective alternative to taxis or rental cars.

D. Discussion of Changes and Expected Impact of This Rule

As a result of Public Law 115–34, this direct final rule amends the FTR by defining the terms ''innovative mobility technology company'' and ''TNC'' and listing them as special conveyances. This direct final rule also defines the word ''taxi'' and will treat ''taxi'' and ''TNC'' as synonymous in that both are used to transport passengers for hire. These changes will explicitly authorize Federal agencies to reimburse employees for use of TNCs and innovative mobility technology companies while on official travel. The changes from this final direct rule will bring the Federal Travel Regulation more in line with modern transportation service trends and practices.

Additionally, this direct final rule adds the statutory due date for agency reporting of travel, transportation, and relocation costs and data to GSA. GSA will consolidate this data and report an analysis of it to the Office of Management and Budget (OMB) and Congress. GSA will work with stakeholders to evaluate this data and the travel programs to shape future policy decisions. These decisions may incorporate new technologies to enable efficient travel by Federal employees. Finally, all data submitted to GSA based upon changes in this direct final rule will be transparent, published, and available for public use along with the summarized data that is delivered to OMB and Congress.

E. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This direct final rule is a significant regulatory action and is subject to review by OIRA under section 6(b) of Executive Order 12866. GSA has further determined that this direct final rule is not a major rule under 5 U.S.C. 804.

F. Executive Order 13771

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel.

G. Regulatory Flexibility Act

This direct final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This direct final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because this direct final rule involves matters relating to agency management or personnel.

H. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

I. Small Business Regulatory Enforcement Fairness Act

This direct final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801. This direct final rule is not a major rule under 5 U.S.C. 804.

List of Subjects

41 CFR Part 300–3

Government employees, Travel and transportation expenses.

41 CFR Part 300–70

Government employees, Reporting and recordkeeping requirements, Travel and transportation expenses.

41 CFR Part 301–10

Common carriers, Government employees, Government property, Travel and transportation expenses.

41 CFR Part 301–70

Administrative practice and procedure, Government employees, Individuals with disabilities, Travel and transportation expenses.

41 CFR Appendix C to Chapter 301

Government employees, Travel and transportation expenses.

41 CFR Parts 302–1, 302–4, and 304–2

Government employees, Travel and transportation expenses.

Dated: December 22, 2017.

Emily W. Murphy,

Administrator.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 300–3, 300–70, 301–10, 301–70, Appendix C to Chapter 301, parts 302–1, 302–4, and 304–2 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, Revised May 22, 1992.

■ 2. Amend § 300–3.1 by adding, in alphabetical order, the definitions ''Innovative mobility technology company'', ''Taxi'', and ''Transportation network company (TNC)''. The additions read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Innovative mobility technology company—An organization, including a

corporation, limited liability company, partnership, sole proprietorship, or any other entity, that applies technology to expand and enhance available transportation choices, better manages demand for transportation services, or provides alternatives to driving alone.

Note to definition of "*Innovative mobility technology company*": Certain jurisdictions may have limits or prohibit the operation or use of innovative mobility technology companies. Federal employees are expected to follow all laws, including those related to innovative mobility technology companies, as well as choose the most cost effective level of service.

* * * * *

Taxi—A hired car that carries passengers to a destination for a fare based upon the distance traveled, time spent in the vehicle, other metric, or a flat rate to and from one point to another (*e.g.,* a flat rate from downtown to a common carrier terminal).

* * * * *

Transportation network company (TNC)—A corporation, partnership, sole proprietorship, or other entity, that uses a digital network to connect riders to drivers affiliated with the entity in order for the driver to transport the rider using a vehicle owned, leased, or otherwise authorized for use by the driver to a point chosen by the rider; and does not include a shared-expense carpool or vanpool arrangement that is not intended to generate profit for the driver. **Note**: Certain jurisdictions may have limits or prohibit the operation or use of TNCs. Federal employees are expected to follow all laws, including those related to TNCs, as well as choose the most cost effective level of service.

* * * * *

PART 300–70—AGENCY REPORTING REQUIREMENTS

■ 3. The authority citation for part 300–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 4. Amend part 300–70 by revising the heading of Subpart A to read as follows:

Subpart A—Requirement To Report Agency Payments for Employee Travel, Transportation, and Relocation

■ 5. Amend § 300–70.1 by revising the section heading and the introductory text to read as follows:

§ 300–70.1 What are the requirements for reporting payments for employee travel, transportation, and relocation?

Agencies (as defined in § 301–1.1 of this subtitle) must report total travel and transportation payments, including relocation, no later than November 30 of each year to GSA, as described in this part:

* * * * *

■ 6. Revise § 300–70.2 through § 300–70.4 to read as follows:

§ 300–70.2 What information must we report?

Information on agency reporting requirements is available at *www.gsa.gov/trip.*

§ 300–70.3 When must we report pertinent travel, transportation, and relocation data?

All travel, transportation, and relocation data are due by the date prescribed in § 300–70.1. The head of your agency is responsible for ensuring this data is complete and accurate before submitting it to GSA.

§ 300–70.4 Must we report travel, transportation, and relocation data if we have major suborganizations?

Your report must cover all components of your agency.

PART 301–10—TRANSPORTATION EXPENSES

■ 7. The authority citation for part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118; Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

§ 301–10.3 [Amended]

■ 8. Amend § 301–10.3 by removing from paragraph (d) ''taxi'' and adding ''taxi, TNC, innovative mobility technology company,'' in its place.

■ 9. Revise § 301–10.308 to read as follows:

§ 301–10.308 What will I be reimbursed if I park my POV at a common carrier terminal while I am away from my official station?

Your agency may reimburse your parking fee as an allowable transportation expense not to exceed the cost of one of the following to/from the terminal as determined by your agency:

(a) The cost of a taxi.

(b) The cost of a TNC fare.

(c) The cost of using an innovative mobility technology company.

§ 301–10.400 [Amended]

■ 10. Amend § 301–10.400 by removing from paragraph (a) ''Taxicabs'' and adding ''Taxis, TNCs, or innovative mobility technology companies'' in its place.

■ 11. Revise the undesignated center heading that appears immediately before § 301–10.420 to read as follows:

Taxis, TNCs, Innovative Mobility Technology Companies, Shuttle Services, or Other Courtesy Transportation

■ 12. Amend § 301–10.420 by—

■ a. Revising the section heading;

■ b. Removing from the introductory text of paragraph (a) ''taxi,'' and adding ''taxi, TNC, innovative mobility technology company,'' in its place; and

■ c. Removing from the introductory text of paragraph (c) ''taxicabs'' and adding ''taxis, TNCs, or innovative mobility technology companies'' in its place.

The revision reads as follows:

§ 301–10.420 When may I use a taxi, TNC, innovative mobility technology company, shuttle service or other courtesy transportation?

* * * * *

■ 13. Amend § 301–10.421 by revising the section heading to read as follows:

§ 301–10.421 How much will my agency reimburse me for a tip to a taxi, TNC, innovative mobility technology company, shuttle service, courtesy transportation driver, or valet parking attendant?

* * * * *

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 14. The authority citation for part 301–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note); OMB Circular No. A–126, revised May 22, 1992; OMB Circular No. A–123, Appendix B, revised January 15, 2009.

§ 301–70.102 [Amended]

■ 15. Amend § 301–70.102 by removing from paragraph (f) ''commercially rented vehicles'' and adding ''taxis, TNCs, innovative mobility technology companies, or commercially rented vehicles'' in its place.

Appendix C to Chapter 301 [Amended]

■ 16. Amend Appendix C to Chapter 301 by—

■ a. Removing from the second table, under the heading ''Commercial Transportation Information'', in the second column under the heading ''Data elements'', in the last entry, the word ''Taxi,'' and adding ''Taxi, TNC, Innovative mobility technology company,'' in its place.

■ b. Removing from the third table, under the heading ''Travel Expense Information'', in the second column

under the heading ''Data Elements'', the words ''Car rental, Taxis, Other'' and adding ''Car rental, Taxi, TNC, Innovative mobility technology company, Other'' in its place.

PART 302–1—GENERAL RULES

■ 17. The authority citation for part 302–1 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§ 302–1.102 [Removed]

■ 18. Remove § 302–1.102.

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

■ 19. The authority citation for part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–4.302 [Amended]

■ 20. Amend § 302–4.302, by removing from paragraph (b), ''taxicab fares'' and adding ''taxi or TNC fares, or the cost of utilizing an innovative mobility technology company,'' in its place.

PART 304–2—DEFINITIONS

■ 21. The authority citation for part 304–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–2.1 [Amended]

■ 22. Amend § 304–2.1, in the definition ''Travel, subsistence, and related expenses (travel expenses)'', in the first sentence, by removing ''taxi fares'' and adding ''taxi or TNC fares, or the cost of utilizing an innovative mobility technology company,'' in its place.

[FR Doc. 2017–28503 Filed 1–4–18; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2017–0118]

RIN 2126–AC03

Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes reductions in the annual registration fees collected from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the registration years 2018, 2019 and subsequent years. For the 2018 registration year, the fees will be reduced below the current level by approximately 9.10% to ensure that fee revenues do not exceed the statutory maximum, and to account for the excess funds held in the depository. For the 2019 registration year and subsequent years, the fees will be reduced below the current level by approximately 4.55% to ensure the fee revenues in that and future years do not exceed the statutory maximum.

DATES: This final rule is effective January 5, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Folsom, Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or by telephone at 202–385–2405.

SUPPLEMENTARY INFORMATION:

This Final Rule is organized as follows:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2017–0118 to read background documents, go to *https://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its rulemaking process. DOT posts any comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.*

II. Abbreviations and Acronyms

The following is a list of abbreviations used in this document

Board Unified Carrier Registration Board of Directors
CAA Clean Air Act
CE Categorical Exclusion
FMCSA Federal Motor Carrier Safety Administration
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act
SBTC Small Business in Transportation Coalition
SSRS Single State Registration System
Texas DMV Texas Department of Motor Vehicles
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UCR Plan Unified Carrier Registration Plan.

III. Executive Summary

A. Purpose and Summary of the Major Provisions

The UCR Plan and the 41 States participating in the UCR Agreement establish and collect fees from motor carriers, motor private carriers of

property, brokers, freight forwarders, and leasing companies. The UCR Plan and Agreement are administered by a 15-member board of directors (UCR Board); 14 appointed from the participating States and the industry, plus the Deputy Administrator of FMCSA. Revenues collected are allocated to the participating States and the UCR Plan. The statute sets a statutory maximum amount that the UCR Plan may collect. If annual revenues will exceed the statutory maximum allowed, then the UCR Plan must request adjustments to the fees. 49 U.S.C. 14504a(f)(1)(E). Also, any excess funds held by the UCR Plan after payments are made to the States and for administrative costs are retained in the UCR depository and subsequent fees charged are reduced as required by 49 U.S.C. 14504a(h)(4). Adjustments in the fees are requested by the UCR Plan and approved by FMCSA. These two provisions are the reasons for the two-stage adjustment adopted in this final rule. The final rule provides for a reduction for at least the next two registration years to the annual registration fees established for the Unified Carrier Registration (UCR) Agreement.

The UCR Plan and the participating States collect registration fees for each registration year, which is the same period as the calendar year. Generally, collection begins on October 1st of the previous year, and continues until December 31st of the year following the registration year. For example, collection for the 2016 registration year began on October 1, 2015, and will end on December 31, 2017. Currently the UCR Plan estimates that by December 31, 2017, total revenues will exceed the statutory maximum for the 2016 registration year by $5.13 million, or approximately 4.55%. This is the first time that revenues collected will exceed the statutory maximum. Therefore, in March 2017, the UCR Board requested that FMCSA adjust the fees in a two-stage process. For the 2018 registration year, with collection beginning on October 1, 2017 and ending December 31, 2019, the fees would be reduced below the current level by approximately 9.10% to ensure that fee revenues do not exceed the statutory maximum, and to reduce the excess funds held in the depository. For the 2019 registration year, with collection beginning on October 1, 2018 and ending December 31, 2020, the fees would be reduced below the current level by approximately 4.55% to ensure the fee revenues in that and future years do not exceed the statutory maximum.

B. Benefits and Costs

The changes imposed by this final rule reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the participating States. Fees are considered by the Office of Management and Budget (OMB) Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. Therefore, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

The UCR Plan's formal recommendation requested the Secretary (delegated to FMCSA) to set annual fees beginning in the registration year 2018, as required by 49 U.S.C. 14504a(d)(7). FMCSA issued a notice of proposed rulemaking proposing to reduce the fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies based on an analysis of current collections and past trends. The Agency reviewed the UCR Plan's formal recommendation prior to issuing the NPRM and concluded that the UCR Plan's projection of the total revenues received for registration year 2016 may have been understated. 49 U.S.C. 14504a(d)(7). This understatement would result in slightly higher fees for certain brackets. FMCSA conducted its own analysis, adjusted the methodology for projecting collections through the remainder of 2017, and updated the fees accordingly. The total amount targeted for collection by the UCR Plan will not change as a result of this rule, but the fees paid, or transfers, per affected entity will be slightly reduced from the UCR Plan's original formal recommendation.

IV. Legal Basis for the Rulemaking

This rule adjusts the annual registration fees for the UCR Agreement established by 49 U.S.C. 14504a. The requested fee adjustments are required by 49 U.S.C. 14504a because, for the registration year 2016, the total revenues collected are expected to exceed the total revenue entitlements of $107.78 million distributed to the 41 participating States plus the $5 million established for the administrative costs associated with the UCR Plan and Agreement. The requested adjustments have been submitted by the UCR Plan in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which requires the Board to request an adjustment by the Secretary when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained ''and the fees charged . . . shall be reduced by the Secretary accordingly.''

The Secretary also has broad rulemaking authority in 49 U.S.C. 13301(a) to carry out 49 U.S.C. 14504a, which is part of 49 U.S.C. subtitle IV, part B. Authority to administer these statutory provisions has been delegated to the FMCSA Administrator by 49 CFR 1.87(a)(2) and (7).

The APA also allows agencies to make rules effective immediately with good cause, instead of requiring publication 30 days prior to the effective date. 5 U.S.C. 553(d)(3). FMCSA finds there is good cause for this rule to be effective immediately so that the UCR Plan and the participating States may begin collection of fees immediately for the registration year that will begin on January 1, 2018. The immediate commencement of fee collection will avoid further delay in distributing revenues to the participating States.

V. Statutory Requirements for the UCR Fees

A. Legislative History

The Unified Carrier Registration Plan is ''the organization . . . responsible for developing, implementing, and administering the unified carrier registration agreement.'' 49 U.S.C. 14504a(a)(9). The UCR Agreement developed by the UCR Plan is the ''interstate agreement . . . governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies . . . .'' 49 U.S.C. 14504a(a)(8).

The legislative history of 49 U.S.C. 14504a indicates that the purpose of the UCR Plan and Agreement is both to replace the Single State Registration System (SSRS) for registration of interstate motor carrier entities with the States and to ''ensure that States don't lose current revenues derived from SSRS'' (S. Rep. 109–120, at 2 (2005)). The statute provides for a 15-member Board of Directors for the UCR Plan to be appointed by the Secretary of Transportation. The statute specifies that the UCR Board should consist of one individual (either the FMCSA Deputy Administrator or another Presidential appointee) from the Department of Transportation; four directors from among the chief

administrative officers of the State agencies responsible for administering the UCR Agreement (one from each of the four FMCSA service areas); five directors from among the professional staffs of State agencies responsible for administering the UCR Agreement, to be nominated by the National Conference of State Transportation Specialists; and five directors from the motor carrier industry, of whom at least one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket. 49 U.S.C. 14504a(d)(1)(B).

The UCR Plan and the participating States are authorized by 49 U.S.C. 14504a(f) to establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The current annual fees charged are set out in 49 CFR 367.30. These fees were adopted by FMCSA in 2010 after a rulemaking proceeding that considered the substantial increase in fees over the fees initially established in 2007. Compare Fees for the Unified Registration Plan and Agreement, 75 FR 21993 (Apr. 27, 2010) (''2010 Final Rule'') with Fees for Unified Registration Plan and Agreement, 72 FR 48585 (Aug. 24, 2007) (''2007 Final Rule'').

For carriers and freight forwarders, the fees vary according to the size of the vehicle fleets, as required by 49 U.S.C. 14504a(f). The fees collected are allocated to the States and the UCR Plan in accordance with 49 U.S.C. 14504a(h). Participating States submit a plan demonstrating that an amount equivalent to the revenues received are used for motor carrier safety programs, enforcement or the administration of the UCR Plan and Agreement. 49 U.S.C. 14504a(e)(1)(B).

B. Fee Requirements

The statute specifies that fees are to be based upon the recommendation of the UCR Board, 49 U.S.C. 14504a(d)(7)(A). In recommending the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and the Agency shall consider the following factors:

- Administrative costs associated with the UCR Plan and Agreement;
- Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the Board; and
- Provisions governing fees in 49 U.S.C. 14504a(f)(1).

The Secretary, if asked by the Board, may also adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees assessed under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Plan. That section provides that a State, participating in SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in the year before that enactment. Participating States that also collected intrastate registration fees from interstate motor carrier entities (whether or not they participated in SSRS) are also entitled to receive revenues of this type under the UCR Agreement, in an amount equivalent to the amount received in the previous registration year. The statute also requires that States that did not participate in SSRS previously, but that choose to participate in the UCR Plan, may receive revenues not to exceed $500,000 per year. The Board calculates the amount of revenue that each participating State is entitled to under the UCR Agreement which is then approved by the Secretary.

FMCSA's responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement are guided by the primacy the statute places on the need both to set and to adjust the fees so they ''provide the revenues to which the States are entitled.'' The statute links the requirement that the fees be adjusted ''within a reasonable range'' by both the UCR Plan and FMCSA to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E); see also 49 U.S.C. 14504a(d)(7)(A)(ii)).

Additionally, section 14504a(h)(4) requires FMCSA to reduce the fees for all motor carrier entities in the year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs.

VI. Background

Recommendation From the UCR Plan

On March 14, 2017, the Board voted unanimously to submit a recommendation to the Secretary for a reduction of registration fees collected by the UCR Plan for 2018, with an adjustment in fees in 2019 and subsequent years. The recommendation was submitted to the Secretary on March 22, 2017, and a copy has been placed in the docket.[1] The requested fee adjustments are required by 49 U.S.C. 14504a because, for the registration year 2016, the total revenues collected have, for the first time, exceeded the total revenue entitlements of $107.78 million distributed to the 41 participating States, plus the $5 million established for ''the administrative costs associated with the unified carrier registration plan and agreement.'' 49 U.S.C. 14504a((d)(7)(A)(i)). The maximum revenue entitlements for each of the 41 participating States, totaling $107.78 million and already established in accordance with 49 U.S.C. 14504a(g), are set out in the table attached to the March 22, 2017 recommendation. These revenue entitlements for the States are the same as those that were approved in the 2010 final rule (75 FR at 22008–9 and Table 5) that have continued in effect for each of the eight registration years from 2010 to 2017, inclusive.

As indicated in the analysis attached to the March 22, 2017 letter, as of the end of February 2017, the UCR Plan had already collected $4.15 million more than the statutory maximum of $112.78 million for 2016. The UCR Plan estimates that by the end of 2017, total revenues will exceed the statutory maximum, for 2016, by $5.13 million, or approximately 4.55%. The excess revenues collected will be held in a depository maintained by the Plan as required by 49 U.S.C. 14504a(h)(4).

Because of the collection of excess revenue, the UCR Plan requested adjustments to the fees in accordance with 49 U.S.C. 14504a(f)(1)(E)(ii), which requires the Board to request an adjustment when the annual revenues exceed the maximum allowed. In addition, 49 U.S.C. 14504a(h)(4) states that any excess funds held by the UCR Plan in its depository, after payments to the States and for administrative costs, shall be retained ''and the fees charged . . . shall be reduced by the Secretary accordingly.'' These two provisions are distinct, and are the basis for the two-stage adjustment in the recommendation.

The requested adjustments would occur in two stages; an initial reduction below the current level by approximately 9.10% for 2018 to account for the excess revenues already

[1] The UCR recommendation submitted March 22, 2017 including the letter request from the Board and all related tables is located in docket FMCSA–2017–0118 at: *www.regulations.gov.*

collected in 2016, followed by a reduction below the current level by approximately 4.55% for 2019 and subsequent years to keep future revenues below the statutory maximum. The adjusted fees recommended for each bracket for 2018 and 2019 are shown in the analysis attached to the March 22 letter. The UCR Plan requested that the reduction for the 2018 registration year be adopted not later than August 31, 2017, to enable the participating States and the UCR Plan to reflect the new fees when fee collection for the 2018 registration year that began on October 1, 2017.

VII. Discussion of the Comments

FMCSA received 7 comments on the NPRM. Five commenters disagreed with some aspect or another of the NPRM, including the Texas Department of Motor Vehicles (Texas DMV), Owner-Operator Independent Drivers Association (OOIDA), Small Business in Transportation Coalition (SBTC) and two anonymous commenters. Two additional anonymous commenters agreed with the NPRM favoring the fee reduction. The major comments included a request to have the NPRM withdrawn, as well as a recommendation to have the UCR Board submit a new recommendation to implement the fee reduction with a new 2019 fee schedule and a request for assurance that the State of Texas will be able to collect all of the revenues to which it is entitled. Also comments addressed recommendations for changing the current design of the fee structure. Additional concerns included the absence of consistent enforcement of penalties, and the difficulty for small businesses to realize benefits from the mandated fees paid due to the existing structure and administration of the program.

A. Small Business in Transportation Coalition

Comments

The Small Business in Transportation Coalition (SBTC) contended that the NPRM published September 21, 2017, is unlawful and should be withdrawn. It contends that while the UCR Plan notified the FMCSA of its recommendation for a reduction in the fees on March 22, 2017, the Agency failed to set the new fees within the 90-day period specified in the statute.

As a result of the lack of action within 90 days, SBTC asserts that on September 14, 2017, the Board held an ''improperly noticed secret meeting'' that changed the date for commencement of the registration and payment of fees from October 1, 2017, to November 1, 2017. SBTC claims that this action by the UCR Plan thereby shortens the period for carriers to comply with the UCR requirement, even though the affected registrants would then be paying a reduced fee.

After the close of the comment period, SBTC and a broker, 12 Percent Logistics, Inc., brought a civil action in the United States District Court for the District of Columbia (Civil Action No 1:17–cv–2000) in which they sought injunctive relief to set aside the UCR Plan's postponement of the date for commencement of registration and fee payment. On October 18, the court denied the request to set aside the postponement of the registration period but ordered the UCR Board and the operator of its on-line registration system (the Indiana Department of Revenue) to post the draft minutes of a September 14, 2017, meeting of the UCR Board on their respective websites and to make an announcement of these postings at the Board's October 26, 2017, meeting. The draft minutes of the Board's September 14, 2017 meeting were posted on websites *www.ucrplan.org* and *www.ucr.in.gov/ucrHome.html* on October 20, 2017 and October 24, 2017, respectively. The Board announced the availability of the draft minutes on these websites at its October 26, 2017 meeting.

FMCSA Response

SBTC cites no authority for its contention that FMCSA and the Secretary no longer have the authority to set new fees for 2018 because the statutory deadline for such action of 90 days in 49 U.S.C. 14504a(d)(7) has not been met. SBTC's contention that FMCSA ''has missed its lawful opportunity'' to set the fees based on the UCR Plan's March 22 recommendation is legally incorrect.

SBTC cannot point to any explicit statement in the provisions of 49 U.S.C. 14504a that bars action by FMCSA when the 90-day period is not met, because there is none. In addition, there are important public rights at stake that would be affected if FMCSA lost its power to act on the UCR Plan's recommendation, as contended by SBTC. The fee reduction recommended by the UCR Plan, proposed for implementation in the NPRM and now adopted in this final rule, is necessary to comply with two important provisions in the statute that require compliance with the statutory maximum amount of revenues to be collected by the UCR Plan and the participating States. 49 U.S.C. 14504a(f)(1)(E)(ii) and (h)(4). Instead of allowing SBTC's members and the rest of the motor carrier industry to benefit as soon as possible from the reduction in fees based on excess revenues that the UCR Plan has already recognized were collected for registration year 2016, SBTC's request would have the harmful effect of delaying the benefits of the reduction until 2019.

FMCSA and the Secretary have not lost the power to take action to implement the reduction in fees for 2018 and later years because the Agency did not complete such action within 90 days. SBTC's request for withdrawal of this rulemaking is therefore denied.

B. Revenue Entitlement for the State of Texas

Comments

The Texas Department of Motor Vehicles requested that FMCSA ''take the necessary steps to ensure that the state of Texas receives the full amount of UCR revenues to which Texas is entitled under 49 U.S.C. 14504a(g)(1).'' Texas DMV stated that after the State's move from the SSRS to the UCR Plan and Agreement, it had not received the amount of funds from the UCR Plan and Agreement to which it believes it is entitled. Since 2007, under the revenue entitlement calculations submitted by the UCR Plan to the Secretary and FMCSA, the revenue entitlement for Texas has been set at $2,718,628.06. 72 FR at 48588 and Table 1 (2007 Final Rule) and 75 FR at 22008–9 and Table 5 (2010 Final Rule). Texas DMV now claims that the State's revenue entitlement for every year since 2007 should have been set at $5,765,819.93, representing a difference of $3,047,191.87 for each registration year. In total, Texas DMV claims that the State did not receive revenues of $33,519,110.57 for the years 2007 to 2017, inclusive.

Texas DMV now asks that the Agency approve a revised annual revenue entitlement for Texas of $5,765,819.93, starting with the year 2018, and approve the ''shortage'' amount of $33,519,110.57 for the years 2007–2017. Most significantly, for the purpose of this rulemaking, Texas DMV asks the Agency to revise the current fees established in 49 CFR part 367 ''as necessary to ensure enough UCR fees are collected to cover the full amount to which Texas is entitled for years 2007 through 2017 and beyond.''

FMCSA Response

The actions by the Agency that Texas DMV requests would not only require declining to implement the reduction in fees requested by the UCR Plan, but

taking two additional steps: (1) Revising the approved revenue entitlement for Texas; and (2) increasing the fees by an uncertain but clearly substantial amount, not only to provide revenues for the new entitlement, but also to cover eleven years of a claimed ''shortage.'' FMCSA does not have authority under the provisions of 49 U.S.C. 14504a to take either of these additional actions. Both the approval of a revised revenue entitlement for Texas and an adjustment of the fees to cover both Texas' claimed revised entitlement and the ''shortage'' would require that a recommendation be made to the Secretary by the Board. Because no such request has been made for either action, FMCSA is without authority to take the action requested by Texas. The fees are based on the only set of revenue entitlements submitted by the UCR Plan to the Secretary, which were approved in the 2010 final rule and which includes a revenue entitlement of $2,718,628.06 for Texas.

The statute has provisions in 49 U.S.C. 14504a(g)(1) to (3) governing how the revenue entitlement for each participating State should be determined. Texas DMV asserts that the Texas revenue entitlement should be determined under paragraph (g)(1), based on the revenues Texas received during the calendar year 2004 under SSRS. But the Texas DMV does not explain how or why its revenue entitlement under this provision should be $5,765,819.93 for each year under the UCR Agreement, instead of the $2,718,628.06 that has been in effect since 2007. It also does not explain why it has waited more than 11 years to assert that it is entitled to a larger revenue entitlement.

Even if Texas DMV is correct that the larger amount is appropriate under the statute, it has failed to submit its claim to the Board. The statute provides that the amount of revenues generated under the UCR Agreement to which a State is entitled shall be calculated by the Board and approved by the Secretary. 49 U.S.C. 14504a(g)(4). A revised calculation of the Texas revenue entitlement, which shows that it complies with the statutory requirements in section 14504a(g)(1), has not been submitted to the Board for its review and confirmation, and it has not been submitted by the Board to FMCSA for approval. FMCSA is without authority to consider or approve a revised revenue entitlement for Texas unless and until a revised calculation is submitted by the UCR Plan's board of directors.

The statute has similar provisions governing adjustments in the fees. The Board may ask FMCSA to adjust the fees within a reasonable range on an annual basis if the revenues derived from the fees are insufficient to provide the revenues to which the States are entitled. 49 U.S.C. 14504a(f)(1)(E)(i). No request has been made by the Board to adjust the fees in order to provide any revenues to satisfy the claim by Texas for a larger annual revenue entitlement or to provide funds to make up the ''shortage'' Texas has supposedly incurred for 11 years. The only request before the Agency from the Board is the reduction in fees submitted on March 22, 2017 after a unanimous vote of the UCR Board. FMCSA is without authority to consider or approve any adjustment in the fees (other than the one submitted on March 22) unless and until the Board makes a recommendation that would reflect the effects of the revised revenue entitlement claimed by Texas.

C. Change Design of Fee Structure

Comments

OOIDA stated that single-truck operators or small fleet carriers represented approximately 95% of the motor carrier industry and that the current fee structure is burdensome and costly to its members due to the limited resources they have in comparison to larger competitors. OOIDA stated that the inequalities are particularly noted between and within the arbitrary payment brackets in effect and proposed that a standard flat fee per vehicle should be considered to reduce inequity amongst small, medium, and large fleets. An anonymous commenter felt that the current structure appears punitive to companies who are on the lower end of the tiered brackets that are currently in effect. The commenter cited the following examples in the current fee structure in which by going from 100 power units to 101 power units or even 1000 power units to 1001 power units companies would incur enormous percentage fee increases for a single power unit. The commenter recommended that the fee should be charged on a per unit basis. The per unit fee recommendation was also supported by another anonymous commenter.

FMCSA Response

Three commenters suggested changing the UCR fees to a ''per-unit'' (*i.e.* on a per vehicle) basis. FMCSA has not evaluated the merits of this suggestion because it is not an alternative available to the Agency. The statute requires that the Board set the fee structure based on 4 to 6 brackets depending on the size of the fleet. 49 U.S.C. 14504a(f)(1)(C). Implementing the commenters' ''per unit'' suggestion would require a statutory amendment. Unless and until that occurs, neither the Board nor FMCSA has authority to change the current fee structure using brackets.

D. Other Concerns

Comments

OOIDA expressed other specific concerns regarding the proposed rule including the fact that smaller carriers lack the resources to assist payment processing and submission of paperwork. OOIDA also expressed concerns regarding the lack of consistency among states in their use of the fees for enforcement or administration purposes. Overall, OOIDA felt that the existing organization and administration of the UCR program makes it difficult for small-business truckers and owner-operators to recognize any benefits from the mandated fees they are expected to pay. OOIDA recommended a federal audit of the UCR plan to review how states are actually spending UCR revenues.

FMCSA Response

OOIDA's concerns described above are outside of the scope of this rulemaking.

VIII. International Impacts

Motor carriers and other entities involved in interstate and foreign transportation in the United States that do not have a principal office in the United States, are nonetheless subject to the fees for the UCR Plan. They are required to designate a participating State as a base State and pay the appropriate fees to that State. 49 U.S.C. 14504a(a)(2)(B)(ii) and (f)(4).

IX. Section-by-Section Analysis

Under this final rule, the provisions of 49 CFR 367.30 are revised to apply to registration years 2010 to 2017, inclusive. A new 49 CFR 367.40 establishes the reduced fees for registration year 2018. A second new section, 49 CFR 367.50, establishes fees for 2019, which will remain in effect in subsequent registration years unless and until revised in the future.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action

under section 3(f) of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; (44 FR 11034), February 26, 1979).

The changes imposed by this final rule adjust the registration fees paid by motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies to the UCR Plan and the participating States. Fees are considered by OMB Circular A–4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition, transfers are not considered in the monetization of societal costs and benefits of rulemakings.

This rule establishes adjustments in the annual registration fees for the UCR Plan and Agreement. The total amount targeted for collection by the UCR Plan will not change as a result of this rule, but the fees paid, or transfers, per affected entity will be reduced. The primary entities affected by this rule are the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Because the total amount collected will continue to be the statutory maximum, the participating States will not be impacted by this rule. The primary impact of this rule will be a reduction in fees paid by individual motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The reduction will range from approximately $7 to $6,700 per entity in the first year, and from approximately $3 to $3,400 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771 requires that for ''every one new [E.O. 13771 regulatory action] 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.'' [2] Implementation guidance for E.O. 13771 issued by the Office of Management and Budget (OMB) on April 5, 2017, defines two different types of E.O. 13771 actions: An E.O. 13771 deregulatory action, and an E.O. 13771 regulatory action.[3]

An E.O. 13771 deregulatory action is defined as ''an action that has been finalized and has total costs less than zero.'' As this is a zero total cost rulemaking and consequently does not have total costs less than zero, it therefore is not an E.O. 13771 deregulatory action.

An E.O. 13771 regulatory action is defined as:

(i) a significant action as defined in Section 3(f) of E.O. 12866 that has been finalized, and that imposes total costs greater than zero; or

(ii) a significant guidance document *(e.g.,* significant interpretive guidance) reviewed by Office of Information and Regulatory Affairs under the procedures of E.O. 12866 that has been finalized and that imposes total costs greater than zero.

The Agency action, in this case a rulemaking, must meet both the significance and the total cost criteria to be considered an E.O. 13771 regulatory action. This rulemaking is not a significant regulatory action as defined in Section 3(f) of E.O. 12866, and therefore does not meet the significance criterion for being an E.O. 13771 regulatory action. Consequently, this rulemaking is not an E.O. 13771 regulatory action and no further action under E.O. 13771 is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.[4] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule will directly affect the participating States, motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. Under the standards of the RFA, as amended by the SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under Section 601(5) of the RFA, both because State government is not included among the various levels of government listed in Section 601(5), and because, even if this were the case, no State nor the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under Section 601(5) of the RFA.

The Small Business Administration (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule would have an impact on a significant number of small entities, FMCSA examined the 2012 Economic Census [5] data for two different industries; truck transportation (Subsector 484) and transit and ground transportation (Subsector 485). According to the 2012 Economic Census, approximately 99 percent of truck transportation firms, and approximately 97 percent of transit and ground transportation firms, had annual revenue less than the SBA revenue threshold of $27.5 million and $15 million, respectively. Therefore, FMCSA has determined that this rule will impact a substantial number of small entities.

However, FMCSA has determined that this rule will not have a significant impact on the affected entities. The

[2] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. February 3, 2017.

[3] Executive Office of the President. Office of Management and Budget. *Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs.''* Memorandum M–17–21. April 5, 2017.

[4] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Available at: *https://www.sba.gov/advocacy/regulatory-flexibility-act* (accessed February 13, 2017).

[5] U.S. Census Bureau, *2012 US Economic Census.* Available at: *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table* (accessed April 27th, 2017).

effect of this rule will be to reduce the registration fee motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay. The reduction will range from approximately $7 to $6,700 per entity, in the first year, and from approximately $3 to $3,400 per entity in subsequent years, depending on the number of vehicles owned and/or operated by the affected entities. FMCSA asserts that the reduction in fees will be entirely beneficial to these entities, and will not have a significant impact on the affected small entities. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Gerald Folsom, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $156 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this final rule will not result in any such expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule, nor are there any revisions to existing, approved collections of information. Therefore, the PRA does not apply to this final rule.

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. As detailed above, the UCR Board of Directors includes substantial State representation. The States have already had opportunity for input through their representatives. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

H. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that this rule is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.(h). The Categorical Exclusion (CE) in paragraph 6.(h) covers regulations and actions taken pursuant to the regulations implementing procedures to collect fees that will be charged for motor carrier registrations. The content in this rule is covered by this CE and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov*.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this final rule in accordance with the E.O. 12898, and has determined that no environmental justice issue is associated with this final rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 367

Insurance, Intergovernmental relations, Motor carriers, Surety bonds.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration is amending title 49 CFR chapter III, part 367 as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. The authority citation for part 367 continues to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

■ 2. Revise § 367.30 to read as follows:

§ 367.30 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2010 and ending in 2017.

TABLE 1 TO § 367.30—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR EACH REGISTRATION YEAR 2010–2017

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$76	$76
B2	3–5	227	
B3	6–20	452	
B4	21–100	1,576	
B5	101–1,000	7,511	
B6	1,001 and above	73,346	

■ 3. Add new §§ 367.40 and 367.50 to subpart B to read as follows:

§ 367.40 Fees under the Unified Carrier Registration Plan and Agreement for registration year 2018.

TABLE 1 TO § 367.40—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2018

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$69	$69
B2	3–5	206	
B3	6–20	410	
B4	21–100	1,431	
B5	101–1,000	6,820	
B6	1,001 and above	66,597	

§ 367.50 Fees under the Unified Carrier Registration Plan and Agreement for registration years beginning in 2019.

TABLE 1 TO § 367.50—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2019 AND EACH SUBSEQUENT REGISTRATION YEAR THEREAFTER

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$73	$73
B2	3–5	217	
B3	6–20	431	
B4	21–100	1,503	
B5	101–1,000	7,165	
B6	1,001 and above	69,971	

Issued under authority delegated in 49 CFR 1.87 on: December 29, 2017.

Cathy F. Gautreaux,

Deputy Administrator.

[FR Doc. 2017–28509 Filed 1–2–18; 4:15 pm]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 83, No. 4
Friday, January 5, 2018

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

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB85

Definition of ''Employer'' Under Section 3(5) of ERISA—Association Health Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed regulation under Title I of the Employee Retirement Income Security Act (ERISA) that would broaden the criteria under ERISA section 3(5) for determining when employers may join together in an employer group or association that is treated as the ''employer'' sponsor of a single multiple-employer ''employee welfare benefit plan'' and ''group health plan'' as those terms are defined in Title I of ERISA. By treating the association itself as the employer sponsor of a single plan, the regulation would facilitate the adoption and administration of such arrangements. The regulation would modify the definition of ''employer,'' in part, by creating a more flexible ''commonality of interest'' test for the employer members than the Department of Labor (DOL or Department) had adopted in sub-regulatory interpretive rulings under ERISA section 3(5). At the same time, the regulation would continue to distinguish employment-based plans, the focal point of Title I of ERISA, from mere commercial insurance programs and administrative service arrangements marketed to employers. For purposes of Title I of ERISA, the proposal would also permit working owners of an incorporated or unincorporated trade or business, including partners in a partnership, to elect to act as employers for purposes of participating in an employer group or association sponsoring a health plan and also to be treated as employees with respect to a trade, business or partnership for purposes of being covered by the employer group's or association's health plan. The goal of the rulemaking is to expand access to affordable health coverage, especially among small employers and self-employed individuals, by removing undue restrictions on the establishment and maintenance of association health plans under ERISA. The proposed regulation would affect such association health plans, health coverage under these health plans, groups and associations of employers sponsoring such plans, participants and beneficiaries with health coverage under these plans, health insurance issuers, and purchasers of health insurance not purchased through association health plans.

DATES: Comments are due on or before March 6, 2018.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB85, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Definition of Employer—Small Business Health Plans RIN 1210–AB85.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged to submit only by one electronic method and not to submit paper copies. Comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records and are posted on the internet as received, and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693–8335 or Janet K. Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

A. Overview

Since the Affordable Care Act [1] (or ACA) was enacted, many consumers have continued to face rising costs of coverage and a lack of quality affordable healthcare options. On October 12, 2017, President Trump issued Executive Order 13813, ''Promoting Healthcare Choice and Competition Across the United States,'' stating that ''[i]t shall be the policy of the executive branch, to the extent consistent with law, to facilitate the purchase of insurance across State lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people.'' The Executive Order states that the Administration will prioritize three areas for improvement in the near term: association health plans (AHPs), short-term, limited-duration insurance, and health reimbursement arrangements (HRAs). With regard to AHPs, the Executive Order directs the Secretary of Labor, within 60 days of the date of the Executive Order, to consider proposing regulations or revising guidance, consistent with law, to expand access to health coverage by allowing more employers to form AHPs. The Executive Order further notes that ''[l]arge employers often are able to obtain better terms on health insurance for their employees than small employers

[1] The Patient Protection and Affordable Care Act (Pub. L. 111–148), enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), enacted on March 30, 2010, collectively are known as the Affordable Care Act or ACA. The Affordable Care Act reorganizes, amends, and adds to the provisions in part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. In addition, the Affordable Care Act adds section 715(a)(1) to ERISA and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act (PHS Act sections 2701 through 2728) into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans.

because of their larger pools of insurable individuals across which they can spread risk and administrative costs. Expanding access to AHPs can help small businesses overcome this competitive disadvantage by allowing them to group together to self-insure or purchase large group health insurance. Expanding access to AHPs will also allow more small businesses to avoid many of the PPACA's costly requirements. Expanding access to AHPs would provide more affordable health insurance options to many Americans, including hourly wage earners, farmers, and the employees of small businesses and entrepreneurs that fuel economic growth.''

The Executive Order directs the Secretary, to the extent permitted by law and as supported by sound policy, to consider expanding the conditions that satisfy the commonality-of-interest requirements under existing DOL advisory opinions interpreting the definition of an ''employer'' under section 3(5) of ERISA. The Executive Order also directs the Department to consider ways to promote AHP formation on the basis of common geography or industry.

AHPs are an innovative option for expanding access to employer-sponsored coverage (especially for small businesses). AHPs permit employers to band together to purchase health coverage. Supporters contend that AHPs can help reduce the cost of health coverage by giving groups of employers increased bargaining power vis-à-vis hospitals, doctors, and pharmacy benefit providers, and creating new economies of scale, administrative efficiencies, and a more efficient allocation of plan responsibilities (as the AHP effectively transfers the obligation to provide and administer benefit programs from participating employers, who may have little expertise in these matters, to the AHP sponsor).

Under current federal law and regulations, health insurance coverage offered or provided through an employer trade association, chamber of commerce, or similar organization, to individuals and small employers is generally regulated under the same federal standards that apply to insurance coverage sold by health insurance issuers directly to these individuals and small employers, unless the coverage sponsored by the association constitutes a single ERISA-covered plan. As a practical matter, however, under existing sub-regulatory guidance, the Department treats few associations as sponsoring single ERISA-covered plans. Instead the associations' arrangements for health coverage are generally treated as a collection of plans, separately sponsored by each of the individual employers.

Whether, and the extent to which, various regulatory requirements apply to association health coverage, like other coverage, depends on whether the coverage is treated as individual or group coverage and, in turn, whether the group coverage is small or large group coverage. Generally, unless the arrangement sponsored by the association constitutes a single ERISA-covered plan, the current regulatory framework disregards the association in determining whether the coverage obtained by any particular participating individual or employer is treated as individual, small group, or large group market coverage. Instead, the test for determining the type of coverage focuses on whether the coverage is offered to individuals or employers. And, if the coverage is offered to employers, whether the group coverage is large group or small group coverage depends on the number of people employed by the particular employer obtaining the coverage. Thus, unless the association plan is treated as a single ERISA-covered plan, the size of each individual employer participating in the association determines whether that employer's coverage is subject to the small group or large group market rules (or the individual market rules, if the participant is an individual and not an employer that can establish and maintain a group health plan), and it is possible that different association members will have coverage that is subject to the individual market, small group market, and/or large group market rules, as determined by each member's circumstances.

There are circumstances, however, even under the Department's existing sub-regulatory guidance, when employer association health coverage is treated as being provided through a plan, fund, or program that is a single ERISA-covered employee welfare benefit plan. In general, this occurs when the employer association, rather than the individual employer member, is considered the sponsoring ''employer'' that establishes and maintains the plan. In such cases, the health coverage program is, accordingly, treated as a single multiple employer plan for purposes of Title I of ERISA.[2] Since these AHPs tend to cover many employees, the coverage, in such cases, tends to be regulated as large group coverage for ACA purposes.

The current criteria that an employer association must satisfy to sponsor a single multiple employer plan, however, are narrow. Thus, the Department often has found that the association is not the sponsor of a multiple employer plan; instead, each employer that gets its health coverage through the association is considered to have established a separate, single-employer health benefit plan covering its own employees. In such cases, the association, much like an insurance company, is simply the mechanism by which each individual employer obtains benefits and administrative services for its own separate plan. Therefore, to the extent the separate employers are small employers, each of their plans are subject to regulation as small group coverage for ACA purposes. Similarly, in the case of sole proprietors and other business owners that do not employ other individuals, the coverage they obtain for themselves through an association is treated as individual coverage. As a result of this regulatory structure today, AHPs currently face a complex and costly compliance environment that may simultaneously subject the AHP to large group, small group, and individual market regulation, which undermines one of the core purposes and advantages of forming or joining an AHP. Accordingly, the Department is proposing to amend the definition of employer in section 3(5) of ERISA to change this state of affairs.

B. Purpose of Regulatory Action

Executive Order 13813 directs the Secretary to consider issuing regulations that will expand access to more affordable health coverage by permitting more employers to form AHPs, and the Secretary has been specifically directed to consider expanding the conditions that a group of employers must satisfy to act as an ''employer'' under ERISA for purposes of sponsoring a group health plan by reconsidering the ''commonality-of-interest'' requirements under current Departmental guidance. This proposed regulation would define the term ''group or association of employers'' under ERISA section 3(5) more broadly, in a way that would allow more freedom for businesses to join together in organizations that could offer group health coverage regulated under the ACA as large group coverage.

[2] The Department's prior guidance under ERISA section 3(5) addressed health benefits and other benefits under section 3(1) of ERISA. However, these proposed rules are limited to health benefits. Accordingly, for simplicity, these proposed regulations often refer only to health benefits, including when discussing the application of prior Departmental guidance.

A principal objective of the proposed rule is to expand employer and employee access to more affordable, high-quality coverage. The Department proposes changes in its approach to the ERISA section 3(5) definition of employer under ERISA. The ACA has caused individual and small group insurance premiums to increase significantly. In part as a result of this increase, health insurance available in the large group market is now typically less expensive, all else equal, than coverage in the small group or individual market. In addition, treating health coverage sponsored by an employer association as a single group health plan may promote economies of scale, administrative efficiencies, and transfer plan maintenance responsibilities from participating employers to the association. The proposed definition includes conditions, including nondiscrimination provisions, designed to continue to draw a line between the sorts of employer-sponsored arrangements that are regulated by ERISA on the one hand, and commercial insurance-type arrangements that lack the requisite connection to the employment relationship on the other, as well as to prevent potential adverse impacts on the individual and small group markets.

It is important to note that the proposed regulation would not preclude associations that do not meet the conditions of the proposal from offering health coverage in accordance with existing ACA requirements and applicable State insurance regulation. *See, e.g.,* CMS Insurance Standards Bulletin, Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations (September 1, 2011) and Department of Labor Publication, Multiple Employer Welfare Arrangements Under ERISA, A Guide to Federal and State Regulation (available at *www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf*). In particular, health insurance coverage sold to, or through, associations that do not sponsor their own separate ERISA-covered employee benefit plans would not need to alter their operations if the proposed rule becomes final. Rather than constricting the offering of such non-plan multiple employer welfare arrangements (MEWAs), the proposed rule would simply make more widely available another vehicle —the AHP— for the employer associations to provide group health coverage to their employer-members, thus making available advantages distinct from non-plan MEWAs, including, often, access to the large group market.

C. Background

1. Section 3(5) of ERISA and the Current Standards for an Association To Be Treated as the ''Employer'' Sponsor of an Employee Welfare Benefit Plan That Is a Group Health Plan.

The term ''employee welfare benefit plan'' is defined in section 3(1) of ERISA to include, among other arrangements, ''any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . .'' Thus, in order to be an employee welfare benefit plan, a plan must, among other criteria, be established or maintained by an employer, an employee organization, or both. The term ''employer'' is defined in section 3(5) of ERISA as ''. . . any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.'' Thus, ERISA defines the term ''employer'' to include the ''direct'' (or common law) employer of the covered employees or ''any other person acting indirectly in the interest of'' the common law employer.[3] Although there are various ways in which groups of employers can participate in a single plan, for example because they share substantial common ownership (*e.g.,* a controlled group of corporations), the Department has taken the view, on the basis of the definitional provisions of ERISA, as well as the overall structure of Title I of ERISA, that, in the absence of the involvement of an employee organization, a single ''multiple employer'' plan may also exist where a cognizable group or association of employers, acting in the interest of its employer members, establishes a benefit program for the employees of member employers and exercises control over the amendment process, plan termination, and other similar functions on behalf of these members with respect to the plan and any trust established under the program. DOL guidance generally refers to these entities as ''bona fide'' employer groups or associations. *See, e.g.,* Advisory Opinions 2008–07A, 2003–17A and 2001–04A. *See also* Advisory Opinion 96–25A (if an employer adopts for its employees a program of benefits sponsored by an employer group or association that does not itself constitute an ''employer,'' such an adopting employer may have established a separate, single-employer benefit plan covered by Title I of ERISA).

In distinguishing employer groups or associations that can act as an ERISA section 3(5) employer in sponsoring a multiple employer plan from those that cannot, the touchstone has long been whether the group or association has a sufficiently close economic or representational nexus to the employers and employees that participate in the plan. This ''commonality of interest'' requirement distinguishes bona fide groups or associations of employers who provide coverage to their employees and the families of their employees from arrangements that more closely resemble State-regulated private insurance offered to the market at large. *See, e.g.,* Advisory Opinion 94–07A; Advisory Opinion 2001–04A. Courts have also held that there must be some cohesive relationship between the provider of benefits and the recipient of benefits under the plan so that the entity that maintains the plan and the individuals who benefit from the plan are tied by a common economic or representational interest. *Wisconsin Educ. Assn. Ins. Trust* v. *Iowa State Bd. of Public Instruction,* 804 F.2d 1059, 1064 (8th Cir. 1986). *See also MD Physicians & Associates, Inc.* v. *State Bd. of Ins.,* 957 F.2d 178 (5th Cir. 1992), *cert. denied,* 506 U.S. 861 (1992); *National Business Assn. Trust* v. *Morgan,* 770 F. Supp. 1169 (W.D. Ky. 1991).

DOL advisory opinions and court decisions have applied a facts-and-circumstances approach to determining whether there is a sufficient common economic or representational interest or genuine organizational relationship for there to be a bona fide employer group or association capable of sponsoring an ERISA plan on behalf of its employer members. This analysis has focused on three broad sets of issues, in particular: (1) Whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits; (2) whether the employers share some

[3] For more information on common law employment relationships, *see Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318 (1992).

commonality and genuine organizational relationship unrelated to the provision of benefits; and (3) whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and substance. The first two issues have tended to merge, depending on the facts of a particular case. When an entity meets each of these requirements, the Department has concluded that it is appropriate to treat the entity as an ''employer'' within the meaning of section 3(5) of ERISA, rather than merely as a commercial insurance-type arrangement that lacks the requisite connection to the employment relationship.

This approach has ensured that the Department's regulation of employee benefit plans is focused on employment-based arrangements, as contemplated by ERISA's text, but neither the Department's previous advisory opinions, nor relevant court cases, have ever held that the Department is foreclosed from adopting a more flexible test in a regulation, or from departing from the three particular factors set forth above in determining whether a group or association can be treated as acting as an ''employer'' or ''indirectly in the interest of an employer,'' for purposes of the statutory definition. These definitional terms are ambiguous as applied to a group or association in the context of ERISA section 3(5), and the statute does not specifically refer to or impose the particular historical elements of the ''commonality'' test on the determination of whether a group or association acts as the ''employer'' sponsor of an ERISA-covered plan within the scope of ERISA section 3(5). Accordingly, that determination may be more broadly guided by ERISA's purposes and appropriate policy considerations, including the need to expand access to healthcare and to respond to statutory changes and changing market dynamics.

2. Federal and State Regulation of Multiple Employer Welfare Arrangements

For many years, promoters of health coverage arrangements and others have established and operated MEWAs, also described as ''multiple employer trusts'' or ''METs,'' as vehicles for marketing health and welfare benefits to employers for their employees.[4] Some MEWAs have provided quality health coverage to their members' employees with less administrative overhead. But others have failed to pay promised health benefits to sick and injured workers while diverting, to the pockets of fraudsters, employer and employee contributions from their intended purpose of funding benefits.

Congress has enacted reforms to curb MEWA abuse. Prior to 1983, a number of States attempted to subject MEWAs to State insurance law requirements but were frustrated in their regulatory and enforcement efforts by MEWA-promoter claims of ERISA-plan status and federal preemption. Recognizing that it was both appropriate and necessary for States to be able to establish, apply, and enforce State insurance laws with respect to MEWAs, Congress amended ERISA in 1983 to provide an exception to ERISA's broad preemption provisions for the regulation of MEWAs under State insurance laws. In general, under the 1983 amendments, if a MEWA that is also an employee welfare benefit plan (an uncommon situation under prior guidance, as explained elsewhere) is not fully insured, then under section 514(b)(6)(A)(ii) of ERISA, any State law that regulates insurance may apply to the MEWA to the extent that such State law is not inconsistent with ERISA. For example, a State law could regulate solvency, benefit levels, or rating. Similarly, States could require registration and claims data reporting of MEWA operators. If, on the other hand, a MEWA is also an employee welfare benefit plan and is fully insured, ERISA section 514(b)(6)(A)(i) of ERISA provides that State laws that regulate the maintenance of specified contribution and reserve levels (and that enforce those standards) may apply to the MEWA, but other State non-insurance laws are preempted. ERISA section 514(b)(6)(D) provides, in turn, that a MEWA will be considered fully insured for purposes of section 514(b)(6) only if all of the benefits offered or provided under the MEWA are guaranteed under a contract or policy of insurance issued by an insurance company that is ''qualified to conduct business in a State.'' With respect to other non-insurance State laws, AHPs under the proposal would be subject to the same general ERISA preemption standards that apply to other ERISA-covered employee benefit plans.

The Affordable Care Act established a multipronged approach to MEWA abuses. Improvements in reporting requirements, together with stronger enforcement tools, are designed to reduce MEWA fraud and abuse. These include expanded reporting and required registration for MEWAs with the Department prior to operating in a State. The additional information facilitates joint State and Federal efforts to prevent harm and take enforcement action. The Affordable Care Act also strengthened enforcement by giving the Secretary of Labor authority to issue a cease and desist order when a MEWA engages in fraudulent or other abusive conduct and issue a summary seizure order when a MEWA is in a financially hazardous condition.[5]

3. Impact of ERISA Definition of Employer on Health Insurance Markets

Federal and State healthcare laws, including the Affordable Care Act, include a variety of requirements that sometimes differ based on whether health coverage is insured or self-insured, and if the coverage is insured, whether it is offered in the individual, small group, or large group health insurance market. Whether coverage is offered in the individual or group health insurance market is determined by reference to ERISA. Specifically, ''individual market coverage'' is health insurance coverage that is offered other than in connection with a group health plan. PHS Act section 2791(e)(1)(A). *See also* 26 CFR 54.9801–2; 29 CFR 2590.701–2; 45 CFR 144.103. A ''group health plan'' is generally defined as an employee welfare benefit plan under ERISA section 3(1), to the extent the plan provides medical care. ERISA

[4] The term MEWA or ''multiple employer welfare arrangement'' is defined in ERISA section 3(40). The term includes an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan) which is established or maintained for the purpose of offering or providing any ERISA welfare benefit to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries. Section 3(40) expressly excludes from the MEWA definition any such plan or arrangement that is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. The definition of MEWA thus includes both ERISA-covered employee welfare benefit plans and other arrangements which offer or provide medical, surgical, hospital care or benefits, or benefits in the event of sickness, accident, disability, or any other benefit described in ERISA Section 3(1). AHPs as described in this proposal are one type of MEWA.

[5] Section 6605 of the Affordable Care Act added section 521 to ERISA to give the Secretary of Labor additional enforcement authority to protect plan participants, beneficiaries, employees or employee organizations, or other members of the public against fraudulent, abusive, or financially hazardous MEWAs. ERISA section 521(a) authorizes the Secretary of Labor to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a MEWA under section 3(40) of ERISA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(e) of ERISA authorizes the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition.

section 733(a); PHS Act section 2791. *See also* 26 CFR 54.9831–1(a); 29 CFR 2590.732(a); 45 CFR 146.145(a). ''Group health insurance coverage'' means, in connection with a group health plan, health insurance coverage offered in connection with such plan. ERISA section 733(b)(4); PHS Act section 2791(b)(4). *See also* 26 CFR 54.9801–2; 29 CFR 2590.701–2; 45 CFR 144.103.

The group health insurance market is divided into the small group market and the large group market, depending on the number of employees employed by the employer. PHS Act section 2791(e)(2)–(7). *See also* 45 CFR 144.103. Generally, group health insurance offered by an employer with at least one and not more than 50 employees is in the small group market, while group health insurance offered by an employer with at least 51 employees is in the large group market. *Id.*[6]

With respect to insured coverage, whether coverage is offered in the individual, small group, or large group market affects compliance obligations under the Affordable Care Act and other State and Federal insurance laws. For example, only individual and small group market health insurance coverage is subject to the requirement to cover essential health benefits as defined under section 1302 of the Affordable Care Act.[7] Moreover, the risk adjustment program, which transfers funds from plans with lower-risk enrollees to plans with higher-risk enrollees, applies only to health insurance issuers offering coverage in the individual and small group markets, not the large group market.[8] The single risk pool requirement, which requires each health insurance issuer to consider the claims experience of all individuals enrolled in plans offered by the issuer in the individual market to be in a single risk pool, and all its individuals in the small group market to be members of a single risk pool, also applies only in the individual and small group markets, not the large group market.[9] In addition, the health insurance premium rules that prohibit issuers from varying premiums except with respect to location, age (within certain limits), family size, and tobacco-use (within certain limits) apply only in the individual and small group markets.[10] Finally, the Medical Loss Ratio (MLR) provisions, which limit the portion of premium dollars health insurance issuers may spend on administration, marketing, and profits establish different thresholds for the small group market and the large group market.[11] Self-insured group health plans are exempt from each of these obligations regardless of the size of the employer that establishes or maintains the plan. These differences in obligations result in a complex and costly compliance environment for coverages provided through associations, particularly if the coverages are simultaneously subject to individual, small group, and large group market regulation.

Guidance issued by the HHS Centers for Medicare & Medicaid Services (CMS) in 2011 (CMS 2011 guidance) clarifies that the test for determining whether association coverage is individual, small group, or large group market coverage for purposes of Title XXVII of the PHS Act is the same test as that applied to health insurance offered directly to individuals or employers.[12] Association coverage does not exist as a distinct meaningful category of health insurance coverage under Title XXVII of the PHS Act.[13] Instead, when applying the individual and group market requirements of the PHS Act to insurance coverage offered or provided through associations, CMS will ignore the association and look directly to each association member to determine the status of each member's coverage. As a result, association coverage may be treated as comprised of individual market coverage, small group market coverage, large group market coverage, and mixed associations of more than one coverage type.

The CMS 2011 guidance further states that, ''in most situations involving employment-based association coverage, the group health plan exists at the individual employer level and not at the association-of-employers level. In these situations, the size of each individual employer participating in the association determines whether that employer's coverage is subject to the small group market or the large group market rules. In the rare instances where the association of employers is, in fact, sponsoring the group health plan and the association itself is deemed the 'employer,' the association coverage is considered a single group health plan. In that case, the number of employees employed by all of the employers participating in the association determines whether the coverage is subject to the small group market or the large group market rules.''

Since the enactment of the Affordable Care Act, DOL and HHS have heard a number of concerns from stakeholders—especially working owners of businesses that do not employ other individuals, and independent contractors—regarding challenges that small businesses face in securing affordable health coverage options.

Some stakeholders have suggested to the Department that allowing businesses, especially small businesses, more flexibility to form AHPs would facilitate more choice and potentially make health coverage more affordable. These stakeholders opined that the AHP structure would give them increased negotiating power to bargain for lower premiums for their employees, as well as the ability to purchase coverage that would be less expensive because it would not be subject to some of the regulatory requirements applicable to the small group market but not the large group market. Proponents also contend that AHPs can help reduce the cost of health coverage because of increased bargaining power, economies of scale,

[6] Under the ACA, the upper bound for the definition of a small employer for purposes of title XXVII of the PHS Act was to change from 50 (as originally enacted) to 100 employees as of 2016. However, the Protecting Affordable Coverage for Employees Act (PACE Act, Pub. L. 114–60) amended the definition so that the upper bound would remain at 50. The PACE Act also permits States to elect an upper bound of 100 employees. CMS guidance indicates that States may elect to extend this upper bound to 100 employees by any means that is legally binding under State law, provided the definition applies to all insurers. States that elect to extend the upper bound were requested to notify CMS. *See https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ-on-the-Impact-of-the-PACE-Act-on-State-Small-Group-Expansion.pdf.* CMS has informed DOL that, to date, no States have elected to change the upper bound to 100.

[7] *See* PHS Act section 2707, as added by the Affordable Care Act.

[8] *See* section 1343 of the Affordable Care Act.

[9] *See* section 1312(c) of the Affordable Care Act. States may require issuers to merge their individual and small group risk pools.

[10] *See* PHS Act section 2701, as added by the Affordable Care Act.

[11] The MLR provision of the Affordable Care Act requires most health insurance issuers that cover individuals or small employers to spend at least 80% of their premium dollars on healthcare claims and quality improvement, leaving the remaining 20% for overhead expenses, such as administrative costs, marketing, and profit. The MLR threshold is higher for large group plans, which must spend at least 85% of premium dollars on healthcare claims and quality improvement. 45 CFR part 158.

[12] *See* CMS Insurance Standards Bulletin Series—(September 1, 2011) available at: *https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf. See also* CMS Insurance Standards Bulletin Transmittal No. 02–02 (August 2002) available at: *https://www.cms.gov/CCIIO/Resources/Files/Downloads/dwnlds/hipaa_02_02_508.pdf.*

[13] Title XXVII of the PHS Act does recognize coverage offered through ''bona fide associations,'' but only for purposes of providing limited exceptions from its guaranteed issue (in limited cases) and guaranteed renewability requirements. PHS Act secs. 2741(e)(1); 2742(b)(5) and (e); 2703(b)(6), as added by the ACA; and 2791(d)(3). Bona fide groups or associations of employers under the definition proposed in this rulemaking would not necessarily qualify as ''bona fide associations'' under the PHS Act definition for purposes of these PHS Act provisions.

administrative efficiencies, and transfer of plan maintenance responsibilities from participating employers to the AHP sponsor. AHPs may also help contain costs by creating a stable risk pool that may enable AHPs to self-insure rather than purchase insurance from commercial insurers.

Legislative proposals designed to foster the formation of AHPs have repeatedly been introduced in Congress.[14] These legislative efforts generally would make it easier for employers to form AHPs and set a uniform federal framework for regulation. In the absence of legislation, however, Executive Order 13813 directs the Department to consider proposing regulations or revising guidance, consistent with law, to expand access to health coverage by allowing more employers to form AHPs by expanding the conditions that satisfy the commonality-of-interest requirements under existing Department advisory opinions interpreting the definition of an ''employer'' under section 3(5) of ERISA in the context of AHPs in a manner that would focus on the association rather than the individual members of the association when evaluating association coverage.

Upon due consideration as directed by the Executive Order, the Department is proposing for public comment a revision to its long-standing interpretation of what constitutes an ''employer'' capable of sponsoring an ''employee benefit plan'' under ERISA in the context of group health coverage. Under the proposal, AHPs that meet the regulation's conditions would have a ready means of offering their employer-members, and their employer members' employees, a single group health plan subject to the same State and Federal regulatory structure as other ERISA-covered employee welfare benefit plans. This proposed rule has been developed in consultation with HHS, CMS, the Department of the Treasury, and the Internal Revenue Service, with which the Department is working to implement the Affordable Care Act, Executive Order 13813, and Executive Order 13765.[15] However, these proposed rules would apply solely for purposes of Title I of ERISA and for determining whether health insurance coverage is regulated by PHS Act provisions that apply in the individual, small group, or large group market, and not, for example, for purposes of taxation under the Code.

4. Overview of Proposed Regulation

The Department believes providing additional opportunities for employer groups or associations to offer health coverage to their members' employees under a single plan may, under the conditions proposed here, offer many small businesses more affordable alternatives than are currently available to them in the individual or small group markets. Consequently, the proposed rule may prompt some working owners who were previously uninsured and some small businesses that did not previously offer insurance to their employees, to enroll in AHPs, and similarly prompt some small businesses with insured health plans to switch from their existing individual or small group policies to AHPs. In addition, the option for small employers to join AHPs could offer better financial protection to employers (and their employees) than if they self-insured and purchased stop-loss insurance [16] that may not adequately protect them from financial risk. Under the proposed rule, AHPs that buy insurance [17] would not be subject to the insurance ''look-through'' doctrine as set forth in the CMS 2011 guidance; instead, because an AHP under the proposed rule would constitute a single plan, whether the plan would be buying insurance as a large or small group plan would be determined by reference to the number of employees in the entire AHP.

The proposed regulation would redefine the criteria in the Department's existing sub-regulatory guidance for a bona fide group or association of employers capable of establishing a multiple employer group health plan that is an employee welfare benefit plan and a group health plan as those terms are defined in ERISA. The Department notes that this preamble and the proposed rule do not address the application of the ERISA section 3(5) statutory phrase, ''acting. . .indirectly in the interest'' or ''group or association of employers,'', in any context other than as applied to an employer group or association sponsoring an AHP.

a. Employers Could Band Together for the Single Purpose of Obtaining Health Coverage

The proposed regulation would remove existing restrictions in the Department's sub-regulatory guidance on ERISA section 3(5) to allow employers to more easily join together in organizations that offer group health coverage to member employers and their employees under one group health plan. Specifically, the regulation would allow employers to band together for the express purpose of offering health coverage if they either are: (1) in the same trade, industry, line of business, or profession; or (2) have a principal place of business within a region that does not exceed the boundaries of the same State or the same metropolitan area (even if the metropolitan area includes more than one State). As discussed elsewhere in this document, the restrictions in the Department's existing advisory opinions were intended to help distinguish healthcare arrangements sponsored by an entity acting as an ''employer'' within the meaning of section 3(5) of ERISA from commercial-insurance-type arrangements that lack the requisite connection to the employment relationship. The Department has concluded that other conditions in this proposal can adequately serve that purpose while removing the condition that the employer association must have a purpose other than offering health coverage as a potential undue restriction on the establishment and maintenance of AHPs under ERISA. The proposal also would allow associations to rely on other characteristics upon which they previously relied to satisfy the commonality provision of paragraph (c) of the proposed rules, because the Department's existing sub-regulatory guidance applies the commonality requirement as a facts and circumstances test, and the Department intends that any employer group or association that meets the commonality requirement in the Department's existing sub-regulatory requirement should also be treated as meeting the commonality requirement in the proposed regulation. The Department seeks comment on whether the final rule, if adopted, should also recognize other bases for finding a commonality of interest.

[14] *See, e.g.,* Small Business Health Fairness Act of 2017, H.R. 1101, 115th Cong. sec. 1 (2017); *see also,* the Better Care Reconciliation Act of 2017, discussion draft of an amendment in the form of a substitute to the American Healthcare Act, H.R. 1628, 115th Cong. sec. 1 (2017) (available at *www.budget.senate.gov/imo/media/doc/ERN17500.pdf.*).

[15] The Departments of Labor, HHS, and the Treasury operate under a Memorandum of Understanding that implements section 104 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and subsequent amendments, including certain sections of the Affordable Care Act, and provides for coordination and consultation. *See* 64 FR 70164 (December 15, 1999).

[16] Stop-loss insurance (sometimes also known as excess insurance) is generally an insurance product that provides protection for self-insured employers or plans by serving as a reimbursement mechanism for catastrophic claims exceeding pre-determined levels. *See https://www.siia.org/i4a/pages/index.cfm?pageID=4549.*

[17] The CMS 2011 guidance ''Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or Through, Associations'' apples only to insured arrangements, and not to self-insured arrangements.

The latter part of the second prong of this proposal's definition relating to States and metropolitan areas will allow an AHP to satisfy the commonality requirement if its members have a principal place of business within a region that does not exceed the boundaries of the same State or metropolitan area (even if the metropolitan area includes more than one State).

Examples of such metropolitan areas include the Greater New York City Area/Tri-State Region covering portions of New York, New Jersey and Connecticut; the Washington Metropolitan Area of the District of Columbia and portions of Maryland and Virginia; and the Kansas City Metropolitan Area covering portions of Missouri and Kansas. AHPs could also satisfy the commonality requirement by limiting themselves to a smaller geographic region, such as a city or county. The Department invites comments specifically on whether more clarification would be helpful regarding the definition of a metropolitan area. For example, the Department is interested in whether a federal designation by the U.S. Census or the Office of Management and Budget (OMB), which delineates metropolitan and micropolitan statistical areas according to published standards (see *www.census.gov/programs-surveys/metro-micro.html*), or another definition, should be used and, if so, how, for purposes of establishing eligibility for continued or new employer membership (*e.g.,* at the beginning of each plan year). The Department is also interested, for example, in comments on whether there is any reason for concern that associations could manipulate geographic classifications to avoid offering coverage to employers expected to incur more costly health claims. The Department also seeks comments on whether there are other examples that would be helpful to clarify the provision and also on whether there should be a special process established to obtain a determination from the Department that all an association's members have a principal place of business in a metropolitan area.

By expressly allowing the group or association to exist for the purpose, in whole or in part, of offering or providing health coverage to its members, the regulation would depart from previous sub-regulatory guidance providing that the group or association must exist for a bona fide purpose other than offering health coverage to be an employer for purposes of section 3(5) of ERISA. The proposal also would not include any requirement that the group or association be a pre-existing organization. Rather, employers could band together in new organizations whose sole purpose is to provide group health coverage to member employers and their employees. And by allowing formation of such an organization based on either common industry or geography, the Department expects that the regulation could greatly increase association coverage options available to American workers.

One of the primary aims of this proposal is to give small employers (as well as sole proprietors and other working-owners) the opportunity to join together to provide more affordable healthcare to their employees; however, the proposed regulation would not restrict the size of the employers that are able to participate in a bona fide group or association of employers. The Department expects minimal interest among large employers in establishing or joining an AHP as envisioned in this proposal because large employers already enjoy many of the large group market advantages that this proposal would afford small employers. However, the Department anticipates that there may be some large employers that may see cost savings and/or administrative efficiencies in using an AHP as the vehicle for providing health coverage to their employees.

b. The Group or Association Must Have an Organizational Structure and Be Functionally Controlled by Its Employer Members

Paragraph (b) of the proposed regulation defines certain criteria for a bona fide group or association of employers to be capable of establishing a group health plan under ERISA. The proposal would require that the group or association have a formal organizational structure with a governing body and have by-laws or other similar indications of formality appropriate for the legal form in which the group or association operates, and that the group or association's member employers control its functions and activities, including the establishment and maintenance of the group health plan, either directly or through the regular election of directors, officers, or other similar representatives. These requirements largely duplicate conditions in the Department's existing sub-regulatory guidance under ERISA section 3(5), and ensure that the organizations are genuine organizations with the organizational structure necessary to act ''in the interest'' of participating employers with respect to employee benefit plans as the statute requires. The proposed regulation would also retain the requirement in the Department's existing sub-regulatory guidance under section 3(5) of ERISA that an AHP's employer-members control the AHP. This requirement is necessary to satisfy the statutory requirement in ERISA section 3(5) that the group or association must act ''in the interest of'' the direct employers in relation to the employee benefit plan, and to prevent formation of commercial enterprises that claim to be AHPs but, in reality, merely operate similar to traditional insurers selling insurance in the group market. In the latter circumstance, the association lacks the requisite connection to the employment relationship, inasmuch as it neither acts directly as an employer, nor ''in the interest'' of employers, within the meaning of section 3(5) of ERISA. The Department intends that any employer group or association that meets the control requirement in the Department's existing sub-regulatory requirement should also be treated as meeting the control requirement in the proposed regulation.

c. Group or Association Plan Coverage Must Be Limited to Employees of Employer Members and Treatment of Working Owners

In addition, paragraph (b)(6) of the proposed regulations would require that only employees and former employees of employer members (and family/beneficiaries of those employees and former employees) may participate in a group health plan sponsored by the association and that the group or association does not make health coverage offered through the association available to anybody other than to employees and former employees of employer members and their families or other beneficiaries. Together, these criteria are intended to ensure that, for purposes of Title I of ERISA, the groups or associations sponsoring the covered AHPs are bona fide employment-based associations, as clarified by this proposal, and not more general membership organizations essentially operating as unlicensed health insurance providers selling commercial group health coverage to individuals and employers without the type of connection to the employment relationship envisioned by ERISA's section 3(1) definition of employee welfare benefit plan. *See, e.g., Wisconsin Educ. Assn. Ins. Trust* v. *Iowa State Bd. of Public Instruction,* 804 F.2d 1059, 1064 (8th Cir. 1986) (''The only relationship between the sponsoring labor union and these non-member recipients stems from the benefit plan

itself. Such a relationship is similar to the relationship between a private insurance company, which is subject to myriad State insurance regulations, and the beneficiaries of a group insurance plan.''). *Accord Mandala* v. *California Law Enforcement Ass'n,* 561 F. Supp.2d 1130, 1135 (C.D. Cal. 2008)).

The text of ERISA relevant here specifies that only employees and former employees of the member employers, and their families or other beneficiaries, may receive coverage through an AHP as an ERISA-covered benefit plan. ERISA is an acronym for the ''Employee Retirement Income Security Act of 1974.'' Consistent with the Act's title and understandings about the workplace, the touchstone of ERISA is the provision of benefits *through the employment relationship.* That understanding appears in the definition of ''employee welfare benefit plan,'' which defines which benefit arrangements are subject to ERISA. An ''employee welfare benefit plan'' is defined as ''any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries [benefits such as health insurance].'' ERISA section 3(1). The term ''participant'' is in turn defined as ''any employee or former employee of an employer . . . who is or may become eligible to receive a benefit . . . from an employee benefit plan which covers employees *of such employer.*'' *Id.* section 3(7) (emphasis added). In other words, a participant is an employee of an employer who may receive benefits from *that employer's own* benefits plan. Individuals who are not ''participants'' within the meaning of ERISA section 3(7), *e.g.,* individuals who are not employees or former employees of employers sponsoring a particular plan, are ineligible to be covered (or have their families or other beneficiaries covered) by an ERISA plan. *See, e.g., Wisconsin Educ. Assn. Ins. Trust,* 804 F.2d at 1064.

Significantly, in paragraph (e) of the regulation, the proposal would expressly provide that working owners, such as sole proprietors and other self-employed individuals, may elect to act as employers for purposes of participating in an employer group or association and also be treated as employees of their businesses for purposes of being covered by the group or association's health plan. This approach is consistent with advisory opinions in which the Department has concluded that working owners may be ''participants'' in ERISA plans. For example, Advisory Opinion 99–04A reviews various provisions of ERISA and the Code that specifically address working owner issues in ERISA plans, and concludes that, taken as a whole, they ''reveal a clear Congressional design to include 'working owners' within the definition of 'participant' for purposes of Title I of ERISA.'' [18]

This proposed rule would also serve to confirm that the Department's regulation at 29 CFR 2510.3–3 does not limit the ability of working owners to participate in AHPs alongside other employer members. Section 2510.3–3(b) excludes ''plans without employees'' from the definition of employee benefit plans covered by Title I of ERISA, thereby ensuring that a health insurance arrangement that covers, for example, only the working owner and his or her spouse, is not generally subject to ERISA's reporting and disclosure, fiduciary, and enforcement provisions. Thus, Section (c) of 29 CFR 2510.3–3 is titled ''Employees'' and states: ''For purposes of this section [*i.e.,* for purposes of the regulation defining a covered plan]: (1) An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse, and (2) A partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.'' Accordingly, if the sole participants in a benefit arrangement are the individual owner of a business and his or her spouse or partners in the same partnership and their spouses, the regulation treats the arrangement as a plan without employees and excludes it from the definition of ERISA-covered plans.

However, that same regulation expressly limits this language to 29 CFR 2510.3–3, and sole owners or partners are not excluded from being participants in a plan that also covers one or more common law employees in addition to the sole owner or partners of the same partnership and their spouses. Rather, plans covering working owners *and* their non-owner employees clearly fall within ERISA's scope. Thus, the U.S. Supreme Court in *Yates* v. *Hendon,* 541 U.S. 1 (2004), concluded in a case involving section 2510.3–3, that ''[u]nder ERISA, a working owner may have dual status, *i.e.,* he can be an employee entitled to participate in a plan and, at the same time, the employer (or owner or member of the employer) who established the plan.'' The definition of ''plans without employees'' in 29 CFR 2510.3–3(b) simply defines a limited circumstance in which the only parties participating in the benefit arrangement are an individual owner/partner and spouse, and declines to deem the individuals, in that limited circumstance, as employees of the trade or business for purposes of the regulation. In that narrow circumstance, the regulation concludes that ERISA's reporting and disclosure, fiduciary, and enforcement provisions are unnecessary.

The regulatory definition does not apply, however, outside that limited context and, accordingly, does not prevent sole proprietors or other working owners from being participants in broader plan arrangements, such as the AHPs that are the subject of this proposal. As proposed here, AHPs are a far cry from such individual arrangements ''administered'' by a single individual on behalf of himself or herself and a spouse. Instead, the association and the AHP are responsible for the provision of employment-based benefits payable to numerous workers employed by multiple employers. Many or most of the affected employers and employees will not be directly involved in the administration of benefits, and all of the employers and employees should benefit from prudence and loyalty requirements for those running the AHP, as well as such other protections as reporting and disclosure obligations and claims procedure requirements, and enforcement, in the same manner and to the same extent as participants in other ERISA plan arrangements.

Accordingly, this proposal would extend by regulation the availability of the dual status of working owners to AHPs as a type of multiple employer plan, and make it clear that 29 CFR 2510.3–3 does not broadly preclude working owners of trades or businesses and other self-employed individuals without common law employees from joining a group health plan sponsored by an employer group or association. The Department set forth above its view regarding the permissible interpretation of the 29 CFR 2510.3–3 regulation as it relates to working owners participating in AHPs. Notwithstanding those views, to the extent the regulation could result in working owners not being able to participate as employees even in some

[18] The Advisory Opinion cites Code section 401(c), which for purposes of certain provisions relating to qualified retirement plans, and also for certain other Code provisions related to employee benefits that cross-reference section 401(c), generally treats a sole proprietor as both an employer and an employee and treats partners (including owners of entities taxed as partnerships, such as limited liability companies) as employees of the partnership.

circumstances, the Department believes the policies and objectives underlying this proposal support an amendment of the 29 CFR 2510.3–3 regulation so that it clearly does not interfere with working owners participating in AHPs as envisioned in this proposal. Accordingly, and to eliminate any potential ambiguity regarding the interaction of this proposal with the regulation at 29 CFR 2510–3–3, this proposal also includes a technical amendment of paragraph (c) of 2510.3–3 to include an express cross-reference to the working owner provision in this proposal.

Specifically, the proposed regulation includes a provision that expressly states that a working owner of a trade or business without common law employees, regardless of the legal form in which the business is operated (*e.g.,* sole proprietors or other working owners of businesses, whether incorporated or unincorporated), may elect to act as an employer for purposes of participating in an employer group or association and be treated as an employee of the trade or business for purposes of being covered by the employer group's or association's health plan, if the individual is earning income from the trade or business for providing personal services to the trade or business; and either provides on average at least 30 hours of personal services to the trade or business per week or 120 hours of such service per month, or has earned income derived from such trade or business that at least equals the cost of coverage under the group or association's health plan. In addition, the individual must not be eligible for other subsidized group health plan coverage under a group health plan sponsored by any other employer of the individual or by a spouse's employer.[19] The proposal also includes an express provision that would allow the group or association sponsoring the AHP to rely, absent knowledge to the contrary, on written representations from the individual seeking to participate as a working owner as a basis for concluding that these conditions are satisfied. Comments are invited on this provision, including whether an individual must not be eligible for other subsidized group health plan coverage under another employer or a spouse's employer.

The Department included the proposed working owner criteria to ensure that a legitimate trade or business exists. ERISA governs benefits provided in the context of an employment relationship. The Department is concerned, therefore, that without such criteria, the regulation could effectively eliminate the statutory distinction between offering and maintaining employment-based ERISA-covered plans, on the one hand, and the mere marketing of insurance to individuals outside the employment context, on the other. Thus, for example, an association would fall outside the purview of this rule if it offered coverage to persons who are not genuinely engaged in a trade or business (*e.g.,* a vendor marketing AHP coverage could not make eligibility turn on such de minimis ''commercial activities'' as giving a ''customer'' a single on-demand ride for a fee, or knitting a single scarf to be offered for sale on the internet, with no requirement that the individual ever engage in the supposed ''trade or business'' ever again). The rule is intended to cover genuine employment-based relationships, not to provide cover for the marketing of individual insurance masquerading as employment-based coverage.

The Department recognizes that it could be possible to draw the line between employment-based arrangements, as covered by ERISA, and non-ERISA arrangements in other ways. For example, the Department also recognizes that some legitimate start-up trades or businesses may take time to become profitable, and ongoing genuine trades or businesses may experience bad years financially. Alternative approaches could focus on other measures of the trade or business as a source of earnings or other measures of time spent on the work activity. Accordingly, the Department solicits comments on whether the proposed standard is workable and, if so, whether any additional clarifications would be helpful to address issues relating to how working owners could reasonably predict whether they will meet the earned income and hours worked requirements, and whether AHPs should be required to obtain any evidence in support of such a prediction beyond a representation from the working owner. Thus, the Department generally invites comment on whether different criteria would be more appropriate to ensure that so-called ''working owners'' who join an AHP are genuinely engaged in a trade or business and are performing services for the trade or business in a manner that is in the nature of an employment relationship.

Under the proposal, an AHP thus could be comprised of participants who are common law employees, common law employees and working owners, or comprised of only working owners. In all cases, the working owner would be treated as an employee and the business as the individual's employer for purposes of being an employer member of the association and an employee participant in the AHP. In the Department's view, allowing sole proprietors and other working owners without common law employees to participate in AHPs covered by ERISA on an equal basis with other employers and employees furthers ERISA's purposes of promoting employee benefit plans and protecting the interests of plan participants and their beneficiaries. This approach acknowledges that an AHP may include as employer-members working owners with common law employees and also addresses the operational impracticability of having an AHP switch in and out of its status as a single multiple employer plan during periods in which the AHP sometimes has and sometimes does not have employees other than sole proprietors.

Finally, as noted above, AHPs that already meet the Department's current commonality of interest and employer-member control standards will continue to be treated as meeting those requirements under the proposal for sponsoring a single multiple employer plan under ERISA. However, if the proposal is adopted as a final rule, upon effectiveness of the final rule, such an existing AHP would need to meet all the conditions in the final rule to continue to act as an ERISA section 3(5) employer going forward.

To the extent a final rule consistent with this proposal would be inconsistent with any prior sub-regulatory guidance, the final rule would supersede that guidance. For example, the regulation would supersede the statement in Advisory Opinion 2003–13A that ERISA section 3(5) does not cover groups with memberships that include persons who are not employers of common-law employees. In the case of statutory and regulatory provisions like those involved here, the Department has the authority to supersede its previous interpretations, as articulated in non-binding advisory opinions, to address marketplace developments and new policy and regulatory issues, *see generally Perez* v. *Mortgage Bankers*

[19] The earned income standard and other group health plan eligibility provision are informed by Federal tax standards, including section 162(l) of the Code that describe conditions for self-employed individuals to deduct the cost of health insurance. However, federal tax treatment, including tax administration of Code section 162(l) and any potential IRS reporting requirements, of working owners is not affected by the proposed regulation's characterization of a working owner as an employer for purposes of participating in a sponsoring employer group or association and an employee for purposes of being covered by the group health plan.

Assn, 135 S. Ct. 1199 (2015), and the authority to supersede a prior interpretation by a federal court, *see National Cable & Telecommunications Ass'n* v. *Brand X internet Services (Brand X),* 545 U.S. 967, 125 S. Ct. 2688 (2005) (''A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.''). The ERISA statutory definition of the term ''employer,'' which includes direct employers and any other person acting indirectly in the interest of the employer in relation to an employee benefit plan, including a group or association of employers, is not an unambiguous term that leaves no room for agency discretion. Moreover, by proceeding through notice and comment rulemaking, the Department has exercised its authority in a way that ensures all interested stakeholders will have an opportunity to present their views on the implications and significance of the proposal in light of past guidance, judicial decisions, and sound public policy.

d. Health Nondiscrimination Protections

Two distinct potential issues prompt the nondiscrimination protections in the proposed rule. First, some stakeholders and experts have expressed concerns that legislative proposals that would have permitted employer groups or associations to sponsor group health plans for the purpose of promoting and expanding association health coverage could have resulted in risk selection. For example, in a letter to the Chairwoman and Ranking Member of the House Committee on Education & the Workforce, the American Academy of Actuaries argued that AHPs could create adverse selection if legislation [20] being considered by the committee allowed them to operate under different rules than other group health plans. They wrote: ''If one set of plans operates under rules that are more advantageous to healthy individuals, then those individuals will migrate to those plans; less healthy individuals will migrate to the plans more advantageous to them.'' [21] Similarly, the National Association of Insurance Commissioners (NAIC) also wrote a letter to the Chairwoman and Ranking Member stating that the legislation would encourage AHPs to select healthy groups by designing benefit packages and setting rates to the detriment of unhealthy groups.[22]

Alternatively, some have argued that more actuarially appropriate pricing where premiums match risk tends to lead people to buy the efficient amount of coverage, rather than underinsuring or overinsuring, and that such pricing also reduces the likelihood that insurance markets deteriorate into adverse selection spirals. In the case of associations, some stakeholders have argued that the presence of nondiscrimination rules may create instability in the AHP market, as employers with disproportionately unhealthy employees seek to join AHPs to lower their rates while AHPs with disproportionately healthy employees constantly modify their rules of admission to avoid this outcome. And stakeholders have argued that allowing employers to join together voluntarily on their own terms to offer health coverage to their members would reflect those employers' interests and maximize the potential for the market, while the converse would deter AHP formation and lead to fewer insured people.

Second, the nondiscrimination provisions distinguish genuine employment-based plans from commercial enterprises that claim to be AHPs but that are more akin to traditional insurers selling insurance in the employer marketplace. ERISA sections 3(1) and (5) require a bona fide employment nexus and a level of cohesion and commonality among entities acting on behalf of common law employers, the common law employers, and the covered employees, as distinguished from commercial insurance arrangements that sell insurance coverage to unrelated common law employers. The nondiscrimination provisions maintain that nexus and cohesion—embodied in the longstanding ERISA section 3(5) ''commonality of interests'' requirement—in the new circumstance permitted under the proposal under which an employer group or association sponsoring an ERISA employee benefit plan may exist solely for the purpose of providing group health coverage. In the Department's view, AHPs that discriminate among employer-members in ways that would violate the nondiscrimination provisions in the proposal may not reflect the common employer interests that characterize an employee benefit plan as compared to the sort of commercial insurance enterprise that ERISA intended to leave to state, rather than federal, regulation. The nondiscrimination provisions are also based on the Department's broad rulemaking authority under ERISA section 505 (authorizing ''such regulations as [the Secretary] finds necessary or appropriate to carry out the provisions of this title'') and ERISA section 734. ERISA section 734 authorizes the Secretary to promulgate such regulations as may be necessary or appropriate to carry out the provisions of Part 7 of ERISA, including ERISA section 715(a)(1), which incorporates the provisions of part A of title XXVII of the PHS Act (generally, sections 2701 through 2728 of the PHS Act) into ERISA and makes those provisions applicable to plans and issuers.

The nondiscrimination provisions in paragraph (d) of the proposed regulation build on the existing health nondiscrimination provisions applicable to group health plans under HIPAA, as amended by the Affordable Care Act (HIPAA/ACA health nondiscrimination rules), with an additional clarification addressing how to apply those rules to association coverage.

Specifically, paragraph (d)(1) of the proposed regulation would ensure the group or association does not restrict membership in the association itself based on any health factor, as defined in the HIPAA/ACA health nondiscrimination rules. The HIPAA/ACA health nondiscrimination rules define a health factor as: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of healthcare, medical history, genetic information, evidence of insurability, and disability. Code section 9802(a)(1), ERISA section 702(a)(1), and PHS Act section 2705(a)(1). *See also* 26 CFR 54.9802–1(a), 29 CFR 2590.702(a), and 45 CFR 146.121(a).

Paragraphs (d)(2) and (d)(3) of the proposed rules provide that the group health plan sponsored by the group or association must comply with the HIPAA/ACA health nondiscrimination rules, which govern eligibility for

[20] Small Business Health Fairness Act of 2017, H.R. 1101, 115th Cong. (2017).

[21] Letter from the American Academy of Actuaries to Virginia Foxx, Chairwoman, Committee on Education and the Workforce, U.S. House of Representatives, and Robert C. Scott, Ranking Member, Committee on Education and the Workforce, U.S. House of Representatives (March 8, 2017) (available at *https://www.actuary.org/files/publications/AHPs_HR1101_030817.pdf*).

[22] Letter from the NAIC to Virginia Foxx, Chairwoman, Committee on Education and the Workforce, U.S. House of Representatives, and Robert C. Scott, Ranking Member, Committee on Education and the Workforce, U.S. House of Representatives (Feb. 28, 2017) (available at *http://www.naic.org/documents/health_archive_naic_opposes_small_business_fairness_act.pdf*).

benefits [23] and premiums for group health plan coverage. In determining what is a group of similarly situated individuals for purposes of applying those rules, this proposed regulation provides in paragraph (d)(4) how to apply these HIPAA/ACA health nondiscrimination rules in the context of a group or association of employers sponsoring a single group health plan.

Specifically, the HIPAA/ACA health nondiscrimination rules generally prohibit health discrimination *within* groups of similarly situated individuals, but they do not prohibit discrimination *across* different groups of similarly situated individuals. In determining what counts as a group of similarly situated individuals, for these purposes, paragraph (d) of the HIPAA/ACA health nondiscrimination rules generally provides that plans may, subject to an anti-abuse provision for discrimination directed at individuals, treat participants as distinct groups if the groups are defined by reference to a bona fide employment-based classification consistent with the employer's usual business practice. As stated in the HIPAA/ACA health nondiscrimination rules, whether an employment-based classification is bona fide is determined based on all the relevant facts and circumstances, including whether the employer uses the classification for purposes independent of qualification for health coverage (for example, determining eligibility for other employee benefits or determining other terms of employment). Examples in the HIPAA/ACA health nondiscrimination rules of classifications that may be bona fide, based on all the relevant facts and circumstances, include full-time versus part-time status, different geographic location, membership in a collective bargaining unit, date of hire, length of service, current employee versus former employee status, and different occupations. Under an anti-abuse provision contained in paragraph (d)(3) of the HIPAA/ACA health nondiscrimination rules, however, a distinction between groups of individuals is not permitted if the creation or modification of an employment or coverage classification is directed at individual participants or beneficiaries based on any health factor of the participants or beneficiaries.

In addition, under the HIPAA/ACA health nondiscrimination rules, a plan may, generally, subject to certain anti-abuse provisions for discrimination directed at individuals, treat beneficiaries as distinct groups based on the bona fide employment-based classification of the participant through whom the beneficiary is receiving coverage, the relationship to the participant, marital status, age or student status (subject to PHS Act section 2714, as incorporated in ERISA section 715, as well as ERISA section 714) and other factors if the factor is not a health factor. Finally, the HIPAA/ACA health nondiscrimination rules generally allow group health plans to treat participants and beneficiaries as distinct groups.

The proposed regulations propose that, in applying the HIPAA/ACA health nondiscrimination rules for defining similarly-situated individuals, the group or association may not treat member employers as distinct groups of similarly-situated individuals. As noted above, the HIPAA/ACA health nondiscrimination rules apply within groups of similarly-situated individuals. If an association could treat different employer-members as different bona fide employment classifications, the nondiscrimination protections in paragraphs (d)(1) through (d)(3) could be ineffective, as AHPs could offer membership to all employers meeting the association's membership criteria, but then charge specific employer members higher premiums, based on the health status of those employers' employees and dependents. Accordingly, under the proposed regulation a group or association which seeks treatment as an ''employer'' under ERISA section 3(5) for purposes of sponsoring a single group health plan under ERISA section 3(1) cannot simultaneously undermine that status by treating different employers as different groups based on a health factor of an individual or individuals within an employer member. DOL seeks comment on whether this structure, which could potentially represent an expansion of current regulations, would create involuntary cross-subsidization across firms that would discourage formation and use of AHPs.

Moreover, the Department views such employer-by-employer risk-rating as undermining the statutory aim of limiting plan sponsors to ''employers'' and to entities acting ''in the interest'' of employers, and instead extending ERISA coverage to entities that seek to underwrite risk and are nearly—or entirely—indistinguishable from such commercial-insurance-type entities. The extension of ERISA coverage to such commercial entities would not be consistent with Congress' deliberate decision to limit ERISA's coverage to employment-based relationships. Coupled with the control requirement, also requiring AHPs to accept all employers who fit their geographic, industry, or any other non-health-based selection criteria that each AHP chooses, the nondiscrimination provisions ensure a level of cohesion and commonality among entities acting on behalf of common law employers, the common law employers themselves, and the covered employees, as distinguished from commercial insurance arrangements that sell insurance coverage to unrelated common law employers.

Paragraph (d)(5) contains examples that illustrate the rules of paragraphs (d)(1) through (d)(4).

The Department specifically solicits comments on the above described nondiscrimination requirements, including how they balance risk selection issues with the stability of the AHP market and the ability of employers to innovate and enter voluntary coverage arrangements. The Department also solicits comments on the effect of additional or different nondiscrimination protections, such as further limitations on price flexibility. Specifically, the Department invites comments on whether paragraph (d)(4) is an appropriate or sufficient response to the need to distinguish AHPs from commercial insurance (and on any alternative provisions that might achieve the same goal, as well as on whether paragraph (d)(4) could destabilize the AHP market or hamper employers' ability to create flexible and affordable coverage options for their employees.

5. Request for Public Comments

The Department invites comments on the specific issues identified in the discussion above, as well as on all aspects of the proposed rule as a potential alternative approach to the Department's existing sub-regulatory guidance criteria. Comments are invited on the interaction with and consequences under other State and Federal laws, including the interaction with the Code section 501(c)(9) provisions for voluntary employees' beneficiary associations (VEBAs), should an AHP want to use a VEBA. The Department also invites comments on whether any notice requirements are needed to ensure that employer members of associations, and

[23] A rule for eligibility for benefits is defined by reference to the HIPAA/ACA health nondiscrimination rules and includes rules relating to enrollment, the effective date of coverage, waiting (or affiliation) periods, late or special enrollment, eligibility for benefit packages, benefits (including covered benefits, benefit restrictions, and cost-sharing), continued eligibility, and terminating coverage. 26 CFR 54.9802–1(b)(1)(ii); 29 CFR 2590.702(b)(1)(ii); 45 CFR 146.121(b)(1)(ii).

participants and beneficiaries of group health plans, are adequately informed of their rights or responsibilities with respect to AHP coverage. Comments are also solicited on the impact of these proposals on the risk pools of the individual and small group health insurance markets, and for data, studies or other information that would help estimate the benefits, costs, and transfers of the rule.

6. Request for Information

In addition to the proposal set forth in this document, pursuant to Executive Order 13813, the Department is considering other actions it could take to promote healthcare consumer choice and competition across the United States. The proposed rules would not alter existing ERISA statutory provisions governing MEWAs. The proposed rules also would not modify the States' authority to regulate health insurance issuers or the insurance policies they sell to AHPs. As described above, some MEWAs have historically been unable to pay claims due to fraud, insufficient funding, or inadequate reserves.[24] ERISA section 514(b)(6) gives the Department [25] and State insurance regulators joint authority over MEWAs (including AHPs described in this proposed rule), to ensure appropriate consumer protections for employers and employees relying on an AHP for healthcare coverage.

Some stakeholders have identified the Department's authority under ERISA section 514(b)(6)(B) to exempt self-insured MEWA plans from State insurance regulation as a way of promoting consumer choice across State lines. Specifically, ERISA section 514(b)(6)(B) provides that the Department may prescribe regulations under which non-fully insured MEWAs that are employee benefit plans may be granted exemptions, individually or class by class, from certain State insurance regulation. Section 514(b)(6)(B) does not, however, give the Department unlimited exemption authority. The text limiting the Department's authority is in ERISA section 514(b)(6)(A). That section provides that the Department cannot exempt an employee benefit plan that is a non-fully insured MEWA from state insurance laws that can apply to a fully insured MEWA plan under ERISA section 514(b)(6)(A), *i.e.,* state insurance laws that establish reserves and contribution requirements that must be met in order for the non-fully insured MEWA plan to be considered able to pay benefits in full when due, and provisions to enforce such standards.

Thus, self-insured MEWAs, even if covered by an exemption, would remain subject to State insurance laws that provide standards requiring the maintenance of specified levels of reserves and contributions as means of ensuring the payment of promised benefits. While beyond the scope of this proposed rulemaking, the Department is interested in receiving additional input from the public about the relative merits of possible exemption approaches under ERISA section 514(b)(6)(B). The Department is interested both in the potential for such exemptions to promote healthcare consumer choice and competition across the United States, as well as in the risk such exemptions might present to appropriate regulation and oversight of AHPs, including State insurance regulation oversight functions.

The Department is also interested in comments on how best to ensure compliance with the ERISA and ACA standards that would govern AHPs and on any need for additional guidance on the application of these standards or other needed consumer protections. In this connection, the Department emphasizes that AHPs would be subject to existing generally applicable federal regulatory standards governing ERISA plans and additional requirements governing MEWAs specifically, and sponsors of AHPs would need to exercise care to ensure compliance with those standards.

The Department requests comments on how it can best use the provisions of ERISA Title I to require and promote actuarial soundness, proper maintenance of reserves, adequate underwriting and other standards relating to AHP solvency. The Department also invites comments on whether additional provisions should be added to the final rule to assist existing employer associations—including MEWAs that do not now constitute AHPs—in making adjustments to their business structures, governing documents, or group health coverage to become AHPs under the final rule.

The Department likewise encourages commenters to identify any aspect of the foregoing rules and obligations that would benefit from additional guidance as applied to AHPs, as well as any perceived deficiencies in existing guidance or regulatory safeguards.

Regulatory Impact Analysis

1.1. Executive Orders

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

Under Executive Order 12866 (58 FR 51735), ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order 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 one 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. It has been determined that this rule is economically significant within the meaning of section 3(f)(1) of the Executive Order. Therefore, OMB has reviewed these proposed rules pursuant to the Executive Order.

[24] *See* U.S. Gov't Accountability Office, GAO–92–40, States Need Labor's Help Regulating Multiple Employer Welfare Arrangements, (1992) (available at *http://www.gao.gov/products/HRD-92-40*); *See also* U.S. Gov't Accountability Office, GAO–04–312, Employers and Individuals Are Vulnerable to Unauthorized or Bogus Entities Selling Coverage (2004) (available at *http://www.gao.gov/products/GAO-04-312*).

[25] Because small employer group health plans typically are fully-insured or pay benefits out of the employer's general assets, they are generally exempt under current DOL regulations from most, if not all, of ERISA's annual reporting requirements. *See 29 CFR 2520.104–20.* However, as a MEWA, an AHP MEWA would not be eligible for this filing exemption, even if it covered fewer than 100 participants. Further, ERISA-covered group health plans that have 100 participants or more generally are required to file a Form 5500, whether insured or self-insured. Thus, AHPs established as a result of the proposal would be required to file Forms 5500. *See* ERISA section 101(b). In addition, because, as noted above, these AHPs are also MEWAs, they would be required to file a Form M–1. *See* ERISA section 101(g) and 29 CFR 2520.101–2. Both Form 5500 and Form M–1 information is accessible by DOL, as well as the States, to fulfill traditional oversight functions to help ensure that plans meet their obligations to pay benefits as promised under the plan and the law.

In accordance with the direction of Executive Order 13813, DOL is proposing a rule to broaden the circumstances under which an AHP will be treated as a single multiple employer-plan under ERISA. The proposal is intended to extend advantages typically enjoyed by large employer-sponsored health benefit plans to more working owners and small employers (collectively hereafter, small businesses) that under the proposal would be eligible to participate in AHPs. AHPs generally can offer these small businesses more health benefit options, and options that are more affordable, than typically are available in today's individual and small group health insurance markets. This document assesses the proposal's potential impacts.

1.2. Introduction and Need for Regulation

U.S. families obtain health benefits from a number of different private and public sources. Essentially all individuals age 65 or older are covered by Medicare. Most individuals under age 65 are covered by employer-sponsored insurance. Nearly all large employers offer health insurance to their employees, but only about one-half of employers with fewer than 50 employees do. Altogether, 61 percent of individuals under age 65 have employer-sponsored coverage. Thirty-eight percent of individuals under age 65 obtain coverage from private employers with 50 or more employees, 9 percent from smaller private employers, and 14 percent from public-sector employers.[26]

Large employers have a long history of providing their employees with affordable health insurance options. This regulation is needed to lower some barriers that can prevent many small businesses from accessing such options.

Today, businesses generally access insurance in one of three market segments, depending on their size. These segments are the individual market, which includes working owners among other individuals and their families, if they do not employ employees and therefore cannot establish a group health plan; the small group market, which generally includes small businesses with at least one and not more than 50 employees; and the large group market, which includes larger employers and some groups of employers. (Many large employers self-insure rather than purchase group insurance in the large group market segment.) Historically, relative to large employers, small businesses accessing health insurance in the individual and small group markets have faced at least two disadvantages. First, owing to their small size, working owners and other small businesses generally lack large employers' potential for administrative efficiencies and negotiating power. Second, unlike large employers, individual small businesses do not constitute naturally cohesive large risk pools. Any single small business's claims can spike abruptly due to one serious illness. Historically, individual and small group issuers often responded to such spikes by sharply increasing premiums, and/or by refusing to issue or renew policies or to cover pre-existing conditions. More recently, State and Federal legal changes including the ACA generally have outlawed these practices. Current rules generally regulate the individual and small group markets in which small businesses obtain insurance more stringently than the large group markets and self-insured employer plans. Unfortunately such rules can themselves limit choice, increase premiums, or even destabilize small group and individual markets. They, in effect, force issuers to raise premiums broadly, particularly for healthier small groups and individuals, which can prompt such groups and individuals to seek more affordable coverage elsewhere if available, or drop insurance altogether. In contrast, large employers' natural ability to provide comprehensive coverage at relatively stable cost is mirrored by the regulatory framework that applies to large group markets and self-insured ERISA plans.

Given the natural advantages enjoyed by large employer groups, it may be advantageous to allow more small businesses to combine into large groups for purposes of obtaining or providing health insurance. While some AHPs exist today, their reach currently is limited by the Department's existing interpretation of the conditions under which an AHP is an employer-sponsored plan under ERISA. Under that interpretation, eligible association members must share a common interest (generally, operate in the same industry), must join together for purposes other than providing health insurance, must exercise control over the AHP, and must have one or more employees in addition to the business owner. Accordingly, this proposed rule aims to encourage the establishment and growth of AHPs comprising otherwise unrelated small businesses, including working owners, and to clarify that nationwide industry organizations such as trade associations can sponsor nationwide AHPs.

This proposal would broaden the conditions under which associations can sponsor AHPs, thereby increasing the number of small businesses potentially eligible to participate in AHPs and providing new, affordable health insurance options for many Americans. It generally would do this in four important ways. First, it would relax the existing requirement that associations sponsoring AHPs must exist for a reason other than offering health insurance. Second, it would relax the requirement that association members share a common interest, as long as they operate in a common geographic area. Third, it would make clear that associations whose members operate in the same industry can sponsor AHPs, regardless of geographic distribution. Fourth, it would clarify that working owners and their dependents are eligible to participate in AHPs. Consequently, for example, the proposal would newly allow a local chamber of commerce that meets the other conditions in the proposal to offer AHP coverage to its small-business members, including working owners.

As large groups, AHPs might offer small businesses some of the scale and efficiency advantages typically enjoyed by large employer plans. They additionally could offer small businesses relief from ACA and State rules that restrict issuers' product offerings and pricing in individual and small group markets.

1.3. AHPs' Potential Impacts

By facilitating the establishment and operation of more AHPs, this proposed rule aims to make more, and more affordable, health insurance options available to more employees of small businesses and the families of such employees. Insuring more American workers, and offering premiums and benefits that faithfully match employees' preferences, are the most important benefits of this rule. The proposed rule contains provisions designed to prevent potentially adverse impacts on individual or small group risk pools that might otherwise carry social costs. AHPs will also affect tax subsidies and revenue and the Medicaid program.While the impacts of this proposed rule, and of AHPs themselves, are intended to be positive on net, the incidence, nature and magnitude of both positive and negative effects are uncertain. Predictions of these impacts are confounded by numerous factors including:

[26] DOL calculations based on the Abstract of Auxiliary Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey, U.S. Department of Labor.

• The dynamic and in some cases unstable conditions currently prevailing in local individual and small group insurance markets under existing ACA and State rules;

• A lack of data on the risk profiles of existing and potential associations and the individual and small group markets with which they intersect;

• A lack of data on the relative availabilities and sizes of subsidies and tax preferences for prospective AHP enrollees in Exchanges or Small Business Health Options Program (SHOP) Exchanges versus in AHPs;

• Legislative proposals to amend or repeal and replace the ACA;

• States' broad discretion to regulate AHPs, and variations in State practices; and

• Interactions with related initiatives per Executive Order 13813, including HRAs and short-term limited duration insurance policies.

In light of these uncertainties, what follows is a mostly qualitative assessment of this proposal's potential impacts, rather than a quantitative prediction. The Department is seeking comments and data that will allow the impacts of the rule to be quantified, and that will enable it to more fully assess the proposed rule's effects.

1.4. Potential Advantages of Scale

Owing to their potentially large scale, under the right conditions, AHPs result in lower insurance premiums compared to existing small group and individual insurance market arrangements. Consequently, AHPs may offer small businesses comparable coverage at lower prices, thereby delivering economic benefits to many working owners and employees of small businesses.

Large employers often enjoy some advantages of scale in the provision of health benefits for their employees, and AHPs may realize some of these same advantages. Scale may yield savings via one or more of three mechanisms: administrative efficiencies from economies of scale, self-insurance, and market power.

Administrative savings generally can be understood to constitute a social benefit, as resources are freed for other uses without reducing consumption. With respect to administrative efficiency from economies of scale, large employers generally avoid the potentially high cost associated with health insurance issuers' efforts to market to, enroll, and underwrite and set premiums for large numbers of individual families or small employer groups.[27] AHPs may, under favorable circumstances, achieve some savings in the same way. On the other hand, rather than avoiding these costs, some AHPs sometimes may merely internalize them, in the form of employers' cost to form associations and AHPs' own efforts to recruit and enroll association members, and to sign members up for insurance. AHPs sponsored by pre-existing associations that exist for reasons other than offering health insurance might have more potential to deliver administrative savings than those set up to offer health insurance. Organizations that already exist for reasons other than offering health insurance (such as chambers of commerce or trade associations) may already have extensive memberships and thus may have fewer setup, recruitment, and enrollment costs than organizations newly formed to offer insurance. Under this proposal, such existing associations that have been prohibited from offering AHPs to some or all of their existing members by the Department's current interpretations could newly extend AHP eligibility to existing members. Some other AHPs, however, might thrive by delivering savings to members by other means, such as by offering less comprehensive benefits, even if their administrative costs are higher.

Some other efficiency gains might arise from AHPs' scale in purchasing not insurance but healthcare services. Healthcare payers and providers sometimes realize administrative efficiencies in their interactions if a large proportion of each provider's patients are covered by a common payer. For example, streamlining of billing and payment processes and procedures for preauthorization for covered services may facilitate volume discounts. A self-insured AHP with a sufficiently large presence in a local market might capture some such efficiency. On the other hand, in some cases AHPs' entry into markets alongside other payers might erode such efficiency by reducing such issuer's scale in purchasing healthcare services. That is, an increase in the number of payers may sometimes increase the administrative burden associated with the payer-provider interface for some or all payers and providers. Consequently, the net impact of this proposal on efficiency in this interface (and on associated social welfare) could be positive or negative.

As large groups, AHPs also may achieve some savings by offering self-insured coverage. Because large group plans in and of themselves constitute large and potentially stable risk pools, it often is feasible for them to self-insure rather than to purchase fully-insured large group insurance policies from licensed health insurance issuers. Large risk pools' claims experience generally varies only modestly from year to year, so well-run large group plans can set premiums and operate with little risk of financial shortfalls. By self-insuring, some large AHPs may avoid some of the overhead cost otherwise associated with fully-insured large group health insurance policies. However State revenue may also decline in States that tax insurance premiums.

Also, as large groups, in addition to potential administrative and overhead savings, AHPs sometimes may be able to achieve savings through market power, negotiating discounts that come at suppliers' expense. In otherwise competitive markets, the exercise of market power sometimes can result in economic inefficiency. The opposite might be true, however, where an AHP's market power acts to counterbalance market power otherwise exercised by issuers or providers. If large group premiums are not already at competitive levels, sufficiently large AHPs may be able to negotiate with issuers for premium discounts. More frequently, issuers and other large payers, potentially including large, self-insured AHPs, may be able to negotiate discounts and other savings measures with hospitals, providers, and third party administrators (TPAs). Because markets for healthcare services are inherently local, payers' market power generally requires not merely scale, but a large geographic market share. Consequently, self-insured AHPs with geographically concentrated membership are more likely to realize such savings than are AHPs whose membership is spread thinly across States.

On the other hand, AHPs might sometimes dilute other payers' market power to command provider discounts,[28] thereby increasing costs for such payers' enrollees. AHP's net effect on payers' market power with respect to providers and consequent effect on enrollee costs consequently could be positive or negative.

It should be noted that diluting others' market power can increase social

[27] ACA and State rules that limit underwriting and set floors for insurers' loss ratios may make some of these savings available even within the existing individual and small group markets.

[28] For a discussion of insurers' market power *see* Sheffler, Richard M. and Daniel R.Arnold. ''Insurer Market Power Lowers Prices in Numerous Concentrated Provider Markets.'' Health Affairs 36, no. 9 (2017).

welfare if it produces more healthy competition. If local individual and small group market premiums are not already at competitive levels, increasing competitive pressure from AHPs might force some individual and small group issuers to lower their own premiums. There is some evidence that competition among issuers has this effect,[29] although the likelihood of this effect occurring in this case is unclear, as market rules and claims experience may already have eliminated excess profit.

Given all of these variables, the net transfer and social welfare effects related to AHPs' exercise of, or impact on others' exercise of, market power are ambiguous.

In summary, AHPs' potential to reap advantages from scale may vary. Under favorable conditions they may realize some administrative savings, and/or negotiate discounts from insurers, providers, or TPAs. Market forces may favor AHPs that reap such advantages, but may also sustain AHPs that deliver savings to members by other means.

1.5. Increased Choice

Because they would not be subject to individual and small group market rules, AHPs in the large group market (which the Department expects would include all or almost all AHPs) would enjoy greater flexibility with respect to the products and prices they could offer to small businesses. AHPs consequently could offer many small businesses more affordable insurance options than would be available to them in individual and small group markets. Under the ACA and State rules, non-grandfathered individual and small group insurance policies generally must cover certain benefits. These rules limit the policies that issuers can offer to small businesses. Under this proposal, as noted earlier in this section, AHPs would generally be treated as large employers and accordingly granted access to the large group market (or, alternatively, could self-insure). The large group market is not subject to the same restrictions that apply in the individual and small group markets.[30] AHPs consequently could offer many small businesses more options than could individual and small group insurance issuers. For instance, AHPs could offer less comprehensive—and hence more affordable—coverage that some employees may prefer.

Some stakeholders have expressed concern that AHPs, by offering less comprehensive benefits, could attract healthier individuals, leaving less healthy individuals in the individual and small group markets and thus driving up the premiums in those markets and potentially destabilizing them. This risk may be small, however, relative to the benefits realized by small businesses and their employees that gain access to more affordable insurance that more closely matches their preferences. AHPs' benefits to their members can be substantial, as discussed above. For example, a small businesses electing less comprehensive AHP coverage can deliver benefits that are more closely tailored to their employees' actual health needs at a price their employees prefer. In addition, to the extent that AHPs deliver administrative savings or market power they may offer less expensive but equally comprehensive benefit options as compared to plans available in the individual or small group markets. This feature of AHPs would appeal to their less healthy members, prompting less healthy individuals to leave the individual and small group markets and potentially balancing out any exodus of healthy individuals from these markets. Moreover, this proposal addresses the risk of adverse effects on the individual and small group markets by including nondiscrimination provisions under which AHPs could not condition eligibility for membership or benefits or vary members' premiums based on their health status. The Department invites comments as to the benefits of AHPs offering wider choice including less comprehensive policies as well as any risk of adverse effects on individual or small group markets.

1.6. Risk Pooling

The proposal seeks to enable AHPs to assemble large, stable risk pools. The ACA and State rules tightly regulate how individual and small group issuers pool risk, for example by limiting the degree to which premiums can be adjusted based on age. These rules can threaten market stability. The ACA and State rules attempt to address this threat with additional, potentially inefficient rules, including the requirement that all individuals acquire coverage and mandatory transfers of ''risk adjustment payments'' from some issuers to others. AHPs would not be subject to these ACA and State rules, but will be subject to the nondiscrimination rules that bar all group health plans from conditioning eligibility, benefits, or premiums on health status. Properly designed, these rules should help AHPs to assemble large, stable risk pools, while at the same time limiting the risk that AHPs might tend to enroll healthier small businesses and thereby adversely affect individual and small group markets.

Some stakeholders have raised concerns that AHPs will be more likely to form in industries with younger, healthier employees, as employers and their employees receive greater access to more affordable coverage than is available in the individual and small group markets. The Department believes such concerns at this juncture are speculative. While AHPs may have larger incentives to form in industries with younger, healthier workers, they will also have incentives to form in industries with older or less healthy workers when, for example, they deliver sufficient administrative savings to offset any additional cost of insuring an older or less healthy population. The Department requests comments that would help further address this issue.

Likewise, some stakeholders have raised concerns that, because AHPs will enjoy greater pricing flexibility to set premiums, some might offer lower prices to healthier groups and higher prices to less healthy groups than individual and small group issuers are allowed to offer to those same groups. Of course, the nondiscrimination provisions in this proposal would prohibit any such discrimination based on health factors, but some non-health factors (such as age) correlate to a large degree with healthcare expenditures, and AHPs under this proposal could vary premiums to reflect actuarial risk based on such non-health factors. Some stakeholders argue that pursuit of lower prices based on non-health factors would lead, for example, younger association members to join AHPs but might lead older members to remain in individual and small group markets.

This argument, however, depends on the assumption that pricing flexibility is the principal or only advantage available to AHPs. In fact, as outlined above, AHPs have the potential to create significant efficiencies that could lower premiums across the board. An AHP that realizes sufficient efficiencies may offer attractive prices even to less

[29] Frank, Richard G. and Thomas G. McGuire. ''Regulated Medicare Advantage and Marketplace Individual Health Insurance Markets Rely on Insurer Competition.'' Health Affairs 36 no. 9 (2017).

[30] Some States do set some minimum standards for benefits covered by large group policies, however. Such mandates would apply to fully insured AHPs. Because AHPs are MEWAs under ERISA, States also may have flexibility under ERISA's MEWA provisions to extend benefit standards to self-insured AHPs. ERISA generally precludes States from applying such standards to self-insured ERISA plans that are not MEWAs. For lists of ''essential health benefits'' that must be covered by non-grandfathered coverage in States' individual and small group markets under the ACA, and for lists of benefit standards that States apply to large group plans, *see https://www.cms.gov/cciio/resources/data-resources/ehb.html.*

healthy groups. In that scenario, less healthy people would also have an incentive to leave the individual and small group markets, potentially balancing out any exodus of healthy people from these markets. The Department requests comments that would help further address this issue.

As noted earlier, the Department intends that this proposal would help AHPs to assemble large, stable risk pools, while at the same time limiting any risk of adverse effects on individual and small group markets. In calibrating the proposal to advance those goals, the Department considered a range of evidence on the dynamics of health insurance markets under various conditions and rules. The Department believes available evidence is consistent with the balanced approach adopted in the proposal, and that the proposal would advance the intended goals, and invites comments responsive to this evidence and viewpoint.

Some of the evidence the Department reviewed appears to suggest this proposal would have little impact on the composition of individual and small group market risk pools. Other potential avenues for segmentation that exist today do not appear to have produced major effects. For example, a small employer currently can segregate itself into a separate risk pool by self-insuring and relying on stop-loss insurance to backstop particularly large losses. Yet the proportion of small-firm establishments reporting that they use self-insurance has increased only modestly, from 12.7 percent in 2010 to 17.4 percent in 2016 and the percent of policy holders in self-insured plans at small-firm establishments has increased from 12.5 percent to 15.7 percent over the same time period.[31] In addition, price inelasticity and inertia in individuals' and small businesses' health insurance purchases [32] may help to limit and/or slow any potential impacts. If, as this evidence suggests, small businesses might not vigorously shop for better prices and products, there may be little potential for risk selection, but also limited demand for AHPs.

Various studies of past State and Federal individual and small group market reforms, cited below in connection with AHPs' potential impact on the uninsured population, mostly find that reforms tightening market rules result in only limited adverse selection. This might suggest that this proposal, by in effect loosening such rules, may produce only limited risk selection effects.

Some other evidence illustrates how under some conditions changes in product and price offerings can affect the composition of risk pools. One employer found that older and less healthy employees sometimes declined to join younger and healthier counterparts in switching to new, less comprehensive options, despite incentives provided to encourage such switches, perhaps due to concerns about reduced coverage.[33] A review of experience with consumer-directed health plans suggests some potential for similar effects.[34] Some prior experiences with different AHP and group purchasing arrangements reportedly did not achieve sufficient efficiencies to fully prevent or offset all potential risk segmentation effects.[35] The Congressional Budget Office once predicted modest risk segmentation from an AHP-like proposal, with small premium increases for small employers retaining traditional insurance, and increased coverage among healthier small groups partly offset by a small loss of coverage among less healthy ones.[36]

The foregoing evidence may be consistent with some key stakeholders' concerns that AHPs, if regulated too loosely relative to issuers, might adversely impact some risk pools.[37] On the other hand, severely restricting AHPs would hinder them from providing additional, affordable coverage options. The Department believes that this proposal, under which AHPs could not condition eligibility, benefits, or premiums on health status, strikes the right balance to enable AHPs to assemble large stable risk pools and offer new affordable options to small businesses without posing substantial risk of adverse effects on other risk pools. AHPs' potential to deliver administrative savings further mitigates any such risk

1.7. Individual and Small Group Markets

The Department separately considered AHPs' potential impacts on both individual and small group markets. In both cases, AHPs could offer many small businesses more, and more affordable, coverage options than otherwise available.

With respect to individual markets, many of those insured there now might become eligible for AHPs. AHPs could enroll both working owners and employees of small business that do not currently offer insurance but might elect to join AHPs. The latter group may be growing as small firms' propensity to offer health insurance for employees has declined substantially from 47 percent of establishments in 2000 to 29 percent in 2016.[38] Of the 25 million U.S. individuals under age 65 who were

[31] Agency for Healthcare Research and Quality (AHRQ), 2016 Medical Expenditure Survey-Insurance Component (MEPS–IC).

[32] *See* M. Kate Bundorf, Joanthan Levin, and Neal Mahoney, ''Pricing and Welfare in Health Plan Choice,'' *American Economic Review* 2012, 107(7), 3214–3248, pointing to price inelasticity; and Benjamin R. Handel, ''Adverse Selection and Inertia in Health Insurance Markets: When Nudging Hurts,'' *American Economic Review* 2013, 103(7), 2643–2682, finding that inertia restrains adverse selection and associated welfare losses.

[33] Fronstin, Paul, and M. Christopher Roebuck. ''Health Plan Switching: A Case Study-Implications for Private- and Public-Health-Insurance Exchanges and Increased Health Plan Choice.'' EBRI Issue Brief 432, March 23, 2017. *https://www.ebri.org/pdf/briefspdf/EBRI_IB_432_PlnSwtch.23Mar17.pdf.*

[34] Bundorf, M. Kate, ''Consumer-Directed Health Plans: A Review of the Evidence.'' *The Journal of Risk and Insurance.* January 2016.

[35] Historically, some efforts to assemble large purchasing coalitions to negotiate such discounts have met with limited success. In one major example, the California Health Insurance Purchasing Cooperative, or HIPC, established by the State and later operated by a business coalition, was eventually disbanded after failing to deliver its intended savings. *See,* for example, National Conference of State Legislatures, ''Health Insurance Purchasing Cooperatives: State and Federal Roles.'' September 1, 2016. Last accessed September 25, 2017. *http://www.ncsl.org/research/health/purchasing-coops-and-alliances-for-health.aspx#Other_Approaches. See also* Bender, Karen, and Beth Fritchen. ''Government-Sponsored Health Insurance Purchasing Arrangements: Do they Reduce Costs or Expand Coverage for Individuals and Small Employers?'' 2008. Report finds that purchasing arrangements increase premiums by as much as six percent. *http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/files/archive/2011/health_ins_purchasing_arrangements(1).pdf.*

[36] CBO Paper, ''Increasing Small-Firm Health Insurance Coverage Through Association Health Plans and HealthMarts,'' January 2000. *https://www.cbo.gov/publication/12066;* CBO cost estimate, H.R. 525 Small Business Health Fairness Act of 2005. April 8, 2005. *https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/costestimate/hr52500.pdf.*

[37] *See* for example: (1) NAIC letter to Reps. Foxx and Scott, February 28, 2017, *http://www.naic.org/documents/health_archive_naic_opposes_small_business_fairness_act.pdf; (2)* American Academy of Actuaries. ''Issue Brief: Association Health Plans,'' February 2017; .and (3) America's Health Insurance Plans (AHIP), ''Association-Sponsored Health Plans and Reform of the Individual Healthcare Market'' February 10, 2017.

[38] Agency for Healthcare Research and Quality, Center for Financing, Access and Cost Trends. Medical Expenditure Panel Survey-Insurance Component, 2012–2016. Medical Expenditure Panel Survey Private Sector Insurance Component, Table II.A.2. In 2016, among employees of firms with fewer than 50 employees, just one in four were enrolled in insurance on the job. Nearly one-half worked at firms that did not offer insurance. Agency for Healthcare Research and Quality (AHRQ), 2016 Medical Expenditure Panel Survey Insurance Component (MEPS–IC) Tables. Nonetheless, just 18 percent of small firm employees were uninsured. Many obtained insurance from a spouse's or parent's employer. DOL calculations based on the Abstract of Auxiliary Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey, U.S. Department of Labor.

insured in individual markets in 2015, approximately 3 million were working owners or dependents thereof, and an additional 6 million were employees of small businesses that did not offer insurance or dependents thereof. With respect to small group markets, essentially all insured businesses might become eligible for AHPs. In 2015, firms with fewer than 50 employees insured 24 million workers and dependents.[39]

In an effort to facilitate the availability of individual insurance, the ACA established federal and State-based ''Exchanges,'' or centralized, regulated marketplaces. The ACA envisioned that a number of health insurance issuers would offer a set of comparable policies in each Exchange, making it possible for individuals to shop (and necessary for issuers to compete) for the best price and quality, while means-tested subsidies would ensure that coverage was affordable. This vision has not been realized fully in much of the country, however.

In 2016, 11 million individuals were enrolled via Exchanges. A large majority qualified for means-tested assistance with premiums (9 million) and/or cost sharing (6 million).[40] However, for 2018, only one issuer offered coverage in the Exchange in each of approximately one-half of US counties. Just two issuers participated in Exchanges in many additional counties.[41] Moreover, many Exchange enrollees have faced large premium increases.[42] The Administration already has taken some steps to stabilize the Exchanges, but their success is uncertain given that the ACA creates significant incentives for some people to wait to purchase insurance until an enrollment period that occurs after they have experienced a medical need. By expanding AHPs, this proposed rule aims to provide many more individuals access to the potentially more stable and affordable large group market. However, to the extent that AHPs prove particularly attractive to younger or lower cost individuals, they may contribute to some Exchanges' instability.

Issuers may elect to offer individual market policies in Exchanges or outside them, or both. Non-grandfathered individual market policies must satisfy various ACA requirements including minimum benefit packages, minimum actuarial value(s), and minimum loss ratios. They must be offered to any individual who applies, and premiums must not vary depending on enrollees' health status, instead varying only based on location, age, tobacco use, and family size, and within certain limits. Issuers offering individual policies in a given location both through the local Exchange and outside it must treat the two as a single risk pool when setting premiums. The issuers offering individual policies, the policies offered, and the premiums charged can vary from place to place and locally between Exchanges and outside markets.

To facilitate access to health insurance for small employers, the ACA established the Small Business Health Options Program, or ''SHOP''. Small employers may purchase insurance from an issuer, agent, or broker via the SHOP, or directly from issuers or through agents or brokers not via a SHOP, or they may self-insure. Employers purchasing group policies via a SHOP may qualify for tax credits to help cover premium costs. If available, small employers also may obtain coverage from an AHP, and thereby pool together with other employers and gain access to the large group market. Small employers whose employees are represented by a union may participate in a (usually large) multiemployer health benefit plan, established pursuant to collective bargaining agreements between the union and two or more employers.

Issuers may offer small group policies to small employers via SHOPs, directly through issuers, agents or brokers, or both. Either way, as with non-grandfathered individual market policies, non-grandfathered small group policies must satisfy various ACA requirements including minimum benefit packages, minimum actuarial value(s), and minimum loss ratios. They must be offered to any small employer who applies, and premiums may vary only based on location, age, and tobacco use, and within certain limits; they may not vary based on health. Issuers offering small group policies in a given location both through the local SHOP and directly must treat the two as a single risk pool when setting premiums. However, the issuers offering small group policies, the policies they offer, and the premiums charged can vary from place to place and locally between SHOPs and outside markets. In some locations the availability of policies may be limited, and/or the premiums charged may be rising rapidly, although in most locations small group markets continue to offer some choice of issuers and policies and moderate premium growth.[43]

Few small employers have elected to acquire health insurance via SHOPs. As of January 2017, just 27,205 small employers purchased small group policies via SHOPs, covering 233,000 employees and dependents.[44] (Much larger numbers obtained coverage directly from small group issuers via agents and brokers outside of SHOPs: In 2016, 1.6 million small-firm establishments offered health benefits for employees.)[45] Sixteen States and the District of Columbia operated SHOPs, while federally-facilitated SHOPs operated in 33 States. (Beginning in 2017, a special waiver allowed Hawaii to operate its existing small group market within the relevant ACA framework without establishing a SHOP.) At this point, SHOPs cover far fewer employees than existing plan-MEWAs/AHPs, which reportedly cover 1.8 million participants.

The Department considered the potential susceptibilities of individual and small group markets to adverse selection under this proposal. All else equal, individual markets may be more susceptible to risk selection than small group markets, as individuals' costs generally vary more widely than small groups'. The ACA's requirement that essentially all individuals acquire coverage and the provision of subsidies in Exchanges may reduce that

[39] DOL calculations based on the Abstract of Auxiliary Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey, U.S. Department of Labor.

[40] Office of the Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services, Compilation of State Date on the Affordable Care Act, December 2016.

[41] See U.S. Department of Health and Human Services, ''County by County Analysis of Plan Year 2018 Insurer Participation in Health Insurance Exchanges,'' available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2017-10-20-Issuer-County-Map.pdf.*

[42] The places with the largest 2017 increases in the unsubsidized second-lowest silver plan included Phoenix, AZ (up 145% from $207 to $507 per month for a 40-year-old non-smoker). See Cynthia Cox, Michelle Long, Ashley Semanskee, Rabah Kamal, Gary Claxton, and Larry Levitt, ''2017 Premium Changes and Insurer Participation in the Affordable Care Act's Health Insurance Marketplaces,'' Kaiser Family Foundation, October 24, 2016 (updated November 1, 2016), available at *https://www.kff.org/health-reform/issue-brief/2017-premium-changes-and-insurer-participation-in-the-affordable-care-acts-health-insurance-marketplaces/.*

[43] Between 1996 and 2016 small (fewer than 50 employees) and large private-sector employer premium increases followed similar trajectories. Both averaged 6 percent annually. Agency for Healthcare Research and Quality. Average total single premium (in dollars) per enrolled employee at private-sector establishments that offer health insurance by firm size and selected characteristics (Table I.C.1). Medical Expenditure Panel Survey Insurance Component Tables.

[44] SHOP numbers reported by SB–SHOPs to CCIIO State Marketplace Insurance Programs Group and FF–SHOP Enrollment Database, May 15, 2017.

[45] Agency for Healthcare Research and Quality (AHRQ), 2016 Medical Expenditure Panel Survey Insurance Component (MEPS–IC). Small firms include those with fewer than 50 employees.

susceptibility, however.[46] The Department believes that under this proposal AHPs' adherence to applicable nondiscrimination rules and potential for administrative savings would mitigate any risk of adverse selection against individual and small group markets.

1.8. Medicaid

Under the ACA, Medicaid eligibility was expanded in many States. Some Medicaid-eligible workers may become eligible to enroll in AHPs under this proposal. Among 42 million individuals under age 65 enrolled in Medicaid or CHIP in 2015, 2 million were working owners or dependents thereof, and 6 million were employees of small businesses that did not offer insurance or dependents thereof.[47]

1.9. The Uninsured

Twenty-eight million individuals in the U.S. lacked health insurance coverage in 2015.[48] Because AHPs often can offer more affordable alternatives to individual and small group insurance policies, it is possible that this proposed rule will extend insurance coverage to some otherwise uninsured individual families and small groups. Of the 28 million uninsured, approximately 3 million are working owners or dependents thereof and an additional 8 million are employees of small businesses that do not offer insurance or dependents thereof.[49] It is likely that some of these uninsured will become eligible for an AHP under this proposed rule.

Past State and Federal reforms that tightened or loosened individual and small group market rules may, according to various studies, have changed the prices paid and policies selected by different businesses, somewhat improved access for targeted groups (potentially at others' expense), and/or prompted some individuals or small businesses to acquire or drop insurance, but had little *net* effect on coverage.[50] AHPs' potential to expand coverage may be greater than this experience suggests, however. Market conditions and the size and composition of the uninsured population are different today, and as noted earlier, small firms' propensity to offer insurance to their employees has fallen, suggesting potential opportunities for AHPs to expand coverage.

1.10. Operational Risks

ERISA generally classifies AHPs as MEWAs. Historically, a number of MEWAs have suffered from financial mismanagement or abuse, often leaving participants and providers with unpaid benefits and bills.[51] Both DOL and State insurance regulators have devoted substantial resources to detecting and correcting these problems, and in some cases, prosecuting wrongdoers. Some of these entities attempt to evade oversight and enforcement actions by claiming to be something other than MEWAs, such as collectively-bargained multiemployer ERISA plans. To address this continuing risk, the ACA gave DOL expanded authority to monitor MEWAs and intervene when MEWAs are headed for trouble, and both DOL and State enforcement efforts are ongoing.

ERISA requires MEWAs to report certain information annually to the Department, using a form known as Form M1.[52] The Department last examined the universe of these reports in September of 2014.[53] That examination included reports for MEWAs (including AHPs) operating in each year from 2010 through 2013. According to this examination, in 2013, 392 MEWAs covered approximately 1.6 million employees. The vast majority of these MEWAs reported themselves as ERISA plans that covered employees of two or more employers. Nearly all of these covered more than 50 employees and therefore constituted large-group employer plans for purposes of the ACA. A few reported as so-called ''non-plan'' MEWAs, that provided or purchased health or other welfare benefits for two or more ERISA plans sponsored by individual employers (most of which probably were small-group plans for ACA purposes). Some of these might qualify to begin operating as ''plan-MEWAs'' (or AHPs) under this proposed rule. This proposed rule is intended to facilitate the establishment of more new plan-MEWAs/AHPs, all of which would be required to report annually to the Department.

Most reporting MEWAs operate in more than one State, and a handful operate in more than 20 States. In 2013, 46 MEWAs reported expanding operations into one or more new States. States with the most plan-MEWAs/AHPs in 2012 included California (147), Texas (106), and New York (100). Only one had fewer than 20 (South Dakota had 18). MEWAs were most likely to be

[46] H.R. 1 of the 115th Congress, enacted December 22, 2017 will eliminate the shared responsibility payment for failure to maintain health insurance coverage effective beginning in 2019. AHPs, by offering eligible individuals more affordable options than are available in individual markets, might reduce somewhat any potential increase in the uninsured population that could result from elimination of the tax payment. At the same time, however, such elimination might prompt some individuals who would have joined AHPs to remain uninsured instead.

[47] DOL calculations based on the Abstract of Auxiliary Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey, U.S. Department of Labor.

[48] *Id.*

[49] *Id.*

[50] *See* for example: (1) Thomas Buchmueller and John DiNardo, ''Did Community Rating Induce an Adverse Selection Death Spiral? Evidence from New York, Pennsylvania, and Connecticut, ''*American Economic Review* 2002, 92(1), 280–294, finding little net effect.'''' (2) Mark A. Hall, ''HIPPA's Small-Group Access Laws: Win, Loss, or Draw,'' *Cato Journal* 2002 22(1), 71–83, generally calling the results a ''draw.'' (3) Susan M. Gates, Kanika Kapur, and Pinar Karaca-Mandic, ''State Health Insurance Mandates, Consumer Directed Health Plans, and Health Savings Account: Are They a Panacea for Small Businesses,'' Chapter 3 in *In the Name of Entrepreneurship: The Logic and Effects of Special Treatment for Small Businesses,* Susan M. Gates and Kristin J Leuschner, eds., Rand Corporation, 2007, finding little effect. (4) Sudha Xirasagar, Carleen H. Stoskopf, James R. Hussey, Michael E. Samuels, William R. Shrader, and Ruth P. Saunders, ''The Impact of State' Small Group Health Insurance Reforms on Uninsurance Rates,'' *Journal of Health and Social Policy* 2005, 20(3), finding little effect. (5) James R. Baumgardner and Stuart A Hagen, ''Predicting Response to Regulatory Change in the Small Group Health Insurance Market: The Case of Association Health Plans and Healthmarts,'' *Inquiry* 2001/2002, 38(4), 351–364, predicting small effects.

[51] For discussions of this history, *see:* (1) U.S. Gov't Accountability Office, GAO–92–40, ''State Need Labor's Help Regulating Multiple Employer Welfare Arrangements.'', March 1992, available at *http://www.gao.gov/assets/220/215647.pdf;* (2) U.S. Gov't Accountability Office, GAO–04–312, ''Employers and Individuals Are Vulnerable to Unauthorized or Bogus Entities Selling Coverage.'' February 2004, available at *http://www.gao.gov/new.items/d04312.pdf;* and Mila Kofman and Jennifer Libster, ''Turbulent Past, Uncertain Future: Is It Time to Re-evaluate Regulation of Self-Insured Multiple Employer Arrangements?'', Journal of Insurance Regulation, 2005, Vol. 23, Issue 3, p. 17–33.

[52] ERISA requires any plan MEWA/AHP (a MEWA that is also an ERISA plan) to file an additional report annually with the Department. This is the same annual report filed by all ERISA plans that include 100 or more participants or hold plan assets, filed using Form 5500. However, while more than 90 percent of 2012 Form M1 filers reported that they were plan MEWAs, only a bit more than one-half of these entities also filed Form 5500 for that year. Among those that did, frequently some of the information reported across the two forms was inconsistent. These reporting inconsistencies raise questions about the reliability of MEWAs' compliance with ERISA's reporting requirements and the reliability of the information recounted here.

[53] ''Analysis of Form M–1 Data for Filing Years 2010–2013,'' September 23, 2014. *https://www.dol.gov/sites/default/files/ebsa/researchers/analysis/health-and-welfare/summit2014.pdf.* A small number of new multiemployer welfare plans that have been in operation for less than three years also are required to submit such reports. Such multiemployer plans, which exist pursuant to collective bargaining agreements between one or more employee organizations and two or more employers, are not subject to ERISA's MEWA provisions (other than the reporting requirement), and are not affected by this regulation. These multiemployer plans made up just 2 percent of all reporting entities in 2013. Because of their inclusion among the reports, the statistics presented here somewhat overstate the size of the true MEWA universe.

self-insured in certain western States including Wyoming (37 percent), Oklahoma (31 percent), Montana (30 percent), and North Dakota (28 percent).

About one-fourth of reporting MEWAs are self-insured in all the States in which they operate, and another 9 percent are self-insured in some States. (The remaining majority does not self-insure and instead purchases insurance from issuers in all States in which they operate.) For MEWAs for which the type of benefits offered could be determined, nearly all offered health insurance, and many offered other, additional welfare benefits, such as dental or vision benefits, or life or disability insurance.

MEWAs' annual reports filed with the Department must indicate whether they are in compliance with a number of ERISA's minimum health plan standards, and with ERISA's general requirement that plans hold assets in trust. Nearly none reported lack of compliance with the former, but 13 percent reported that they did not comply with the trust requirement.

This proposed rule includes provisions intended to protect AHPs against mismanagement and abuse. It requires that the group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality appropriate for the legal form in which the group or association is operated, and that the functions and activities of the group or association, including the establishment and maintenance of the group health plan, are controlled by its employer members. These requirements are intended to ensure that the organizations are bona fide organizations with the organizational structure necessary to act ''in the interests'' of participating employers with respect to employee benefit plans as ERISA requires. The proposed rule also requires that the AHP's member companies control the AHP. This requirement is necessary both to satisfy ERISA's requirement that the group or association must act for the direct employers in relation to the employee benefit plan, and to prevent formation of commercial enterprises that claim to be AHPs but that operate like traditional issuers selling insurance in the employer marketplace and may be vulnerable to abuse. In addition, the proposal would require that only employer members may participate in the AHP and health coverage is not made available other than to or in connection with a member of the association. Together, these criteria are intended to ensure that associations sponsoring AHPs are bona fide employment-based associations and likely to be resistant to abuse. Nevertheless, the flexibility afforded AHPs under this proposal could introduce more opportunities for mismanagement or abuse, increasing potential oversight demands on the Department and State regulators.

1.11. Federal Budget Impacts

The proposal is likely to have offsetting effects on the budget, with some increasing the deficit and others reducing the deficit. On balance, deficit-increasing effects are likely to dominate, making the proposal's net impact on the federal budget negative.

Approximately 906,000 individuals who are insured on the Exchanges and eligible for subsidies, and approximately 2 million Medicaid enrollees, are working owners or dependents thereof. An additional 2 million and 6 million, respectively, are employees of small businesses that do not offer insurance or dependents thereof.[54] As of February 2017, 10.3 million individuals were enrolled, and paid their premiums, on a Federal or State-based Exchange. Of these individuals, 8.7 million received tax credits, and 5.9 million were receiving cost-sharing reduction subsidies. The average advanced premium tax credit for these individuals was $371 per month.[55] Forty-two million individuals under age 65 were covered by Medicaid.

In 2005, the Congressional Budget Office (CBO) estimated the potential budget impacts of a 2005 legislative proposal to expand AHPs. Under the 2005 legislation and contemporaneous law, many individuals joining AHPs previously would have been uninsured or purchased individual policies without benefit of any subsidies; by joining AHPs they stood to gain potentially large subsidies in the form of tax exclusions. CBO predicted that the legislation, by increasing spending on employer-provided insurance, would reduce federal tax revenue by $261 million over 10 years, including a $76 million reduction in Social Security payroll taxes. CBO also predicted that AHPs would displace some Medicaid coverage and thereby reduce federal spending by $80 million over 10 years. Finally, according to CBO, the legislation would have required DOL to hire 150 additional employees and spend an additional $136 million over 10 years to properly oversee AHPs.[56] Together these budget impacts would have increased the federal deficit by $317 million over 10 years.

Today, consequent to the ACA, many individuals who in 2005 might have been uninsured instead are enrolled in Medicaid or are insured and receive subsidies on individual Exchanges, and therefore would trade existing subsidies for potential new tax subsidies when joining AHPs. Market forces generally favor individuals capturing the larger available subsidy, so it is likely that AHPs will mostly enroll higher income individuals, whose net subsidies will increase, adding to the federal deficit. Resources allocated to support the Departments' efforts to prevent and correct potential mismanagement and abuse could add more to it. If, however, AHPs do enroll some Medicaid enrollees or individuals receiving large subsidies on individual Exchanges, savings from these impacts might offset a portion of these deficit increases.

1.12. Regulatory Alternatives

In developing this proposal DOL considered various alternative approaches.

• *Retaining existing rules and interpretations.* DOL elected to propose relaxing existing rules and interpretations because they have proven to impede the establishment and growth of potentially beneficial AHPs. Existing interpretations generally block working owners who lack employees from joining AHPs. Instead these individuals and their families are limited to options available in individual markets where premiums may be higher and choice narrower than that which AHPs can sometimes provide. The existing commonality requirement sometimes prevents associations from achieving sufficient scale in local markets to effectively establish and operate efficient AHPs. The existing uncertainty as to the sufficiency of a common industry to permit establishment of an AHP may prevent the formation of more nationwide AHPs. And, the existing requirement that associations exist for purposes other than providing health benefits prevents the establishment of beneficial AHPs in circumstances where no other compelling reason exists to establish and maintain an association. By addressing these requirements, this proposal aims to promote the establishment and growth of AHPs and

[54] DOL calculations based on the Abstract of Auxiliary Data for the March 2016 Annual Social and Economic Supplement to the Current Population Survey, U.S. Department of Labor.

[55] CMS, ''2017 Effectuated Enrollment Snapshot,'' June 12, 2017. *https://downloads.cms.gov/files/effectuated-enrollment-snapshot-report-06-12-17.pdf*

[56] CBO cost estimate, H.R. 525 Small Business Health Fairness Act of 2005. April 8, 2005. *https://www.cbo.gov/sites/default/files/109th-congress-2005-2006/costestimate/hr52500.pdf*

optimize small businesses' access to them.

• *Relaxing the control requirement.* The proposal generally requires that association members control the AHP. Relaxing this requirement might encourage more and faster establishment and growth of AHPs, as entrepreneurs identify and seize opportunities to reap and share with enrollees the economic benefits AHPs can deliver. DOL believes, however, that relaxing this requirement would increase the risk that AHPs would be vulnerable to mismanagement or abuse. Additionally, the Department's authority to loosen this requirement is unclear in light of ERISA's text.

• *Including only fully-insured AHPs.* DOL considered prohibiting broadening the circumstances under which an AHP is treated as a single plan under ERISA only for fully insured AHPs. Historically, self-insured MEWAs have been particularly vulnerable to financial mismanagement and abuse. MEWA promoters sometimes have used self-insurance both to evade State oversight and to maximize opportunities for abusive financial self-dealing, often with highly negative consequences for their enrollees. Nonetheless, DOL recognizes that well-managed self-insured AHPs may be able to realize efficiencies that insured AHPs cannot. In light of this potential, and considering the enforcement tools that the ACA added to DOL's arsenal, DOL elected to allow AHPs to continue to self-insure under this proposal. This provision will serve to further promote the establishment and growth of effective AHPs, but it will also compel DOL to commit additional resources to AHPs' oversight.

• *Limiting or increasing AHPs' product and/or price flexibility.* As noted earlier, this proposal allows small businesses to band together to obtain advantages that attend the provision of insurance by a large employer, including access to the large-group market. The large-group market is not subject to certain product and pricing restrictions that govern the individual and small group markets. As noted earlier, some stakeholders expressed their concern that allowing small businesses to escape these restrictions could lead to excessive risk segmentation and might destabilize some local individual and small group markets. The Department considered, but rejected, subjecting AHPs to constraints similar to those applicable to the individual and small group markets. The goal of the proposed rule is to allow AHPs to leverage advantages available to large employers to assemble large, stable risk pools, pursue administrative savings, and offer small businesses more, and more affordable, health insurance options. In light of that objective, imposing the product and pricing restrictions that distinguish the individual and small group markets from the large group market would have been too limiting. The flexibility also may increase AHPs' market reach, making more affordable options available to more small businesses than would be possible without it. This proposal would mitigate AHPs' potential to segment risk and destabilize individual and small group markets by applying nondiscrimination rules that bar them from conditioning eligibility, benefits, or premiums on the health status of small businesses' employees. Some stakeholders argue that nondiscrimination provisions themselves unduly restrict AHPs and could prevent AHP formation (and hence lower the number of insured people). DOL considered, but rejected, omitting the nondiscrimination provisions in part. These provisions, among other functions, serve to distinguish AHPs from commercial insurers as a legal matter.

1.13. Conclusion

This proposed rule broadens the conditions under which AHPs will be treated as large group health benefit plans under ERISA, the ACA and State law. Under the proposal, AHPs generally can offer small businesses more, and more affordable, benefit options than are available to them in the individual and small group markets, in part through the creation of various efficiencies. AHPs' flexibility to tailor products and adjust prices to more closely reflect expected claims will also improve social welfare for AHP participants. Although they may limit AHPs' appeal and thus we are seeking comment on them, rules barring discrimination based on health status will moderate the incentives for relatively healthy people disproportionately to leave the individual and small group markets, which would further destabilize local individual and small group markets. Operational risks may demand increased federal and State oversight. The proposal may increase the federal deficit.

2. Paperwork Reduction Act

The proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Department has determined that this proposed rule, which would broaden the criteria for determining when employers may join together in a group or association to sponsor a group health plan under ERISA, is likely to have a significant impact on a substantial number of small entities. Therefore, the Department provides its IRFA of the proposed rule, below.

Need for and Objectives of the Rule

This proposed rule is intended and expected to deliver benefits primarily to the employees of small businesses and their families, as well as the small businesses themselves. As detailed earlier, this proposed rule would encourage the establishment and growth of AHPs. AHPs may offer small businesses more, and more affordable, health benefit options than otherwise are available to them in the individual and small group markets, resulting in employer-sponsored coverage for more Americans, and more diverse and affordable insurance options.

Affected Small Entities

Potential beneficiaries of savings and increased choice from AHP coverage under the proposed rule include:

• Some of the 25 million individuals under age 65 who currently are covered in individual markets, including approximately 3 million who are sole proprietors or dependents thereof, and an additional 6 million who are employees of small businesses or dependents thereof.

• The 25 million individuals under age 65 who currently are covered in small group markets.

• Some of the 28 million individuals under age 65 who currently lack insurance, including 2 million who are sole proprietors or dependents thereof, and an additional 5 million who are employees of small businesses or dependents thereof.

• Some of the 1.6 million private, small-firm establishments (those with fewer than 50 employees) that currently offer insurance and the 4 million that do not.

Impact of the Rule

By expanding AHPs, this proposal would provide more, and more affordable, health insurance options for small businesses, thereby yielding economic benefits for participating small businesses. The proposal includes provisions to mitigate any risk of negative spillovers for other small businesses. The proposal may impact individual and small group issuers whose enrollees might switch to AHPs, some of which would likely be small entities.

Duplication, Overlap, and Conflict With Other Rules and Regulations

The proposed actions would not conflict with any relevant federal rules. As discussed above, the proposed rule would merely broaden the conditions under which an association can act as an ''employer'' under ERISA for purposes of offering a group health plan and would not change AHPs' status as large group plans and MEWAs, under ERISA, the ACA, and State law.

4. Congressional Review Act

The proposed rule is subject to the Congressional Review Act (CRA) provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The proposed rule is a ''major rule'' as that term is defined in 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100 million or more.

5. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandate that the Department expects would result in such expenditures by State, local, or tribal governments, or the private sector. This proposed rule would merely broaden the conditions under which AHPs will be treated as large group health benefit plans under ERISA, the ACA and State law. In so doing, it makes available to more small businesses some of the advantages currently enjoyed by large employer-sponsored plans.

6. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final rule.

In the Department's view, these proposed regulations would have federalism implications because they would have direct effects on the States, the relationship between the national government and the States, and on the distribution of power and responsibilities among various levels of government. The Department believes these effects are limited, insofar as the proposal would not change AHPs' status as large group plans and MEWAs, under ERISA, the ACA, and State law. As discussed above in this preamble, because ERISA classifies AHPs as MEWAs, they generally are subject to State insurance regulation. Specifically, if an AHP is not fully insured, then under section 514(b)(6)(A)(ii) of ERISA any State insurance law that regulates insurance may apply to the AHP to the extent that such State law is not inconsistent with ERISA. If, on the other hand, an AHP is fully insured, section 514(b)(6)(A)(i) of ERISA provides that only those State insurance laws that regulate the maintenance of specified contribution and reserve levels may apply to the AHP. The Department notes that State rules vary widely in practice, and many States regulate AHPs less stringently than individual or small group insurance. The Department welcomes input from affected States, including the NAIC and State insurance officials, regarding this assessment.

7. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an EO 13771 deregulatory action, because it would expand small businesses' access to more lightly regulated and more affordable health insurance options, by removing certain restrictions on the establishment and maintenance of AHPs under ERISA.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2510 as follows:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(5), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

■ 2. Section 2510.3–3 is amended by revising paragraph (c) introductory text to read as follows:

§ 2510.3–3 Employee benefit plan.

* * * * *

(c) *Employees.* For purposes of this section and except as provided in § 2510.3–5(e):

* * * * *

■ 3. Section 2510.3–5 is added to read as follows:

§ 2510.3–5 Employer.

(a) *In general.* The purpose of this section is to clarify which persons may act as an ''employer'' within the meaning of section 3(5) of the Act in sponsoring a multiple employer group health plan. Section 733(a)(1) defines the term ''group health plan,'' in relevant part, as an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents through insurance, reimbursement, or otherwise. The Act defines an ''employee welfare benefit plan'' in section 3(1), in relevant part, as any plan, fund, or program established or maintained by an employer, employee organization, or by both an

employer and an employee organization, for the purpose of providing certain listed welfare benefits to participants or their beneficiaries. For purposes of being able to establish and maintain a welfare benefit plan, an ''employer'' under section 3(5) of the Act includes any person acting directly as an employer, or any person acting indirectly in the interest of an employer in relation to an employee benefit plan. A group or association of employers is specifically identified in section 3(5) of the Act as a person able to act directly or indirectly in the interest of an employer, including for purposes of establishing or maintaining an employee welfare benefit plan.

(b) *Bona fide group or association of employers.* For purposes of Title I of the Act and this chapter, a bona fide group or association of employers capable of establishing a group health plan that is an employee welfare benefit plan shall include a group or association of employers that meets the following requirements:

(1) The group or association exists for the purpose, in whole or in part, of sponsoring a group health plan that it offers to its employer members;

(2) Each employer member of the group or association participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan;

(3) The group or association has a formal organizational structure with a governing body and has by-laws or other similar indications of formality;

(4) The functions and activities of the group or association, including the establishment and maintenance of the group health plan, are controlled by its employer members, either directly or indirectly through the regular nomination and election of directors, officers, or other similar representatives that control the group or association and the establishment and maintenance of the plan;

(5) The employer members have a commonality of interest as described in paragraph (c) of this section;

(6) The group or association does not make health coverage through the association available other than to employees and former employees of employer members and family members or other beneficiaries of those employees and former employees;

(7) The group or association and health coverage offered by the group or association complies with the nondiscrimination provisions of paragraph (d) of this section; and

(8) The group or association is not a health insurance issuer described in section 733(b)(2) of ERISA, or owned or controlled by such a health insurance issuer.

(c) *Commonality of interest.* Commonality of interest of employer members of a group or association will be determined based on relevant facts and circumstances and may be established by:

(1) Employers being in the same trade, industry, line of business or profession; or

(2) Employers having a principal place of business in a region that does not exceed the boundaries of the same State or the same metropolitan area (even if the metropolitan area includes more than one State).

(d) *Nondiscrimination.* A bona fide group or association, and any health coverage offered by the bona fide group or association, must comply with the nondiscrimination provisions of this paragraph (d).

(1) The group or association must not condition employer membership in the group or association based on any health factor of an employee or employees or a former employee or former employees of the employer member (or any employee's family members or other beneficiaries), as defined in § 2590.702(a) of this chapter.

(2) The group health plan sponsored by the group or association must comply with the rules of § 2590.702(b) of this chapter with respect to nondiscrimination in rules for eligibility for benefits, subject to paragraph (d)(4) of this section.

(3) The group health plan sponsored by the group or association must comply with the rules of § 2590.702(c) of this chapter with respect to nondiscrimination in premiums or contributions required by any participant or beneficiary for coverage under the plan, subject to paragraph (d)(4) of this section.

(4) In applying the nondiscrimination provisions of paragraphs (d)(2) and (3) of this section, the group or association may not treat different employer members of the group or association as distinct groups of similarly-situated individuals.

(5) The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* Association *A* offers group health coverage to all members. According to the bylaws of Association *A,* membership is subject to the following criteria: All members must be restaurants located in a specified area. Restaurant *B,* which is located within the specified area, has several employees with large health claims. Restaurant *B* applies for membership in Association *A,* and is denied membership based on the claims experience of its employees.

(ii) *Conclusion.* In this *Example 1,* Association *A*'s exclusion of Restaurant *B* from Association *A* discriminates on the basis of claims history, which is a health factor under § 2590.702(a)(1) of this chapter. Accordingly, Association *A* violates the requirement in paragraph (d)(1) of this section, and, therefore would not meet the definition of a bona fide group or association of employers under paragraph (b) of this section.

Example 2. (i) *Facts.* Association *C* offers group health coverage to all members. According to the bylaws of Association *C,* membership is subject to the following criteria: All members must have a principal place of business in a specified metropolitan area. Individual *D* is a sole proprietor whose principal place of business is within the specified area. As part of the membership application process, Individual *D* provides certain health information to Association *C.* After learning that Individual *D* has diabetes, based on *D*'s diabetes, Association *C* denies Individual *D*'s membership application.

(ii) *Conclusion.* In this *Example 2,* Association *C*'s exclusion of Individual *D* because *D* has diabetes is a decision that discriminates on the basis of a medical condition, which is a health factor under § 2590.702(a)(1) of this chapter. Accordingly, Association *C* violates the requirement in paragraph (d)(1) of this section and would not meet the definition of a bona fide group or association of employers under paragraph (b) of this section.

Example 3. (i) *Facts.* Association *F* offers group health coverage to all plumbers working for plumbing companies in a State. Plumbers employed by a plumbing company on a full-time basis (which is defined under the terms of the arrangement as regularly working at least 30 hours a week) are eligible for health coverage without a waiting period. Plumbers employed by a plumbing company on a part-time basis (which is defined under the terms of the arrangement as regularly working at least 10 hours per week, but less than 30 hours per week) are eligible for health coverage after a 60-day waiting period.

(ii) *Conclusion.* In this *Example 3,* making a distinction between part-time versus full-time employment status is a permitted distinction between similarly situated individuals under § 2590.702(d) of this chapter, provided the distinction is not directed at individuals under § 2590.702(d)(3) of this chapter. Accordingly, the requirement that plumbers working part time must satisfy a waiting period for coverage is a rule for eligibility that does not violate § 2590.702(b) or, as a consequence, paragraph (d)(2) of this section.

Example 4. (i) *Facts.* Association *G* sponsors a group health plan, available to all employers doing business in Town *H.* Association *G* charges Business *I* more for premiums than it charges other members because Business *I* employs several individuals with chronic illnesses.

(ii) *Conclusion.* In this *Example 4,* Business *I* cannot be treated as a separate group of similarly situated individuals from other members under paragraph (d)(4) of this section. Therefore, charging Business *I* more for premiums based on one or more health

factors of the employees of Business *I* violates § 2590.702(c) of this chapter and, consequently, the requirement in paragraph (d)(3) of this section.

Example 5. (i) *Facts.* Association *J* sponsors a group health plan that is available to all members. According to the bylaws of Association *J,* membership is open to any entity whose principal place of business is in State *K,* which has only one major metropolitan area, the capital city of State *K.* Members whose principal place of business is in the capital city of State *K* are charged more for premiums than members whose principal place of business is outside of the capital city.

(ii) *Conclusion.* In this *Example 5,* making a distinction between members whose principal place of business is in the capital city of State *K,* as compared to some other area in State *K,* is a permitted distinction between similarly situated individuals under § 2590.702(d) of this chapter, provided the distinction is not directed at individuals under § 2590.702(d)(3) of this chapter. Accordingly, Association *J*'s rule for charging different premiums based on principal place of business does not violate paragraph (d)(3) of this section.

Example 6. (i) *Facts.* Association *L* sponsors a group health plan, available to all members. According to the bylaws of Association *L,* membership is open to any entity whose principal place of business is in State *M.* Sole Proprietor *N*'s principal place of business is in City *O,* within State *M.* It is the only member whose principal place of business is in City *O,* and it is otherwise similarly situated with respect to all other members of the association. After learning that Sole Proprietor *N* has been diagnosed with cancer, based on the cancer diagnosis, Association *L* changes its premium structure to charge higher premiums for members whose principal place of business is in City *O.*

(ii) *Conclusion.* In this *Example 6,* cancer is a health factor under § 2590.702(a) of this chapter. Making a distinction based on a health factor, between members that are otherwise similarly situated is in this case a distinction directed at an individual under § 2590.702(d)(3) of this chapter and is not a permitted distinction. Accordingly, by charging higher premiums to members whose principal place of business is City *O,* Association *L* violates § 2590.702(c) of this chapter and, consequently, paragraph (d)(4) of this section.

(e) *Dual treatment of working owners as employers and employees*—(1) A working owner of a trade or business may qualify as both an employer and as an employee of the trade or business for purposes of the requirements in paragraph (b) of this section, including paragraph (b)(2) that each employer member of the group or association participating in the group health plan must be a person acting directly as an employer of one or more employees who are participants covered under the plan, and paragraph (b)(6) that the group or association does not make health coverage offered to employer members through the association available other than to employees and former employees of employer members and the family members or other beneficiaries of those employees and former employees.

(2) The term ''working owner'' as used in this paragraph (e) means any individual:

(i) Who has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including partners and other self-employed individuals;

(ii) Who is earning wages or self-employment income from the trade or business for providing personal services to the trade or business;

(iii) Who is not eligible to participate in any subsidized group health plan maintained by any other employer of the individual or of the spouse of the individual; and

(iv) Who either:

(A) Works at least 30 hours per week or at least 120 hours per month providing personal services to the trade or business, or

(B) Has earned income from such trade or business that at least equals the working owner's cost of coverage for participation by the working owner and any covered beneficiaries in the group health plan sponsored by the group or association in which the individual is participating.

(3) Absent knowledge to the contrary, the group or association sponsoring the group health plan may reasonably rely on written representations from the individual seeking to participate as a working owner as a basis for concluding that the conditions in paragraph (e)(2) are satisfied.

Jeanne Klinefelter Wilson,

Deputy Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2017–0734; FRL 9972–64–Region 7]

Air Plan Approval and Air Quality Designation; MO; Redesignation of the Missouri Portion of the St. Louis Missouri-Illinois Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter and Approval of Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this Advanced Notice of Proposed Rulemaking (ANPR) to inform the public of currently available information that will be used by the Administrator to issue a subsequent action to propose redesignation of the Missouri portion of the St. Louis MO-IL nonattainment area for the 1997 $PM_{2.5}$ NAAQS, (hereafter referred to as the ''St. Louis area'' or ''area''). On September 2, 2011, Missouri, through the Missouri Department of Natural Resources (MDNR) submitted a request for EPA to redesignate the Missouri portion of the St. Louis MO-IL nonattainment area to attainment for the 1997 Annual National Ambient Air Quality Standards (NAAQS) for fine particulate matter ($PM_{2.5}$) and approve a state implementation plan (SIP) revision containing a maintenance plan for the Missouri portion of the area. In advance of any potential rulemaking to address the state of Missouri's request, EPA is specifically requesting early input and comments on its interpretation that currently available data support a finding that the area will be attaining the 1997 Annual $PM_{2.5}$ NAAQS based on air quality monitoring data from 2015–2017, and on EPA's advanced notice of its expectation that the state's plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS for the St. Louis Area (maintenance plan) including the associated motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and $PM_{2.5}$ for the years 2008–2025 is approvable. EPA will take any information received from this ANPR into consideration when developing a proposed action for redesignating the Missouri portion of the St. Louis Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 5, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0734 to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551 7214, or by email at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

Table of Contents

I. What is the purpose of this Advanced Notice of Proposed Rulemaking?

The primary purpose of this Advanced Notice of Proposed Rulemaking or ANPR is to provide the public an opportunity to provide input on the EPA's approach and initial review of Missouri's request to redesignate the Missouri portion of the St. Louis bi-state nonattainment area to attainment for the 1997 $PM_{2.5}$ NAAQS. Once the 2015–2017 quality assured and certified air monitoring data for the entire bi-state nonattainment area is available, EPA intends to take action determining if the area has met the standard and if the state of Missouri has satisfied the other requirements for redesignating a nonattainment area to attainment as provided by the Clean Air Act (CAA or Act). Specifically, section 107(d)(3)(E) of the CAA allows for redesignation to attainment provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS, (2) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k), (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions, (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A, and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has reviewed Missouri's submittal and additional information and recognizes that the state's information supports the St. Louis area's redesignation for the 1997 annual $PM_{2.5}$ NAAQS. Based on historical and air quality data collected for the majority of 2017, it is extremely likely the area will have an attaining design value based on 2015–2017 air quality data. Provided air quality data for the remainder of the 2017 calendar year continues to support a finding of attainment and EPA approves the emissions inventory submitted with the maintenance plan, EPA expects to approve the area's redesignation.

II. What future EPA action is discussed in this Advanced Notice of Proposed Rulemaking?

EPA is providing advanced notice on future actions related to Missouri's request that the Agency determine that the St. Louis bi-state nonattainment area for the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard attains the standard and the Agency officially redesignate the area from nonattainment to attainment. Missouri submitted their first request to determine attainment and redesignation on September 1, 2011. The state then supplemented and revised their request on March 31, 2014, and on September 17, 2014.[1] In this notice, when EPA refers to Missouri's submission, we are referring to information provided in the 2011 and 2014 submissions and the additional clarifying information together unless otherwise specified. EPA is providing advanced notice related to information that supports redesignation from nonattainment to attainment for the Missouri portion of the St. Louis area for the 1997 annual $PM_{2.5}$ NAAQS and evaluation of Missouri's 1997 annual $PM_{2.5}$ NAAQS maintenance plan, which includes the 2008 and 2025 NO_X and $PM_{2.5}$ MVEBs for the St. Louis area. EPA evaluated Missouri's request and plan consistent with section 175A of the CAA and EPA's supplemental analysis that the area will continue to maintain for ten years following redesignation. The Missouri counties comprising the St. Louis area are Franklin, Jefferson, St. Charles and St. Louis. The City of St. Louis is also part of the nonattainment area.

III. What is the background for EPA's advanced notice?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary $PM_{2.5}$ are sulfur dioxide (SO_2), nitrogen oxides (NO_X), ammonia (NH_3), and volatile organic compounds (VOC). *See, e.g.,* 72 FR 20586, 72 FR 20589. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_X emissions of power plants, automobiles, and other combustion sources of fossil fuel.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of 24-hour

[1] The date of the original submission is September 2, 2011. Missouri supplemented and revised their request on March 31, 2014, September 17, 2014, and May 23, 2017. The May 27, 2017, letter requested EPA to take action on prior submission, but did not include additional documentation. EPA considered all submissions in reviewing and proposing this action.

concentrations.[2] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a three-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the St. Louis area as nonattainment for the 1997 $PM_{2.5}$ annual NAAQS. In that action, EPA defined the 1997 annual $PM_{2.5}$ St. Louis nonattainment area to include Jefferson, Franklin, St. Charles, and St. Louis Counties along with the City of St. Louis on the Missouri side, and Madison, Monroe, and St. Clair Counties as well as the Baldwin Township of Randolph County on the Illinois side of the nonattainment area.

On November 13, 2009, EPA promulgated designations for the 24-hour standard established in 2006, designating the St. Louis area as attainment for that NAAQS (74 FR 58688). That action clarified that the St. Louis area was classified as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS. EPA did not promulgate designations for the 2006 annual $PM_{2.5}$ NAAQS because that NAAQS was essentially identical to the 1997 annual $PM_{2.5}$ NAAQS, and today's action only addresses the 1997 annual $PM_{2.5}$ NAAQS designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007 (72 FR 20586), EPA promulgated its Clean Air Fine Particle Implementation Rule, codified at 40 CFR part 52, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. The DC Circuit remanded the Clean Air Fine Particle Implementation Rule and the final rule entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rules'') to EPA on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1, rather than the particulate matter-specific provisions of subpart 4.

On July 29, 2016, EPA issued a rule entitled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' ($PM_{2.5}$ SIP Requirements Rule) that clarifies how states should meet the statutory SIP requirements that apply to areas designated nonattainment for any $PM_{2.5}$ NAAQS under subparts 1 and 4. *See* 81 FR 58010 (August 24, 2016). It does so by establishing regulatory requirements and providing guidance that is applicable to areas that are currently designated nonattainment for existing $PM_{2.5}$ NAAQS and areas that are designated nonattainment for any $PM_{2.5}$ NAAQS in the future. In addition, the rule responds to the D.C. Circuit's remand of the 1997 $PM_{2.5}$ Implementation Rules. As a result, the requirements of the rule also govern future actions associated with states' ongoing implementation efforts for the 1997 and 2006 $PM_{2.5}$ NAAQS.

In the $PM_{2.5}$ SIP Requirements Rule, EPA revoked the 1997 primary Annual $PM_{2.5}$ NAAQS in areas that had always been attainment for that NAAQS, and in areas that had been designated as nonattainment but that were redesignated to attainment before October 24, 2016, the rule's effective date. *See* 81 FR 58010 (August 24, 2016). EPA also finalized a provision that revokes the 1997 primary Annual $PM_{2.5}$ NAAQS in areas that are redesignated to attainment for that NAAQS after October 24, 2016, effective on the effective date of the redesignation of the area to attainment for that NAAQS. *See* 40 CFR 50.13(d). EPA is providing advanced notice of its expectation to redesignate the St. Louis area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS and to approve the CAA 175A maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS in a future action, for the reasons described elsewhere in this advanced notice.[3] If the action is finalized, the 1997 primary Annual $PM_{2.5}$ NAAQS will be revoked in the Missouri portion of the St. Louis Area on the effective date of the redesignation. Beginning on that date, the Missouri portion of the St. Louis Area will no longer be subject to transportation or general conformity requirements for the 1997 Annual $PM_{2.5}$ NAAQS due to the revocation of the primary NAAQS. *See* 81 FR 58125. The Missouri portion of the St. Louis Area will be required to implement the CAA section 175A maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS and the prevention of significant deterioration (PSD) program for the 1997 Annual $PM_{2.5}$ NAAQS. Once approved, the maintenance plan can only be revised if the revision meets the requirements of CAA Section 110(l) and, if applicable CAA section 193. The Area would not be required to submit a second 10-year maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS. *See* 81 FR 58144.

IV. What is EPA's initial analysis of the state's request?

As stated above, EPA is providing advanced notice that in a future action it intends to formally act on Missouri's request to redesignate the Missouri portion of the St. Louis area to attainment for the 1997 annual $PM_{2.5}$ NAAQS and Missouri's plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS for the St. Louis portion of the area, including finding the associated MVEBs for 2008 and 2025 as adequate using criteria in 40 CFR 93.118(e)(4) and (5). EPA is issuing this advanced notice of proposed rulemaking because the information currently before the agency strongly supports a redesignation of the St. Louis area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, with the exception of a small amount of air quality data for the 2017 calendar year, which EPA expects the states of Missouri and Illinois to certify in early 2018. Assuming, as EPA fully expects, that the remaining air quality data continue to support a finding that the area will have attained the 1997 standard based on monitoring data from 2015–2017, EPA intends to propose approval of Missouri's redesignation request for its portion of the St. Louis 1997 $PM_{2.5}$ nonattainment area. EPA's evaluation of whether Missouri's request for the area satisfies the five redesignation criteria provided under CAA section 107(d)(3)(E), based on currently available information, is discussed in greater detail in the following paragraphs of this section.

Criteria (1)—Attainment of the 1997 Annual $PM_{2.5}$ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has

[2] In response to legal challenges of the annual standard promulgated in 2006, the United States Courts of Appeals for the District of Columbia Circuit (D.C. Cir.) remanded that NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA*, 559 F.3d (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

[3] CAA Section 175A(a) established the requirements that must be fulfilled by nonattainment areas in order to be redesignated to attainment. That section only requires that nonattainment areas for the *primary* standard submit a plan addressing maintenance of the *primary* NAAQS in order to be redesignated to attainment; it does not require nonattainment areas for secondary NAAQS to submit maintenance plans in order to be redesignated to attainment.

attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area's attainment of the 1997 annual $PM_{2.5}$ NAAQS is determined in accordance with 40 CFR 50.7 and appendix N of part 50, which requires three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this NAAQS, the three-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, must be less than or equal to 15.0 μg/m^3 at all relevant monitoring sites in the subject area over a three-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database.

On May 23, 2011, EPA determined that the St. Louis area was attaining the 1997 annual $PM_{2.5}$ NAAQS (76 FR 29652). In that action, EPA reviewed $PM_{2.5}$ monitoring data from monitoring stations in the area for the 1997 annual $PM_{2.5}$ NAAQS for 2007–2009. This data was quality-assured and recorded in AQS. The design value for 2007–2009 was 14.1 μg/m^3 for the St. Louis area which met the NAAQS. On June 27, 2012 (77 FR 38183), EPA also finalized a determination that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

In August of 2014, EPA Region 7 received notice that EPA Region 5 conducted a technical systems audit regarding the weighing of $PM_{2.5}$ samples in Illinois. The audit revealed that the Cook County Department of Environmental Control, which weighs all of the filters in Illinois' monitoring network, did not have the appropriate equipment for determining whether the laboratory conditions met the temperature and humidity criteria in 40 CFR 50 appendix L for proper conditioning of filters. The instantaneous temperature and humidity information collected during the audit suggested that many of the sample weighings failed to meet these criteria. As a result, no filter-based $PM_{2.5}$ site in Illinois has sufficient, valid Federal Reference Method (FRM) data from 2011 through 2013. EPA is aware that the monitors in the Illinois portion of the St. Louis area started recording valid data in AQS in the 3rd quarter of 2014 and that a valid annual mean can only be determined, to date, for the years 2015 and 2016 from those Illinois monitors. EPA completed a review of the recorded data from the entire nonattainment area from 2015, 2016, and the first two quarters of 2017 and believes that this data is indicative of air quality that will support a finding that the area is attaining the 1997 $PM_{2.5}$ annual NAAQS based on 2015–2017 air quality monitoring data. Assuming the complete, quality assured data for 2017 continues to support that finding, EPA in a future action intends to take future action regarding Missouri's request to redesignate the Missouri portion of the St. Louis area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

To evaluate how likely it is that the area will have an attaining design value, once all air quality data for the 2017 calendar year is complete and certified, EPA calculated critical values that would be required for the area to be in violation of the NAAQS. EPA has calculated the critical values in two ways; for the entire year of 2017 and for the remaining two quarters of 2017. Table 1 provides the area's critical values. Both the annual and quarterly critical values greatly exceed recently recorded levels, indicating that it is extremely unlikely that the area's design value will be in violation of the NAAQS based on 2015–2017 air quality data. The data analysis of critical values in 2017 demonstrates that all the monitors should easily attain the $PM_{2.5}$ NAAQS as the critical values are well above what is currently measured or historically measured at any of the St. Louis $PM_{2.5}$ monitors.

TABLE 1—CRITICAL VALUES FOR THE ST. LOUIS AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

[μg/m^3]

State	County	Monitor	AQS site ID	2015	2016	2017 [1]	DV [2]	Critical value [3]	Critical value 3rd/4th qtrs [4]
Missouri	St. Louis City	Blair Street (FRM).	29–510–0085	10.4	8.5	7.4	8.8	26.1	44.8
Missouri	St. Louis City	South Broadway	29–510–0007	11.1	8.1	7.0	8.7	25.8	44.6
Missouri	Jefferson	Arnold West	29–099–0019	11.6	8.3	8.0	9.3	25.1	42.2
Missouri	St. Louis County	Ladue	29–189–3001	10.3	8.7	9.2	9.4	26.0	42.8
Missouri	St. Louis City	Forest Park	29–510–0094	9.2	8.7	7.7	8.5	27.1	46.5
Illinois	Madison	Alton	17–119–2009	9.0	8.8	8.6	8.8	27.2	45.8
Illinois	Madison	Wood River	17–119–3007	9.1	8.7	8.2	8.7	27.2	46.2
Illinois	Madison	Granite City	17–119–1007	10.4	9.1	8.8	9.4	25.5	42.2
Illinois	St. Clair	East St. Louis	17–163–0010	10.7	10.0	8.3	9.7	24.3	40.3
Illinois	Jersey	Jerseyville	17–083–1001	7.7	7.9	8.9	8.2	29.4	49.9

[1] Only first 2 quarters of 2017 data are complete and reported to AQS.

[2] 2015–2017 design values not yet valid since only the first 2 quarters of 2017 data being reported to AQS.

[3] To determine the critical value for the 2012 NAAQS, and knowing that the average annual value over 3 years must be less than or equal to 15 μg/m^3, EPA used the following formula (y1 + y2 + y3)/3 <= 15 solving for year 3 (y3). Where y3 = 45 − y1 − y2 is the critical value for y3 in the equation.

[4] Having 2 quarters of data in 2017 (y3), EPA was able to determine how high the average of the last two quarters could be by utilizing the following formula (Q12 + Q34)/2 <= annual critical value where Q34 <= 2 * CV − Q12.

If there is any indication that the area is not attaining the 1997 annual $PM_{2.5}$ NAAQS, EPA will not go forward with acting on Missouri's request to redesignate the area. MDNR has committed to continue monitoring in this area in accordance with 40 CFR part 58.

In summary, EPA is providing for the public's review the currently available air quality data, including all data submitted by Missouri to AQS, as well as EPA's analysis of the critical values for both 2017 and the last two quarters of 2017 which indicate it is extremely likely that the area will have an attaining design value once the 2017 data are complete and quality-assured. EPA is requesting the public's comments and feedback on the data and analysis provided, and is providing advanced notice that it intends to use this information in support of a

proposal for redesignation of the St. Louis area.

Criteria (2)—the Area Has a Fully Approved SIP Under Section 110(k); and Criteria (5)—The Missouri Portion of the St. Louis Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA is providing advanced notice of its review of Missouri's redesignation and believes Missouri has submittal all applicable SIP requirements for purposes of redesignation for the Missouri portion of the St. Louis area under section 110 of the CAA (general SIP requirements) and part D of title I.

EPA has ascertained which requirements are applicable to the Missouri portion of the St. Louis area and, if applicable, determined that they are, or will be, fully approved through this action under section 110(k) of the CAA. *See* sections (a) and (b) below. EPA notes that SIPs must be fully approved only with respect to requirements that were due prior to submittal of the complete redesignation request.

a. The Missouri Portion of the St. Louis Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2). These ''infrastructure'' requirements include, but are not limited to, the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); (4) provisions for the implementation of part D requirements (Nonattainment New Source Review (NNSR) permit programs); (5) provisions for air pollution modeling; and (6) provisions for public and local agency participation in planning and emission control rule development.

EPA has long interpreted section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status not to be applicable requirements for purposes of redesignation, under the theory that states were required to fulfill these obligations as to a particular NAAQS regardless of the designation status of any specific area. As noted above, this advanced notice of redesignation also has the effect of revoking the 1997 $PM_{2.5}$ NAAQS for the St. Louis Area, and thus the section 110(a)(2) general SIP requirements will no longer be in force for the 1997 standard upon the effective date of the redesignation. However, the 1997 standard was superseded by the more stringent 2012 $PM_{2.5}$ NAAQS, and all states are required to comply with section 110(a)(2) for that more stringent standard. The Missouri portion of the St. Louis area (and Missouri in general) continues to be subject to the section 110(a)(2) general SIP requirements for the more stringent 2012 $PM_{2.5}$ NAAQS notwithstanding the expected redesignation and revocation. In any case, EPA has previously approved provisions of Missouri's SIP addressing CAA section 110(a)(2) requirements including provisions addressing the 1997 $PM_{2.5}$ NAAQS on May 8, 2007 (72 FR 25975), and June 21, 2013 (78 FR 37457). In summary, EPA does not interpret the section 110(a)(2) requirements to be applicable for purposes of redesignation under sections 107(d)(3)(E)(ii) and (v), and in any case those provisions have been fully approved.

Part D Requirements. EPA is providing advanced notice that upon final approval of the 2008 comprehensive emissions inventory discussed in section VII of this rulemaking, the Missouri SIP will meet the applicable SIP requirements for the Missouri portion of the St. Louis area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 171–179 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the applicable requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992). In section V of this proposed rulemaking, EPA discusses the relationship between this proposed redesignation action and subpart 4 of part D.

Subpart 1 section 172 Requirements. Sections 172 to 175 of the CAA, set forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. On May 23, 2011 (76 FR 29652), EPA made a determination that the St. Louis area had attained the 1997 annual $PM_{2.5}$ NAAQS. This determination was based upon complete, quality-assured, and certified ambient air monitoring data that showed that the area monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the 2007–2009 monitoring period. Pursuant to 40 CFR 51.1004(c), upon determination by EPA that an area designated nonattainment for the $PM_{2.5}$ NAAQS has attained the standard, the requirement for such an area to submit an attainment demonstration and associated reasonably achievable control technology (RACT)/reasonably achievable control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIPs related to the attainment of the $PM_{2.5}$ NAAQS are suspended until the area is redesignated to attainment or EPA determines that the area has violated the $PM_{2.5}$ NAAQS, at which time such plans are again required to be submitted. As a result of the determination of attainment, the only remaining requirement under CAA section 172 to be considered is the emissions inventory required to be submitted and approved by EPA under CAA section 172(c)(3).

In this advanced notice, as discussed further in section VI, EPA is providing advanced notice of Missouri's 2008 base year emissions inventory and intends to approve the emissions inventory in a future action in accordance with section 172(c)(3) of the CAA.[4] Because Missouri withdrew their nonattainment SIP submittal, which included the 2002 baseyear emissions inventory after EPA finalized the Clean Data Determination (76 FR 29652) for the Missouri portion of the St. Louis nonattainment area in

[4] EPA's longstanding guidance on redesignations, entitled ''Processing Redesignations to Attainment,'' John Calcagni 1992, notes that the subpart 1 emissions inventory requirement is satisfied by the maintenance plan inventory requirements.

2011, EPA believes the 2008 base year emissions inventory is an appropriate baseyear emissions inventory requirement under section 172(c)(3) of the CAA. For more information on EPA's ''Emissions Inventory and Motor Vehicle Emissions Budget (MVEB) Technical Support Document (TSD) for the Redesignation Request and Maintenance Plan for the St Louis, Missouri 1997 $PM_{2.5}$ Nonattainment Area'', available online at *www.regulations.gov,* Docket ID No. EPA–R07–OAR–2017–0734.

The General Preamble for Implementation of title I also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. See General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Because attainment has been reached for the area, no additional measures are needed for attainment, and CAA section 172(c)(1) requirements for an attainment demonstration and RACT/RACM are no longer considered to be applicable for purposes of redesignation as long as the area continues to attain the standard until redesignation. See 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) and contingency measures requirement under CAA section 172(c)(9) are similarly not relevant for purposes of redesignation.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for new and modified major stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR (NNSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Nevertheless, Missouri currently has an approved NNSR program and Missouri's PSD program for the 1997 annual $PM_{2.5}$ NAAQS will become effective in the Missouri portion of the St. Louis area upon redesignation to attainment.

Section 172(c)(6) of the CAA requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached for the Missouri portion of the St. Louis area, no additional measures are needed to provide for attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of CAA section 110(a)(2). As noted previously, we believe the Missouri SIP meets the requirements of CAA section 110(a)(2) that are applicable for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine transportation conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). EPA approved the most recent revisions to the transportation conformity SIP for the Missouri portion of the St. Louis area on August 29, 2013 (78 FR 53247).

Thus, for purposes of redesignating the Missouri portion of the St. Louis area to attainment, EPA is providing advanced notice of our determination and believes Missouri has satisfied all applicable requirements for purposes of redesignation for the Missouri portion of the St. Louis area under CAA section 110, and upon final approval of the 2008 base year emissions inventory, also will have satisfied all applicable requirements under part D of title I of the CAA.

Subpart 4 Requirements. As discussed above, in *NRDC* v. *EPA,* the Circuit held that EPA should have implemented the 1997 $PM_{2.5}$ NAAQS pursuant to the particulate matter-specific provisions of subpart 4. On remand, EPA identified all areas designated nonattainment for either the 1997 or the 2006 $PM_{2.5}$ NAAQS, including the St. Louis Area, as moderate nonattainment areas for purposes of Subpart 4 in the Classification and Deadlines Rule. Moderate nonattainment areas are subject to the requirements of sections 189(a), (c), and (e), including: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)); and (5) precursor control (section 189(e)).14

With respect to the specific attainment planning requirements under subpart 4,[5] EPA applies the same interpretation that it applies to attainment planning requirements under Subpart 1 or any of the other pollutant-specific subparts. That is, under its long-standing interpretation of the CAA, where an area is already attaining the standard, EPA does not consider those attainment planning requirements to be applicable for purposes of evaluating a request for redesignation, that is, CAA section 107(d)(3)(E)(ii) or (v), because requirements that are designed to help an area achieve attainment no longer have meaning where an area is already meeting the standard. EPA has proposed to determine that the area has attained the 1997 Annual $PM_{2.5}$ Standard. Therefore, under its longstanding interpretation, EPA is providing advance notice that the requirements to submit an attainment demonstration under section 189(a)(1)(B) and a RFP demonstration under section 189(c)(1) are not applicable for purposes of evaluating Missouri's redesignation request.

The permit requirements of subpart 4, contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[6] As discussed above, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in the Nichols Memorandum. *See also* rulemakings for the Illinois portion of the St. Louis Area (77 FR 34819, 77 FR 34826, June 12, 2012); Louisville, Kentucky (66 FR 53665–66 FR 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 61 FR 31834–

[5] These planning requirements include the attainment demonstration, quantitative milestone requirements, and RACM analysis.

[6] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

61 FR 31837, June 21, 1996); Cleveland-Akron-Lorain, Ohio 61 FR 20458, 61 FR 20469–61 FR 20470, May 7, 1996); Detroit, Michigan (60 FR, 12467–60 FR 12468, March 7, 1995).

Subpart 4 and the Control of $PM_{2.5}$ Precursors. CAA section 189(e) provides that control requirements for major stationary sources of direct PM_{10} (including $PM_{2.5}$) shall also apply to PM precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' The CAA does not explicitly address whether it would be appropriate to include a potential exemption from precursor controls for all source categories under certain circumstances. In implementing subpart 4 with regard to controlling PM_{10}, EPA permitted states to determine that a precursor was ''insignificant'' where the state could show in its attainment plan that it would expeditiously attain without adoption of emission reduction measures aimed at that precursor. This approach was upheld in *Association of Irritated Residents* v. *EPA,* 423 F.3d 989 (9th Cir. 2005) and extended to $PM_{2.5}$ implementation in the PM Implementation Rule. A state may develop its attainment plan and adopt reasonably available control measures that target only those precursors that are necessary to control for purposes of timely attainment. *See* 81 FR 58020. In the rule, EPA also finalized application of 189(e) to the NNSR permitting program, requiring states to determine whether a new major source of a precursor might have a significant contribution to air quality before allowing exemption of controls of a precursor from a new major stationary source or major modification in the text of that program. *See* 81 FR 58026.

Therefore, because the requirement of section 189(e) is primarily actionable in the context of addressing precursors in an attainment plan and in NNSR permitting, a precursor exemption analysis under section 189(e) and EPA's implementing regulations is not an applicable requirement that needs to be fully approved in the context of a redesignation under CAA section 107(d)(3)(E)(ii). As discussed above, for areas that are attaining the standard, EPA does not interpret attainment planning requirements of subparts 1 and 4 to be applicable requirements for the purposes of redesignating an area to attainment nor does it interpret NNSR to be an applicable requirement if the area can maintain the NAAQS with a PSD program after redesignation. However, to the extent that Missouri is required to conduct a precursor exemption analysis in order to satisfy 189(e) in the context of its RACM determination for the St. Louis Area, which is required pursuant to the Sixth Circuit's decision in *Sierra Club,* EPA proposes to find that the requirements of section 189(e), as interpreted by EPA's regulations, are met in this case. The area has attained the 1997 Annual $PM_{2.5}$ NAAQS, and therefore, no additional controls of any pollutant, including any $PM_{2.5}$ precursors, are necessary to bring the area into attainment.[7] For these reasons, EPA is providing advance notice that it believes Missouri has satisfied all applicable requirements for purposes of redesignation of it portion of the St. Louis area under section 110 and part D of the CAA.

b. The Missouri Portion of the St. Louis Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of the comprehensive emissions inventory in a future notice, EPA will have fully approved the state's SIP for the Missouri portion of the St. Louis area for the 1997 annual $PM_{2.5}$ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426 (6th Cir. 2001, upholding this interpretation)) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Missouri has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 annual $PM_{2.5}$ NAAQS in the St. Louis area (*e.g.,* 78 FR 37457, June 21, 2013).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has previously approved all part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. EPA is providing advanced notice that it believes that Missouri has demonstrated that the observed air quality improvement in the St. Louis area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures discussed below.

In making this demonstration, MDNR has calculated the change in emissions from a nonattainment year inventory to an attainment year inventory. For the nonattainment inventory, Missouri developed a 2002 base year emissions inventory, which the state subsequently withdrew once a Clean Data Determination was finalized for the Missouri portion of the St. Louis nonattainment area. For purposes of their redesignation request, Missouri developed a baseyear emissions inventory for 2008, one of the years the St. Louis area monitored attainment of the standard. See section b. below for discussion on development of these inventories. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of permanent and enforceable regulatory control measures that St. Louis and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion on the permanent and enforceable measures that have been implemented in the area.[8] Reductions in $PM_{2.5}$ precursor emissions have occurred statewide and

[7] The Missouri portion the St. Louis area contains no major stationary sources of ammonia, and existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS. The St. Louis area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

[8] It should be noted that the mobile source controls discussed below also provide reductions in VOC and/or SO_2 emissions. While those emissions may be reduced, the submitted maintenance plan and redesignation request do not rely on these emission reductions.

in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 2 vehicle standards and low-sulfur gasoline. Implementation of the Tier 2 vehicle standards began in 2004, and as newer, cleaner cars enter the national fleet, these standards continue to significantly reduce NO_X emissions. The standards require all classes of passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. In addition, starting in January of 2006, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm). Most gasoline sold prior to this had a sulfur content of approximately 300 ppm. EPA expects that these standards will reduce NO_X emissions from vehicles by approximately 74 percent by 2030, translating to nation-wide reductions of nearly 3 million tons annually by 2030.

Heavy-duty gasoline and diesel highway vehicle standards and ultra-low-sulfur diesel rule. On October 6, 2000, EPA promulgated a rule to reduce NO_X and VOC emissions from heavy-duty gasoline and diesel highway vehicles that began to take effect in 2004 (65 FR 59896). On January 18, 2001, (66 FR 5002) EPA promulgated a second phase of standards and testing procedures began in 2007 to reduce particulate matter from heavy-duty highway engines, and reduce highway diesel fuel sulfur content to 15 ppm since the sulfur in fuel damages high efficiency catalytic exhaust emission control devices. The total program is estimated to achieve a ninety percent reduction in $PM_{2.5}$ emissions and a ninety-five percent reduction in NO_X emission for new engines using low-sulfur diesel fuel, compared to existing engines using higher-content sulfur diesel fuel. EPA expects that this rule will reduce NO_X emissions by 2.6 million tons nation-wide by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.

Tier 4 Non-Road Diesel Engine Rule. This rule, which applies to diesel engines used in industries such as construction, agriculture, and mining, was promulgated in 2004 and fully phased in 2014. This rule reduced allowable non-road diesel fuel sulfur levels from approximately 3,000 ppm to 500 ppm in 2007 and further reduced those levels to 15 ppm starting in 2010 (a 99 percent reduction). This rule also achieved significant reductions for up to 90 percent for NO_X and particulate matter emissions nationwide.

Nonroad Large spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, and hydrocarbons, and carbon monoxide from groups of previously unregulated non-road engines. (67 FR 68242). These engine standards apply to large spark-ignition engines (*e.g.,* forklifts and airport ground service equipment), recreational vehicles (*e.g.,* off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards.

When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall seventy-two percent reduction in hydrocarbons, eighty percent reduction in NO_X, and fifty-six percent reduction in carbon monoxide emissions is expected by 2020. These controls will help reduce ambient concentrations of fine particulate matter.

Tier 3 Motor Vehicles Emission and Fuel Standards: On April 24, 2014 (79 FR 23414), EPA finalized a rule designed to reduce air pollution from passenger cars and trucks. The vehicle emissions standard began in 2017, and combined with the reduction of gasoline sulfur content will significantly reduce motor vehicle emissions including NO_X, VOC, $PM_{2.5}$, Carbon Monoxide and air toxics by 2030, which will help the area maintain the 1997 $PM_{2.5}$ annual NAAQS.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call pursuant to the CAA to require twenty-two states and the District of Columbia to reduce NO_X, a precursor to ozone and $PM_{2.5}$ pollution, and providing a mechanism (the NO_X Budget Trading Program) that states could use to achieve those reductions. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. By the end of 2008, ozone season NO_X emissions from sources subject to the NO_X SIP Call dropped by sixty-two percent from 2000 emissions levels. All NO_X SIP Call states have SIPs that currently satisfy their obligations under the NO_X SIP Call, and the emission reductions required under the SIP Call are permanent and enforceable.

As part of the NO_X SIP Call, the eastern third of Missouri was required to comply with Phase II of the program. In response, Missouri developed rules governing the control of NO_X emissions from EGUs, major non-EGU industrial boilers, major cement kilns, and large internal combustion engines. EPA approved Missouri's Phase II NO_X SIP Call rules on August 15, 2006 (71 FR 46860). Implementation of the Phase II rules was projected to result in an eighty-two percent NO_X reduction from 1995 levels. Missouri rules which address the NO_X SIP call include:

- 10 CSR 10–6.350, ''*Emissions limitations and Emissions Trading of Oxides of Nitrogen*''
- 10 CSR 10–6.360, ''*Controlling NO_X Emissions From Electric Generating Units and Non-Electric Generating Boilers*''
- 10 CSR 10–6.380, ''*Control of NO_X Emissions From Portland Cement Kilns*''
- 10 CSR 10–6.390, ''*Control of NO_X Emissions From Large Stationary Internal Combustion Engines*''

Clean Air Interstate Rule (CAIR) and the *Cross State Air Pollution Rule (CSAPR).* The Clean Air Interstate Rule (CAIR) was promulgated in 2005 and required twenty-eight eastern states and the District of Columbia to significantly reduce emissions of SO_2 and NO_X from electric generating units (EGUs) in order to limit the interstate transport of these pollutants and the ozone and fine particulate matter these pollutants form in the atmosphere. 70 FR 25162 (May 12, 2005). In 2008, the D.C. Circuit initially vacated CAIR and ordered EPA to replace CAIR in its entirety, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur in order to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011, acting on the Court's remand, EPA promulgated CSAPR in order to replace CAIR and address interstate transport of emissions and the resulting secondary formation of ozone and fine particulate matter (76 FR 48208).[9] CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in twenty-eight states in the eastern United States. As a general matter, because CSAPR is CAIR's replacement, emissions reductions associated with CAIR will for most areas be made permanent and enforceable through implementation of CSAPR.

Implementation of the rule was scheduled to begin on January 1, 2012, when CSAPR's cap-and-trade programs would have superseded the CAIR cap-and-trade programs. Numerous parties filed petitions for review of CSAPR in the D.C. Circuit and on August 21, 2012,

[9] CAIR addressed the 1997 $PM_{2.5}$ annual standard and the 1997 8-hour ozone standard. CSAPR addresses contributions from upwind states to downwind nonattainment and maintenance of the 2006 24-hour $PM_{2.5}$ standard as well as the ozone and $PM_{2.5}$ NAAQS addressed by CAIR.

the court issued its ruling vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the Supreme Court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118. (D.C. Cir. 2015) (*EME Homer City II*). The CSAPR budgets for Missouri are not affected by the Court's decision. The litigation over CSAPR ultimately delayed implementation of that rule for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets were originally promulgated to begin on January 1, 2014, but began on January 1, 2017.

As noted above, CAIR was promulgated in 2005 and incentivized early reductions from sources in all covered states, including those upwind of the St. Louis area. On December, 14, 2007, EPA approved Missouri's CAIR rules into the SIP and the state's CAIR rules became effective in 2009 (72 FR 71073). The Missouri rule written to comply with the NO_X SIP Call requirements for EGUs was replaced with the CAIR NO_X regulations, 10 CSR 10–6.362, *Clean Air Interstate Rule Annual NO_X Trading program* and 10 CSR 10–6.364, *Clean Air Interstate Rule Seasonal NO_X Trading program,* and include limits for non-EGU boilers, specifically Trigen Units 5 and 6 and Anheuser Busch Unit 6. However, these three units have all been retired, and received retired unit exemptions that prohibit these units from operating.

Missouri's SIP redesignation request lists CAIR as a control measure. CAIR was in effect and achieving emission reductions in Missouri when the St. Louis area began monitoring attainment of the 1997 annual $PM_{2.5}$ NAAQS. The quality-assured, certified monitoring data used to demonstrate the area's attainment of the 1997 annual $PM_{2.5}$ NAAQS by the April 5, 2010, attainment deadline was influenced by reductions achieved by CAIR. Furthermore, because $PM_{2.5}$ concentrations in the St. Louis area are likely impacted by the transport SO_2 and NO_X emissions produced upwind, the area's air quality is likely affected by regulation of emissions from power plants in other states.

On November 21, 2014, the Administrator signed an action that published in the **Federal Register** on December 3, 2014 (79 FR 71163), amending the regulatory text of CSAPR to reflect the Court's October 23, 2014, order tolling all deadlines in CSAPR by three years, including provisions governing the sunsetting of CAIR. CAIR therefore sunset at the end of 2014 and was replaced by CSAPR beginning January 1, 2015, which continue to remain in place. Relative to CAIR, CSAPR required similar or greater emission reductions from relevant upwind areas starting in 2015 and beyond, and Missouri's emissions budgets were not affected by the Court's remand of some of the ozone-season and SO_2 budgets. The emission reductions associated with CAIR that helped the St. Louis area achieve attainment of the 1997 annual $PM_{2.5}$ NAAQS can therefore be considered permanent and enforceable for purposes of redesignation under section 107(d)(3)(E)(iii) of the CAA.

State and Local Measures. In addition to the above Federal measures, Missouri has several other state regulations that provide permanent and enforceable controls for $PM_{2.5}$ and $PM_{2.5}$ precursor emissions in the St. Louis area. These SIP approved rules include:

- 10 CSR 10–6.405 ''*Restriction of Particulate Matter Emissions from Fuel Burning Equipment Used for Indirect Heating*''
- 10 CSR 10–5.040 ''*Use of Fuel in Hand-Fired Equipment Prohibited*''
- 10 CSR 10–5.070 ''*Open Burning Restrictions*''
- 10 CSR 10–6.170 ''*Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin*''
- 10 CSR 10–6.220 ''*Restriction of Emission of Visible Air Contaminants*''
- 10 CSR 10–6.260 ''*Restriction of Emission of Sulfur Compounds*''
- 10 CSR 10–6.330 ''*Restriction of Emissions from Batch-Type Charcoal Kilns*''
- 10 CSR 10–6.400 ''*Restriction of Emission of Particulate Matter from Industrial Processes*''

Vehicle Inspection and Maintenance Program. To meet nonattainment area requirements for the one-hour ozone standard, Missouri implemented an inspection and maintenance program beginning in 2000 in the counties of St. Louis, St. Charles, and Jefferson and the City of St. Louis. Missouri codified the program through state rule 10 CSR 10–5.380, ''*Motor Vehicle Emissions Inspection,*'' and EPA approved an additional revision this rule on May 12, 2003 (68 FR 25414). While this program was established to address ozone formation, the reduction in NO_X emissions impact $PM_{2.5}$ in this area. The mobile source emissions inventory projections used in this demonstration incorporates the inspection and maintenance program rule, 10 CSR 10–5.381, which replaced the 10–5.380 rule. The state has implemented 10 CSR 10–5.381 since 2007 and EPA approved this rule in 80 FR 11323, March 3, 2015.

Permanent and Enforceable Controls Used to Attain the Standard for the Illinois portion of the nonattainment area. The same Federal control measures listed above for the Missouri side of the area are also applicable to the Illinois side of the St. Louis area (defined as Madison, Monroe, and St. Clair Counties as well as the Baldwin Township of Randolph County). These include the Federal mobile source measures and Federal upwind trading programs. Illinois also operates an Inspection/Maintenance (I/M) program, and has adopted a state rule to control NO_X and SO_2 from EGUs. Illinois also has a number of other state regulations in place to control $PM_{2.5}$ and $PM_{2.5}$ precursors. Additional information regarding NO_X and VOC emissions controls for the Illinois portion of the area can be found in the Illinois maintenance plan for the nonattainment area under the 1997 ozone standard. See docket ID EPA–R05–OAR–2010–0523; FRL–9619–8 for more information.

b. Emission Reductions

The St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS based on monitoring data for the three-year period from 2007–2009. During the development of the nonattainment SIP, which was subsequently withdrawn by the state, MDNR selected 2002 as the baseyear and since then has selected 2008 as the attainment emission inventory year. The attainment inventory identifies a level of emissions in the area that is sufficient to attain the 1997 annual $PM_{2.5}$ NAAQS for direct $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2, NO_X, NH_3 and VOC. Point source information was compiled from the 2008 NEI and the annual emissions reports submitted to MDNR by sources and EPA's Clean Air Markets Division database for electric utilities. Area, nonroad and onroad attainment year inventories originated from the 2008 NEI v1.5 provided by EPA. For more information on EPA's analysis of the 2002 and 2008 emissions inventories, see EPA's ''Emissions Inventory and Motor Vehicle Emissions Budget (MVEB) Technical Support Document

(TSD) for the Redesignation Request and Maintenance Plan for the St Louis, Missouri 1997 $PM_{2.5}$ Nonattainment Area,'' or appendix B, E and F of the state submittal, available on line at *www.regulations.gov,* Docket ID No. EPA–R07–OAR–2017–0734.

Using the inventory described above, as well as emissions inventories provided by Illinois, Missouri has documented changes in emissions from 2002 NEI to 2008 for the St. Louis area as shown in table 3 below. This table demonstrates that the entire St. Louis area has reduced emissions during the period except as described below.

TABLE 3—COMPARISON OF 2002 NEI AND 2008 BASEYEAR INVENTORY FOR THE ST. LOUIS NONATTAINMENT AREA

[tpy]

County name	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	Point Sources	−7.11	−13,095.20	−1,113.84	+44,701.42	−6,569.97
Illinois		164.12	−17,471.79	+134.22	−3,811.29	−816.76
Totals		157.01	−30,566.99	−979.62	+40,890.13	−7,386.76
Missouri	Area Sources	−453.09	−5,546.29	−799.57	−5,721.41	−7,169.82
Illinois		−433.02	−1,967.73	−2,757.16	−141.18	−16,890.58
Totals		−886.11	−7,514.02	−3,556.73	−5,862.59	−24,060.40
Missouri	On-Road Mobile Sources	−177.76	−31,503.01	−631.79	−1,452.91	−18,830.40
Illinois		6.88	−4,646.94	−102.62	−556.81	−2,555.87
Totals		−170.88	−36,149.95	−734.41	−2,009.72	−21,386.27
Missouri	Off-Road Mobile Sources	+5.84	−6,714.58	−386.84	−1,531.01	−3,962.38
Illinois		−1.24	+1,063.95	+33.13	−93.56	131.75
Totals		+4.60	−5,650.63	−353.71	−1,624.57	−3,830.63
Missouri Totals		−632.13	−56,859.08	−2,932.04	+35,996.09	−36,532.57
Illinois Totals		−263.26	−23,022.51	−2,692.43	−4,602.84	−20,131.46
Grand Total		−895.39	−79,881.59	−5,624.47	+31,393.25	−56,664.03

There is an increase of total SO_2 emissions from 2002 to 2008 of 35,996.09 tons on the Missouri side of the nonattainment area. This increase is a result of two factors described below. First, over 20,700 tons of the SO_2 increase can be attributed to a change in emission factors between 2002 and 2008 for the Doe Run Primary Lead Smelter in Herculaneum, MO, but that source has since shut down.[10] The second factor which contributes to the increase in SO_2 emissions is a ten percent increase in electricity demand at four Missouri EGUs. Between 2002 and 2008 a 10 percent increase in electricity demand coupled with increases in SO_2 emission rates from the Ameren utilities lead to increasing SO_2 emissions between 2002 and 2008. Overall emissions from 2002 to 2008 are trending down for direct $PM_{2.5}$ and the three other $PM_{2.5}$ precursors and EPA believes that the effect of these decreases cumulatively outweigh the increase seen in SO_2 emissions during the same time, thus supporting EPA's position set forth in this ANPR. In addition, in the years following 2008, substantial SO_2 reductions have been realized in the St. Louis utility sector within the nonattainment area from a combination of controls, fuel switching and shutdowns, and EPA believes SO_2 emissions from the utility sector will not increase back to 2002 or 2008 levels further supporting EPA's position in this ANPR.

Based on the information summarized above, and information provided in the technical support, which is a part of the docket for this action, EPA is providing advanced notice of its determination that Missouri has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the St. Louis area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, MDNR submitted a SIP revision on September 1, 2011, supplemented on March 31, 2014, and further clarified on September 17, 2014, to provide for the maintenance of the 1997 annual $PM_{2.5}$ NAAQS for at least ten years after the effective date of redesignation to attainment. EPA is providing advanced notice that it believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. Maintenance Plan Requirements

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Because the 1997 p.m.2.5 NAAQS will be revoked for the area if the area is redesignated to attainment, Missouri is not required submit a revised maintenance plan eight years after the redesignation. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, as EPA deems necessary, to assure prompt correction of any future 1997 annual $PM_{2.5}$ NAAQS violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan

[10] This facility shut down in 2011 pursuant to a federally enforceable Consent Decree. *https://www.epa.gov/enforcement/doe-run-resources-corporation-settlement.*

should address five requirements: (1) The attainment emissions inventory, (2) a maintenance demonstration, (3) a commitment to maintain the existing monitoring network, (4) verification of continued attainment, and (5) a contingency plan to plan or prevent or correct future violations. As discussed below, EPA is proposing that MDNR's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Missouri SIP.

b. Maintenance Plan Base Year Inventory

As discussed previously, the 2008 inventory is referenced as the baseyear and is used for the year of attainment is called the Attainment Year Inventory. The 2008 inventory is the inventory which all future years will be compared to in order to show maintenance. However, MDNR created a different 2008 onroad inventory for the comparison to future years in the maintenance plan. As explained previously, for the 2008 onroad attainment inventory, MDNR used NEI data which was developed using Mobile6.2 to compare with the 2002 nonattainment base year. A second 2008 onroad inventory was developed utilizing MOVES2010 to establish a maintenance base year for comparison to the future 2017 and 2025 MOVES-based future year inventories. This allows for a smooth transition to the updated model and to prevent comparing a MOVES2010 version of 2008 attainment year with the Mobile6.2 version of the 2002 nonattainment base year inventory. Therefore, the 2008 onroad mobile source inventory used for supporting maintenance was developed using the most current version of EPA's highway mobile source emissions model, MOVES2010a.

Emissions projections to support maintenance through 2025 have been prepared for the years 2017 and 2025. While Missouri's maintenance plan projects maintenance of the 1997 Annual $PM_{2.5}$ NAAQS through 2025, as noted above, EPA believes that the St. Louis area will continue to maintain the standard through 2027 for several reasons: All of the Federal regulatory requirements that enabled the area to attain the NAAQS will continue to be in effect and enforceable after the ten-year maintenance period. Overall emissions are projected to decline steadily through 2025. Because it is unlikely that emissions will suddenly increase in 2026 and 2027 in an amount that results in overall emissions in the area exceeding an attainment year inventory levels. EPA expects that the St. Louis area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS through 2027.

EPA has reviewed the documentation provided by MDNR and is providing advanced notice that the EPA believes the emissions inventory is acceptable. For more information on EPA's analysis of the 2008 emissions inventory, see EPA's TSD as part of this advanced notice of proposed rulemaking, or Appendix B, E and F of the state's 2014 submittal and additional clarifying information provided on September 17, 2014, available on line at *www.regulations.gov,* Docket ID No. EPA–R07–OAR–2017–0734.

c. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the Area ''for at least ten years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the subsection below, Missouri's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2025. For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on air quality modeling. *See Wall* v. *EPA,* 265 F.3d 426 *(6th Cir.2001); Sierra Club* v. *EPA,* 375 F. 3d 537 [*(7th Cir.2004)*]. *See also* 66 FR 53099–66 FR 53100; 68 FR 25430–68 FR 25432. MDNR uses projection inventories to show that the Missouri portion of the St. Louis area will remain in attainment. MDNR developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of direct $PM_{2.5}$, NO_X, SO_2, NH_3 and VOC will remain at or below the attainment year 2008 emissions levels in the St. Louis area through the year 2025. In light of more recent information on CSAPR, Missouri submitted on September 17, 2014, a revision that updated their future year projections for EGU facilities using the presumption that CSAPR will be in place to control emissions from sources. Non-EGU Point source and nonpoint sources were developed using growth factors created from the EGAS model (*https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations*) using economic growth projections from the Policy Insight® Model for Regional Economic Model, Inc. (REMI) to project the future year inventory. EPA's Nonroad Model and EPA's onroad mobile model, MOVES, were utilized to project mobile source future inventories.

EPA has reviewed the documentation provided by MDNR and is providing advanced notice that it finds the methodologies acceptable. Table 4–6 below shows the inventory summaries for the 2008 attainment year, 2017 interim year, and the 2025 maintenance plan end year for the entire area.

TABLE 4—2008 EMISSIONS INVENTORY SUMMARY

[tpy]

State	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	Point Sources	1,308.64	31,103.26	3,493.39	201,700.73	5,067.89
Illinois		208.31	16,981.51	2,448.15	21,853.56	4,277.72
Totals		1,516.95	48,084.77	5,941.54	252,431.33	9,345.61
Missouri	Area Sources	3,514.98	4,382.94	14,033.64	11,510.48	38,215.34
Illinois		3,354.13	1,638.36	5,161.76	246.67	7,796.34
Totals		6,869.11	6,021.30	19,195.40	11,757.15	46,011.68

TABLE 4—2008 EMISSIONS INVENTORY SUMMARY—Continued

[tpy]

State	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	On-Road Mobile Sources	1,056.17	58,819.58	2,179.28	426.65	23,793.80
Illinois		250.58	15,012.94	577.99	116.76	5,069.55
Totals		1,306.75	73,832.52	2,757.27	543.41	28,863.35
Missouri	Off-Road Mobile Sources	15.68	20,722.57	1,199.82	544.3	11,545.53
Illinois		2.89	8,475.24	425.71	300.72	2,972.77
Totals		18.57	29,197.81	1,625.53	845.02	14,518.30
Grand Total		9,711.38	157,136.40	29,515.74	265,576.91	98,738.94

TABLE 5—2017 EMISSIONS INVENTORY SUMMARY

[tpy]

State	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	Point Sources	1,308.64	31,661.08	3,692.74	107,713.00	6,363.13
Illinois		221.12	11,891.31	2,601.95	20,221.18	4,962.34
Totals		1,529.76	43,552.39	6,294.69	127,934.18	11,325.47
Missouri	Area Sources	3,514.98	4,446.97	14,165.78	11,534.82	44,057.17
Illinois		3,364.32	1,694.82	4,706.63	258.36	8,607.70
Totals		6,879.30	6,141.79	18,872.41	11,793.18	52,664.87
Missouri	On-Road Mobile Sources	722.47	22,904.99	913.15	191.12	10,867.41
Illinois		186.79	5,623.42	231.68	49.31	2,364.85
Totals		909.26	28,528.41	1,144.83	240.43	13,232.26
Missouri	Off-Road Mobile Sources	15.75	10,505.88	787.35	193.55	7,398.02
Illinois		3.46	8,673.75	370.28	390.79	2,303.43
Totals		19.21	19,179.63	1,157.63	584.34	9,701.45
Grand Total		9,337.53	97,402.22	27,469.56	140,552.13	86,924.05

TABLE 6—2025 EMISSIONS INVENTORY SUMMARY

[tpy]

State	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	Point Sources	1,308.64	32,603.86	4,403.28	108,617.07	7,809.01
Illinois		242.69	12,822.94	2,865.19	21,853.56	5,541.80
Totals		1,551.33	45,426.80	7,268.47	130,470.63	13,350.81
Missouri	Area Sources	3,514.98	4,531.02	14,314.86	11,606.89	49,458.63
Illinois		3,374.17	1,735.20	4,668.15	268.04	9,249.75
Totals		6,889.15	6,266.22	18,983.01	11,874.93	58,708.38
Missouri	On-Road Mobile Sources	691.88	16,568.44	533.34	189.22	8,035.80
Illinois		178.80	3,616.52	181.73	49.15	1,592.92
Totals		870.68	20,184.96	715.07	238.37	9,628.72
Missouri	Off-Road Mobile Sources	17.63	8,895.81	640.68	219.9	7,178.29
Illinois		3.99	9,028.03	331.2	438.02	2,037.10
Totals		21.62	17,923.84	971.88	657.92	9,215.39
Grand Total		9,332.78	89,801.82	27,938.43	143,241.85	90,903.30

Table 7 below compares the 2008 base year to the 2025 projection year and shows that the St. Louis area is projected to reduce SO_2 emissions by 122,335 tpy, NO_X emissions by 67,335 tpy, direct $PM_{2.5}$ emissions by 1,577 tpy, NH_3 emissions by 379 tpy, and VOC emissions by 7,836 tpy.

TABLE 7—COMPARISON OF 2008 BASE YEAR AND 2025 PROJECTION YEAR

[tpy]

State	Source category	NH_3	NO_X	$PM_{2.5}$-Pri	SO_2	VOC
Missouri	Point Sources	0.00	+1,500.60	+909.89	−93,083.66	+2,741.12
Illinois		34.38	−4,158.57	+417.04	−28,877.04	+1,264.08
Totals		34.38	−2,657.97	1,326.93	−121,960.70	+4,005.20
Missouri	Area Sources	0.00	+148.08	+281.22	+96.41	+11,243.29
Illinois		20.04	+96.84	−493.61	+21.37	+1,453.41
Totals		20.04	244.92	−212.39	117.78	+12,696.70
Missouri	On-Road Mobile Sources	−364.29	−42,251.14	−1,645.94	−237.43	−15,758.00
Illinois		−71.78	−11,396.42	−396.26	−67.61	−3,476.63
Totals		−436.07	−53,647.56	−2,042.20	−305.04	−19,234.63
Missouri	Off-Road Mobile Sources	1.95	−11,826.76	−559.14	−324.40	−4,367.24
Illinois		1.10	+552.79	−94.51	+137.30	−935.67
Totals		+3.05	−11,273.97	−653.65	−187.10	−5,302.91
Missouri Totals (Safety Margin).		−362.34	−52,429.22	−1,013.97	−93,549.08	−6,140.83
Illinois Totals (Safety Margin).		−16.26	−14,905.36	−567.34	−28,785.98	−1,694.81
Grand Total		−378.60	−67,334.58	−1,577.31	−122,335.06	−7,835.64

* **Note**: A negative value indicates a projected decrease in emissions from 2008 to 2025. A positive value indicates a projected increase in emissions from 2008 to 2025.

Table 5–4 of Missouri's September 17, 2014 submittal shows that in the 2017 interim year, emissions levels in the area will remain below the 2008 base year for all pollutant categories.

While MDNR's maintenance plan projects maintenance of the 1997 Annual $PM_{2.5}$ NAAQS through 2025, as noted above, EPA is providing advanced notice that it expects St. Louis Area will continue to maintain the standard through 2028 for several reasons: All of the Federal regulatory requirements that enabled the Area to attain the NAAQS will continue to be in effect and enforceable after the ten-year maintenance period and overall emissions are projected to decline significantly through 2025. Again, because there is no indication that emissions will suddenly increase in 2026, 2027 and 2028 in an amount that results in overall emissions in the area exceeding attainment year inventory levels, EPA is providing advanced notice that it expects that the St. Louis Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS through 2028.

d. Monitoring Network

There are currently 6 monitors measuring $PM_{2.5}$ in the Missouri portion of the St. Louis area.[11] MDNR has committed to continue operation of the network in the area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Missouri's 2016 monitoring plan on December 29, 2016, *see https://www.epa.gov/ks/region-7-air-quality-program.*

e. Verification of Continued Attainment

MDNR has the legal authority to enforce and implement the requirements of the Missouri portion of the St. Louis area 1997 annual $PM_{2.5}$ NAAQS maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

MDNR will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the St. Louis area as required in the Air Emissions Reporting Rule (AERR). For these periodic inventories, MDNR will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels.

f. Contingency Measures in the Maintenance Plan.

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a

[11] One monitor in the Missouri portion of the St. Louis area is a middle scale monitor and is not comparable to the 1997 $PM_{2.5}$ Annual NAAQS.

process of developing and implementing appropriate control measures. MDNR will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

Missouri has identified two different levels of corrective responses should the annual $PM_{2.5}$ level exceed the NAAQS in any year. A level I trigger occurs when the annual average monitored $PM_{2.5}$ concentration exceeds 15.0 $\mu g/m^3$ in any year at any monitoring station in the nonattainment area as described in the state's submittal for the St. Louis area.

MDNR will evaluate a level I condition, if it occurs, as expeditiously as practicable to determine the causes of the ambient $PM_{2.5}$ increase. If adverse emission trends are likely to continue, MDNR will first evaluate and subsequently adopt and implement control measures, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures, as outlined in the state's plan no later than twenty-four months after quality-assured ambient data has been entered into EPA's Air Quality System (AQS) database indicating a level I trigger.

A level II trigger is activated when any violation of the 1997 annual $PM_{2.5}$ NAAQS at any Federal reference method monitor in the St. Louis maintenance area is recorded, based on quality-assured monitoring data. In this event, MDNR will conduct a comprehensive study to determine the cause of the violation within six months of the triggering event. Selected measures will be implemented as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures, as outlined in the state's plan no later than twenty-four months after quality-assured ambient data has been entered into EPA's AQS database indicating a level II trigger.

The comprehensive measures will be selected from the following types of measures, as further detailed in the state's submission, or from any other measure deemed appropriate and effective at the time the selection is made by MDNR:

- Controls for local individual sources with significant effects on the monitored violation;
- Revisions to current rules that control $PM_{2.5}$ and $PM_{2.5}$ precursor emissions such as lowering limits and broadening applicability thresholds of current rules; and
- Establishing new rules that control $PM_{2.5}$ and $PM_{2.5}$ precursor emissions.

In addition to the triggers indicated above, Missouri commits to compiling and monitoring $PM_{2.5}$ and $PM_{2.5}$ precursor emissions inventories for the Missouri portion of the area every three years throughout the duration of the maintenance period to facilitate the emissions trends analysis included in the contingency plan under levels I and II.

EPA is providing advanced notice of its analysis that that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment emission inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Therefore, EPA is providing advanced notice that it in a future action, it intends to find that the maintenance plan SIP revision submitted by MDNR for the Missouri portion of the St. Louis area meets the requirements of section 175A of the CAA and is approvable.

In addition, EPA is providing advanced notice that it intends to determine that the state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. As explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What is EPA's initial analysis of the state's MVEBs?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved CAA section 175A maintenance plan for that NAAQS.

Under the CAA, states are required to submit at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. A MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEBs serve as a ceiling on emissions from an area's planned transportation system. The MVEBs concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule. *See* 58 FR 62188. The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

After interagency consultation with the transportation partners for the St. Louis area, Missouri developed MVEBs for NO_X and $PM_{2.5}$ for the Missouri portion of the St. Louis nonattainment area. Missouri has developed these MVEBs for 2008 and 2025. The MVEBs reflect the total on-road emissions for 2008 and 2025, plus an allocation from the available NO_X and $PM_{2.5}$ safety margin. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. All or a portion of the safety margin can be allocated to the transportation sector; however, the total emissions from all sources must remain below the attainment level (40 CFR 93.124(a)). The NO_X and $PM_{2.5}$ MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in modeled vehicle miles traveled, and new emission factor models. The NO_X and $PM_{2.5}$ MVEBs for the Missouri portion of the St. Louis area are identified in Table 9, below.

TABLE 8—MISSOURI PORTION OF THE ST. LOUIS AREA $PM_{2.5}$ AND NO_X 2008 AND 2025 MVEBS

[tpy]

	$PM_{2.5}$	NO_X
2008 Motor Vehicle Emissions Budgets	2,179	58,820
2025 Mobile Emissions	533	16,568
2025 Safety Margin Allocated (20%)	107	3,314
2025 Motor Vehicle Emissions Budgets	640	19,882

In an effort to accommodate future variations in travel demand models (TDM) results and the vehicle miles traveled forecast when no change to the network is planned, MDNR consulted with the interagency consultation group, including U.S. EPA Region 7, to determine a reasonable approach to address this variation. The projected 2025 annual on-road motor vehicle emissions for direct $PM_{2.5}$ and NO_X are 533 and 16,568 tons, respectively.

A safety margin is necessary to accommodate the variability, or worst-case scenarios that can occur due to future planning assumptions. The Missouri portion of the St. Louis area's available total safety margin for NO_X is 52,429 and direct $PM_{2.5}$ is 1,014. However, Missouri is only using a portion of this available safety margin. The worst-case daily motor vehicle emissions projection for $PM_{2.5}$ is twenty percent above the projected 2025 on-road emissions. For the $PM_{2.5}$ MVEB, the needed annual safety margin would be twenty percent above the projected 533 tons for 2025 onroad emissions. Therefore, the needed annual safety margin for $PM_{2.5}$ would be 107 tons resulting in an overall MVEB of 640 tons per year. The worst-case daily motor vehicle emissions projection for NO_X is twenty percent above the projected 16,568 tons for 2025 on-road emissions. Therefore, the needed annual safety margin for the NO_X MVEB would be 3,314 tons, resulting in an overall MVEB of 19,882 tons per year.

The maintenance plan establishes 2008 and 2025 MVEBs for direct $PM_{2.5}$ and NO_X for the St. Louis area. EPA is providing advanced notice that in a future action it will initiate the process for determining whether or not the MVEBs are adequate for transportation conformity purposes. The publication of the future notice starts a 30-day public comment period on the adequacy of the submitted MVEBs. The comment period will be concurrent with the comment period on of the future action and comments should be submitted to the docket for that rulemaking. EPA may choose to make its determination on the adequacy of the budgets either in the final rulemaking on this maintenance plan and redesignation request or by informing the state of the determination in writing, and publishing a notice in the **Federal Register**. EPA will also update its adequacy web page to reflect the decision on the adequacy of the budgets (*https://www.epa.gov/state-and-local-transportation*).[12] EPA, through is providing advanced notice, that it intends to propose to approve the MVEBs for use to determine transportation conformity in the Missouri portion of the St. Louis area. EPA has reviewed the budgets and the entire maintenance plan and redesignation request. In conducting that review we applied the adequacy criteria found in 40 CFR 93.118(e)(4) and found that the budgets satisfy all of these criteria. For more information on EPA's review, see EPA's ''Emissions Inventory and Motor Vehicle Emissions Budget (MVEB) Technical Support Document (TSD) for the Redesignation Request and Maintenance Plan for the St Louis, Missouri 1997 $PM_{2.5}$ Nonattainment Area'' available on line at *www.regulations.gov,* Docket ID No. EPA–OAR–R07–2017–0734.

As discussed throughout this notice EPA's review of the redesignation request and maintenance plan for this area shows that the area has attained the 1997 annual $PM_{2.5}$ NAAQS and will continue to maintain that NAAQS through 2028. While budgets were submitted for 2008 and 2025, EPA is providing advanced notice that the submitted motor vehicle emissions budgets for NO_X and $PM_{2.5}$ for 2025 are consistent with maintenance of the 1997 annual $PM_{2.5}$ NAAQS through at least 2028 for the reasons discussed above.

We are providing advanced notice that we intend to approve the redesignation request, maintenance plan and the NO_X and $PM_{2.5}$ budgets contained in the maintenance plan in a subsequent action.

VI. What is EPA's initial analysis of the state's 2008 emissions inventory?

EPA has reviewed Missouri's documentation of the emissions inventory techniques and data sources used for the derivation of the 2008 emissions estimates and has found that Missouri has thoroughly documented the derivation of these emissions inventories. The submittal from the state shows that at the time the 2008 emissions inventory was the most complete emissions inventory for $PM_{2.5}$ and $PM_{2.5}$ precursors in the St. Louis area. Based upon EPA's review, we propose to find that 2008 emissions inventories are as complete and accurate as possible given the input data available to Missouri. Therefore, we are providing advanced notice and taking comment on the 2008 NH_3, VOC, NO_X, direct $PM_{2.5}$ and SO_2 emissions inventories as a base year inventory. Final approval of the 2008 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA. For more information on EPA's analysis of the 2008 base year emissions inventory, see EPA's ''Emissions Inventory and Motor Vehicle Emissions Budget (MVEB) Technical Support Document (TSD) for the Redesignation Request and Maintenance Plan for the St, Louis, Missouri 1997 $PM_{2.5}$ Nonattainment Area'' available on line at *www.regulations.gov,* Docket ID No. EPA–OAR–R07–2017–0734.

VII. Summary of Advanced Notice of Proposed Actions

EPA is providing advanced notice on several actions regarding the area's redesignation and maintenance of the 1997 $PM_{2.5}$ NAAQS. We are processing this as an advanced notice of proposed action because we are soliciting comments on the information provided in this notice and the appropriate of EPA's future action. First, EPA is giving advanced notice that in a future action it intends to determine, based on data for the 2015–2017 monitoring period, and after review of all available data in AQS, that the Missouri portion of the St. Louis area is attaining the 1997 annual $PM_{2.5}$ NAAQS. EPA is also providing advanced notice that it believes the St. Louis area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Therefore, EPA is providing advanced notice and taking comment on Missouri's request to redesignate the St. Louis area and change the legal designation of Franklin, Jefferson, St. Charles, and St. Louis and the City of St. Louis from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

Second, EPA is providing advanced notice and taking comment on the maintenance plan for the St. Louis area, including the $PM_{2.5}$ and NO_X MVEBs for 2008 and 2025 submitted by Missouri. The maintenance plan demonstrates that the area will continue to maintain the 1997 annual $PM_{2.5}$ NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

[12] For additional information on the adequacy process, refer to 40 CFR 93.118(f) and the discussion of the adequacy process in the preamble to the 2004 final transportation conformity rule. (69 FR 40039–40043)

In addition, EPA is providing advanced notice of proposed approval of Missouri's 2008 base year emissions inventory in accordance with section 172(c)(3) of the CAA. If finalized, approval of the redesignation request would change the official designation of St. Louis area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

Dated: December 15, 2017.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2018–00037 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2017–0548; FRL–9972–84–OAR]

EPA Responses to Certain State Designation Recommendations for the 2015 Ozone National Ambient Air Quality Standards: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of availability and public comment period.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted on our public electronic docket and internet website responses to certain state and tribal area designation recommendations for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) (2015 Ozone NAAQS). These responses include our intended designations for the affected areas. The EPA invites the public to review and provide input on our intended designations during the comment period specified in the **DATES** section. The EPA sent its responses directly to the states and tribes on or about December 20, 2017. The EPA intends to make final designation determinations for the areas of the country addressed by these responses no earlier than 120 days from the date the EPA notified states and tribes of the agency's intended designations.

DATES: Comments must be received on or before February 5, 2018. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0548, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* The EPA may publish any comment received to our public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Denise Scott, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01, Research Triangle Park, NC 27709, telephone (919) 541–4280, email at *scott.denise@epa.gov.* The EPA contacts listed at the beginning of the **SUPPLEMENTARY INFORMATION** can answer questions regarding areas in a particular EPA Regional office.

SUPPLEMENTARY INFORMATION:

Regional Office Contacts:

Region I—Richard Burkhart (617) 918–1664

Region II—Omar Hammad (212) 637–3347

Region III—Maria Pino (215) 814–2181

Region IV—Jane Spann (404) 562–9029

Region V—Kathleen D'Agostino (312) 886–1767

Region VI—Carrie Paige (214) 665–6521

Region VII—Lachala Kemp (913) 551–7214

Region VIII—Chris Dresser (303) 312–6385

Region IX—Laura Lawrence (415) 972–3407

Region X—Karl Pepple (206) 553–1778

The public may inspect the recommendations from the states and tribes, our recent letters notifying the affected states and tribes of our intended designations, and area-specific technical support information at the following locations:

Regional offices	States
Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Richard Ruvo, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4014.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Cynthia H. Stahl, Acting Associate Director, Office of Air Program Planning, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2180.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
R. Scott Davis, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, 12th Floor, Atlanta, GA 30303, (404) 562–9127.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
John Mooney, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–6043.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Alan Shar, Acting Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–6691.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Mike Jay, Chief, Air Programs Branch, EPA Region VII, 11201 Renner Blvd., Lenexa, KS 66129, (913) 551–7460.	Iowa, Kansas, Missouri, and Nebraska.
Monica Morales, Air Program Director, EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6936.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Doris Lo, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3959.	American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands, Navajo Nation, and the Hopi Tribe.

Regional offices	States
Debra Suzuki, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0985.	Alaska, Idaho, Oregon, and Washington.

The information can also be reviewed online at *https://www.epa.gov/ozone-designations* and in the public docket for these ozone designations at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2017–0548.

I. What is the purpose of this action?

The purpose of this notice of availability is to solicit input from interested parties other than states and tribes on the EPA's recent responses to the state and tribal designation recommendations for the 2015 Ozone NAAQS. These responses, and their supporting technical analyses, can be found at *https://www.epa.gov/ozone-designations* and in the public docket for these ozone designations at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OAR–2017–0548.

On October 1, 2015, the EPA Administrator signed a notice of final rulemaking that revised the primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). The EPA established the revised primary and secondary ozone NAAQS at 0.070 parts per million (ppm). The 2015 Ozone NAAQS are met at an ambient air quality monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (*i.e.,* the design value) is less than or equal to 0.070 ppm. The revised standards will improve public health protection, particularly for at-risk groups including children, older adults, people of all ages who have lung diseases such as asthma, and people who are active outdoors, especially outdoor workers. They also will improve the health of trees, plants and ecosystems.

After the EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA) requires the EPA to designate all areas of the country as either ''Nonattainment,'' ''Attainment,'' or ''Unclassifiable,'' for that NAAQS. The process for these initial designations is contained in CAA section 107(d)(1) (42 U.S.C. 7407). After promulgation of a new or revised NAAQS, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for Nonattainment areas, to the EPA. The EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised NAAQS. By no later than 120 days prior to promulgating designations, the EPA is required to notify states, territories, and tribes, as appropriate, of any intended modifications to an area designation or boundary recommendation that the EPA deems necessary.

On November 6, 2017, the EPA established initial air quality designations for most areas in the United States, including most areas of Indian country, for the 2015 primary and secondary ozone NAAQS 82 FR 54232, November 16, 2017). In that action, the EPA designated 2,646 counties, including Indian country located in those counties, two separate areas of Indian country, and five territories as Attainment/Unclassifiable and three counties as Unclassifiable.

This current action provides the EPA's intended designation of all remaining undesignated areas. On or about December 20, 2017, consistent with section 107(d)(1)(b)(ii) of the CAA, the EPA notified affected states and tribes of the remaining recommended designations.[1] While the EPA is in agreement with the recommendations for most areas, the EPA indicated that in some instances it intended to modify a state or tribal recommends. States and tribes have the opportunity during the 120-day process to provide additional information for the EPA to consider in making the final designation decisions. We stand ready to assist and hope to resolve any differences regarding the proper designation for all remaining areas within the 120-day process provided by the CAA.

Once designations take effect, they govern what subsequent regulatory actions states, tribes, and the EPA must take in order to improve or preserve air quality in each area.

II. Instructions for Submitting Public Comments and Internet Website for Rulemaking Information

A. Invitation To Comment

The purpose of this notice is to solicit input from interested parties, other than the states and tribes to which we have sent notification letters, on the EPA's recent responses to the designation recommendations for the 2015 Ozone NAAQS. These responses, and their supporting technical analyses, can be found at *https://www.epa.gov/ozone-designations* and in the public docket for these ozone designations at Docket ID No. EPA–HQ–OAR–2017–0548. The EPA Docket Office can be contacted at (202) 566–1744, and is located at EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The hours of operation at the EPA Docket Center are 8:30 a.m.–4:30 p.m., Monday–Friday.

CAA section 107(d)(1) provides a process for air quality designations that involves recommendations by states, territories, and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final area designations and boundaries. The EPA is not required under the CAA section 107(d)(1) to seek public comment during the designation process, but we are electing to do so for these areas with respect to the 2015 Ozone NAAQS in order to gather additional information for the EPA to consider before making final designations for the specific areas addressed in the EPA's recent letters to states and tribes. The EPA invites public input on our responses to states and tribes regarding these areas during the 30-day comment period provided in this notice. In order to receive full consideration, input from the public must be submitted to the docket by February 5, 2018. This notice and opportunity for public comment does not affect any rights or obligations of any state, or tribe, or of the EPA, which might otherwise exist pursuant to the CAA section 107(d).

Please refer to the **ADDRESSES** section in this document for specific instructions on submitting comments and locating relevant public documents.

In establishing Nonattainment area boundaries for a particular area, CAA section 107(d)(1)(A) requires the EPA to include within the boundaries both the area that does not meet the standard and any nearby area contributing to ambient air quality in the area that does not meet the NAAQS. We are particularly interested in receiving comments, supported by relevant information addressing the section 107(d)(1)(A) criteria, if you believe that a specific geographic area should not be categorized as Nonattainment, or if you

[1] Note that the EPA completed the area designations for the U.S. territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands in the November 6, 2017, designations action.

believe that an area the EPA had indicated that it intends to designate as Attainment/Unclassifiable or Unclassifiable should in fact be categorized Nonattainment based on the presence of a violating monitor in the area or based on contribution to ambient air quality in a nearby areas. Please be as specific as possible in supporting your views.

- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Provide your input by the comment period deadline identified.

The EPA intends to complete designations for all of the areas addressed in the responses to the states and tribes no later than April 30, 2018. This would complete the designation process for the 2015 Ozone NAAQS.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit CBI information to the EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to the 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 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Tiffany Purifoy, OAQPS CBI Officer, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0878, email at *purifoy.tiffany@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2017–0548.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

C. Where can I find additional information for this rulemaking?

The EPA has also established a website for this rulemaking at *https://www.epa.gov/ozone-designations.* The website includes the state, territorial and tribal recommendations, the EPA's intended area designations, information supporting the EPA's preliminary designation decisions, the EPA's designation guidance for the 2015 Ozone NAAQS as well as the rulemaking actions and other related information that the public may find useful.

Dated: December 21, 2017.

Peter Tsirigotis,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–00024 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 4
Friday, January 5, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho and Southwestern Montana (Beaverhead-Deerlodge, Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie, Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming (Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National Forest and Thunder Basin National Grassland) Amendments to Land Management Plans for Greater Sage-Grouse Conservation

AGENCY: Forest Service, USDA.

ACTION: Notice to Extend the Public Scoping Period for the Notice of Intent to Prepare an Environmental Impact Statement for the Amendments to Land Management Plans for Greater Sage-Grouse Conservation

SUMMARY: The Forest Service is issuing this notice to advise the public of a 14-day extension to the public scoping period on the notice of intent to prepare an environmental impact statement for the amendments to land management plans for greater sage-grouse conservation.

DATES: Comments concerning the scope of the analysis must be received by January 19, 2018.

ADDRESSES: Send written comments to Sage-grouse Amendment Comment, USDA Forest Service Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401. Comments may also be sent via email to, *comments-intermtn-regional-office@fs.fed.us,* or via facsimile to 801–625–5277.

FOR FURTHER INFORMATION CONTACT: John Shivik at 801–625–5667 or email *johnashivik@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The original notice of intent for public comment on the greater sage-grouse plan amendments was published in the **Federal Register** on November 21, 2017 (82 FR 55346). The original notice of intent provided a 45 day comment period, which may be insufficient for comment preparation from all interested parties. As such, the comment period for the original notice is being extended by 14 days.

If the Forest Service amends land management plans, we hereby give notice that substantive requirements of the 2012 Planning Rule (36 CFR 219) likely to be directly related, and therefore applicable, to the amendments are in sections 219.8(b) (social and economic sustainability), 219.9 (diversity of plant and animal communities), and 219.10(a)(1) (integrated resource management).

The public is encouraged to help identify any issues, management questions, or concerns that should be addressed in plan amendment(s) or policy or administrative action. The Forest Service will work collaboratively with interested parties to identify the management direction that is best suited to local, regional, and national needs and concerns. The Forest Service will use an interdisciplinary approach as it considers the variety of resource issues and concerns.

Dated: December 29, 2017.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–00045 Filed 1–4–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue River-Siskiyou National Forest; Oregon; Shasta Agness Landscape Restoration Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Rogue River-Siskiyou National Forest (RRSNF), Gold Beach Ranger District is providing notice that it will prepare an environmental impact statement (EIS) for the Shasta Agness Landscape Restoration Project, which would implement multiple landscape restoration actions on National Forest System lands within an approximately 93,000-acre project planning area. Restoration actions include vegetation treatments, prescribed fire, sustainable recreation, and sustainable roads actions. In order to implement the project, the Forest Service identified the need for a project-specific amendment to exempt commercial and noncommercial thinning restoration actions in unique oak and pine units from the silviculture standard. This notice identifies the planning rule provisions likely to be directly related to the plan amendment.

DATES: Comments concerning the scope of the analysis must be received by February 5, 2018. The draft environmental impact statement is expected early 2018, and the final environmental impact statement is expected fall of 2018.

ADDRESSES: Send written comments to Rogue River-Siskiyou National Forest (RRSNF), 3040 Biddle Road, Medford, OR 97504.

Comments may also be submitted online at *https://cara.ecosystem-management.org/Public//CommentInput?Project=49607;* or via the Gold Beach Ranger District facsimile at 541–247–3641; or the RRSNF facsimile at (541) 618–2400.

FOR FURTHER INFORMATION CONTACT: Craig Trulock, Deputy Forest Supervisor, *ctrulock@fs.fed.us,* 541–618–2032. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need

As a result of past fire exclusion and vegetation management regimes conducted within the project area, current ecosystem conditions have departed from natural conditions and exhibit lower compositions of certain species, plant communities, and habitat types. The result is that some of these

rare, highly specialized, and unique habitat types and plant associations are in decline and at risk of being lost or greatly reduced.

Oak and pine savannahs and woodlands have suffered substantial losses in both areal extent and ecological integrity due to fire suppression and the resulting invading conifers. Composition, structure, and important habitat types associated with oak and pine vegetation communities are transitioning to a closed-canopy Douglas-fir forest, which is resulting in reduction and loss of these unique habitats.

The overall purpose of the project is to restore resilience and ecological integrity to unique ecosystems and to aquatic and riparian habitats, to conserve and accelerate the development of late-successional forests while preserving species diversity, and to provide a diverse range of high-quality, sustainable recreation opportunities supported by an environmentally sustainable road system.

Proposed Action

Proposed project management activities include: Restoring unique oak savannahs and woodlands; restoring sugar pine and Jeffrey pine savannahs and woodlands; accelerating development of late seral forest structures; reducing spread of the Port-Orford-cedar root disease via roadside sanitation; implementing burn blocks of prescribed fire in and between thinning restoration units; improving water quality; rehabilitating soils impacted by past management activities and natural events; enhancing habitat conditions in aquatic and riparian areas for endangered and threatened fish species; reducing hydrologic impacts of excess or poorly designed roads; and managing recreational opportunities and needs in a sustainable manner.

Variable and radial density thinning along with application of prescribed fire would be the primary restoration actions for the oak, pine, and plantation units. In order to optimize terrain features and weather windows and to achieve low-intensity prescribed fire conditions, burning would occur during spring-like conditions and include blocks of land between identified restoration thinning units. Roadside sanitation via removal of POC along identified road prisms would address the spread of root disease. Changes in road maintenance levels would address both water quality and sustainable recreation needs. Campground and trail maintenance and closures would address sustainable recreation needs. The RTV Plan would identify high-priority sites within the three watersheds analyzed and provide management direction to ensure RTV persistence and protection. This and future projects within those watersheds would follow that guidance.

Portions of the project restoration units are located within the designated Fishhook Late Successional Reserve (LSR), which is geographically nested within the designated Southwest Oregon (SWOR) LSR, per the evaluation found in the *SWOR Late-successional Reserve Assessment* (USDA Forest Service and USDI Bureau of Land Management 1995). Because of this, the proposed radial and variable density thinning to reduce competition around shade-intolerant oaks and pines, the restoration of forest structures and patterns, POC sanitation, and the reintroduction of ecological process and disturbance regimes (fire) all would be required to maintain consistency with the 1989 *Siskiyou Land Resources Management Plan* (*LRMP*) and as amended by the NWFP. The *NWFP* provides standards, guidelines, goals, and desired conditions for protecting and maintaining LSR resources.

However, proposed commercial and noncommercial restoration thinning in older LSR stands would not comply with one *NWFP* silviculture standard: C–12, which prohibits harvest in stand over 80 years old in LSR (*LRMP* and *NWFP;* USDA Forest Service 1989; as amended by USDA Forest Service, USDI Bureau of Land Management, 1994); incorporated by reference and available at: *https://www.fs.usda.gov/detail/rogue-siskiyou/landmanagement/?cid=stelprdb5315100*). Therefore, after all reasonable stipulations to minimize adverse environmental impacts on National Forest LSR resources have been included, a project-specific forest plan amendment is required. This amendment would be the only exemption to Plan standards, and all other standards and guidelines would be unaffected.

When proposing a Forest Plan amendment, the 2012 planning rule (36 CFR 219), as amended, requires the responsible official to provide in the initial notice ''which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment'' (36 CFR 219.13 (b)(2)). Whether a rule provision is likely to be directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment. Based on this amendment proposal and requirements of the planning rule, the following substantive requirements of the 36 CFR 219 planning regulations would likely be directly related to the proposed amendment:

§ 219.8(a)(1)(i)—[. . . the plan must include plan components to maintain or restore . . .] Interdependence of terrestrial and aquatic ecosystems in the plan area;

§ 219.8(a)(1)(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area;

§ 219.8(a)(1)(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area;

§ 219.8(a)(1)(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

§ 219.8(a)(1)(v) Wildland fire and opportunities to restore fire adapted ecosystems;

§ 219.8(a)(1)(vi) Opportunities for landscape scale restoration;

§ 219.8(a)(2)(ii) Soils and soil productivity, including guidance to reduce soil erosion and sedimentation.

§ 219.8(a)(2)(iii) Water quality;

§ 219.8(a)(3)(i)—[. . . the plan must include plan components to maintain or restore the ecological integrity of riparian areas in the plan area . . .] including plan components to maintain or restore structure, function, composition, and connectivity . . . ;

§ 219.8(a)(3)(ii) Plans must establish width(s) for riparian management zones;

§ 219.8(b)(1)—[. . . the plan must include plan components to guide the plan area's contribution to social and economic sustainability . . .] Social, cultural and economic conditions relevant to the area influenced by the plan;

§ 219.8(b)(2) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character;

§ 219.8(b)(3) Multiple uses that contribute to local, regional, and national economies in a sustainable manner;

§ 219.8(b)(4) Ecosystem services;

§ 219.8(b)(5) Cultural and historic resources and uses;

§ 219.9(a)(1)—[. . . plan must provide for the diversity of plant and animal communities and include plan components to maintain or restore . . .] Ecosystem integrity;

§ 219.9(a)(2)(i) Key characteristics associated with terrestrial and aquatic ecosystem types;

§ 219.9(a)(2)(ii) Rare aquatic and terrestrial plant and animal communities;

§ 219.9(a)(2)(iii) The diversity of native tree species similar to that existing in the plan area;

§ 219.9(b)(1)—[. . . plan must provide for the diversity of plant and animal communities and must include plan components to maintain or restore additional species-specific plan components . . .] Provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area . . .;

§ 219.9(c)—[. . . plan must provide for the diversity of plant and animal communities and must include plan components to maintain or restore additional species-specific plan components . . .] Species of conservation concern . . . for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area;

§ 219.10(a)(1)—[. . . plan must include plan components . . . for integrated resource management to provide for ecosystem services and multiple uses in the plan area . . . the responsible official shall consider: . . .] Aesthetic values, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface water quality, timber, vegetation, viewsheds;

§ 219.10(a)(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments);

§ 219.10(a)(7) Reasonably foreseeable risks to ecological, social, and economic sustainability;

§ 219.10(a)(8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8);

§ 219.11(c)—[. . . plan must include plan components . . . and other plan content regarding timber management within Forest Service authority and the inherent capability of the plan area, . . .] Timber harvest for purposes other than timber production . . . as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use values may include improving wildlife or fish habitat, thinning to reduce fire risk, or restoring meadow or savanna ecosystems where trees have invaded;

If this proposed project-specific amendment is determined to be directly related to the substantive rule requirements, the responsible official must apply those requirements within the scope and scale of the amendment and, if necessary, make adjustments to the amendment to meet these rule requirements (36 CFR 219.13 (b)(5) and (6)).

Possible Alternatives

The Shasta Agness Landscape Restoration Project has emphasized early and substantive collaboration in its development. Robust engagement and contributions to project location, design, and proposed restoration components were derived from collaboration with members of the Wild Rivers Coast Forest Collaborative (WRCFC). As a result of that collaboration, additional District analyses, and public input from scoping comments, the Forest Service identified and evaluated four alternatives, including the no action alternative. The proposed action is a slightly modified version of the proposed scoping action described in the initial scoping letter. The other two action alternatives include varying degrees and types of recreational opportunities and restoration treatments. All action alternatives were related to proposals put forth by the WRCFC as evaluated by Forest staff. The no action alternative provides the baseline conditions with which to compare the action alternatives; it assumes conditions which would occur if no decision related to this project were implemented.

Responsible Official

The responsible official for this decision will be the Forest Supervisor for the Rogue River-Siskiyou National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide where, and whether or not, to take action to meet desired conditions within the planning area. The responsible official also will decide how to mitigate any potential impacts of these actions and will determine when and how possible effects monitoring would take place. The final project decision and rationale will be documented in a Record of Decision supported by a final EIS.

Per 36 CFR 218.7(a)(2), this is a project proposing to implement a land management plan and is not authorized under the Healthy Forests Restoration Act (HFRA). Therefore, it is subject to both subparts A and B of 36 CFR 218, Project-level Predecisional Administrative Review Process.

Decisions by the Forest Supervisor to approve project-specific plan amendments are subject to the Administrative Review Process of 36 CFR 218 Subpart A, in accordance with 36 CFR 219.59 (b). The term ''project specific'' refers to amendments that would only apply to the proposed project and would not apply to any future management actions.

Prior Scoping

Besides ongoing public collaboration with the WRCFC, the Forest Service's project scoping proposal to develop an environmental assessment (EA) was first introduced to the broader public through the Forest Service's schedule of proposed action (SOPA) on June 14, 2016. A legal notice to initiate the 30-day NEPA public comment scoping period for the proposed action was published June 15, 2016 in the *Curry County Reporter* and in the *Grants Pass Daily Courier.* The proposed action and detailed maps were made available on the USFS website: *http://www.fs.usda.gov/projects/rogue-siskiyou/landmanagement/projects.* Additionally, a public comment scoping letter dated June 15, 2016, was mailed via post to over 200 and electronically sent to over 60 individuals, organizations, and agencies who had expressed interest in being informed of projects on the Gold Beach Ranger District. Letters summarized the proposed action and included directions to the Forest's website for more information. The formal scoping period ended July 15, 2016. During the scoping period, the Forest Service received input from 13 commenters representing a spectrum of individuals and groups from Oregon and Idaho. Comments received also were posted on the project website and can be viewed here: *http://*

www.fs.fed.us/nepa/nepa_project_exp.php?project=49607.

The project originally was released for scoping comments as an environmental assessment (EA) as described above. Subsequent to the initial EA scoping efforts and based on the overall project scope and complexity—including its associated analyses—it was determined that an EIS would better provide a more appropriate vehicle than an EA for evaluating project information important to the public and decision-maker. Though the Forest Service anticipates and intends that this project will be beneficial for landscape restoration, due to these complex circumstances, the Forest Service proposes to develop an EIS to ensure sufficient analysis and to further the intent of NEPA.

Scoping Process

Comments and submittals already received during the previously conducted public scoping comment period are part of the record and have been considered during further development of the project and its draft EIS and need not be re-submitted for the commenter to retain standing in the event of possible future objections. Furthermore, the draft EIS, including analysis of the project-specific plan amendment, is anticipated to be filed with the Enviromental Protection Agency (EPA) and available for public review and a designated 45-day public comment by early 2018. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. At such time, detailed instructions for how to submit comments regarding both the project-specific plan amendment and the draft EIS will be provided.

Comments received, including names and addresses of those who comment, will be part of the public record for this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not afford the Agency the ability to provide the respondent with subsequent environmental documents, nor will those who submit anonymous comments have standing to object to the subsequent decision under 36 CFR 218.

Access and review for documents related to information in this notice is available at: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=49607.*

Dated: December 21, 2017.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–00049 Filed 1–4–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 160721646–6646–01]

RIN No. 0625–XC022

Applications To Serve as Accountability Agents in the Asia Pacific Economic Cooperation (APEC) Privacy Recognition for Processors (PRP) System

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of opportunity for organizations to submit applications to serve as Accountability Agents in the Asia Pacific Economic Cooperation (APEC) Privacy Recognition for Processors (PRP) system.

SUMMARY: The International Trade Administration's Office of Digital Services Industries (ODSI) invites interested organizations to submit applications for recognition by APEC to act as an Accountability Agent for U.S.-based companies that are subject to Federal Trade Commission jurisdiction as part of APEC's Privacy Recognition for Processors system.

DATES: Applications may be submitted beginning December 29, 2017. Until further notice, there is no closing date for submitting applications.

ADDRESSES: Please submit applications by email to *michael.rose@trade.gov*, attention: Michael Rose, Office of Digital Services Industries, International Trade Administration, U.S. Department of Commerce. See **SUPPLEMENTARY INFORMATION** for additional instructions on submitting applications.

FOR FURTHER INFORMATION CONTACT: All questions concerning this notice should be sent to the attention of Michael Rose, Office of Digital Services Industries, International Trade Administration, U.S. Department of Commerce, by telephone at (202) 815–0374 (this is not a toll-free number) or by email at *michael.rose@trade.gov.*

SUPPLEMENTARY INFORMATION: In 2004, Leaders of the 21 APEC economies [1] endorsed the ''APEC Privacy Framework'' (Framework). The goal of the Framework is to facilitate the flow of information between the 21 economies in APEC by promoting a common set of privacy principles that will enhance electronic commerce, facilitate trade and economic growth, and strengthen consumer privacy protections. In order to implement this Framework, member economies developed a voluntary system of Cross Border Privacy Rules (CBPR), which was endorsed by APEC Leaders in November 2011 (the Leaders' Declaration is available at *http://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm.aspx*). The Leaders' Declaration instructs APEC member economies to implement the APEC CBPR system to reduce barriers to information flows, enhance consumer privacy, and promote interoperability across regional data privacy regimes. In July 2012, the United States formally commenced participation in the CBPR system. The United States issued an open invitation for interested organizations to submit applications for recognition by APEC to act as an Accountability Agent for U.S.-based companies that are subject to Federal Trade Commission jurisdiction as part of APEC CBPR system, available at: *https://www.federalregister.gov/documents/2012/07/30/2012-18515/applications-to-serve-as-accountability-agents-in-the-asia-pacific-economic-cooperation-apec-cross.*

The APEC CBPR system applies to personal information controllers (''controller''), defined in the Framework as ''person(s) or organization(s) who control the collection, holding, processing or use of personal information''. APEC developed the Privacy Recognition for Processors (PRP) system to complement the CBPR system, and APEC Leaders endorsed the PRP system in February 2015. The United States was approved by APEC economies on the Joint Oversight Panel, the body overseeing the CBPR and PRP systems, to participate in the PRP system on November 15, 2017.

The PRP system is designed to help personal information processors (''processors''), third parties that are acting as agents to perform task(s) on behalf of and under the instructions of a controller, demonstrate their ability to implement a controller's privacy obligations related to the processing of personal information. The PRP system also helps controllers identify qualified

[1] The 21 APEC economies are Australia, Brunei Darussalam, Canada, Chile, the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States, and Vietnam.

and accountable processors and helps ensure that processing is consistent with the controller's CBPR System processing requirements.

The PRP system requires processors to implement privacy policies and practices consistent with the PRP system requirements for all personal information that they process on behalf of controllers, and these policies and practices must be assessed as compliant by an APEC-recognized Accountability Agent (''PRP certification''). Under the PRP system, an ''Accountability Agent'' is a third-party organization that provides verification services related to the data privacy policies and practices for those processors seeking PRP certification. Only APEC-recognized Accountability Agents may perform PRP certifications.

An Accountability Agent may only provide PRP certification for a *U.S.* processor that is subject to the enforcement authority of the Federal Trade Commission, the U.S. privacy enforcement authority.

An applicant may be designated as an Accountability Agent if APEC member economies recognize that it meets the recognition criteria agreed to by APEC. Those criteria are set forth in the Accountability Agent APEC Application for the PRP System (''APEC PRP System Guide''), which is available at: *https://cbprs.blob.core.windows.net/files/Accountability%20Agent%20Application%20for%20PRP%20Revised%20For%20Posting%203-16.pdf.*

Organizations interested in being designated as an Accountability Agent should notify the Department of Commerce of their interest in obtaining APEC recognition and submit the information described in the APEC PRP System Guide to the Office of Digital Services Industries by email at *michael.rose@trade.gov.*

Dated: December 29, 2017.

James Sullivan,

Deputy Assistant Secretary for Services, U.S. Department of Commerce.

[FR Doc. 2018–00046 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China). The period of review (POR) is April 1, 2016, through March 31, 2017. The review covers two mandatory respondents, Feidong Import and Export Co., Ltd. (Feidong) and Foshan Zhaoshun Trade Co., Ltd (Zhaoshun). We preliminarily determine that neither mandatory respondent qualifies for a separate rate and, therefore, both are considered part of the China-wide entity. Additionally, we are preliminarily including two companies that failed to demonstrate their entitlement to a separate rate (*i.e.,* Jiangmen Hongmao Trading Co., Ltd. (Hongmao) and Yuyao Afa Kitchenware Co., Ltd. (Yuyao)) as part of the China-wide entity. We also preliminarily grant separate rates to the following companies which demonstrated eligibility for separate rate status but were not selected for individual examination: Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star); KaiPing Dawn Plumbing Products, Inc. (KaiPing); Guangdong New Shichu Import and Export Company Limited (New Sichu); and Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo Afa). Finally, we preliminarily find that B&R Industries Limited (B&R); Xinhe Stainless Steel Products Co., Ltd. (Xinhe); Zhongshan Superte Kitchenware Co., Ltd. (Superte); and Zhuhai KOHLER Kitchen & Bathroom Products Co., Ltd. (Zhuhai KOHLER) made no shipments of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 5, 2018.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz or Ajay Menon, 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) 482–2972 or (202) 482–1993, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order include drawn stainless steel sinks. Imports of subject merchandise are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[1]

Preliminary Determination of No Shipments

Based on our analysis of CBP information and information provided by the companies, we preliminarily determine that B&R, Superte, Xinhe, and Zhuhai KOHLER did not have any shipments of subject merchandise during the POR. In addition, Commerce finds that, consistent with its assessment practice in non-market economy (NME) cases, it is appropriate not to rescind the review in part in these circumstances, but to complete the review with respect to these four companies and issue appropriate instructions to CBP based on the final results.[2] For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Because Feidong is majority government-owned and Foshan did not respond to the NME questionnaire, we preliminarily determine that they are not eligible for a separate rate and are part of the China-wide entity, subject to the China-wide entity rate of 76.45 percent.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and

[1] For a complete description of the Scope of the Order, *see* Memorandum, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China,'' issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*) and the ''Assessment Rates'' section, below.

Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

Preliminary Results of Review

Commerce finds that the two mandatory respondents have not established eligibility for a separate rate and are considered to be part of the China-wide entity for these preliminary results. Additionally, because Hongmao and Yuyao did not submit a separate rate application or certification by the deadline established in the *Initiation Notice* or make a claim that they had no exports, sales, or entries of subject merchandise during the POR, we preliminarily find that these companies failed to establish their entitlement to a separate rate and, therefore, remain part of the China-wide entity. Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[3] Under this policy, the China-wide rate will not be under review unless a party requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate is not subject to change.

The statute and Commerce's regulations do not address what rate to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all rates are zero, *de minimis,* or based entirely on facts available, Commerce may use ''any reasonable method'' for assigning a rate to non-examined respondents.

For these preliminary results, we have not calculated any individual rates or assigned a rate based on facts available. Therefore, consistent with our recent practice,[4] we preliminary determine to assign to the non-individually examined separate rate respondents the most recently assigned separate rate in this proceeding, which is from the previous administrative review.[5] Using this method, we are preliminarily assigning a separate rate margin of 1.78 percent to the four non-individually examined companies that demonstrated their eligibility for a separate rate.

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period April 1, 2016, through March 31, 2017:

Exporter	Weighted-average dumping margin (percent)
Guangdong New Shichu Import and Export Company Limited	1.78
Jiangmen New Star Hi-Tech Enterprise Ltd	1.78
KaiPing Dawn Plumbing Products, Inc	1.78
Ningbo Afa Kitchen and Bath Co., Ltd	1.78

Disclosure and Public Comment

Normally, Commerce will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, here, Commerce preliminary applied a separate rate[6] and the China-wide rate[7] that were established in prior segments of the proceeding. Thus, there are no calculations on this record to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[8] Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[9]

Any interested party may request a hearing within 30 days of publication of this notice.[10] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[11]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[12] Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review. For the companies receiving a separate rate, we intend to assign an assessment rate of 1.78 percent, consistent with the methodology described above. For the final results, if we continue to treat the mandatory respondents as part of the China-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 76.45 percent to all entries of subject merchandise during the POR that were produced and/or exported by those companies. In addition, if we continue to find that B&R, Superte, Xinhe, and Zhuhai KOHLER, had no shipments of the subject merchandise, any suspended

[3] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[4] *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 81 FR 62717 (September 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11, *unchanged in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 11431 (February 23, 2017).

[5] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 82 FR 28639, 28640 (June 23, 2017) (*Sinks AR3 Final*).

[6] *See Sinks AR3 Final.*

[7] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination,* 78 FR 13019 (February 26, 2013).

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See* 19 CFR 351.212(b)(1).

entries of subject merchandise from these companies will be liquidated at the China-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed China and non-China exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 76.45 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213.

[13] For a full discussion of this practice, *see NME AD Assessment.*

Dated: December 29, 2017.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–00016 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–893]

Fine Denier Polyester Staple Fiber From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that fine denier polyester staple fiber (fine denier PSF) from the Republic of Korea (Korea) are being, or is likely to be sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Celeste Chen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4081 or (202) 482–0890, respectively.

DATES: Applicable January 5, 2018.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on June 27, 2017.[1] On October 24, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is fine denier polyester staple fiber from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments

[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29023 (June 27, 2017) (*Initiation Notice*).

[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations,* 82 FR 49178 (October 24, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available, with adverse inferences, for Huvis Corporation (Huvis) and Down Nara, Co. Ltd. (Down Nara) which did not respond to the Department's questionnaire.[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

In accordance with section 735(d)(1)(A)(i) of the Act, the Department determined weighted-average dumping margins for each of the producers/exporters of the subject merchandise individually investigated. Pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the Department shall determine an estimated all-others rate for all exporters and producers not individually examined equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 735(c)(5)(B) of the Act instructs the Department to establish ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' The Department has preliminarily determined the estimated weighted-average dumping margins for the two non-responsive companies, Huvis and Down Nara, under section 776 of the Act and determined that the estimated weighted-average dumping margin for TCK is zero. Pursuant to section 735(c)(5)(B) of the Act, we calculated the ''all-others''' rate as a simple average of the zero percent dumping margin and the two dumping margins based totally on AFA. For a full description of the methodology underlying the Department's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Toray Chemical Korea Inc	(*)
Huvis Corporation	45.23
Down Nara, Co., Ltd	45.23
All-Others	30.15

* *de minimis.*

Consistent with section 733(b)(3) of the Act, the Department disregards *de minimis* rates and preliminarily determines that the individually examined respondent with a *de minimis* rate did not sell subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise, except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for TCK is zero, entries of shipments of subject merchandise produced and exported by TCK will not be subject to suspension of liquidation or cash deposit requirements. In such situations, the Department applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, the Department is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by TCK. Entries of shipments of subject merchandise from TCK in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for subject merchandise exported and produced by TCK, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by TCK in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combinations.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, the Department intends to verify TCK 's information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, unless the Secretary alters

[6] *See* Memorandum, ''Fine Denier Polyester Staple Fiber from the Republic of Korea: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated December 8, 2017.

[7] Toray Chemical Korea Inc. (TCK), Huvis, and Down Nara are the mandatory respondents in this investigation. *See* Huvis Corporation's Letter, ''Fine Denier Polyester Staple Fiber from the Republic of Korea: Notice of Intent Not to Participate,'' dated August 10, 2017 (Huvis Notice of Intent).

the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 13, 2017, pursuant to 19 CFR 351.210(e), TCK requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) Our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.[10]

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded, combed, or pre-opened, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–28257 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–875]

Fine Denier Polyester Staple Fiber From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that fine denier polyester staple fiber (fine denier PSF) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable January 5, 2018.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* Petitioner's Letter, ''Fine Denier Polyester Staple Fiber from India, the People's Republic of China, the Republic of Korea, and Taiwan—Petitioners' Request to Postpone the Antidumping Duty Preliminary Determinations,'' dated October 13, 2017.

[10] *See also* 19 CFR 351.210(e).

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor or Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0989 or (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on June 27, 2017.[1] On October 24, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is fine denier PSF from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available, with adverse inferences (AFA), for Bombay Dyeing & Manufacturing Company Limited (Bombay Dyeing), which failed to cooperate by not acting to the best of its ability in its responses to the Department's requests for information. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. Section 735(c)(5)(A) states that in calculating this rate, it shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, the Department preliminarily assigned a rate based entirely on selecting facts otherwise available with an adverse inference to Bombay Dyeing. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available with an adverse inference is the rate calculated for Reliance Industries Limited (RIL). Consequently, the rate calculated for RIL is also assigned as the rate for all-other producers and exporters.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Reliance Industries Limited	2.66	[7] 0.66
Bombay Dyeing & Manufacturing Company Limited	[8] 21.43	15.66
All-Others	2.66	0.00

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after

[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29023 (June 27, 2017) (*Initiation Notice*).

[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations,* 82 FR 49178 (October 24, 2017).

[3] *See* Memorandum entitled ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Fine Denier Polyester Staple Fiber from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Fine Denier Polyester Staple Fiber from the Republic of Korea: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[7] *See* Calculation Memorandum, dated concurrently with this notice.

[8] This rate is based on AFA.

the date of publication of this notice in the **Federal Register**.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where the Department preliminarily made an affirmative determination of countervailable export subsidies, the Department has offset the estimated weighted-average dumping margin by the appropriate CVD export subsidy rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination Section above.

Should the provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, the Department will direct CBP to begin collecting estimating antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, adjusted for export subsidies, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination, adjusted for export subsidies; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise, adjusted for export subsidies; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin, adjusted for export subsidies. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify RIL's information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 15, 2017, pursuant to 19 CFR 351.210(e), RIL requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded, combed, or pre-opened, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* Letter from RIL, ''Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Request to Extend the Antidumping Duty Final Determination,'' dated November 15, 2017.

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–27752 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–060]

Fine Denier Polyester Staple Fiber From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (PRC) is being, or is likely to be sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2016, through March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–3019, respectively.

DATES: Applicable January 5, 2018.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on June 28, 2017.[1] On October 24, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://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 Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is fine denier PSF from the PRC. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated export prices and constructed export prices in accordance with section 772(a) of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the

[1] *See Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29023 (June 27, 2017) (*Initiation Notice*).

[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations,* 82 FR 49178 (October 24, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Fine Denier Polyester Staple Fiber from the Republic of Korea: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated December 8, 2017.

Act.[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[8] the Department stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9]

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangyin Hailun Chemical Fiber Co. Ltd./Jiangyin Xinlun Chemical Fiber Co., Ltd./Jiangyin Yunlun Chemical Fiber Co., Ltd./Jiangyin Bolun Chemical Fiber Co., Ltd./Jiangyin Fenghua Synthetic Fiber Co., Ltd./Jiangyin Huamei Special Fiber Co., Ltd./Jiangyin Huasheng Polymerization Co., Ltd./Jiangyin Huayi Polymerization Co., Ltd./Jiangyin Huaxing Synthetic Co., Ltd./Jiangyin Xingsheng Plastic Co., Ltd [10].	Jiangyin Hailun Chemical Fiber Co. Ltd.	181.46	170.92
Jiangyin Huahong Chemical Fiber Co., Ltd./Jiangyin Huakai Polyester Co., Ltd./Jiangyin Hongkai Chemical Fiber Co., Ltd [11].	Jiangyin Huahong Chemical Fiber Co., Ltd.	63.26	52.66
Hangzhou Best Chemical Fiber Co., Ltd	Hangzhou Best Chemical Fiber Co., Ltd.	122.36	111.79
Cixi Jiangnan Chemical Fiber Co. Ltd	Cixi Jiangnan Chemical Fiber Co. Ltd.	122.36	111.79
Jiangsu Xinsu Chemical Fiber Co., Ltd	Jiangsu Xinsu Chemical Fiber Co., Ltd.	122.36	111.79
Jiangyin Jinyan Chemical Fiber Co., Ltd./Jiangsui Xiang He Tai Fiber Technology Co., Ltd.	Jiangyin Jinyan Chemical Fiber Co., Ltd.	122.36	111.79
Jiangsu Hengze Composite Materials Technology Co., Ltd./Chuzhou Prosperity Enviromental Protection Color Fiber Co., Ltd./Jiangsu Xiang He Tai Fiber Technology Co., Ltd./Jiangyin Hengfeng Chemical Fiber Co., Ltd./Jiangyin Shunze Chemical Fiber Co., Ltd.	Jiangyin Yangxi International Trade Co., Ltd.	122.36	111.79
Zhejiang Jinfuchun Industrial Co., Ltd	Zhejiang Jinfuchun Industrial Co., Ltd.	122.36	111.79
Nanyang Textile Co., Ltd	Nanyang Textile Co., Ltd.	122.36	111.79
Ningbo Dafa Chemical Fiber Co. Ltd	Ningbo Dafa Chemical Fiber Co. Ltd.	122.36	111.79
Zhaoqing Tifo New Fibre Co., Ltd	Zhaoqing Tifo New Fibre Co., Ltd.	122.36	111.79
Jiangyin Yueda Chemical Fiber Limited Company/Hangzhou BenMa Chemical and Spinning Company Ltd./Yizheng Chemical Fiber Limited Liability Company.	Unifi Textiles (Suzhou) Co., Ltd.	122.36	111.79
Yuyao Dafa Chemical Fiber Co., Ltd	Yuyao Dafa Chemical Fiber Co., Ltd.	122.36	111.79
Jiangyin Jindun Chemical Fiber Co., Ltd	Zhangjiagang City Hongtuo Chemical Fiber Co., Ltd.	122.36	111.79
Zhejiang Huashun Technology Co., Ltd	Zhejiang Linan Foreign Trade Co., Ltd.	122.36	111.79
Suzhou Zhengbang Chemical Fiber Co., Ltd	Suzhou Zhengbang Chemical Fiber Co., Ltd.	122.36	111.79
PRC–Wide Entity		181.46	170.92

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in

[7] Jiangyin Hailun Chemical Fiber Co., Ltd. (Hailun), and Jiangyin Huahong Chemical Fiber Co., Ltd. (Huahong), are the mandatory respondents in this investigation.

[8] *See Initiation Notice,* 82 FR at 29028.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[10] The Department preliminarily determines that the following companies are a single entity for dumping purposes: Hailun; Jiangyin Xinlun Chemical Fiber Co., Ltd.; Jiangyin Yunlun Chemical Fiber Co., Ltd.; Jiangyin Bolun Chemical Fiber Co., Ltd.; Jiangyin Fenghua Synthetic Fiber Co., Ltd.; Jiangyin Huamei Special Fiber Co., Ltd.; Jiangyin Huasheng Polymerization Co., Ltd.; Jiangyin Huayi Polymerization Co., Ltd.; Jiangyin Huaxing Synthetic Co., Ltd.; Jiangyin Xingsheng Plastic Co., Ltd. *See* Preliminary Decision Memorandum.

[11] The Department preliminarily determines that Huahong, Jiangyin Huakai Polyester Co., Ltd., and Jiangyin Hongkai Chemical Fiber Co., Ltd., are a single entity for dumping purposes. *See* Preliminary Decision Memorandum.

the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit [12] equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies,[13] as follows: (1) For the producer/exporter combinations listed in the above table, the cash deposit rate for the exporter/producer combinations listed in the table above will be the rate the Department determines in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not established eligibility for their own separate rates, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

To determine the cash deposit rate, the Department normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where the Department has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, the Department has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Rates adjusted for export subsidies may be found in the Preliminary Determination section's chart of estimated weighted-average dumping margins above.

As stated previously, we will adjust cash deposit rates by the amount of export subsidies, where appropriate. In the companion CVD investigation, Hailun was also a mandatory respondent and received a calculated export subsidy rate of 10.54 percent, and, thus, we will offset the calculated rate for Hailun by 10.54 percent. Huahong was also a mandatory responding in the companion CVD investigation and received a calculated export subsidy rate of 10.60 percent, and, thus, we will offset the calculated rate for the Huahong by 10.60 percent. For the separate rate companies, which were not mandatory respondents in the companion CVD investigation, we will offset the calculated rate for each of the companies by 10.57 percent, the average of the export subsidy rates for the two mandatory respondents in the companion CVD investigation. Finally, we are adjusting the cash deposit rate for the PRC-wide entity by 10.54 percent, the lowest adjustment for any party in the companion CVD investigation.[14]

Pursuant to 777A(f) of the Act, we also intend to adjust preliminary cash deposit rates for estimated domestic subsidy pass-through, where appropriate. We will make these adjustments after analysis of responses to a double-remedy questionnaire, which we issued to Hailun and Huahong on December 12, 2017.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, the Department will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, the Department intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS no later than 5:00 p.m. Eastern Time on the established due date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

[12] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[13] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department does not calculate the adjustment for export subsidies in investigations in the margin calculation program, but in the cash deposit instructions issued to CBP. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[14] *See* Preliminary Decision Memorandum.

[15] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

On November 10 and December 12, 2017, the petitioners and the respondents, respectively, requested that the Department postpone the final determination and extend provisional measures from four months to six months.[16] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) Our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.[17]

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded, combed, or pre-opened, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–27749 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See* Letter from the petitioners, ''Fine Denier Polyester Staple Fiber from China, India, Korea and Taiwan—Petitioners' Request to Extend the Antidumping Duty Final Determinations'', dated November 10, 2017; Letter from the respondents, ''Fine Denier Polyester Staple Fiber from the People's Republic of China—Request for Postponement of Final Determination,'' dated December 12, 2017, *and* People's Republic of China—Petitioners' Request to Extend Final Determination,'' dated September 11, 2017.

[17] *See also* 19 CFR 351.210(e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–860]

Fine Denier Polyester Staple Fiber From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that fine denier polyester staple fiber (fine denier PSF) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable January 5, 2018.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on June 28, 2017.[1] On October 21, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2017.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public

[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 29023 (June 27, 2017) (*Initiation Notice*).

[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations,* 82 FR 49178 (October 24, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Fine Denier Polyester Staple Fiber from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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 *https://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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is fine denier PSF from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice.* The revised scope is provided in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has preliminarily relied upon facts otherwise available, with an adverse inference, for Far Eastern Textile, Ltd. (Far Eastern) also known as Far Eastern New Century Corporation, which declined to participate and did not respond to the Department's questionnaire or otherwise participate in the investigation.[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

In accordance with section 733(d)(1)(A)(i) of the Act, the Department determined weighted-average dumping margins for each of the producers/exporters of the subject merchandise individually investigated. Pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the Department shall determine an estimated all-others rate for all exporters and producers not individually examined equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 735(c)(5)(B) of the Act instructs the Department to establish ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' The Department has preliminarily determined the estimated weighted-average dumping margin for Far Eastern under section 776 of the Act and determined that the estimated weighted-average dumping margin for Tainan Spinning Co., Ltd. (TSCL) is zero. Pursuant to section 735(c)(5)(B) of the Act, we calculated the ''all-others'' rate as a simple average of the zero percent dumping margin and the dumping margin based totally on AFA. For a full description of the methodology underlying the Department's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tainan Spinning Co., Ltd	0.00
Far Eastern Textile Ltd. (AKA Far Eastern New Century Corporation)	48.86
All-Others	24.43

Consistent with section 733(b)(3) of the Act, the Department disregards *de minimis* rates and preliminarily determines that individually examined respondents with *de minimis* rates have not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise, except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for TSCL is *de minimis,* entries of shipments of subject merchandise from TSCL will not be subject to suspension of liquidation or cash deposit requirements. In such situations, the Department applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, the Department is directing CBP not to suspend liquidation of entries of subject merchandise exported and produced by TSCL. Entries of shipments of subject merchandise from TSCL in any other producer/exporter combination, or by

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Fine Denier Polyester Staple Fiber from the Republic of Korea: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

[7] *See* Memorandum, ''Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from Taiwan: Far Eastern Textile Ltd.,'' dated August 8, 2017, at Attachment I (Far Eastern Withdrawal).

third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for subject merchandise exported and produced by TSCL, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by TSCL in any other producer/exporter combinations or by third parties that source subject merchandise from the excluded producer/exporter combinations.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, the Department intends to verify TSCL's information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Department alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 13, 2017, pursuant to 19 CFR 351.210(e), TSCL requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 18, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded, combed, or pre-opened, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* TSCL's Letter, ''Fine Denier Polyester Staple Fiber (FDPSF),'' dated November 13, 2017.

[FR Doc. 2017–27751 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Technical Information Service (NTIS)

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Request for nominations.

SUMMARY: NTIS invites nomination of individuals for appointment to the National Technical Information Service Advisory Board (Board or Committee). NTIS will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: NTIS will accept nominations on a rolling basis. The initial members of the Board will be selected from nominations submitted by 5:00 p.m. on February 12th, 2018. Any nominations received after that date will be kept on file and may be used to fill vacancies on the Board should they occur.

ADDRESSES: Please submit nominations to Greg Capella, Deputy Director, NTIS, 5301 Shawnee Rd, Alexandria VA 22312, Attention: NTIS Advisory Board Membership.

FOR FURTHER INFORMATION CONTACT: Greg Capella, 5301 Shawnee Rd, Alexandria VA 22312, Subject: NTIS Advisory Board Membership, telephone 703–605–6532; or via email at *gcapella@ntis.gov.*

SUPPLEMENTARY INFORMATION:

Committee Information

The Committee was established pursuant to Section 212(c) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(c)), in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

Objectives

1. The NTIS Advisory Board shall review and make recommendations to improve NTIS programs, operations, and general policies in support of NTIS's mission to advance Federal data priorities, promote economic growth, and enable operational excellence by providing innovative data services to Federal agencies through joint venture partnerships with the private sector.

2. The Board shall report to the Secretary of Commerce and to the Under Secretary of Commerce for Standards and Technology through the Director of NTIS.

Duties

3. The Board shall act in the public interest to:

a. Provide advice on the optimal data services business and operating model to best implement NTIS's joint venture authority.

b. Provide advice on the means, including infrastructure and process improvements, to make Federal data easier to find, access, use, analyze, and combine.

c. Assess progress in evolving NTIS programs toward a focus on Federal data priorities.

d. Assess the use of merit-based criteria and processes to plan, conduct, and oversee programs and projects, including the selection of joint venture partners.

e. Assess policies in connection with fees and charges for NTIS services in order for the agency to operate on a substantially self-sustaining basis, as required by law.

f. Assess organizational capabilities required to carry out NTIS's mission, including capabilities in data science and for operational management of its project portfolio.

Membership

1. The NTIS Advisory Board shall be composed of a Chairperson appointed by the Secretary and four other members appointed by the Secretary. In the event of a vacancy in the Chairperson position, the NTIS Director may designate a member to serve as acting Chairperson until a Chairperson is appointed by the Secretary.

2. Members shall be selected solely on the basis of established records of distinguished service and objectivity; shall have recognized expertise in data collection, compilation, analysis, use, and dissemination, as well as data science, information technology, cybersecurity, and privacy. Members will be selected from the business, academic, non-profit, and state and local government communities. Reasonable efforts will be made to ensure members represent the entire spectrum of Federal data interests including demographic, economic, trade, health, scientific, patent, environmental, geospatial, security, and transactional data. No Federal Government employee shall serve as a member of the Board.

3. The term of office of each member of the Board shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. All appointments shall automatically terminate if the charter is terminated or not renewed. All members serve at the pleasure of the Secretary.

4. Any person who has completed two consecutive full terms of service on the Board shall be ineligible for appointment for a third term during the one-year period following the expiration of the second term.

5. Members shall serve as Special Government Employees (SGEs) and will be subject to all ethical standards and rules applicable to SGEs.

Miscellaneous

1. Members of the Committee will not be paid for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. The Board shall meet at the call of the Secretary or the Secretary's designee, but not less often than once every six months.

3. NTIS may establish such subcommittees of its members as may be necessary, subject to the provisions of FACA, the FACA implementing regulations, and applicable Department of Commerce guidance. Subcommittees will report to the NTIS Advisory Board and may not provide advice or work products directly to the Department of Commerce or NTIS.

4. Recordkeeping. Records of the NTIS Advisory Board, any formally and informally established subcommittees or other subgroups of the Board, shall be handled in accordance with General Records Schedule 6.2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. 552).

Nomination Information

1. NTIS seeks nominations of practitioners with recognized expertise

in data collection, compilation, analysis, use, and dissemination, as well as data science, information technology, cybersecurity, and privacy.

2. Members will be selected from the business, academic, non-profit, and state and local government communities.

3. Reasonable efforts will be made to ensure members represent the entire spectrum of Federal data interests including demographic, economic, trade, health, scientific, patent, environmental, geospatial, security, and transactional data. Collectively, their knowledge will include all types of data the Federal Government collects, compiles, analyzes, uses, and disseminates.

4. Nominees should have established records of distinguished service. The field of expertise in which the candidate is qualified should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the board, and will actively participate in good faith in the tasks of the NTIS Advisory Board.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse NTIS Advisory Board membership.

Dated: December 29, 2017.

Gregory S. Capella,

Deputy Director.

[FR Doc. 2017–28502 Filed 1–4–18; 8:45 am]

BILLING CODE 3510–04–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* February 4, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 11/27/2017 (82 FR 226), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
9905–02–000–8089—Holder, Label, Brass
9905–02–000–8698—Holder, Label, Brass
Mandatory Source(s) of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: U.S. Postal Service, Eagan, Eagan, MN
NSN—Product Name:
3920–02–000–1915—Bar Assembly, Door
Mandatory Source of Supply: Rauch, Inc., New Albany, IN
Contracting Activity: USPS, Topeka Purchasing Center, Topeka, KS
NSNs—Product Names:
7510–01–600–7561—Wall Calendar, Dated 2017, Wire Bound w/hanger, 15.5″ × 22″
7510–01–600–7564—Monthly Wall Calendar, Dated 2017, Jan–Dec, 8–1/2″ × 11″
7530–01–600–7578—Daily Desk Planner, Dated 2017, Wire bound, Non-refillable, Black Cover
7530–01–600–7592—Weekly Desk Planner, Dated 2017, Wire Bound, Non-refillable, Black Cover
7530–01–600–7600—Weekly Planner Book, Dated 2017, 5″ × 8″, Digital Camouflage
7530–01–600–7611—Monthly Desk Planner, Dated 2017, Wire Bound, Non-refillable, Black Cover
7510–01–600–7622—Wall Calendar, Dated 2017, Wire Bound w/Hanger, 12″ × 17″
Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, New York, NY

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2018–00011 Filed 1–4–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before February 4, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN—Product Name:
3920–00–000–8908—Shelf Assembly, Top
Mandatory Source of Supply: Rauch, Inc., New Albany, IN
Contracting Activity: USPS, Topeka Purchasing Center
NSN(s)—Product Name(s):

8455–00–NSH–0001—Logo, BDU Coat and Shirt
8455–00–NSH–0002—Logo, BDU Coat and Shirt

Mandatory Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

Contracting Activity: Defense Logistics Agency Troop Support

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2018–00010 Filed 1–4–18; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–HA–0065]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 6, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Defense Health Agency, TRICARE Health Plan (J–10), ATTN: Mark Ellis, 7700 Arlington Boulevard, Falls Church, VA 22042, or call the TRICARE Health Plan, 703–681–0039.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TRICARE Select Enrollment, Disenrollment, and Change Form; DD Form 3043; OMB Control Number 0720–0061.

Needs and Uses: The information collection requirement is necessary to obtain each non-active duty TRICARE beneficiary's personal information needed to: (1) Complete his/her enrollment into the TRICARE Select health plan option, (2) dis-enroll a beneficiary, or (3) change a beneficiary's enrollment information (*e.g.,* address, add a dependent, report other health insurance). This information is required to ensure the beneficiary's TRICARE benefits and claims are administered based on their TRICARE plan of choice. Without this new enrollment form, each non-active duty TRICARE beneficiary is automatically defaulted into direct care, limiting their health care options to military hospitals and clinics. These beneficiaries would have no TRICARE coverage when using the TRICARE network of providers for services not available at their local military hospital or clinic.

Affected Public: Individuals or Households.

Annual Burden Hours: 24,825.

Number of Respondents: 99,300.

Responses per Respondent: 1.

Annual Responses: 99,300.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents could be any non-active duty TRICARE beneficiary who is not eligible for Medicare. These beneficiaries have the option of enrolling into either the TRICARE Prime or TRICARE Select plan option starting January 1, 2018. Those choosing to enroll in TRICARE Select can do so by submitting the DD Form 3043, using the BWE portal, or calling their Regional Contractor. If they choose to use the DD Form 3043, they must complete the appropriate page(s) of the form and mail the form to their Regional Contractor. No other form is required to enroll, dis-enroll, or change an enrollment. Respondents can download the form from the DoD Forms Management Program website, or click on the link to the form on the *TRICARE.mil* website or their Regional Contractor's website, or obtain a copy from their local military hospital or clinic. The mailing address and toll-free customer service number for their Regional Contractor are included on the DD Form 3043. If using either website option, the respondent can type in the information on the form prior to printing it or handwrite the information after printing the blank form.

Dated: January 2, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–00007 Filed 1–4–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Notice of TRICARE Prime and TRICARE Select Plan Information for Calendar Year 2018

AGENCY: Office of the Secretary of Defense, Department of Defense.

ACTION: TRICARE Prime and TRICARE Select Plan Information for Calendar Year 2018.

SUMMARY: This notice provides a notice of TRICARE Prime and TRICARE Plan Information for Calendar Year 2018.

DATES: TRICARE health plan information in this notice is valid for services during calendar year 2018 (January 1, 2018–December 31, 2018).

ADDRESSES: Defense Health Agency, TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Ellis, (703) 681–0039.

SUPPLEMENTARY INFORMATION: An interim final rule published in the

Federal Register (FR) on September 29, 2017 (82 FR 45438–45461) established the requirement for the Director, Defense Health Agency, to provide a public notice to TRICARE program beneficiaries with a summary of changes to the TRICARE program each calendar year in connection with the open season enrollment period.

The following changes or improvements to the TRICARE program benefits apply for calendar year 2018:

• On January 1, 2018, TRICARE North and South regions will combine to form TRICARE East, while TRICARE West region will remain mostly unchanged. Humana Military will administer the new East region and Health Net Federal Services will administer the West region. This change will allow better coordination between the military hospitals and clinics and the civilian health care providers in each region. Go to *https://tricare.mil/About/Changes/General-TRICARE-Changes/Regions* for more information.

• TRICARE Select will replace TRICARE Standard and TRICARE Extra on January 1, 2018. TRICARE Select brings together the features of TRICARE Standard and TRICARE Extra in a single plan. Select enrollees may obtain care from any TRICARE authorized provider without a referral or authorization. Enrollees who obtain services from TRICARE network providers will pay lower cost sharing amounts for network care.

• All current TRICARE beneficiaries will be automatically enrolled in their respective plan on January 1, 2018. TRICARE Prime plan enrollees will remain in their TRICARE Prime plan. TRICARE Standard and Extra beneficiaries will be enrolled in a TRICARE Select plan.

• Beneficiary out-of-pocket costs: A detailed break-out of beneficiary out-of-pocket costs for 2018 is shown in Appendix A. Some out-of-pocket costs will be announced later in 2018 as we define certain high-value medications and health care services that will result in lower out of pocket expenses for beneficiaries.

• Improving what's covered: Beginning January 1, 2018:

➢ TRICARE Select enrollees may receive most TRICARE Prime clinical preventive services with no copayment when furnished by a network provider.

➢ TRICARE Prime and TRICARE Select will cover behavioral interventions for obese adults and children/adolescents with certain body mass indexes to promote sustained weight loss with no cost if furnished by a network provider.

• TRICARE will cost share on medically necessary foods and vitamins, including low protein modified food and amino acid preparation products for dietary management of individuals with limited or impaired capacity to absorb other nourishment.

• Beneficiaries can choose to enroll in or change their TRICARE Prime or TRICARE Select coverage during an annual open enrollment period in November-December, 2018 for coverage beginning on January 1, 2019. For calendar year 2019, failure to enroll in TRICARE Prime or TRICARE Select results in the termination of coverage for civilian care. These beneficiaries who choose to not enroll may only receive care at a military clinic or hospital on a space available basis.

• 2018 will be a transition year with a grace period for enrollment. To allow beneficiaries to adjust to making their health care option choices during an annual open season enrollment period or to remember to elect their coverage when a qualifying life event (QLE) occurs, beneficiaries can elect to make their coverage changes anytime during 2018 to ensure they have the right coverage in place starting in 2019.

• Referrals for civilian urgent care visits are no longer needed for most TRICARE Prime enrollees. Most TRICARE Prime enrollees can now seek care at an urgent care center without a referral. Point of Service charges no longer applies if seen without a referral. As a reminder, after seeking urgent care, it's always a good idea to contact the primary care manager and arrange follow-up care as needed.

➢ However, some exceptions still apply. Active Duty Service members (ADSMs) must obtain authorization before seeking urgent care services from civilian providers.

➢ Active Duty family members enrolled to TRICARE Overseas Program (TOP) Prime/Prime Remote must contact the TOP contractor to obtain an authorization in order to ensure their urgent care visit will be cashless/claimless. Without this authorization, overseas providers may request payment upfront and the beneficiary will then have to submit a claim for reimbursement. Additionally, any ADSM enrolled in TOP Prime/Prime Remote requiring urgent care while on temporary duty or on leave status in the 50 United States and the District of Columbia, may access urgent care without a referral or an authorization.

• For more information, visit *tricare.mil/changes* or call your regional TRICARE contractor.

Appendix A

See tables below for TRICARE Prime, TRICARE Select, and TRICARE Pharmacy out-of-pocket expenses that take effect on January 1, 2018.

Group A beneficiaries are service members who enlisted or were appointed in a Uniformed Service before January 1, 2018 and their family members.

Group B are service members who enlisted or were appointed in a Uniformed Service on or after January 1, 2018 and their family members.

Group B cost shares also apply to enrollees in the TRICARE Reserve Select, TRICARE Retired Reserve, TRICARE Young Adult, and the Continued Health Care Benefit Program health plans. Monthly premiums apply in lieu of enrollment fees.

Key:

IN—Network Provider

OON—Out-of-Network Provider

TABLE 1—TRICARE SELECT AND TRICARE PRIME COST SHARING FOR ACTIVE DUTY FAMILY MEMBERS (ADFMS) FOR CALENDAR YEAR 2018

	TRICARE select group A ADFMs	TRICARE select group B ADFMs	Prime group A ADFMs	Prime group B ADFMs
Annual Enrollment	$0	$0	$0	$0
Annual Deductible	E1–E4: $50/$100 E5 & above: $150/$300.	E1–E4: $50/$100 E5 & above: $150/$300.	0	0
Annual Catastrophic Cap	$1,000	$1,000	1,000	1,000
Preventive Care Outpatient Visit	$0	$0	0	0
Primary Care Outpatient Visit	$21 IN 20% OON	$15 IN 20% OON	0	0
Specialty Care Outpatient Visit	$31 IN 20% OON	$25 IN 20% OON	0	0
Emergency Room Visit	$81 IN 20% OON	$40 IN 20% OON	0	0
Urgent Care Center	$21 IN 20% OON	$20 IN 20% OON	0	0
Ambulatory Surgery	$25	$25 IN 20% OON	0	0

TABLE 1—TRICARE SELECT AND TRICARE PRIME COST SHARING FOR ACTIVE DUTY FAMILY MEMBERS (ADFMS) FOR CALENDAR YEAR 2018—Continued

	TRICARE select group A ADFMs	TRICARE select group B ADFMs	Prime group A ADFMs	Prime group B ADFMs
Ambulance Service (not including air).	$74 IN 20% OON	$15 IN 20% OON	0	0
Durable Medical Equipment	15% IN 20% OON	10% IN 20% OON	0	0
Inpatient Hospital Admission	$18.60/day, minimum $25/admission.	$60/admission IN; 20% OON	0	0
Inpatient Skilled Nursing/Rehab Facility.	$18.60/day, minimum $25/admission.	$25/day IN; $50/day OON	0	0

TABLE 2—TRICARE SELECT AND TRICARE PRIME COST SHARING FOR RETIREE FAMILIES FOR CALENDAR YEAR 2018

	TRICARE select group A retirees	TRICARE select group B retirees	TRICARE prime group A retirees [1]	TRICARE prime group B retirees
Annual Enrollment	$0	$450/$900	$289.08/$578.16	$350/$700
Annual Deductible	$150/$300	$150/$300 IN $300/$600 OON.	0	0
Annual Catastrophic Cap	$3,000	$3,500	3,000	3,500
Preventive Care Visit	$0	$0	0	0
Primary Care Outpatient Visit	$28 IN 25% OON	$25 IN 25% OON	20	20
Specialty Care Outpatient Visit	$41 IN 25% OON	$40 IN 25% OON	30	30
Emergency Room Visit	$109 IN 25% OON	$80 IN 25% OON	60	60
Urgent Care Center Visit	$28 IN 25% OON	$40 IN 25% OON	30	30
Ambulatory Surgery	20% IN 25% OON	$95 IN 25% OON	60	60
Ambulance Service (not including air).	$98 IN 25% OON	$60 IN 25% OON	40	40
Durable Med. Equip.	20% IN 25% OON	20% IN 25% OON	20%	20%
Inpatient Admission	$250/day up to 25% hosp. charge + 20% separately billed services IN $901/day up to 25% hosp. charge + 25% separately billed services OON.	$175/admission IN 25% OON.	150/admission	150/admission
Inpatient Skilled Nursing/Rehab Admission.	$250/day up to 25% hospital charge + 20% separately billed services IN 25% OON.	$50/day IN Lesser of $300/day or 20% OON.	30/day	30/day

[1] TRICARE Prime enrollees who are (1) survivors of active duty deceased sponsors, or (2) medically retired Uniformed Services members and their family members, have their TRICARE Prime enrollment fees frozen at the rate in effect when classified and enrolled in a fee paying Prime plan. (This does not include TRICARE Young Adult (TYA) plans).

TABLE 3—PHARMACY COPAYMENTS FOR CALENDAR YEAR 2018

Year	Copayment amount for a 30-day supply of a retail generic is:	Copayment amount for a 30-day supply of a retail formulary is:	Copayment amount for a 90-day supply of a mail order generic is:	Copayment amount for a 90-day supply of a mail order formulary is:	Copayment amount for a 90-day supply of a mail order non-formulary is:
2018	$11	$28	$7	$24	$53

Note: Pharmacy copayment amounts for (1) survivors of active duty deceased sponsors, or (2) medically retired Uniformed Services members and their family members are equal to the copayment amounts, if any, for 2017.

Dated: January 2, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–00018 Filed 1–4–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Secretary of the Navy Advisory Panel (''the Panel'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Panel's Designated Federal Officer (DFO) can be

obtained at *http://www.facadatabase.gov/.*

The Panel shall provide the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Navy, independent advice and recommendations on critical matters concerning the Department of the Navy. The Panel's focus will include Department of the Navy administration and management, recruitment and training, equipment acquisition and maintenance, military and civilian manpower systems, basing and support infrastructure, and logistical support. The Panel shall be composed of no more than 15 members, who are eminent authorities in the fields of science, research, finance, history, engineering, business, and industry. Members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees are appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each member is appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Panel-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Panel's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Panel, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Panel and must report all recommendations and advice solely to the Panel for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Panel. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Panel's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Panel/subcommittee meeting. The public or interested organizations may submit written statements to the Panel membership about the Panel's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Panel meetings. All written statements must be submitted to the Panel's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: January 2, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–00041 Filed 1–4–18; 8:45 am]

BILLING CODE 5001–06–P

ELECTION ASSISTANCE COMMISSION

Notice of Meeting of the EAC Board of Advisors

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting for EAC Board of Advisors.

Date and Time: Monday, January 22, 2018, 8:30 a.m.–5:00 p.m. and Tuesday, January 23, 2018, 8:15–11:30 a.m.

Place: Hyatt Regency Coral Gables, 50 Alhambra Plaza, Coral Gables, FL 33134, Phone: (305) 441–1234.

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Board of Advisors will meet to address its responsibilities under the Help America Vote Act of 2002 (HAVA), to present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC activities.

Agenda: The Board of Advisors will receive an overview and updates on EAC programs and agency operations. The Board of Advisors will receive updates on the Voluntary Voting System Guidelines (VVSG) 2.0 and on equipment certification. The Board will consider a resolution(s) on VVSG recommendations. The Board will hear a panel discussion on Election Security.

The Board of Advisors will conduct committee breakout sessions and hear committee reports. The Board of Advisors will elect officers, appoint Board of Advisors committee members and chairs, and consider other administrative matters.

Supplementary: Members of the public may submit relevant written statements to the Board of Advisors with respect to the meeting no later than 5:00 p.m. EDT on Tuesday, January 16, 2018. Statements may be sent via email at *facaboards@eac.gov,* via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This meeting will be open to the public.

Person To Contact for Information: Bryan Whitener, Telephone: (301) 563–3961.

Bryan Whitener,

Director, National Clearinghouse on Elections, U.S. Election Assistance Commission.

[FR Doc. 2018–00054 Filed 1–4–18; 8:45 am]

BILLING CODE 6820–KF–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL–9972–77–OAR]

Proposed Information Collection Request; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR Program in the Residential Sector, EPA ICR No. 2193.04

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''EPA's ENERGY STAR Program in the Residential Sector'' (EPA ICR No. 2193.04, OMB Control No. 2060–0586) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which was approved through August 31, 2017. 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.

DATE: Comments must be submitted on or before March 6, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0500, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless

the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brian Ng, Energy Star Residential Branch, Mailcode 6202A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2204; email address: *ng.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA first developed energy efficiency guidelines for new homes in 1995. ENERGY STAR's new construction programs promote cost-effective, whole house energy efficiency that is independently verified by third party professionals. Through 2016, there have been more than 1.8 million ENERGY STAR certified new homes built in the U.S.

Since participation in the ENERGY STAR program is voluntary, organizations are not required to submit information to EPA. Information received is not of a confidential nature. EPA has developed this ICR to obtain authorization to collect information for the following activities:

Joining the ENERGY STAR Program and Related Activities: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing its commitment to ENERGY STAR. Partners agree to undertake efforts such as educating their staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR label.

Verification of ENERGY STAR Guidelines: The purpose of the verification process is to objectively and independently ensure the quality of home construction and improvements with respect to ENERGY STAR guidelines. Under ENERGY STAR's Certified Homes program, verification of a home's energy efficiency occurs when site-built home builders, multifamily high-rise developers, or plants producing manufactured and modular homes want to apply the ENERGY STAR label on homes. The verification process for site-built homes involves the home builder, the third-party verification organization (Home Energy Rating Providers and Home Energy Raters), and the Heating, Ventilation, and Cooling (HVAC) contractor. These organizations complete four checklists as part of the verification process. The verification process for multifamily high-rise units involves the developer and a Licensed Professional (architect or engineer), who submit information both pre-construction and post-construction to ensure that program prerequisites and energy conservation measures are properly installed and meet ENERGY STAR requirements. In addition, plants producing manufactured and modular homes must undergo a certification process to ensure that they consistently produce and install homes that meet ENERGY STAR guidelines. Also, under ENERGY STAR's HVAC Verified Installation program, local program sponsors promote the installation of HVAC systems in homes to meet ENERGY STAR guidelines. Sponsors oversee contractors who perform the installations, perform tests, and report the results to the sponsors. Sponsors submit periodic reports to EPA on these activities.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on residential energy use and the supply and demand for energy-efficient homes and home improvement products and services. In addition, EPA offers online tools, such as the Home Energy Yardstick and Home Energy Advisor, for homeowners to learn about and improve their homes' energy efficiency.

Periodic Reporting: Some partners are asked to submit information to EPA periodically to assist EPA in tracking and measuring progress in building and promoting ENERGY STAR certified homes and installing and promoting energy-efficient improvements.

ENERGY STAR Awards: Each year, partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. An application is submitted to EPA by interested partners.

Form Numbers: 5900–06, 5900–08, 5900–17, 5900–33, 5900–172, 5900–175, 5900–176, 5900–178, 5900–179, 5900–180, 5900–183, 5900–184, 5900–186, 5900–188, 5900–189, 5900–194, 5900–266, 5900–267, 5900–268, 5900–269, 5900–270, 5900–271, 5900–272.

Respondents/Affected Entities: Home builders, modular and manufactured home manufacturing plants, developers, verification organizations, oversight organizations, energy efficiency program sponsors (*e.g.,* national, regional, state, or local government entities, utilities), architects, engineers, home plan designers, retailers, contractors, and homeowners.

Respondent's Obligation to Respond: Voluntary.

Estimated Number of Respondents: 132,000 (total).

Frequency of Response: Once, quarterly, annually, and occasionally.

Total Estimated Burden: 183,967 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $13,553,809 (per year). This includes an estimated cost of $13,553,209 for labor and $600 for capital investment, operation and maintenance.

Changes in Estimates: The burden estimates presented in this notice are from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval,

in the next **Federal Register** notice to be issued for this renewal.

Dated: December 21, 2017.

Carolyn Snyder,

Director, Climate Protection Partnerships Division.

[FR Doc. 2018–00035 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9036–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 12/25/2017 Through 12/29/2017 Pursuant to 40 CFR 1506.9.

Notice:

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search*

EIS No. 20170249, Draft, OSM, MT, Western Energy Company's Rosebud Mine Area F, *Comment Period Ends:* 02/20/2018, *Contact:* Logan Sholar, OSMRE Project Coordinator (303) 293–5036.

Dated: January 2, 2018.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2018–00019 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0007; FRL–9971–45]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before February 5, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as show in the body of this document, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

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. 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 in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. 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. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. Notice of Receipt—New Active Ingredients

1. File Symbol: 10163–GLI. *Docket ID number:* EPA–HQ–OPP–2017–0565. *Applicant:* Gowan Company LLC, P.O. Box 5569, Yuma, AZ 85366–5569. *Product name:* EcoSwing Technical. *Active ingredient:* Biochemical fungicide—Extract of *Swinglea glutinosa* at 100%. *Proposed use:* Biochemical manufacturing-use product. *Contact:* BPPD.

2. File Symbol: 10163–GLT. *Docket ID number:* EPA–HQ–OPP–2017–0565. *Applicant:* Gowan Company LLC, P.O. Box 5569, Yuma, AZ 85366–5569. *Product name:* EcoSwing Botanical Fungicide. *Active ingredient:* Biochemical fungicide—Extract of *Swinglea glutinosa* at 82%. *Proposed use:* Biochemical end-use product/fungicide. *Contact:* BPPD.

3. File Symbol: 91810–E. *Docket ID number:* EPA–HQ–OPP–2017–0316. *Applicant:* Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616 (on behalf of Lesaffre Yeast

Corporation, 7475 W. Main St., Milwaukee, WI 53214). *Product name:* Romeo®. *Active ingredient:* Systemic resistance inducer (SRI)—Cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) at 94.1%. *Proposed use:* End-use product that is a systemic resistance inducer. *Contact:* BPPD.

4. File Symbol: 91810–R. *Docket ID number:* EPA–HQ–OPP–2017–0316. *Applicant:* Technology Sciences Group Inc., 712 Fifth St., Suite A, Davis, CA 95616 (on behalf of Lesaffre Yeast Corporation, 7475 W. Main St., Milwaukee, WI 53214). *Product name:* Cerevisane Technical. *Active ingredient:* Systemic resistance inducer (SRI)—Cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) at 94.1%. *Proposed use:* For manufacturing use. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 4, 2017.

Delores Barber,

Director, Information Technology and Resources Management Division,Office of Pesticide Programs.

[FR Doc. 2018–00021 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2017–0490; FRL–9972–80–Region 9]

Adequacy Status of Motor Vehicle Emissions Budgets in Submitted $PM_{2.5}$ Serious Area Plan for South Coast; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is notifying the public that the Agency has found that the motor vehicle emissions budgets (MVEBs or ''budgets'') for the years 2017 and 2019 in the 2016 South Coast Serious Area Plan for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) (''2016 $PM_{2.5}$ Plan'' or ''Plan'') are adequate for transportation conformity purposes. The California Air Resources Board (CARB) submitted the 2016 $PM_{2.5}$ Plan to the EPA on April 27, 2017, as a revision to the California State Implementation Plan (SIP). Upon the effective date of this notice of adequacy, the Southern California Association of Governments (SCAG) and the U.S. Department of Transportation must use the adequate budgets in future transportation conformity analyses.

DATES: This finding is effective January 22, 2018.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 947–4192 or *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to CARB on December 19, 2017, stating that the MVEBs in the 2016 $PM_{2.5}$ Plan for the reasonable further progress (RFP) milestone year of 2017 and attainment year of 2019 are adequate. The finding is available at the EPA's conformity website: *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.* We announced the availability of the Plan and related budgets on the EPA's conformity website on October 18, 2017. We received no comments in response to this announcement. The adequate budgets are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGETS IN SOUTH COAST 2006 $PM_{2.5}$ SERIOUS AREA PLAN

[Annual average tons per day]

Budget Year	Volatile organic compounds	Nitrogen oxides	Directly emitted $PM_{2.5}$
2017	99	200	21
2019	83	169	20

Transportation conformity is required by CAA section 176(c). The EPA's Transportation Conformity Rule at 40 CFR part 93, subpart A requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

The criteria we use to determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), promulgated on August 15, 1997 (62 FR 43780, 43781–43783). We further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from the EPA's completeness review and should not be used to prejudge the EPA's ultimate action on the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Consistent with the requirements set forth in the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, Final Rule (81 FR 58010, August 24, 2016) (''$PM_{2.5}$ SIP Requirements Rule''), the 2016 $PM_{2.5}$ Plan contains RFP budgets for 2020, which is the year following the attainment year. As explained below, we are not taking action on the 2020 budgets at this time.

The Transportation Conformity Rule requires that control strategy SIPs, including the RFP plans and attainment plans required for Serious $PM_{2.5}$ nonattainment areas,[1] contain MVEBs for direct $PM_{2.5}$ and $PM_{2.5}$ precursors subject to transportation conformity analyses for each milestone year addressed in the control strategy.[2]

[1] *See* 40 CFR 93.101 (defining ''control strategy implementation plan revision'').

[2] *See* 40 CFR 93.101 (defining ''motor vehicle emissions budget''), 93.102(b)(2)(iv) and (v) (establishing applicability of part 93 requirements to $PM_{2.5}$ precursor pollutants) and 93.118(a) (requiring that each transportation plan, TIP, or project not from a conforming transportation plan and TIP be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission)).

Under the $PM_{2.5}$ SIP Requirements Rule, Serious area $PM_{2.5}$ attainment plans must define appropriate quantitative milestones and include projected RFP emission levels for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors in each milestone year. For an area designated nonattainment for the 2006 $PM_{2.5}$ NAAQS before January 15, 2015, the attainment plan must contain quantitative milestones to be achieved no later than 3 years after December 31, 2014, and every 3 years thereafter until the milestone date that falls within 3 years after the applicable attainment date (40 CFR 51.1013(a)(4)).[3] As the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule, it is important to include a post-attainment year quantitative milestone to ensure that, if the area fails to attain by the attainment date, the EPA can continue to monitor the area's progress toward attainment while the state develops a new attainment plan (*see* 81 FR 58010, 58063–58064, August 24, 2016).

Consistent with the requirements of 40 CFR 51.1013(a)(4), the 2016 $PM_{2.5}$ Plan identifies December 31, 2017, as the first quantitative milestone date (*i.e.,* the date 3 years after December 31, 2014). The second quantitative milestone date is December 31, 2020, and is also the last milestone date identified in the Plan because it falls within 3 years after the December 31, 2019 attainment date for the area.[4] Although this post-attainment year quantitative milestone is a required element of the Serious area plan, it is not necessary to demonstrate transportation conformity for 2020 in the submitted SIP or to use the 2020 budgets in transportation conformity determinations until such time as the area fails to attain the 2006 $PM_{2.5}$ NAAQS. Therefore, the EPA is not taking action at this time on the submitted MVEBs for 2020 in the 2016 $PM_{2.5}$ Plan. Additionally, the EPA has not yet started the adequacy process for the 2020 budgets.

If the EPA were to either find adequate or approve the post-attainment milestone year MVEBs now, those budgets would have to be used in transportation conformity determinations that are made after the effective date of the adequacy finding or approval even if the South Coast area ultimately attains the $PM_{2.5}$ NAAQS by the Serious area attainment date. This would mean that SCAG[5] would be required to demonstrate conformity for the post-attainment date milestone year and all later years addressed in the conformity determination (*e.g.,* the last year of the metropolitan transportation plan) to the post-attainment date RFP budgets rather than the budgets associated with the attainment year for the area (*i.e.,* the budgets for 2019). The EPA does not believe that it is necessary to demonstrate conformity using these post-attainment year budgets in areas that either the EPA anticipates will attain by the attainment date or in areas that attain by the attainment date. As discussed elsewhere in this notice, the EPA is announcing that it has found adequate the MVEBs for the first milestone year (2017) and the attainment year (2019) for the South Coast $PM_{2.5}$ nonattainment area.

If and when the EPA determines that the South Coast area has failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date, the EPA will begin the MVEB adequacy and approval processes for the post-attainment year (2020) budgets. If the EPA finds the 2020 budgets adequate or approves them, those budgets will have to be used in subsequent transportation conformity determinations. The EPA believes that initiating the process to act on the submitted post-attainment year MVEBs following a determination that the area has failed to attain by the Serious area attainment date ensures that transportation activities will not cause or contribute to new violations, increase the frequency or severity of any existing violations, or delay timely attainment or any required interim emission reductions or milestones in the South Coast $PM_{2.5}$ nonattainment area, consistent with the requirements of CAA section 176(c)(1)(B).

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

Dated: December 20, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–00029 Filed 1–4–18; 8:45 am]

BILLING CODE 6560–50–P

[3] *See also* 81 FR 58010, 58058 and 58063–58064 (August 24, 2016).

[4] Under CAA section 188(c)(2), a Serious $PM_{2.5}$ nonattainment area must attain the $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the tenth calendar year after the area is designated as nonattainment. Because the South Coast area was designated as nonattainment for the 2006 $PM_{2.5}$ NAAQS effective December 14, 2009 (74 FR 58688, November 13, 2009), the latest permissible attainment date for the area is December 31, 2019.

[5] SCAG is the Metropolitan Planning Organization for the South Coast 2006 $PM_{2.5}$ nonattainment area.

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2017–04; Docket No. 2017–0002; Sequence No. 27]

Office of Federal High-Performance Buildings; Green Building Advisory Committee; Notification of Upcoming Teleconference

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Notice of this teleconference is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule for a teleconference/web meeting of the Advisory Committee, which is open for the public to listen to and observe. Interested individuals must register to attend as instructed below under **SUPPLEMENTARY INFORMATION**.

DATES: The Committee will hold a teleconference/web meeting on Monday, February 5, 2018, from 2:00 p.m., Eastern Standard Time (EST), to 4:00 p.m., EST.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Buildings, OGP, GSA, 1800 F Street NW, Washington, DC, 20405, telephone 202–219–1121 (note: this is not a toll-free number). Additional information about the Committee is available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance: Contact Mr. Ken Sandler at *ken.sandler@gsa.gov* to register to listen in to the teleconference. To attend the teleconference, submit your full name, organization, email address, and phone number. Requests to listen in to the calls must be received by Monday, January 29, 2018, by 5:00 p.m., EST (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the web meeting site in advance of calls is recommended).

Background: The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee provides independent policy advice and recommendations to GSA to improve federal buildings (assets, operations, use, and resilience) to enhance human health and performance, and safeguard

social, economic, and environmental security. Completed Committee recommendations, including recent Advice Letters on health and wellness, high performance building adoption, and power purchase agreements, are posted at: *https://www.gsa.gov/about-us/organization/office-of-governmentwide-policy/office-of-federal-highperformance-buildings/green-building-advisory-committee/advice-letters-and-resolutions.*

February 5, 2018 Committee Teleconference/Web Meeting Agenda:

- Introductions
- Safeguarding GSA Assets
- Building and Grid Integration & Resilience
- Urban Resilience
- Discussion & Next Steps

A detailed agenda, relevant background information, and updates for the teleconference will be posted on GSA's website at *http://www.gsa.gov/gbac.*

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Buildings, General Services Administration.

[FR Doc. 2018–00040 Filed 1–4–18; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services announces the next meeting of the Community Preventive Services Task Force (CPSTF) on February 14–15, 2018, in Atlanta, Georgia.

DATES: The meeting will be held on Wednesday, February 14, 2018, from 8:30 a.m. to 6:00 p.m. EDT and Thursday, February 15, 2018, from 8:30 a.m. to 1:00 p.m. EDT.

ADDRESSES: The CPSTF Meeting will be held at the CDC Edward R. Roybal Campus, Centers for Disease Control and Prevention Headquarters (Building 19), 1600 Clifton Road NE, Atlanta, GA 30329. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION.** Information regarding meeting logistics will be available on the Community Guide website (*www.thecommunityguide.org*) closer to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Onslow Smith, Center for Surveillance, Epidemiology and Laboratory Services; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E–69, Atlanta, GA 30329, phone: (404)498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: This space-limited meeting is open to the public. All meeting attendees must register. To ensure completion of required security procedures and access to the CDC's Global Communications Center.

U.S. citizens intending to attend in person must register by February 7, 2018, and non-U.S. citizens intending to attend in person must register by January 17, 2018. Failure to register by the dates identified could result in the inability to attend the CPSTF meeting in person.

Those unable to attend the meeting in person are able to do so via Webcast. CDC will send the Webcast URL to registrants upon receipt of their registration. All meeting attendees must register by February 8, 2018 to receive the webcast information. CDC will email webcast information from the *CPSTF@cdc.gov* mailbox.

Public Comment: A public comment period, limited to three minutes per person, will follow the CPSTF's discussion of each systematic review. Individuals wishing to make public comments must indicate their desire to do so with their registration by providing their name, organizational affiliation, and the topic to be addressed (if known). Public comments will become part of the meeting summary. Public comment is not possible via Webcast.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews on existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when they are determining what best meet the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled in the *Guide to Community Preventive Services (The Community Guide).*

Matters proposed for discussion: Cancer Prevention and Control (Economics of Multicomponent Interventions to Improve Cancer Screening for Breast, Colorectal, and Cervical Cancer); Health Equity (proposal for housing interventions as a new topic area); Obesity Prevention and Control (Combined School-Based Interventions to Increase Healthier Food and Beverage Consumption and Physical Activity); Women's Health (Primary Prevention of Intimate Partner Violence and Sexual Violence Among Youth); and discussion of Community Guide economic methods. The agenda is subject to change without notice.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the CDC and is located at 1600 Clifton Road NE, Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must register by the dates outlined under **MEETING ACCESSABILITY**. In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Edward R. Roybal Campus through the front entrance on Clifton Road. Vehicles may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government-issued photo identification (*e.g.,* a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. CDC Security

personnel will issue a visitor's ID badge at the entrance to Building 19. Visitors may receive an escort to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: January 2, 2018.

Lauren Hoffmann,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018–00042 Filed 1–4–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2018

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

Notice is given that the Acting Director of the Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2018 for Medicare and Medicaid beneficiaries, beneficiaries of other Federal programs, and for recoveries under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653). The inpatient rates for Medicare Part A are excluded from the table below, as they are paid based on the prospective payment system. Since the inpatient per diem rates set forth below do not include all physician services and practitioner services, additional payment shall be available to the extent that those services are provided.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

Calendar Year 2018

Lower 48 States $3,229
Alaska $3,277

Outpatient Per Visit Rate (Excluding Medicare)

Calendar Year 2018

Lower 48 States $427
Alaska $653

Outpatient Per Visit Rate (Medicare)

Calendar Year 2018

Lower 48 States $383
Alaska $595

Medicare Part B Inpatient Ancillary Per Diem Rate

Calendar Year 2018

Lower 48 States $740
Alaska $1,061

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2018 Rates

Consistent with previous annual rate revisions, the Calendar Year 2018 rates will be effective for services provided on/or after January 1, 2018, to the extent consistent with payment authorities, including the applicable Medicaid State plan.

Dated: December 29, 2017.

Michael D. Weahkee,

RADM, Assistant Surgeon General, U.S. Public Health Service, Acting Director, Indian Health Service.

[FR Doc. 2018–00047 Filed 1–4–18; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

Date: January 31, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: February 7–8, 2018.

Time: 7:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: Weihua Luo, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function D Study Section.

Date: February 7, 2018.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: February 7, 2018.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: February 7, 2018.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Clinical Molecular Imaging and Probe Development.

Date: February 7–8, 2018.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Orlando East UCF, 1959 N. Alafaya Trail, Orlando, FL 32822.

Contact Person: Ai-Ping Zou, M.D., Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Glia Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Ying-Yee Kong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5185, Bethesda, MD 20892, *ying-yee.kong@nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Downtown Hotel, 999 Ninth Street, Washington, DC 20001.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: February 8–9, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Baltimore Washington Airport, 1100 Old Elkridge Landing Road, Linthicum Heights, MD 21090.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: February 8–9, 2018.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: SpringHill Suites San Diego Downtown/Bayfront, 900 Bayfront Court, San Diego, CA 92101.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative Nutrition and Metabolic Processes.

Date: February 8, 2018.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: *December 29, 2017.*

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–00052 Filed 1–4–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–15]

Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice advises that HUD is extending the deadline for submission of an Assessment of Fair Housing (AFH) by local government consolidated plan program participants to their next AFH submission date that falls after October 31, 2020. Such program participants will not be required to submit an AFH using the current Office of Management and Budget (OMB)-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No: 2529–0054), but must continue to comply with existing obligations to affirmatively further fair housing. Local government program participants that have already submitted an AFH that has been accepted by HUD must continue to execute the goals of that AFH.

DATES:

Applicability Date: January 5, 2018.

Comment Due Date: March 6, 2018.

ADDRESSES: Interested persons are invited to submit comments responsive to this notice to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. *Submission of Hard Copy Comments.* Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to *http://www.regulations.gov* without change.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m., Eastern Time, weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Krista Mills, Deputy Assistant Secretary, Office of Policy, Legislative Initiatives, and Outreach, Office Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5246, Washington, DC 20410; telephone number 202–402–6577. Individuals with hearing or speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, at 80 FR 42357, HUD published in the **Federal Register** its Affirmatively Furthering Fair Housing (AFFH) final rule. The AFFH final rule provides HUD program participants with a new approach for planning for fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing as required by the Fair Housing Act, 42 U.S.C. 3608. To assist HUD program participants in meeting this obligation, the AFFH rule provides that program participants must conduct an Assessment of Fair Housing (AFH) using an ''Assessment Tool.'' HUD's AFFH regulations provide for a staggered AFH submission deadline for its program participants. (See 24 CFR 5.160.)

On October 24, 2016, at 81 FR 73129, HUD published a notice extending the deadline for submission of an AFH for local government consolidated plan participants that received in Fiscal Year (FY) 2015, or receive in a subsequent fiscal year, a CDBG grant of $500,000 or less, or in the case of a HOME consortium, whose members collectively received a CDBG grant of $500,000 or less, from the program year that begins on or after January 1, 2018, to the program year that begins on or after January 1, 2019 for which a new consolidated plan is due. By notice published in the **Federal Register** on January 13, 2017, at 82 FR 4388, HUD announced the renewal of approval of the Assessment Tool for use by local governments that receive Community Development Block Grants (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), or Housing Opportunities for Persons With AIDS (HOPWA) formula funding from HUD when conducting and submitting their own AFH, and in some joint and regional collaborations, as explained in that notice. This Assessment Tool is referred to as the Assessment of Fair Housing Tool for Local Governments.

This notice extends the deadline for submission of an Assessment of Fair Housing (AFH) to all local government consolidated plan program participants until their next AFH submission deadline that falls after October 31, 2020. (See 24 CFR 5.160(a) for information about how to calculate a program participant's AFH submission deadline.) The AFFH rule requires that program participants have no less than 9 months after the publication of the OMB-approved assessment tool to submit their AFH. Therefore, the Department selected the October 31, 2020 date in anticipation that it will complete the Paperwork Reduction Act requirements and receive OMB approval to renew the Assessment of Fair Housing Tool for Local Governments by January 31, 2020. Local government program participants will not be required to submit an AFH using the current OMB-approved version of the Assessment of Fair Housing Tool for Local Governments (OMB Control No: 2529–0054), but must continue to comply with existing statutory obligations to affirmatively further fair housing. (See 42 U.S.C. 3608.) Local government program participants who qualified for an extension under the October 24, 2016 notice are also covered by this notice, extending their deadline for submission of an AFH to their next AFH submission deadline (See 24 CFR 5.160(a).) that falls after October 31, 2020.

Based on the initial AFH reviews, HUD believes that program participants need additional time and technical assistance to adjust to the new AFFH process and complete AFH submissions that can be accepted by HUD. HUD's decision is informed by the review of AFH submissions received. Based on the first 49 AFH initial submissions that received a determination of accept, non-accept, or deemed accepted from HUD, the Department found that many program participants are striving to meet the requirements of the AFFH rule. In 2017, the Department conducted an evaluation of these submissions and found that more than a third (35%) were initially non-accepted.

HUD's analysis identified several reasons that merit a delay of AFH submission deadlines, including program participants' need for additional technical assistance. HUD determined that many program participants struggled to meet the regulatory requirements of the AFFH rule, such as developing goals that

could be reasonably expected to result in meaningful actions to overcome the effects of contributing factors and related fair housing issues. Further, program participants struggled to develop metrics and milestones that would measure their progress as they affirmatively furthering fair housing. HUD determined that program participants' frequent misunderstanding of how to set clear goals, metrics, and milestones that addressed their identified contributing factors and related fair housing issues often resulted in non-accepted AFHs. HUD believes that additional technical assistance may result in program participants better understanding their obligations under the AFFH rule. HUD also believes that by enhancing its technical assistance that resources expended by program participants will be reduced because they are more likely to submit an initial AFH that can be accepted by HUD.

Additionally, HUD determined that significant staff resources are required when deciding that an AFH will not be accepted because it is inconsistent with fair housing or civil rights requirements or substantially incomplete, or both. (See 24 CFR 5.162 (a)(2)(b).) HUD believes that it can reduce the resources expended by program participants by examining and revising its technical assistance content and methods of delivery so that program participants' AFHs are more likely to meet the regulatory requirements on first submission.

In order to reduce burden for program participants in conducting AFHs that meet the regulatory requirements, HUD, in the AFFH rule, encourages program participants to share resources and to address fair housing issues from a broader perspective by collaborating and submitting a single AFH. Nonetheless, HUD believes that some joint and regional collaborations that were non-accepted on their first submission may have benefited from technical assistance early in the process. For example, the largest regional AFH submitted to HUD consisted of 19 program participants. In its review of the AFH, HUD determined that each of the 19 program participants met the regulatory standards for nonacceptance. HUD believes that improving technical assistance for collaborative AFHs will enable collaborations to more efficiently use their resources to address fair housing issues that cross jurisdictional boundaries.

Based on the initial AFH reviews, HUD believes that local government program participants need additional time and technical assistance from HUD to adjust to the new AFFH process and complete acceptable AFH submissions. HUD also believes it can use this time to improve its Data and Mapping Tool (AFFH–T) and the User Interface (AFFH–UI). The extension period allows HUD to further refine its materials to provide additional guidance to program participants. Finally, this extension allows HUD staff to devote additional time to providing program participants, and program participants in an AFH collaboration, with technical assistance on the legal objective to affirmatively further fair housing.

Consolidated plan program participants must continue to comply with existing, ongoing obligations to affirmatively further fair housing. Until a consolidated plan program participant is required to submit an AFH, it will continue to provide the AFFH Consolidated plan certification in accordance with the requirements that existed prior to August 17, 2015. See 24 CFR 5.160(a)(3). The requirements obligated a program participant to certify that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments (AI) to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions.

For Consolidated plan program participants that are starting a new 3–5-year Consolidated plan cycle that begins before their due date for an AFH, the AI should continue to be updated in accordance with the HUD, Fair Housing Planning Guide (1996), available at *https://www.hud.gov/sites/documents/FHPG.PDF* until those consolidated plan program participants submit an AFH after October 31, 2020. HUD encourages consolidated plan program participants to use the data and mapping tool and the AFH Assessment Tool as resources for program participants that are updating their AIs. HUD encourages program participants to collaborate to develop a regional AI, as regional collaborations provide an opportunity for program participants to share resources and address fair housing issues that cross jurisdictional boundaries.[1]

Program participants that have already submitted an AFH which has been accepted by HUD must continue to execute the goals of that accepted AFH and are not required to conduct a separate AI. Program participants that are covered by this notice and that may have already begun work on an AFH may continue to do so, as the AFFH rule may provide program participants with a useful framework for complying with their AFFH obligation.

HUD will discontinue the review of AFHs currently under review and will not render an accept, deemed accepted, or non-accept determination. Program participants that received a non-accept decision from HUD on their AFH submission and are preparing to re-submit an AFH are also covered by this notice and should not submit their revised AFHs. HUD encourages these program participants to use the information contained in their draft AFHs to conduct the required AI analysis. Finally, program participants prepared to submit their first AFH are covered by this notice and should not submit an AFH to HUD. Program participants that have not received an accept or non-accept determination from HUD, or that have received a non-accept but will no longer be required to resubmit their AFH, are still required to prepare an AI, as described above in this notice.

HUD is issuing this notice for applicability immediately upon publication. Program participants must continue to affirmatively further fair housing as required by the Fair Housing Act. 42 U.S.C. 3608.

Although HUD is issuing this notice for applicability immediately upon publication, it also invites public comment for a period of 60-days on the extension. HUD will consider all the comments in its ongoing process of reviewing the Assessment of Fair Housing Tool for Local Governments.

Dated: January 2, 2018.

Anna Maria Farías,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2018–00106 Filed 1–4–18; 8:45 am]

BILLING CODE 4210–67–P

[1] Please refer to HUD's 2017 interim guidance for additional information on collaboration, specifically the Q&A captioned: ''How can States Collaborate with Local Governments or PHAs?''. The guidance is available at: *https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf.* This guidance is generally applicable to all types of program participants.

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2017–0020]

Outer Continental Shelf Official Protraction Diagrams MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Availability of World Geodetic System Datum of 1984 Outer

Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given of the availability of new World Geodetic System Datum of 1984 (WGS 84)-based Outer Continental Shelf (OCS) Official Protraction Diagrams (OPDs) depicting geographic areas located in the Pacific Ocean. The Bureau of Ocean Energy Management (BOEM), in accordance with its authority and responsibility under the OCS Lands Act, is announcing the availability of maps that could be used for the description of potential energy and mineral lease sales in the geographic areas they represent.

ADDRESSES: Copies of the OPDs are available for download in .pdf format at: *https://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Pacific.aspx.*

FOR FURTHER INFORMATION CONTACT: Douglas Vandegraft, Chief, Mapping and Boundary Branch at (703) 787–1312 or via email at *Doug.Vandegraft@boem.gov.*

SUPPLEMENTARY INFORMATION: The maps represent the first non-provisional OPDs published by BOEM that reflect Federal waters seaward of the State of Hawaii. The Submerged Lands Act Boundary was projected three nautical miles seaward from the shoreline as shown on nautical charts produced by the National Oceanic and Atmospheric Administration dated 2001–2008. Further information is provided on the specific OPDs.

Outer Continental Shelf Official Protraction Diagrams in the Pacific Ocean

Description/Date

NF04–08 (Kauai Channel)—09/01/2017
NF04–09 (Oahu)—09/01/2017
NF04–12 (Maui)—09/01/2017

Dated: December 29, 2017.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2017–28501 Filed 1–4–18; 8:45 am]

BILLING CODE 4310–MR–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 Graphics Processors and Products Containing the Same, DN 3285;* 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 ZiiLabs Inc., Ltd. on December 29, 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 graphics processors and products containing the same. The complaint names as respondents ASUSTeK Computer Inc. of Taiwan; ASUS Computer International of Fremont, CA; EVGA Corporation of Brea, CA; Gigabyte Technology Co., Ltd. of Taiwan; G.B.T. Inc. of City of Industry, CA; Micro-Star International Co., Ltd. of Taiwan; MSI Computer Corp of City of Industry, CA; Nintendo Co., Ltd. of Japan; Nintendo of America Inc. of Redmond, WA; Nvidia Corporation of Santa Clara, CA; PNY Technologies Inc. of Parsippany, NJ; Zotac International (MCO) Ltd. of Macau; and Zotac USA Inc. of Duarte, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, 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. 3285) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic 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 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: December 29, 2017.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2017–28506 Filed 1–4–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1110–0060]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; CJIS Name Check Form (1–791)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division 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 Month xx, 2017, allowing for a 60 day comment period.

DATES: Comments are encourages and will be accepted for an additional 30 days until February 5, 2018.

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 Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093). 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 20503. Additionally, comments may be submitted via email to *OIRA_submission@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 agencies 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:* Approval of existing collection in use without an OMB control number.

(2) *Title of the Form/Collection:* CJIS Name Check Request.

(3) *Agency form number:* 1–791.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Agencies authorized to submit applicant fingerprints into the Next Generation Identification (NGI) system for noncriminal justice purposes such as employment, benefits, and licensing. This form is completed to obtain a name check for an applicant when the fingerprints have been rejected twice for quality to ensure eligible individuals are not denied employment, benefits, or licensing.

(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 77,816 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6485 total annual burden hours associated with this collection.

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, Suite 3E.405B, Washington, DC 20530.

Dated: January 2, 2018.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2018–00008 Filed 1–4–18; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL SCIENCE FOUNDATION

Request for Information—National Space Weather Action Plan

ACTION: Notice for request of information.

SUMMARY: The purpose of this Request for Information (RFI) is to seek inputs from the public on establishing space weather research priorities to address Action 5.5.1 in the National Space Weather Action Plan. This RFI is intended to gather information from external stakeholders about potential space weather research activities that will help guide the science and technology priorities of Federal agencies. The public input will be used as guidance by various concerned Federal agencies in planning for targeted research programs. Input is sought from space weather community including researchers in academia and industry, non-governmental organizations, scientific and professional societies, and all other interested members of the public. Suggestions in response to this RFI will assist NSF and other federal agencies including NASA, DOC and DOD in carrying out action 5.5.1.

DATES: Written comments must be submitted by March 6, 2018.

ADDRESSES: Email comments to *spwxrfi@nsf.gov.* Include ''RFI Response: SWORM Goal 5.5.1'' in the subject line of the message. The response must be an attachment to the email. See the instructions in the **SUPPLEMENTARY INFORMATION** for comment guidelines.

FOR FURTHER INFORMATION CONTACT: Contact *spwxrfi@nsf.gov* for further information. Any requests for clarification must be received no later than seven (7) business days prior to the close of this RFI in order to receive a timely response.

SUPPLEMENTARY INFORMATION:

I. Background Information

On October 29, 2015, the White House OSTP released the National Space Weather Strategy (NSWS) and Space Weather Action Plan (SWAP). The NSWS identifies several key goals in specific areas of space weather research and operations to make the national critical infrastructure and technologies resilient to space weather events. The NSWS also calls for improving national space-weather services through advancing fundamental understanding of the underlying physical processes and their forecasting. The SWAP document, which accompanied NSWS, specifies actions to develop and continually improve predictive models through enhanced fundamental understanding of space weather and its drivers. In particular, the SWAP Action 5.5.1 directed NSF, NASA, DOC and DOD with documenting priorities for research and development (R&D) efforts to enhance the fundamental understanding of space weather and its drivers and to improve space weather forecasting capabilities.

> Action 5.5.1: NSF and NASA, in collaboration with DOC and DOD, will lead an annual effort to prioritize and identify opportunities for research and development (R&D) to enhance the understanding of space weather and its sources. These activities will be coordinated with existing National-level and scientific studies. This effort will include modeling, developing, and testing models of the coupled sun-Earth system and quantifying the long- and short-term variability of space weather.

Forecasting space weather depends on understanding the fundamental processes that give rise to hazardous events. Continued support for basic research in solar and space physics is essential to achieve the level of understanding required for accurate predictions. Particularly important is the study of processes that link the Sun-Earth system and that control the flow of energy within the coupled system.

Space weather science as a discipline is still in its nascent phase. There exist significant gaps in the fundamental understanding of many physical processes and coupling mechanisms underpinning various space weather phenomena. This poses a major limiting factor for improving space weather prediction, including some of the most important and immediate operational needs. It is, therefore, essential to continue untargeted investments in basic research into areas that in unforeseeable ways can lead to a better understanding of the physical processes that drive space weather.

High priority space weather research topics and linkages to the SWAP Benchmarks (Goal 1) were assessed by the 5.5.1 interagency working group. The SWAP benchmarks are a set of physical characteristics and conditions against which a space-weather event can be measured. They describe the nature and intensity of extreme space-weather events, providing a point of reference from which to improve understanding of space-weather effects. Addressing research that would advance our physical understanding of the phenomenology behind these benchmarks will ultimately improve our predictive capability necessary for operational advancements.

II. Purpose

Successful execution of Action 5.5.1 requires definitions of research priorities in the context of benchmarks identified by NSWS Goal 1. An interagency working group developed the first set of priorities in fulfillment of this task. To ensure that an optimal list of priorities is generated, which could benefit all interested parties including Federal agencies, state and local governments, universities, policy groups, and the private sector, the broader community must weigh in. This RFI requests public comments to SWAP Action 5.5.1 to support a public dialogue on developing research priorities to enhance fundamental understanding of space weather and its drivers to develop and continually improve predictive models.

This RFI seeks inputs from the research community on setting research priorities, which will then be used as guidance by various concerned agencies in planning for space weather related research programs. Examples of space weather research topics include ionospheric irregularities and structure, thermospheric neutral density and neutral wind response to external drivers, forecasting of GICs, radiation belt dynamics, SEP events, flare and CME initiation and propagation, forecasting of EUV and proxy F10.7, predictions of ICME amplitudes and directions, magnetosphere-ionosphere coupling during space weather events, etc.

III. Response Instructions

The specific objective of this RFI is to seek information that will assist the Action 5.5.1 Working Group in determining a list of space weather research priorities.

Disclaimer: Federal agencies may or may not use any responses to this RFI as a basis for a subsequent project, program, or funding opportunity. Responses to this RFI will not be returned. The National Science Foundation is under no obligation to acknowledge receipt of the information received, or provide feedback to respondents with respect to any information submitted under this RFI. No requests for a bid package or solicitation will be accepted; no bid package or solicitation exists. In order to protect the integrity of any possible future acquisition, no additional information will be provided and no appointments for presentations will be made in reference to this RFI. This RFI is issued solely for information and planning purposes and does not constitute a solicitation. Responders to

this RFI will have no competitive advantage in receiving any awards related to the submitted input on a potential space weather-related research priority.

Confidential Information: Some contents of the submissions may be made public. Therefore, responses must be unclassified and should not contain any information that might be considered proprietary, confidential, business sensitive, or personally identifying (such as home address or social security number).

Instructions: One page documents per topic, multiple documents are allowed. Reponses must include the following sections; (1) Title—short and descriptive, (2) Brief Summary of Impacts—a bulleted list of systems impacted by the potential study, (3) Description—a succinct discussion of the topic, its importance, and relevant supporting evidence or arguments, (4) 5–10 year Imperatives—a bulleted list of the steps necessary to carry out the research including comments on relative importance to other. A section including references can be added if needed. Responses should follow the template outlined below. Responses may be no longer than 1 page type written in 12-point font.

Response Template

Title of the priority

Brief Summary of Impacts

- One sentence summary of impact 1
- One sentence summary of impact 2

Background and Relevance

A few paragraphs explaining the background of the space weather research priority, its relevance to SWAP Goal 5.5.1 and supporting justification of why this is a high priority issue.

5–10 Year Goals

Over the next 5 to 10 years it is imperative to:

- One sentence summary of goal 1
- One sentence summary of goal 2

References

Include essential references only

References:

National Space Weather Strategy, *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/final_nationalspaceweatherstrategy_20151028.pdf.*

National Space Weather Action Plan, *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/final_nationalspaceweatheractionplan_20151028.pdf.*

Dated: January 2, 2018

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–00031 Filed 1–4–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 5, 2018. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2018–030

1. *Applicant:* Sarah Eppley, Portland State University, Department of Biology, PO Box 751, Portland, OR 97207.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas (ASPAs), sample collection and import into the USA. The applicant proposes to collect moss and soil samples from ASPAs to investigate how warming will affect Antarctic moss terrestrial ecosystems. Moss and soil samples, up to 3 cm deep, would be collected using a metal 2 cubic centimeter coring device. Up to 180 samples total from each of seven different moss species and up to 400 total soil samples will be collected. Sample collection would require access to APSA in the South Shetland Islands. The samples would be imported back to the home university.

Location

ASPA 125, Fildes Peninsula, King George Island, including Zone 125c, Glacier Dome Belligshausen (Collins Glacier); ASPA 150, Ardley Island, Maxwell Bay, Antarctic Peninsula; ASPA 126, Byers Peninsula, Livingston Island.

Dates of Permitted Activities

January 30–June 30, 2018.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2018–00009 Filed 1–4–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

DATES: Weeks of January 8, 15, 22, 29, February 5, 12, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 8, 2018

There are no meetings scheduled for the week of January 8, 2018.

Week of January 15, 2018—Tentative

Thursday, January 18, 2018

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Damaris Marcano: 301–415–7328)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of January 22, 2018—Tentative

Tuesday, January 23, 2018

9:00 a.m. Hearing on Construction Permit for Northwest Medical Isotopes Production Facility: Section 189a of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Michael Balazik: 301–415–2856)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, January 25, 2018

10:00 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting) (Contact: Donna Williams: 301–415–1322)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of January 29, 2018—Tentative

There are no meetings scheduled for the week of January 29, 2018.

Week of February 5, 2018—Tentative

Thursday, February 8, 2018

9:00 a.m. Discussion of Potential Changes to the 10 CFR 2.206 Enforcement Petition Process (Public Meeting) (Contact: Doug Broaddus: 301–415–8124)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of February 12, 2018—Tentative

There are no meetings scheduled for the week of February 12, 2018.

* * * * *

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.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

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 *Patricia.Jimenez@nrc.gov or Jennifer.BorgesRoman@nrc.gov.*

Dated: January 3, 2018.

Denise L. McGovern,

Policy Coordinator Office of the Secretary.

[FR Doc. 2018–00116 Filed 1–3–18; 4:15 pm]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:30 a.m. on Thursday, January 11, 2018.

PLACE: The Commission's National Office at One Lafayette Centre, 1120 20th Street NW, 9th Floor, Washington, DC 20036–3457.

STATUS: This oral argument will be open to the public.

MATTERS TO BE CONSIDERED: The Commission will be hearing oral argument in the case of *Secretary of Labor* v. *Kiewit Power Constructors Co.,* Docket No. 11–2395.

CONTACT PERSON FOR MORE INFORMATION: John X. Cerveny, Executive Secretary, (202) 606–5400.

John X. Cerveny,

Executive Secretary.

[FR Doc. 2018–00143 Filed 1–3–18; 4:15 pm]

BILLING CODE 7600–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36156]

Chicago South Shore & South Bend Railroad Company—Lease Exemption Containing Interchange Commitment—Wisconsin Central Ltd.

Chicago South Shore & South Bend Railroad Company (CSS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Wisconsin Central Ltd. (WCL) and operate approximately 5.64 miles of the City Industrial Track (CIT) in Gary, Ind., between milepost 1.21 and milepost 6.85.[1]

According to CSS, the lease and related switching agreement between CSS and WCL were entered into on November 14, 2017.[2] As required by 49 CFR 1150.43(h)(1), CSS has disclosed in its verified notice that the lease agreement contains an interchange commitment, which affects CSS's ability to interchange traffic with carriers other than WCL. CSS has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h). CSS states that it will operate the track it is leasing.

CSS certifies that its projected annual revenues as a result of the transaction will not result in CSS's becoming a Class II or Class I rail carrier. However, because its projected annual revenues exceed $5 million, CSS states that it provided notice on November 22, 2017, pursuant to the labor notice requirements of 49 CFR 1150.42(e).

CSS states that it intends to consummate the lease agreement on or after January 21, 2018, the effective date of the exemption.[3]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 12, 2018 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36156, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Nardi, Transport Counsel PC, 1900 M Street NW, Suite 400, Washington, DC 20036.

Board decisions and notices are available on our website at ''*www.stb.gov.*''

Decided: January 2, 2018.

[1] CSS states that the CIT is a line of railroad, and not ancillary (industrial) trackage. However, according to CSS, the subject CIT lease transaction also involves ancillary track not subject to the Board's entry licensing requirements, pursuant to 49 U.S.C. 10906.

[2] CSS filed a confidential version of the lease and related switching agreement with its notice of exemption to be kept confidential by the Board under 49 CFR 1104.14(a) without the need for the filing of an accompanying motion for protective order under 49 CFR 1104.14(b). *See* 49 CFR 1150.43(h).

[3] Pursuant to 49 CFR 1150.42(e), the exemption may not become effective until 60 days from CSS's November 22, 2017 certification.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–00043 Filed 1–4–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36160]

Great Lakes Terminal Railroad, LLC—Lease and Operation Exemption—Rail Line of Great Lakes Reloading, LLC

Great Lakes Terminal Railroad, LLC (GLTRR), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to sublease from Great Lakes Reloading, LLC (GLR), and to operate,[2] approximately 12,500 feet (2.37 miles) of railroad right-of-way and trackage and transloading facilities located at 13535 S. Torrence Avenue, in Chicago, Ill. (the Chicago Transload Facility Trackage).

According to GLTRR, there are no mileposts associated with the Chicago Transload Facility Trackage. GLTRR states that Centerpoint Chicago Enterprise, LLC, owns the Chicago Transload Facility Trackage, and leases it to GLR. GLTRR further states that the trackage is used to transload steel rebar, steel pipe, and agriculture and construction equipment from truck to rail. According to GLTRR, the trackage is used in conjunction with interchanging with the Indiana Harbor Belt Railroad Company.

GLTRR asserts that, because the trackage in question will constitute the entire line of railroad of GLTRR, this trackage is a line of railroad under 49 U.S.C. 10901, rather than spur, switching, or side tracks excepted from Board acquisition and operation authority under 49 U.S.C. 10906.[3]

Although GLTRR states in its verified notice that the operations were proposed to be consummated on or about December 1, 2017, this transaction may not be consummated until January 19, 2018 (30 days after the verified notice was filed).[4]

GLTRR certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million. GLTRR also certifies that there are no provisions or agreements that may limit future interchange with a third-party connecting carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 12, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36160, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GLTRR's representative, David C. Dillon, Dillon & Nash, Ltd., 3100 Dundee Road, Suite 508, Northbrook, IL 60062.

According to GLTRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at ''*WWW.STB.GOV.*''

Decided: January 2, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–00020 Filed 1–4–18; 8:45 am]

BILLING CODE 4915–01–P

[1] GLTRR states that the transaction described here is its initial railroad acquisition.

[2] A draft copy of the operating agreement was submitted with the notice of exemption.

[3] *See Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.,* NOR 41986 et al., slip op. at 5 (STB served Sept. 18, 1998), *aff'd sub nom. United Transp. Union-Ill. Legislative Bd.* v. *STB,* 183 F.3d 606 (7th Cir. 1999).

[4] GLTRR initially submitted its verified notice of exemption on December 8, 2017, but the notice is deemed officially filed on December 20, 2017, when the Board received the appropriate filing fee.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0325]

Motor Carrier Safety Assistance Program Multi-Year Plans

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The Fixing America's Surface Transportation Act (FAST Act), requires the Secretary to prescribe procedures for a State to submit multiple-year commercial vehicle safety plans (''multi-year plans'') and annual updates for the Motor Carrier Safety Assistance Program (MCSAP) grants. In a prior notice, FMCSA requested information and posed specific questions to improve the Agency's development and implementation of multi-year plans. This notice announces FMCSA's voluntary implementation of multi-year plans.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Liberatore, Chief, State Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Telephone (202) 366–3030 or by email at *Thomas.Liberatore@dot.gov.* Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

The goal of the MCSAP is to ensure that there is a partnership between the U.S. Department of Transportation and the States to establish programs to improve motor carrier, commercial motor vehicle (CMV), and driver safety to support a safe and efficient surface transportation system. MCSAP makes targeted investments to promote CMV safety, including the transportation of passengers and hazardous materials. FMCSA encourages the States and Territories to invest in activities likely to maximize reductions in the number and severity of CMV crashes and fatalities resulting from such crashes. This is accomplished by adopting and enforcing effective motor carrier, CMV, and driver safety regulations and practices consistent with Federal requirements, assessing and improving statewide performance by setting program goals, and meeting performance standards, measures, and benchmarks.

FMCSA amended its regulations to conform to 49 U.S.C. 31102(c)(1), as amended by the FAST Act, Public Law 114–94 (2015), section 5101, and removed the requirements for the annual plans in the final rule titled, ''Amendments to Implement Grants Provisions of the Fixing America's Surface Transportation Act.'' FMCSA published this rule in the **Federal Register** on October 14, 2016 [81 FR 71010]. These changes allow States to use a multi-year plan, but do not require it.

The FAST Act section 5101, amending 49 U.S.C. 31102, required significant changes to the Agency's grant programs, including moving the border enforcement and new entrant programs into the MCSAP for allocation via the formula. In addition, section

5106 required a working group to develop recommendations for a new distribution formula for the MCSAP funds. The MCSAP Working Group has met four times, to date, and FMCSA received the group's funding formula recommendations on April 7, 2017. Some States expressed concern about moving to a multi-year plan before knowing the new formula. With these complex changes in progress, FMCSA developed a phased, voluntary implementation plan for multi-year state plans as described below.

Responses to October 2016 Notice

In a notice published October 27, 2016, FMCSA asked 14 questions that would assist the Agency in developing an information technology system form and procedures for submission of a multiple-year plan, *see* (81 FR 74862). Twenty-three States and the Owner Operator Independent Driver Association provided responses.

Regarding questions on the length of the multi-year plan, responses to this question varied with some States indicating that they are not interested in a multi-year plan and some States expressing interest in a 5-year plan. However, the largest number of States recommended a 3-year period. In addition, this time period is the best fit for FMCSA's implementation as explained below.

The majority of the States agreed that the multi-year plan length should be the same for all States. FMCSA agrees that this is the easiest implementation and maintenance solution. In addition, while States indicated that their Strategic Highway Safety Plans (SHSP) vary in length from 1 year to 5 years, almost all respondents commented that there was no safety benefit from aligning the length of these two planning documents because the programs are already aligned through the States' SHSP development processes.

Regarding the accuracy of available data, all States confidently reported that they can provide complete and accurate data, with many States recommending 2 or 3 years for the multi-year plan. These States advised that their responses were specific to their recommended timeframes. These responses confirmed FMCSA's expectations.

Many States recommended changes to the requirements in 49 CFR part 350 and to the electronic Commercial Vehicle Safety Plan (eCVSP) to allow grant application forms to be submitted in one system. FMCSA's goal is one access point for quarterly reporting and eCVSP submissions. The Agency intends to complete these changes as funds are available.

The States were divided about their confidence in multi-year plans that will extend beyond the expiration of the MCSAP authorization. While some States advised that an expiring authorization would not cause them concern, as long as there was an opportunity to adjust the multi-year plan based on any unanticipated impacts, other States responded that they would not be confident in a multi-year plan that went beyond a MCSAP authorization period. However, it seemed that these commenters did not anticipate that there would be required annual updates to the multi-year plan. The Agency clarifies this in this notice.

The number of responses supporting a phased implementation proposal was nearly equal to the responses supporting all States concurrently instituting a multi-year plan. However, FMCSA believes that a phased-in approach will best allow the Agency to test the new eCVSP and make needed modifications as States start using the revised application and updated modules.

The States requested additional elements and features in the multi-year plan. FMCSA will consider these for the FY 2019 eCVSP process. FMCSA determined which eCVSP data fields States must validate or update annually, which include prior-year activity objectives, current-year activity goals, current-year spending plans, etc.

With the exception of the few States that currently want to remain with a 1-year plan; the majority of States agreed that there is no benefit to an annual plan. As described in the Agency's implementation information below, the multi-year plan will be a 3-year plan with information carrying over from one year to the next, where appropriate.

Regarding the requirement for States/Territories to provide detailed spending plans or estimate their costs utilizing the SF–424A budget categories for the multi-year plan and annual update in the eCVSP tool, all of the States' comments supported the use of the SF–424A. Several States commented that the existing requirements for detailed budgets is impractical and results in more changes.

Several States requested changes that require statutory or regulatory updates, such as the period of time the funds are available, the order the funds must be expensed, and the percentage of budget changes allowed without formal Agency approval. These issues are not within the scope of this notice.

Implementation

Phased-In Schedule

FMCSA considered the October 27, 2016, **Federal Register** Notice comments, the status of the FAST Act Formula Working Group's recommendations, and necessary eCVSP tool modifications. As a result, FMCSA decided that the FY 2018 eCVSP would allow at least 18 States and Territories to complete a multi-year plan based on the States that volunteered. The 3-year plan for this group of States will include FYs 2018, 2019, and 2020. All other States will submit 1-year eCVSP for the FY 2018 MCSAP applications.

Using the experience and feedback of the FY 2018 users, FMCSA intends to make any necessary modifications prior to the FY 2019 eCVSP process. As a result, FMCSA will then solicit another group of States to volunteer to start their 3-year plans by August 1, 2018. The 3-year plan for these States will include FYs 2019, 2020, and 2021. States that did not move to the 3-year plan in FY 2018 or FY 2019 will have the option to complete the 1-year eCVSP.

FMCSA expects that the remaining States will move to the 3-year eCVSP by August 1, 2019. This group of States will complete their 3-year plans for FYs 2020, 2021, and 2022. If a State is unable to transition to a 3-year plan, States can continue to submit 1-year eCVSP until FMCSA decides whether or not to require the multi-year plan.

FMCSA expects that States will remain on one of these 3-year planning cycles, with the States that begin submitting multi-year plans in FY 2017 for FY 2018 grants to submit a complete a 3-year plan again in 2020 for the FY 2021 grants. As a result of distributing State's complete plans across three years and only requiring annual updates, FMCSA anticipates the workload of the States to decrease by 40 percent, as information will carry over (unless authorization requires changes). Additionally, FMCSA expects that this change will improve and expedite the Agency's eCVSP reviews.

First Year of the 3-Year Plan

FMCSA is modifying the eCVSP to allow States to submit the following information/documentation in the first year of the 3-year plan:

1. eCVSP with program goals for all 3 years;
2. Certification of MCSAP Conformance;
3. Annual Certification of Compatibility;
4. New Laws and Regulations; and
5. Substantiation of Maintenance of Effort (MOE) Calculations.

States will submit the following documentation in the *Grants.gov* system:

1. SF–424 Application for Federal Assistance;
2. SF–424A Budget Information for Non-Construction Programs;
3. SF–424B Assurances for Non-Construction Programs;
4. *Grants.gov* Lobbying Form;
5. SF–LLL Disclosure of Lobbying Activities, as required;
6. Key Contacts Form;
7. Indirect Cost Rate Agreement;
8. Title VI Assurance; and
9. Supplemental Attachments.

Second and Third Years of 3-Year Plan

In the second and third years of the 3-year plan, FMCSA is planning for States to revise budgets to reflect current costs and revise program goals and certifications, if needed, as part of the annual update and to submit the Substantiation of MOE Calculations.

Unanticipated Funding or Program Changes

FMCSA will require States to update their 3-year plan if there are unexpected changes in funding or authorization resulting in different requirements and will notify States accordingly.

Additional Information

For other information on this program, please see *https://www.fmcsa.dot.gov/grants/mcsap-basic-incentive-grant/motor-carrier-safety-assistance-program-mcsap-grant.*

Issued on: December 20, 2017.

Cathy F Gautreaux,

Deputy Administrator.

[FR Doc. 2018–00014 Filed 1–4–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0319]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the Agricultural and Food Transporters Conference of American Trucking Associations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA) to allow certain alternate methods for the securement of agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and hay, straw, and cotton bales that are grouped together into large singular units. The Federal Motor Carrier Safety Regulations (FMCSR) generally require loads to be secured by a minimum number of tiedowns based on article length, and the aggregate working load limit of those tiedowns must be at least one-half times the weight of the article or group of articles being transported. Based on the results of a comprehensive test program conducted by FMCSA in collaboration with the California Highway Patrol (CHP), the California Department of Food and Agriculture, the California Trucking Association, and others, AFTC believes that use of certain alternate cargo securement methods will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because the test results confirmed that the performance requirements of the regulations are met when using the alternate securement methods.

DATES: Comments must be received on or before February 5, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2017–0319 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday–Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level

of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

AFTC Application for Exemption

AFTC applied for an exemption from 49 CFR 393.102, 393.106, 393.110, and 393.114 to allow alternate methods for the securement of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units. A copy of the application is included in the docket referenced at the beginning of this notice.

On September 27, 2002, FMCSA published new cargo securement rules (67 FR 61212). The rules were based on the North American Cargo Securement Standard Model Regulation, reflecting (1) the results of a multi-year research program to evaluate U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials, and other interested parties.

The cargo securement rules include general securement rules applicable to all types of articles or cargo, with certain exceptions (§§ 393.100–393.114), and commodity-specific rules for cargoes that require specialized means of securement (§§ 393.116–393.136). The commodity-specific requirements take precedence over the general rules for a commodity listed in those sections. This means all cargo securement systems must meet the general requirements, except to the extent a commodity-specific rule imposes additional requirements that prescribe in more detail the securement method to be used. There are no commodity-specific rules applicable to the transportation of (1) agricultural commodities transported in wood and plastic boxes and bins and large fiberglass tubs, and (2) hay, straw, and cotton bales that are grouped together into large singular units.

AFTC states that ''For the past several years, Agricultural haulers in California have been utilizing annual exemptions granted by the CHP to continue to allow the use of previously existing cargo securement methods for hauling agricultural products. The California annual exemptions were granted because the strict application of the cargo securement requirements that FMCSA identified in a Final Rule in 2002 and became effective in 2004 would have resulted in a less secure agricultural commodity cargo securement environment.''

In support of its application, AFTC states that ''We are requesting this exemption after the Federal Motor Carrier Safety Administration (FMCSA) performed testing and evaluation of various methods utilized in securing a wide variety of agricultural products for transport that occurred in 2007 and 2008. Many cargo securement methods were tested including those used to secure plastic and wood bins, large fiberglass tubs, and hay and cotton bales. The study with FMCSA was a collaborative effort with the California Highway Patrol . . . , California Department of Food and Agriculture, California Trucking Association and several of our carrier members.'' A copy of the draft report has been included in the docket referenced at the beginning of this notice.

AFTC notes that the alternate securement methods for boxes, bins, and tubs are intended to apply only to the transportation of agricultural products from the field or storage to the first point of processing and the return or delivery of empty containers to the field or storage location. Additionally, loads transported in vans or that are contained on four sides by racks, or for other than agricultural operation as described above must be transported in accordance with the general cargo securement rules of §§ 393.100–393.114. AFTC states ''The reason for the requested variances is because these agricultural commodities are 'grouped' into larger singular 'units' and these larger grouped units of cargo behave differently when tested to the performance requirements under 49 CFR 393.102.''

Interested parties are referred to the detailed cargo securement requirements outlined by AFTC in an attachment to its exemption application for each box/bin/tub scenario and for hay and cotton bales. The attachment includes information regarding (a) the applicability of the alternative securement methods and definitions, (b) general provisions relating to required tiedowns and other securement devices, (c) construction of loads, and (d) securement of loads.

The exemption would apply to all commercial motor vehicle operators nationwide that transport agricultural commodities in interstate commerce as described in the attachment to the exemption application. AFTC states that the alternative securement requirements ''will provide an increased level of safety and these securement techniques have been tested by the Volpe National Transportation Systems Center in cooperation with FMCSA and the California Highway Patrol.'' Further, AFTC notes that granting the exemption ''will provide an increased level of safety as the alternate securement methods require more cargo securement than is currently required under the California exemptions the industry has been operating under for the past few years.''

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on AFTC's application for an exemption from 49 CFR 393.102, 393.106, 393.110, and 393.114. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file relevant information in the public docket that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: December 28, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00013 Filed 1–4–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Funding Opportunity for America's Marine Highway Projects

AGENCY: Maritime Administration, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The Consolidated Appropriations Act of 2017, signed by

the President on May 5, 2017, appropriated $5,000,000 to the Short Sea Transportation Program, commonly referred to as the America's Marine Highway Program (AMHP). The purpose of the appropriation is to make grants to previously designated Marine Highway Projects that support the development and expansion of documented vessels, and port and landside infrastructure. This notice announces the availability of funding for grants and establishes selection criteria and application requirements.

The U.S. Department of Transportation (Department) will award Marine Highway Grants to implement projects or components of projects previously designated by the Secretary of Transportation (Secretary) under AMHP. Only sponsors of designated Marine Highway Projects are eligible to apply for a Marine Highway Grant as described in this notice.

DATES: Applications must be received by the Maritime Administration by 5 p.m. EST on March 2, 2018.

ADDRESSES: Grant applications must be submitted electronically using *Grants.gov (https://www.grants.gov).* Please be aware that you must complete the *Grants.gov* registration process before submitting your application, and that the registration process usually takes 2 to 4 weeks to complete. Applicants are strongly encouraged to make submissions in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact Tori Collins, Office of Ports & Waterways Planning, Room W21–315, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, phone 202–366–0795 or email *Tori.Collins@dot.gov.*

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for these Marine Highway Grants, and all applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications. Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties as outlined below in Section D.4.

Table of Contents

A. Program Description

Section 55601 of Title 46, United States Code directs the Secretary to establish a short sea transportation grant program to implement projects or components of designated marine highway projects. The grant funds currently available are for projects related to documented vessels and to port and landside infrastructure.

B. Federal Award Information

The Secretary, through the Maritime Administration (MARAD), intends to award $4,850,000 through grants to the extent that there are qualified applications. MARAD will seek to obtain the maximum benefit from the available funding by awarding grants to as many qualified projects as possible; however, MARAD reserves the right to award all funds to just one project. MARAD may partially fund applications by selecting discrete components of projects. The start date and period of performance for each award will depend on the specific project to which MARAD must agree. MARAD will administer each Marine Highway Grant pursuant to a grant agreement with the Marine Highway Grant recipient.

Recipients of prior Marine Highway Grants in earlier rounds of this program may apply for funding to support additional phases of a designated project. However, to be competitive, the applicant should demonstrate the extent to which the previously funded project phase has met estimated project schedules and budget, as well as the ability to realize the benefits expected for the new award.

C. Eligibility Information

To be selected for a Marine Highway Grant, an applicant must be an Eligible Applicant, and the project must be an Eligible Project.

1. Eligible Applicants

Applicants eligible for Marine Highway Grants are sponsors of projects that the Secretary has previously designated as a Marine Highway Project under the AMHP. Project sponsors are public entities, including metropolitan planning organizations, state governments (including state departments of transportation), port authorities, and tribal governments.

Project sponsors are encouraged to develop coalitions and public/private partnerships, which include vessel owners and operators; third-party logistics providers; trucking companies; shippers; railroads; port authorities; state, regional, and local transportation planners; environmental organizations; impacted communities; or any combination of entities working in collaboration on a single application. However, only the public entity sponsor may be a direct recipient of Federal funds under this award.

If multiple project sponsors submit a joint application, they must identify a lead applicant as the primary point of contact. Joint applications must include a description of the roles and responsibilities of each applicant and must be signed by each applicant. Although we encourage a single award recipient, where circumstances require more than one award recipient, the application must identify the recipients of the award.

2. Cost Sharing or Matching

An applicant must provide at least 20 percent of project costs from non-Federal sources. The application should demonstrate, such as through a letter or other documentation, the sources of these funds.

3. Other

Eligible Projects

This grant program intends to create new marine highway services or to expand existing marine highway services. Only projects or their components that the Secretary has previously designated as Marine Highway Projects are eligible for this round of grant funding, and they must support the development and expansion of documented vessels, and port and landside infrastructure. The current list of designated Marine Highway Projects, and sponsors thereof, can be found on the Marine Highway website at: *https://www.marad.dot.gov/wp-content/uploads/pdf/Click-here-for-Marine-Highway-Project-Designations-1.pdf.*

D. Application and Submission Information

1. Address To Request Application Package

Applications may be found at and must be submitted through *Grants.gov*. Applications must include the Standard Form 424 (Application for Federal Assistance), which is available on the *Grants.gov* website at *https://www.grants.gov/web/grants/forms/sf-424-family.html.*

2. Content and Form of Application Submission

In addition to the SF–424, the application should include all the information requested below. MARAD reserves the right to ask any applicant

for supplemental data but expects applications to be complete upon submission. Applicants are encouraged to provide quantitative information, including baseline information that demonstrates the project's merits and economic viability.

a. *Length of Application.* The narrative portion of the application should be in the standard academic format (*i.e.,* 12 pt. font, double-spaced) and must not exceed ten pages. Documentation supporting assertions made in the narrative portion must also be provided but should be limited to relevant information. If possible, website links to supporting documentation should be provided instead of copies of these materials. At the applicant's discretion, relevant materials provided previously in support of a Marine Highway Project application may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted in support of a Marine Highway Grant application.

b. *First Page of Application Narrative.* The first page of the narrative portion of the application should provide the following items of information:

(i) Marine Highway Project name (as stated on the Marine Highway Program's list of Designated Projects);

(ii) Primary point of contact for applicant;

(iii) Total amount of the project cost in dollars and the amount of grant funds the applicant is seeking, along with sources and share of matching funds;

(iv) Summary statement of how the grant funding will be applied;

(v) Project parties; and

(vi) Unique Entity Identifier (*e.g.,* DUNS) number. Recipients of Marine Highway Grants and their first-tier sub-awardees must have Unique Entity Identifier numbers (*https://fedgov.dnb.com/webform*) and current registrations in the System for Award Management (*https://www.SAM.gov*).

c. *Contact Information.* An application must include the name, phone number, email address, and business address of the primary point of contact for the applicant. MARAD will use this information to inform applicants of our decision regarding selection of grant recipients, as well as to contact them if we need additional or supplemental information regarding an application.

d. *Grant Funds and Sources and Uses of Project Funds.* An application should include specific information about the amount of grant funding requested, sources and uses of all project funds, total project costs, the percentage of project costs that would be paid with Marine Highway Grant funds, and the identity and percentage shares of all parties providing funds for the project.

e. *National Environmental Policy Act (NEPA) Requirement.* Projects selected for grant award must comply with NEPA and any other applicable environmental laws. If the environmental review process is underway but not complete at the time of the application, the application must detail where the project is in the process, indicate the anticipated date of completion, and provide a website link or other reference to copies of any environmental documents prepared.

f. *Other Federal, State, and Local Actions.* An application must indicate whether the proposed project is likely to require actions by other agencies (*e.g.,* permits), indicate the status of such actions, provide a website link or other reference to materials submitted to the other agencies, and demonstrate compliance with other Federal, state, or local regulations and permits as applicable.

g. *Certification Requirements.* For an application to be considered for a grant award, the Chief Executive Officer, or equivalent, of the applicant is required to certify, in writing, the following:

(i) That, except as noted in this grant application, nothing has changed from the original application for formal designation as a Marine Highway Project;

(ii) The project sponsor will administer the project and any funds received will be spent efficiently and effectively; and

(iii) Applicant will provide information, data, and reports as required.

h. *Protection of Confidential Commercial Information.* Applicants should submit, as part of or in support of an application, 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 that 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 Commercial Information (CCI)''; (2) mark each affected page ''CCI''; and (3) highlight or otherwise denote the CCI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

3. Unique Entity Identifier and System for Award Management (SAM)

MARAD will not make an award to an applicant until the applicant has complied with all applicable Unique Entity Identifier and SAM requirements. Each applicant must be registered in SAM before applying, provide a valid Unique Entity Identifier number in its application, and maintain an active SAM registration with current information throughout the period of the award. Applicants may register with the SAM at *www.SAM.gov.* Applicants can obtain a Unique Entity Identifier number at *http://fedgov.dnb.com/webform.* If an applicant has not fully complied with the requirements by the time MARAD is ready to make an award, MARAD may determine that the applicant is not qualified to receive a Federal award under this program.

4. Submission Dates and Times

Applications must be received by 5 p.m. EST on March 2, 2018. Late applications that are the result of failure to register or comply with *Grants.gov* application requirements in a timely manner will not be considered. Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *MH@dot.gov* or Tim Pickering at 202–366–0704 prior to the 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 issue experienced along with the corresponding ''Grant tracking number'' that is provided via *Grants.gov* (3) the ''Legal Name'' for the applicant that was provided in the SF–424; (4) the name and contact information for the person to be contacted on matters involving submission that is included on the SF–424; (5) the Unique Entity Identifier number (*e.g.,* DUNS) associated with the application; and (6) the *Grants.gov* Help Desk Tracking Number.

5. Funding Restrictions

MARAD will not allow reimbursement of any pre-Federal award costs that may have been incurred by an applicant.

Grant funds may only be used for the purposes described in 46 U.S.C. 55601(b)(1) and (3) and may not be used as an operating subsidy.

6. Other Submission Requirements

Grant applications must be submitted electronically using *Grants.gov* (*https://www.grants.gov*).

E. Application Review Information

1. Selection Criteria

When reviewing grant applications, MARAD will consider how the proposed service could satisfy, in whole or in part, 46 U.S.C. 55601(b)(1) and (3) and any of the following criteria found at 46 U.S.C. 55601(g)(2)(B):

(i) The project is financially viable;

(ii) The funds received will be spent efficiently and effectively; and

(iii) A market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

In awarding grants under the program, MARAD will give preference to those projects or components that present the most financially viable marine highway transportation services and require the lowest total percentage Federal share of the costs. MARAD will also give special consideration to projects which emphasize improved infrastructure condition, or facilitate economic or competitiveness in rural areas.

2. Review and Selection Process

Upon receipt, MARAD will evaluate the application using the criteria outlined above. Upon completion of the technical review, MARAD will forward the applications to a Department inter-agency review team (Intermodal Review Team). The Intermodal Review Team will include members of MARAD, other Operating Administrations, and representatives from the Office of the Secretary of Transportation. The Intermodal Review Team will assign ratings of ''highly recommended,'' ''recommended,'' ''not recommended,'' ''incomplete,'' or ''not eligible'' for each application based on the criteria set forth above. The Intermodal Review Team will provide their findings to the Program Office. The Program Office will use those findings to inform the recommendations that will be made to the Maritime Administrator and the Secretary.

Prior to making a Federal award over the simplified acquisition threshold of $150,000 MARAD will review and consider any information about the applicant that is in the designation integrity and performance system accessible through SAM (currently the Federal Awardee Performance Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. MARAD 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, we will announce the selected projects on the MARAD website (*https://www.marad.dot.gov*).

2. Administrative and National Policy Requirements

All awards must be administered pursuant to the ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards'' found at 2 CFR part 200, as adopted by the Department at 2 CFR part 1201. Additionally, all applicable Federal laws and regulations will apply to projects that receive Marine Highway Grants. The period following award that a project is expected to expend grant funds and start construction, acquisition, or procurement will be considered on a case-by-case basis and will be specified in the project-specific grant agreement. We reserve the right to revoke any award of Marine Highway Grant funds and to award such funds to another project to the extent that such funds are not expended in a timely or acceptable manner and in accordance with the project schedule. Federal wage rate requirements included at 40 U.S.C. 3141–3148 apply to all projects receiving funds under this program and apply to all parts of the project, whether funded with other Federal funds or non-Federal funds.

3. Reporting

Award recipients are required to submit quarterly reports to the Program Office to keep MARAD informed of all activities during the reporting period. The reports will indicate progress made, planned activities for the next period, and a listing of any purchases made with grant funds during the reporting period. In addition, the report will include an explanation of any deviation from the projected budget and timeline. Quarterly status reports will also contain, at a minimum, the following: (1) A statement as to whether the award recipient has used the grant funds consistent with the terms contemplated in the grant agreement; (2) if applicable, a description of the budgeted activities not procured by recipient; (3) if applicable, the rationale for recipient's failure to execute the budgeted activities; (4) if applicable, an explanation as to how and when recipient intends to accomplish the purposes of the grant agreement; and (5) a budget summary showing funds expended since commencement, anticipated expenditures for the next reporting period, and expenditures compared to overall budget.

4. Requirements for Domestic Content (''Buy American,'' ''Buy America,'' and ''Cargo Preference'')

Consistent with the requirements of section 410 of Title IV of Division K, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2017, of the Consolidated Appropriations Act of 2017 (Pub. L. 115–31), the Buy American requirements of Chapter 83 of Title 41 U.S.C. apply to funds made available under this Notice of Funding Opportunity. Depending on other funding streams, the project may be subject to ''Buy America'' requirements. If a project intends to use any product with foreign content or of foreign origin, this information should be listed and addressed in the application. If certain foreign-content is granted an exception or waiver from Buy American or Buy America requirements, a Cargo Preference requirement may apply.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact Tori Collins, Office of Ports & Waterways Planning, Room W21–315, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, phone 202–366–0795 or email *Tori.Collins@dot.gov.* To ensure applicants receive accurate information about eligibility, the program, or in response to other questions, applicants are encouraged to contact MARAD directly, rather than through intermediaries or third parties.

* * * * *

Dated: January 2, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00033 Filed 1–4–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0418]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs Acquisition Regulation (VAAR)

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 5, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Department Of Veterans Affairs Acquisition Regulation (VAAR) Sections 809.504(d) and Clause 852.209–70.

OMB Control Number: 2900–0418.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR section 809.504(d) and Clause 852.209–70 requires VA to determine whether or not to award a contract to a firm that might involve or result in a conflict of interest. VA uses the information to determine whether additional contract terms and conditions are necessary to mitigate the conflict. 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 142 on July 26, 2017, pages 34748 and 34749.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: VAAR section 809–504(d) and VAAR clause 852.209–70—110 hours.

Estimated Average Burden per Respondent: VAAR section 809–504(d) and VAAR clause 852.209–70—1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: VAAR section 809–504(d) and VAAR clause 852.209–70—102.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–00003 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0704]

Agency Information Collection Activity: DoD Referral to Integrated Disability Evaluation System (IDES)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 6, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0704'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: DoD Referral to Integrated Disability Evaluation System (IDES) (VA Form 21–0819).

OMB Control Number: 2900–0704.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0819 is used to gather the necessary information to determine eligibility for active duty service members who may be eligible for DoD Disability Evaluation Board and VA compensation. Without this information, determination of entitlement would not be possible.

Affected Public: Individuals and households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 14,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–28507 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0393]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs Acquisition Regulation (VAAR), Simplified Acquisition Procedures

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 5, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0393'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0393'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Part 813, Simplified Acquisition Procedures.

OMB Control Number: 2900–0393.

Type of Review: Extension of a currently approved collection.

Abstract: This request for an extension covers the competitive acquisition of commercial and non-commercial goods or services conducted under the simplified acquisition procedures of FAR Part 13 and VAAR Part 813 that exceed $25,000. The collection of procurement information is an integral part of the Federal acquisition process. VA cannot award contracts, issue purchase orders, or enter into blanket purchase agreements (BPAs) or other contract actions without the collection of information. The Federal Acquisition Regulation (FAR) contains PRA control numbers for the collection of information under FAR Parts 14, Sealed Bidding, and 15, Contracting by Negotiation. All VA invitations for bids (IFB) (*i.e.,* sealed bids) and requests for proposals (RFPs) (*i.e.,* negotiated) acquisitions exceeding $150,000 (or exceeding $7 million for commercial items) are conducted in accordance with FAR Parts 14 or 15 and are covered by the FAR PRA control numbers. In addition, many of VA's commercial item acquisitions between $150,000 and $7 million are also conducted in accordance with FAR Parts 14 or 15. Therefore, the OMB PRA control numbers assigned to the FAR already cover VA acquisition activities under FAR Parts 14 and 15 and VAAR Parts 814 and 815. There are no separate collections of information in VAAR Parts 814 and 815 that are over and above those already required by the FAR. However, the FAR does not have an OMB PRA control number for Part 13. Thus, this VAAR PRA number 2900–0393 covers VA's acquisition activities conducted under FAR Part 13 and under VAAR Part 813, since those activities are not covered by a PRA number assigned to the FAR.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 47080 on October 10, 2017, page 47080.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: VAAR Part 813—20,845 Burden Hours.

Estimated Average Burden per Respondent: VAAR Part 813—1 Hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: VAAR Part 813—20,845.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–00001 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0779]

Agency Information Collection Activity Under OMB Review: Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire, Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease) Disability Benefits Questionnaire, Peripheral Nerve Conditions (Not Including Diabetic Sensory-Motor Peripheral Neuropathy) Disability Benefits Questionnaire, Persian Gulf and Afghanistan Infectious Diseases Disability Benefits Questionnaire, Tuberculosis Disability Benefits Questionnaire, Kidney Conditions (Nephrology) Disability Benefits Questionnaire, Male Reproductive Organ Conditions Disability Benefits Questionnaire, Prostate Cancer Disability Benefits Questionnaire, Eating Disorders Disability Benefits Questionnaire, Mental Disorders (other than PTSD and Eating Disorders) Disability Benefits Questionnaire, Review Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 5, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through

electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0779'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0779'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire (VA Form 21–0960B–2), Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease) Disability Benefits Questionnaire (VA Form 21–0960C–2), Peripheral Nerve Conditions (Not Including Diabetic Sensory-Motor Peripheral Neuropathy) Disability Benefits Questionnaire (VA Form 21–0960C–10), Persian Gulf and Afghanistan Infectious Diseases Disability Benefits Questionnaire (VA Form 21–0960I–1), Tuberculosis Disability Benefits Questionnaire (VA Form 21–0960I–6), Kidney Conditions (Nephrology) Disability Benefits Questionnaire (VA Form 21–0960J–1), Male Reproductive Organ Conditions Disability Benefits Questionnaire (VA Form 21–0960J–2), Prostate Cancer Disability Benefits Questionnaire (VA Form 21–0960J–3), Eating Disorders Disability Benefits Questionnaire (VA Form 21–0960P–1), Mental Disorders (other than PTSD and Eating Disorders) Disability Benefits Questionnaire (VA Form 21–0960P–2), Review Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire (VA Form 21–0960P–3).

OMB Control Number: 2900–0779.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0960 series is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA gathers medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. The Disability Benefit Questionnaire title will include the name of the specific disability for which it will gather information. VAF 21–0960B–2, Hematologic and Lymphatic Conditions, Including Leukemia Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of any hematologic or lymphatic condition; VAF 21–0960C–2, Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease) Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of amyotrophic lateral sclerosis; VAF 21–0960C–10, Peripheral Nerve Conditions (Not Including Diabetic Sensory-Motor Peripheral neuropathy) Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of a peripheral nerve disorder; VAF 21–0960I–1, Persian Gulf and Afghanistan Infectious Diseases Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of an infectious disease due to service in the Persian Gulf or Afghanistan; VAF 210960–I–6, Tuberculosis Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of tuberculosis; VAF 21–0960J–1, Kidney Conditions (Nephrology) Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of kidney disease; VAF 21–0960J–2, Male Reproductive Organ Conditions Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of a condition affecting the male reproductive organ; VAF 21–0960J–3, Prostate Cancer Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of prostate cancer; VAF 21–0960P–1, Eating Disorders Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of an eating disorder; VAF 21–0960P–2, Mental Disorders (other than PTSD and Eating Disorders) Disability Benefits Questionnaire will gather information related to the claimant's diagnosis of any mental disorder with the exception of PTSD; VAF 21–0960P–3, Review Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of PTSD.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 74 on April 19, 2017, pages 18538 and 18540.

Affected Public: Individuals or Households.

Estimated Annual Burden: 127,917 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 307,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–28510 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0622]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs Acquisition Regulation (VAAR), Buy American Act

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 5, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0622'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0622'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Department Of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–89, Buy American Act.

OMB Control Number: 2900–0622.

Type of Review: Extension of a currently approved collection.

Abstract: The Buy American Act requires that only domestic construction

material shall be used to perform domestic Federal contracts for construction, with certain exceptions. VA policy is to not accept foreign construction material. However, if a bidder chooses to submit a bid that includes foreign material, VA will consider such bids if the material is specifically identified and the price of the material is provided. VAAR clause 852.236–89, Buy American Act, advises bidders of these provisions and requires bidders who want to offer foreign construction material to list the material and its price. Bidders who do not intend to offer foreign material do not need to submit any information under this clause. The information is required to allow VA to make an informed decision as to whether or not to accept a bid that includes foreign construction material. In actual practice, very few bidders ever offer foreign materials and, when they do, very few of those offers are accepted.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 142 on July 26, 2017, pages 34747 and 34748.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: VAAR clause 852.236–89, Buy American Act—22 hours.

Estimated Average Burden per Respondent: VAAR clause 852.236–89, Buy American Act—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: VAAR clause 852.236–89, Buy American Act—43.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–00002 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC)

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information regarding its Program of Comprehensive Assistance for Family Caregivers (PCAFC). Through PCAFC, VA provides certain medical, travel, training, and stipend benefits to designated family caregivers of eligible veterans and servicemembers who were seriously injured in the line of duty on or after September 11, 2001. This notice requests information and comments from interested parties to help inform PCAFC of any changes needed to increase consistency across the program, as well as ensure it supports those family caregivers of veterans servicemembers most in need.

DATES: Comments in response to this request for information must be received by VA on or before February 5, 2018.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''Notice of Request for Information on the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers (PCAFC)''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1063B, Washington, DC 20420, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. During the comment period, comments may also be viewed online through the Federal Docket Management System at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Margaret Kabat, National Director, Caregiver Support Program, 10P4C, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–6780 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Program of Comprehensive Assistance for Family Caregivers (PCAFC) was established by Title I of Public Law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010, and is codified in section 1720G(a) of title 38, United States Code (U.S.C.). VA has been administering PCAFC continuously since May 5, 2011 and has implemented this program through its regulations in part 71 of title 38, Code of Federal Regulations (CFR). The purpose of PCAFC is to support family caregivers of eligible veterans (as defined in 38 U.S.C. 1720G(a)(2) and 38 CFR 71.20 to include certain servicemembers) through the provision of caregiver benefits, including training, respite care, counseling, technical support, beneficiary travel (in certain circumstances), a monthly stipend payment, and access to health care (if qualified) through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 U.S.C. 1720G(a)(3), 38 CFR 71.40.

For purposes of this notice hereinafter, the term ''veteran'' refers to veterans and servicemembers who apply for or participate in the Program of Comprehensive Assistance for Family Caregivers.

We are issuing this notice in order to solicit input on several components of the program, as further explained below. This notice and request for information serves as a means for VA to consult with key stakeholders on whether and how PCAFC should be modified to provide the highest quality care and support to veterans and their family caregivers in a consistent manner. We will use the information to inform any updates to this program and its implementing regulations. To the extent that there are any comments related to, or which would require changing, the relevant statutory authorities, those comments are outside the scope of this notice, as those would require Congressional action. The intent of this notice is for VA to garner input from the public on whether and how to change its regulations under the current statute.

This notice and request for information has a comment period of 45 days, during which individuals, groups, and entities may reply to the questions presented below. VA believes that 45 days is sufficient to provide comments, as the individuals, groups, and entities interested in this program likely have information and opinions readily available or can quickly compile and submit such information. Commenters are encouraged to provide complete but concise responses to the questions outlined below. Please note that VA will not respond to comments or questions regarding policy plans, decisions, or issues with regard to this notice. VA may choose to contact individual commenters, and such communications would serve to further clarify their written comments.

In order to improve PCAFC, we are seeking information on the following topics and issues:

Initial and Ongoing Eligibility of Veterans and Servicemembers

In order to be eligible for PCAFC under the statute, the individual must be a veteran or a servicemember undergoing medical discharge from the Armed Forces and must have a serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001. 38 U.S.C. 1720G(a)(2)(A)–(B), 38 CFR 71.20(a)–(b). We have defined ''serious injury'' as ''any injury, including traumatic brain injury, psychological trauma, or other mental disorder, incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001, that renders the veteran or servicemember in need of personal care services.'' 38 CFR 71.15. We have interpreted 38 U.S.C. 1720G to require this causal relationship between the need for personal care services and the serious injury. 76 FR 26150.

Additionally, 38 U.S.C. 1720G requires that eligibility be premised on an individual's need for personal care services because of (1) an inability to perform one or more activities of daily living, (2) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury, or (3) such other matters as the Secretary considers appropriate. 38 U.S.C. 1720G(a)(2)(C)(i)–(iii). This requirement is set forth in 38 CFR 71.20(c), in which we require that the serious injury renders the veteran in need of personal care services for a minimum period of six continuous months based on specified criteria. Otherwise, the criteria under § 71.20(c) do not distinguish between, or require, any specific degree of need for assistance (*e.g.,* in frequency, complexity, or scope).

In order to be eligible for the program, we also require that a clinical determination be made that it is in the best interest of the individual to participate in the program. 38 CFR 71.20(d). This determination currently requires the clinician to consider whether participation in the program significantly enhances the individual's ability to live safely in a home setting, supports the individual's potential progress in rehabilitation, if such potential exists, and creates an environment that supports the health and well-being of the individual. 38 CFR 71.15. VA has found variability in how these three considerations are applied by clinicians assessing whether participation in PCAFC is in a veteran's best interest.

Once a veteran has been determined to be eligible for the program and a family caregiver has been approved and designated, the veteran's well-being is monitored by VA no less often than every 90 days, unless otherwise clinically indicated. 38 CFR 71.40(b)(2). Currently, there is no regulatory requirement to reassess eligibility. If, however, the veteran's level of functioning improves, lessening the need for assistance of a family caregiver, VA may determine that the veteran no longer meets the eligibility criteria for PCAFC. Because approval and designation of a family caregiver is conditioned on the eligibility criteria being met, in the instance that a veteran is determined to be ineligible for the program, VA will revoke the family caregiver's designation, and the caregiver benefits will cease. 38 CFR 71.25(f), 71.45(c).

Continuation of Benefits After Revocation

Under PCAFC, caregiver benefits may continue for a period of time after revocation of the family caregiver's designation in limited situations. For example, under § 71.45(b)(4), caregiver benefits continue for 30 days after the date of revocation initiated by the veteran or his or her surrogate, subject to certain exceptions. Additionally, under § 71.45(c), caregiver benefits continue for 90 days after revocation initiated by VA, subject to certain exceptions. We provide these extended periods of benefits to allow a family caregiver, who did not request the revocation, a transition period before benefits are discontinued (particularly, for certain benefits like health care). We believe these extended benefits periods are consistent with the purpose of 38 U.S.C. 1720G and represent an appropriate and compassionate way to interpret and enforce the law. 76 FR 26155–26156. The 30- and 90-day periods set forth in § 71.45(b)(4) and (c), respectively, are the only instances in which the regulations provide for extended caregiver benefits beyond the date of revocation.

While a family caregiver can voluntarily leave the program at any time, when a family caregiver initiates revocation, his or her caregiver benefits terminate at the present or future date of revocation as specified by the family caregiver. 38 CFR 71.45(a). While a family caregiver is not required to provide a basis for revocation, a family caregiver's voluntary revocation may involve instances when the family caregiver leaves because of a situation involving actions of the veteran. VA is seeking input on whether there are any circumstances in which a family caregiver's benefits should be extended beyond the revocation date when the family caregiver makes the decision to be removed as the family caregiver as well as the length of such an extension.

Determination of Stipend Payment Methodology for Primary Family Caregivers

Section 1720G(a)(3)(A)(ii)(V) of title 38, U.S.C., requires VA to provide a monthly stipend to primary family caregivers of eligible veterans. Under the statute, VA is required to base the stipend amount on the amount and degree of personal care services provided; to the extent practicable, ensure that the amount is not less than the monthly amount a commercial home health care entity would pay an individual in the geographic area of the veteran to provide equivalent personal care services; and in the instance that the geographic area does not have a commercial home health entity, VA must take into consideration the costs of commercial providers of personal care services in those geographic areas with similar costs of living. See 38 U.S.C. 1720G(a)(3)(C).

Under the implementing regulations, VA relies on the U.S. Department of Labor's Bureau of Labor Statistics (BLS) hourly wage rate for home health aides at the 75th percentile in the veteran's geographic area of residence, which is multiplied by the Consumer Price Index for All Urban Consumers. 38 CFR 71.15, 71.40(c)(4). We have used the BLS wage rate to meet the intent of the statute to ensure that primary family caregivers are not paid less than home health aides in the applicable geographic area. 76 FR 26154. These rates, however, fluctuate annually in conjunction with changing geographical area designations, which can result in alterations to stipend amounts.

VA also calculates the stipend amount based on a veteran's assigned tier level which is determined by a clinical assessment of functional needs, as further detailed in 38 CFR 71.40(c)(4). Specifically, VA determines the veteran's level of dependency based on the degree to which he or she is unable to perform one or more activities of daily living or the degree to which he or she is in need of supervision or protection based on symptoms or residuals of neurological or other impairment or injury. VA conducts a clinical assessment, which is scored and summed. Based on the sum of all ratings, the veteran is assigned a tier level. Each tier level is assigned a

number of hours, up to forty hours per week. The primary family caregiver receives a stipend based on the assigned tier level. Currently, this is a determination based upon the needs of the veteran, not the family caregiver, and it distinguishes among three different tiers.

Request for Information

Through this notice, we are soliciting information on PCAFC. We ask respondents to address the following questions, where possible, in the context of the discussion in this document. Commenters do not need to address every question and should focus on those that relate to their expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response. As previously mentioned, responses to this request will inform our updates to PCAFC. Accordingly, we request comments on the following:

1. Should VA change how ''serious injury'' is defined for the purposes of eligibility?

a. Should the severity of injury be considered in determining eligibility to ensure VA is supporting family caregivers of Veterans most in need? If so, how should the level of severity be determined?

b. How should VA define veterans who are most in need?

c. Should eligibility be limited to only those veterans who without a family caregiver providing personal care services would otherwise require institutionalization? If so, how should this be determined?

2. One of the bases upon which a veteran can be determined to need personal care services is his or her need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury.

a. What should be the criteria to assess a veteran's need for supervision or protection?

b. What standardized tools should be used to assess a veteran's need for supervision or protection because of a mental health condition?

3. To be eligible for the program, participation must be determined to be in the ''best interest'' of the veteran. How should ''best interest'' be defined?

a. How can VA improve consistency in ''best interest'' determinations for participation in the program?

b. Are there any conditions under which participation would not be in a veteran's best interest?

4. Once approved for PCAFC, should the veteran's eligibility be reassessed at specific time intervals or based on certain clinical indicators?

a. If so, what intervals and/or what clinical indicators should be used?

b. Should reassessments be standard for every participant? Are there conditions under which continued eligibility should be presumed and a reassessment not needed? If so, what would these conditions be?

5. When VA determines that a veteran or family caregiver is no longer eligible for PCAFC or the family caregiver or veteran no longer wishes to participate in PCAFC, the family caregiver's designation is ''revoked''. The term ''revok[ed]'' is used in the statute (38 U.S.C. 1720G(a)(9)(C)(ii)(II)); however, stakeholders have expressed concerns that this term is not supportive of participants. What terminology should VA use in reference to those participants who are determined to be no longer eligible for the program?

a. Should VA use such language as removal, discharge, or graduate in reference to participants who become ineligible for the program?

6. Should the timeframes for continuation of benefits for family caregivers who are revoked from the Program be modified?

a. If so, how?

b. Under what circumstances should family caregiver benefits be continued after revocation? For example, should VA continue providing benefits to a family caregiver who requests revocation due to an unsafe environment created by a veteran, such as an instance involving intimate partner violence committed by a veteran? How long should the benefits be continued under such circumstances?

7. VA's methodology of stipend calculations using the U.S. Department of Labor's Bureau of Labor Statistics (BLS) wage rates is complex and creates variability in stipend amounts annually across localities. How should VA calculate stipend rates?

a. What other standards or rates should VA consider using to calculate stipends?

b. Should VA use one BLS rate per state, *i.e.,* one rate that is applicable to all veterans residing in a particular state?

c. Should VA have one stipend amount for all primary family caregivers?

8. A veteran is assigned a stipend tier based on the amount and degree of personal care services provided. How should VA assess and determine the amount and degree of personal care services provided to the veteran by the family caregiver?

a. How should ''degree of'' need be determined, for both physical needs and those related to the need for supervision and protection?

b. Should ''degree of'' need be based on *either* physical needs *or* needs related to psychological disorder? Or should all factors be considered together?

c. Should the three tier system be changed? If so, how should it be changed?

Paperwork Reduction Act

This request for information constitutes a general solicitation of public comments as stated in the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.3(h)(4). Therefore, this request for information does not impose information collection requirements (*i.e.,* reporting, recordkeeping or third-party disclosure requirements). Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2017, for publication.

Dated: December 6, 2017.

Jeffrey Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–00004 Filed 1–4–18; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 83, No. 4

Friday, January 5, 2018

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–208	2
209–462	3
463–588	4
589–704	5

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9688 587

7 CFR

927 589
959 592
Proposed Rules:
Subtitle A 474
Subtitle B 474
929 72
930 77

9 CFR

Proposed Rules:
Ch. I 474
Ch. II 474
Ch. III 474

12 CFR

Proposed Rules:
213 286

14 CFR

25 463
39 ..... 209, 594, 596
Proposed Rules:
39 ..... 80, 83

17 CFR

Proposed Rules:
200 291

18 CFR

11 1
381 468

20 CFR

655 7
702 7
725 7
726 7

21 CFR

1 598
11 598
16 598
106 598
110 598
111 598
112 598
114 598
117 598
120 598
123 598
129 598
179 598
211 598
507 598
573 19
864 ..... 20, 232
878 22
892 600
1308 469

22 CFR

35 234
103 234
127 234
138 234

26 CFR

301 24

29 CFR

5 7
500 7
501 7
503 7
530 7
570 7
578 7
579 7
801 7
825 7
1902 7
1903 7
2560 7
2575 7
2590 7
Proposed Rules:
2510 614

30 CFR

100 7

33 CFR

100 237
117 237
147 237
165 237

36 CFR

Proposed Rules:
220 302

40 CFR

52 33
180 33
260 420
262 420
263 420
264 420
265 420
271 420
Proposed Rules:
52 636
81 ..... 636, 651

41 CFR

50–201 7
300–3 602
300–70 602

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